



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lenzar Optics Corporation
File: B-225432
Date: March 4, 1987

DIGEST

1. protest that RFP was tailored to favor traditional optics technology is untimely since alleged improprieties apparent in the solicitation should have been protested prior to the date for receipt of initial proposals.
2. Where RFP placed emphasis on minimizing technical risk and on assuring that system to be acquired would perform as specified, contracting agency did not act arbitrarily in ranking a proposal to furnish proven equipment as superior to innovative, but less well proven design which the agency believed would perform less satisfactorily.
3. Protester has not established contention that agency failed to properly consider price reduction where record does not show that reduced prices were actually proposed. Moreover, any price reduction submitted after the closing date for receipt of best and final offers could not be considered without reopening discussions because protester was not otherwise in line for award.

DECISION

Lenzar Optics Corporation protests the award of a contract to Contraves-Goerz Corporation under request for proposals (RFP) No. DAAA02-85-R-9003, issued by the Army Communications-Electronics Command for electro-optical packages (television camera systems, including technical data and support). The protester asserts that the RFP favored what Lenzar characterizes as old technology. Lenzar asserts that its proposal offered a unique, light weight catadioptric zoom lens system, while Contraves-Goerz offered a less attractive design and is a foreign owned firm. Lenzar also says the Army arbitrarily and capriciously failed to reevaluate its proposal in light of reduced costs resulting from the award of a second government contract.

We dismiss the protest in part and deny it in part.

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The RFP called for the award of a fixed-price contract for three low light level television systems with options to acquire up to three additional systems. The contractor was also to furnish technical support, including the design, fabrication and installation of shock mounts that will permit a camera to be installed on a high mobility multi-purpose wheeled vehicle. The equipment is to be used by the Military Intelligence Battalion, 9th Infantry Division, as part of a long range electro-optical system.

Award was to be made based on three evaluation factors listed in descending order of importance: (1) technical approach, (2) management, personnel and facilities, and (3) cost. Technical approach was broken down into numerous subfactors, with soundness of approach, reliance on proven technology, and the Army's assessment of the extent to which each vendor's proposed program would conform to the specifications as the most important considerations.

Contraves-Goerz and Lenzar each submitted proposals^{1/} that were found to be within the competitive range. Following discussions and best and final offers, the Army ranked Lenzar's proposal as technically acceptable. Contraves-Goerz's proposal was evaluated as superior, reflecting the Army's judgment that it combined lower technical risk with far better expected performance at low light levels. Moreover, Lenzar's proposal was higher in price, at \$1,310,349, compared with Contraves-Goerz's price of \$978,907. Accordingly, the Army selected Contraves-Goerz's proposal for award.

Although Lenzar complains that the solicitation was tailored to the type of technology that Contraves-Goerz offered, which according to the protester is comparatively heavy and bulky, any complaint regarding the terms of the solicitation is untimely. To be considered timely, our regulations require protests concerning alleged improprieties that are apparent in a solicitation to be filed prior to the closing date for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986). The RFP requirements and evaluation criteria employed here were apparent from the outset. This portion of Lenzar's protest is therefore dismissed.

^{1/} Contraves-Goerz submitted four proposals; Lenzar submitted one. Throughout, we refer only to the Contraves-Goerz proposal that was selected for award.

Lenzar argues that it proposed a unique, technically superior system, which should have been preferred over Contraves-Goerz's system. Competitive proposals must be evaluated solely on the basis of factors specified in the solicitation. Computer Data Systems, Inc., B-223921, Dec. 9, 1986, 86-2 CPD ¶ 659. Moreover, an agency's evaluation of proposals is a judgmental process, which our Office will not question absent a showing that it acted arbitrarily or in violation of procurement statutes or regulations. Orange State Consultants, B-223030, July 15, 1986, 86-2 CPD ¶ 69. The protester has not shown that the evaluation here was improper.

The RFP placed great emphasis on minimizing technical risk and on assuring that the system would perform as specified. Although the record indicates that the Army's evaluators were impressed with Lenzar's proposed design, Contraves-Goerz's proposal was rated higher because its system had been produced before, while Lenzar's system had not been marketed in the proposed configuration. Further, the evaluators found that Contraves-Goerz's more conventional design would perform much better in low light conditions, a conclusion that Lenzar has not disputed. In the circumstances, we have no basis upon which to question the reasonableness of the Army's technical evaluation.

Lenzar's argument that Contraves-Goerz is a foreign owned firm and thus should not have gotten the award is likewise without merit. The Buy American Act, 41 U.S.C. §§ 10(a)-10(d) (1982), does not prohibit awards to foreign firms or the procurement of foreign products, but merely establishes a preference evaluation system favoring domestic products. California Mobile Communications, B-224398, Aug. 29, 1986, 86-2 CPD ¶ 244. In any event, Contraves-Goerz certified that it will furnish domestic products under its contract, and the Army, therefore, properly concluded that the Buy American preference did not apply. See Spectrum Leasing Corp., B-218323.3 et al., July 11, 1986, 86-2 CPD ¶ 56.

Finally, we consider Lenzar's complaint that the Army failed to properly evaluate its price. According to Lenzar, it advised the Army at the time it submitted its cost and pricing data that its costs would be reduced if it were successful in obtaining a second contract for which it was then competing. Subsequently, well after the closing date for receipt of best and final offers, Lenzar informed the agency that it had been awarded the second contract. In Lenzar's view, the Army's evaluation of its proposed price should have taken into account the new lower cost at which it could have performed the work.

The fact that Lenzar's costs may have declined does not establish what portion of the savings it would have been willing to pass on to the government under this solicitation for a fixed-price contract. More important, there is no evidence in this record that Lenzar ever submitted a written proposal reducing its prices. Moreover, the Army could not have considered such a price reduction had one been submitted after the date for receipt of best and final offers unless discussions were reopened, allowing Contraves-Goerz to also amend its proposal, since the protester was not already in line for award. Merret Square, Inc., B-220526.2, Mar. 17, 1986, 86-1 CPD ¶ 259.

The protest is dismissed in part and denied in part.

for *Stephen E. Van Cleve*
Harry R. Van Cleve
General Counsel