

**DECISION**

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

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**FILE:** B-215978**DATE:** November 5, 1984**MATTER OF:** Communication Manufacturing Company**DIGEST:**

1. Agency may exclude revised proposal from the competitive range where the agency reasonably determines that because of the proposal's high price it has no reasonable chance of being selected for award.
2. Agency properly did not request a best and final offer from an offeror whose proposal was excluded from the competitive range.
3. The otherwise successful offeror whose late modification shall be considered when it is advantageous to the government is the offeror selected for award.

Communication Manufacturing Company (CMC) protests the Federal Emergency Management Agency (FEMA) failure to request CMC's best and final offer or consider the unsolicited best and final offer CMC submitted in connection with request for proposals (RFP) No. EMW-84-R-1386.

The protest is denied.

The RFP requested offers to provide an automated access control system. FEMA received four proposals. After scoring those proposals in accordance with the RFP's technical evaluation criteria, it determined that the proposals of ADT, Bendix and CMC were technically acceptable. The price proposals of these three offers were then scored pursuant to the RFP's price evaluation formula. ADT's price proposal of \$696,237 received 100 points; the Bendix \$2,158,143 price proposal received 30 points. CMC's \$3,141,810 price proposal received 20 points. The three firms were placed in the competitive range. By letter dated May 10, 1984, they were requested to respond to questions and to submit revised price and technical proposals by May 29.

In response to the May 10 letter, ADT raised its price to \$997,416. Neither Bendix nor CMC changed its price. CMC did offer four options which FEMA could choose. Each

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option reduced CMC's price by a stated amount. In evaluating the revised proposals, FEMA did not consider any of the reductions pursuant to the options in CMC's price proposal because FEMA determined that, if any of CMC's options were chosen, CMC's proposal would become technically unacceptable. After this evaluation, CMC was removed from the competitive range because FEMA believed that CMC's price was so excessive that CMC did not have a reasonable chance of being selected for award. By letter dated July 9, CMC was informed of this decision and that no further consideration would be given to CMC's proposal.

CMC submitted an unsolicited best and final offer to FEMA on July 24 and sent supplemental information concerning this offer on July 30. By letters dated July 27 and August 3, FEMA informed CMC that this revision of CMC's proposal would not be considered because it was a late modification to CMC's revised proposal and did not fall within any of the RFP provisions which permitted FEMA to consider late proposal modifications. CMC protested FEMA's decisions to this Office by telex dated August 1.

CMC's first protest basis that FEMA improperly failed to request a best and final offer from CMC is without merit. A procuring agency only is required to request best and final offers from those offerors whose proposals are in the competitive range. SDC Integrated Services, Inc., B-195624, Jan. 15, 1980, 80-1 C.P.D. ¶ 44. The competitive range is comprised of those proposals which the agency believes have a chance of being selected for award and this Office will disturb an agency's decision to exclude a proposal from the competitive range only if that decision is arbitrary or unreasonable. Informatix General Corporation, B-210709, June 30, 1983, 83-2 C.P.D. ¶ 47. Further, a proposal which was initially in the competitive range may be removed from further consideration for award where the agency determines that the proposal does not have a reasonable chance of being selected for award after the proposal is revised. See United Computing Systems, Inc., B-204045, Sept. 23, 1981, 81-2 C.P.D. ¶ 247; SDC Integrated Services, Inc., B-195624, supra. In determining the proposals that fall within the competitive range, price is a proper factor to consider and may emerge as the dominant factor. Datawest Corporation, B-185060, Feb. 17, 1976, 76-1 C.P.D. ¶ 106. Thus, a proposal may be excluded from the competitive range

if the evaluation shows that because the proposal is excessively priced, it has no reasonable chance of being selected for award. See Informatics General Corporation--Request for Reconsideration, B-210709.2, Nov. 18, 1983, 83-2 C.P.D. ¶ 580; Informatics General Corporation, B-210709, supra.

In the present case, after the initial opportunity for revision of proposals, CMC's price was \$2,144,394 higher than ADT's price and \$983,667 higher than Bendix's price. Given this fact, we do not believe that FEMA's decision to exclude CMC's proposal from the competitive range was arbitrary or unreasonable. See id.; Datawest Corporation, B-185060, supra. Consequently, FEMA properly did not request CMC to submit a best and final offer.

CMC next argues that FEMA should not have rejected as a late modification CMC's unsolicited best and final offer which allegedly reduced its price \$300,000 below the best and final price submitted by Bendix. In this regard, CMC relies on Federal Procurement Regulations, 41 C.F.R. § 1-3.802.2 (1984), which state that a late proposal modification submitted by an otherwise successful offeror shall be considered when the modification is advantageous to the government. However, an otherwise successful offeror is the offeror selected for award. Windham Power Lifts, Inc./Quality Plus Equipment, Inc., B-214287, Mar. 7, 1984, 84-1 C.P.D. ¶ 278. Since CMC was not chosen for award, there was no basis to consider its late modification.

*for* Milton J. Douglas  
Comptroller General  
of the United States