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DECISION | **THE COMPTROLLER GENERAL OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-211762 **DATE:** March 27, 1984

MATTER OF: Townsend & Company

DIGEST:

1. In a negotiated procurement, although an agency may in certain circumstances make award on the basis of initial proposals, the decision to do so is discretionary and no offeror has a legal right to insist on such an award.

2. Where offeror, in submitting best and final offer, changes how offeror is to be identified but in fact there is no change in entity that submitted initial proposal, offer may be accepted for award.

Townsend & Company, on behalf of California Computer Group, protests the proposed award of a contract to provide various items of computer equipment under request for proposals (RFP) No. 1316 issued by the U.S. Geological Survey, Department of the Interior. Townsend contends that award should have been made on the basis of its initial proposal. We deny the protest.

The solicitation was originally issued on a sole-source basis to Electronic Marketing Specialists (EMS), an authorized representative of Kennedy, Inc., for specific models of Kennedy tape transports, formatters and buffers. Townsend learned of the solicitation through the Commerce Business Daily and notified the agency that it could supply the equipment. The agency allowed Townsend an opportunity to submit a proposal and the protester submitted an initial offer of $14,450. EMS' initial offer was $14,850.

Upon evaluating Townsend's proposal, the agency learned that Townsend had offered other agencies larger discounts from the Kennedy list price than it offered under this solicitation. In light of this information and because of concern that EMS was under the impression that the procurement was being conducted on a sole-source basis, the contracting officer decided to request best and final offers and to inform Townsend and EMS that the procurement was competitive and that she viewed the Kennedy price list as "variable."

Prior to the closing date for receipt of best and final offers, Townsend filed a protest with this Office challenging the agency's request. It also did not respond to the request for best and final offers. EMS, however, lowered its total price to $13,010. The contracting officer proposes to make award to EMS.

Townsend complains that the agency did not have a sufficient reason to request best and final offers. It states that the prices it offered other agencies were based on different equipment and asserts that the request for best and final offers was merely an auction which permitted EMS to lower its prices even though no material items of the RFP were changed in any way. We find no merit to this allegation.

In negotiated procurements, contract awards are not usually made upon receipt of initial proposals. Rather, the regulatory scheme envisions that discussions will be held with all offerors in the competitive range and that these offerors will be allowed an opportunity to revise their proposals. Federal Procurement Regulations § 1-3.805-1(a). While the regulations do permit the agency to make award without discussions where it can be demonstrated that acceptance of the most favorable initial proposal without discussions would result in a fair and reasonable price, they do not require that an award be made without discussions; they only permit such an award if the criteria are met. The decision whether to award on the basis of initial proposals when all the necessary conditions are present is discretionary with the procuring activity. 52 Comp. Gen. 425 (1973); Fordel Films, Inc., B-186841, October 29, 1976, 76-2 CPD 370. An offeror has no legal right, therefore, to insist that award be made on the basis of its initial proposal. Consequently, regardless of whether the agency's price evaluation of Townsend's initial proposal was flawed, Townsend has no legal claim to award based on its initial proposal.

Moreover, we point out that it is not unusual for an offeror to reduce its prices when best and final offers are submitted, and the fact that an offeror does so, even when there is no change to contract terms and conditions, does not indicate the existence of an improper auction. See Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168.

We further point out that the contracting officer's concern that EMS understand that the procurement had become competitive was an appropriate one--we have previously stated that an offeror which reasonably is led to believe that it is a sole-source offeror should be informed when the procurement changes from noncompetitive to competitive and given the opportunity to submit a revised proposal on that basis. See 48 Comp. Gen. 605 (1969); 47 Comp. Gen. 778 (1968); see also Instrumentation Marketing Corporation, B-182347, January 28, 1975, 75-1 CPD 60; B-176861, January 24, 1973.

Finally, Townsend expresses concern over the contracting officer's willingness "to accept a substitution in the offering entity from EMS to Kennedy . . . ." Townsend refers to the EMS best and final offer, which stated that block 17 of Standard Form 33 (in which the name and address of the offeror is entered) was revised as follows:

> "Please Address Purchase Order to:
> Kennedy Company
> c/o Electronic Marketing
> Specialists"

The contracting officer reports that EMS, during negotiations, explained that as a Kennedy distributor it could only offer the list price on Kennedy equipment but that a discounted price could be offered under the manufacturer's name. Apparently it was for that reason that EMS included the revision statement on its best and final offer.

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Generally, the entity awarded the contract should be the entity that submitted the initial proposal. Pedestrian Bus Stop Shelters, Ltd., B-212570, March 20, 1984, 84-1 CPD ___; Ionics Incorporated, B-211180, March 13, 1984, 84-1 CPD ___. We do not believe award to EMS would violate that rule. We note that the best and final offer was submitted by EMS on an EMS printed quotation form and was signed by the same EMS official who signed the initial offer. We further note that no changes were made to the offeror's identification number as inserted in the original proposal or to other information indicating that the offeror was a dealer and that the principal place of performance ("location of the plant or place of business where the item(s) will be produced or supplied from stock") was at the EMS location. In short, it appears that for its own business reasons, EMS changed how the offeror was to be identified, but did not in fact make any change in the actual contracting party.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States