

C. Melody



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bromma, Inc.

File: B-225663

Date: May 6, 1987

DIGEST

1. Submission of revised proposal after initial proposal due date and before contracting agency called for best and final offers did not affect offeror's eligibility for award where the offeror's initial proposal and best and final offer, on which award ultimately was based, were timely submitted before the proposal due dates.
2. Contracting agency's decision to allow offeror to change the company name listed in its initial proposal to reflect company's subsequent incorporation was proper where there is no indication that there was any change in the identity of the offeror which submitted the initial proposal.
3. Contracting agency's decision to allow only the prospective awardee to revise its best and final offer was improper since, when discussions are reopened after best and final offers are received, the contracting agency must hold discussions with all the offerors in the competitive range and allow them to submit new best and final offers.

DECISION

Bromma, Inc. protests the award of a contract to Elme North America, Inc. under request for proposals (RFP) No. DLA400-86-R-9550, issued by the Defense Logistics Agency (DLA) for spreaders for handling containers. Bromma contends that Elme's initial proposal was submitted late and that DLA improperly permitted only Elme to revise its proposed price after discussions were completed and best and final offers had been received. We sustain the protest.

The RFP, issued on July 14, 1986, called for offers on an f.o.b. origin or destination basis for 52 spreaders for handling containers to be used at six different locations.

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Seven offerors, including Bromma and Elme, submitted initial proposals by the August 13 due date. Elme's prices, submitted on both an f.o.b. origin and f.o.b. destination basis, were lowest for all the items. In a cover letter to its proposal, dated August 11, Elme stated that its proposal was based on manufacturing the items in Sweden, but that it intended to revise its prices to reflect manufacture in the United States once it received the relevant cost figures from its American licensee. On August 17, Elme submitted a revised proposal which omitted the destination prices.

After review of the initial proposals, the contracting officer concluded that there were no technical deficiencies warranting discussions. By letter dated August 28, the contracting officer asked all seven offerors to submit best and final offers by September 8. Elme's best and final offer, received on September 5, included f.o.b. destination prices lower than those in its initial August 11 proposal and left the f.o.b. origin prices unchanged. Elme also changed the company named in its proposal to Elme North America, Inc., stating that the incorporation of its U.S. company had been completed. Based on the best and final offers, Elme remained the lowest-priced offeror.

On September 10, the contracting officer selected Elme as the prospective awardee and requested that a preaward survey be performed. On October 18, before award had been made, Elme advised the contracting officer that it had omitted the cost of one component (a hoist bridle) from the prices in its best and final offer and asked to increase each unit price by \$650. According to DLA, the contracting officer told Elme to submit a revised best and final offer. By letter dated October 21, Elme confirmed its request to increase its unit prices by \$650 due to omission of the hoist bridle from its calculations. Even after the price increase, Elme's prices remained approximately 25 percent lower than Bromma's. On December 15, the contracting officer made award to Elme at its revised price.

Bromma first contends that the award to Elme was improper because Elme's revised offer dated August 17, which withdrew its initial f.o.b. destination prices, was submitted after the date for submission of initial offers. We disagree. While, except under limited circumstances, an offer which is submitted late may not be considered, see Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.412 (1986), we see no reason for challenging the award here merely because of Elme's August 17 revision. As indicated, Elme was viewed as technically acceptable and was asked to submit a best and final offer, in which it was free to revise its proposal in

any way it saw fit. Since a timely initial proposal was submitted, and since Elme's best and final offer also was submitted timely and became the basis for award, Elme's August 17 revision simply had no effect on the propriety of Elme's selection for award.

The protester also expresses concern that Elme's best and final offer changed the company named as the offeror from Elme International BV to Elme North America, Inc. According to Elme, the name change reflected the incorporation of its U.S. company after the initial proposal was submitted; the company address remained the same as listed in the initial proposal. We see no basis to object to the contracting officer's decision to allow Elme to make the name change since there is no indication in the record that there was any change in the identity of the offeror submitting the initial proposal. See Harnischfeger Corp., B-224371, Sept. 12, 1986, 86-2 CPD ¶ 296; Pedestrian Bus Stop Shelters Ltd., B-212570, Mar. 20, 1984, 84-1 CPD ¶ 331.

Bromma also argues that it was improper for DLA to allow Elme to revise the prices in its best and final offer without allowing all the other offerors the same opportunity. We agree. After best and final offers are received, a contracting officer may reopen discussions where it is in the government's best interest to do so. See 48 C.F.R. § 15.611(c); Standard Mfg. Co., 65 Comp. Gen. 451 (1986), 86-1 CPD ¶ 304. Here, the contracting officer decided that it was preferable to reopen discussions and consider Elme's revised proposal instead of allowing Elme to withdraw its offer and making award to a higher priced offeror, a decision which we see no reason to challenge.

As Bromma states, however, when discussions are reopened after best and final offers are received, the contracting officer is required to hold discussions with all the offerors in the competitive range and allow them to submit another round of best and final offers. See Greenleaf Distribution Services, Inc., B-221335, Apr. 30, 1986, 86-1 CPD ¶ 422. In this case, DLA justifies the contracting officer's decision to consider only Elme's revised best and final offer on the ground that by selecting Elme for award, the contracting officer already had implicitly narrowed the competitive range to include only Elme. As a result, DLA argues, when Elme later advised the contracting officer that it wished to revise its best and final offer, the contracting officer was under no obligation to give the same opportunity to the other six offerors, who no longer were being considered for award. We do not agree that the mere selection of the prospective awardee amounts to revision of the competitive range to exclude all the other

eligible offerors. The competitive range consists of all offerors with a reasonable chance for award. FAR, 48 C.F.R. § 15.609(a). Here the agency essentially was basing award selection on lowest price, and it is well-established that in a new round of proposal revisions, it is not uncommon for offerors to lower their prices, even when the government's requirements do not change. See Greenleaf Distribution Services, Inc., B-221335, supra. Therefore, we fail to see how Elme, to the exclusion of all other vendors in the competitive range through the initial best and final offer request, could be viewed as having the only reasonable chance for award.

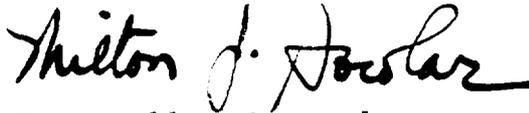
DLA argues that the contracting officer's decision to consider a revised proposal only from Elme did not prejudice Bromma or the other offerors since they could not reasonably be expected to reduce their prices enough to displace Elme as the successful offeror. Elme's prices after the revision (approximately \$6,000 per spreader) were approximately 25 percent lower than Bromma's (approximately \$8,000 per spreader).^{1/} In addition, the prices for the first article test report required by the RFP (Elme, \$1,500; Bromma, \$6,500) increased Elme's price advantage. As indicated above, however, vendors are free to change their prices when proposal revisions are sought, and there is no limitation on the extent to which prices can be reduced. Here, Bromma was deprived of that opportunity. Consequently, we sustain the protest.

In determining what remedy is appropriate, we note that all the offerors' prices have been revealed, and that reopening discussions would only create an auction among the offerors. In addition, since the protest was filed more than 10 days after award was made, DLA was not required to and did not suspend performance. See Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(1) (Supp. III 1985). Elme's contract called for delivery of the first article test report in February, with delivery of the spreaders from May through August 1987. Under these circumstances, we do not believe it is appropriate to recommend that DLA reopen discussions; rather, we find that Bromma is entitled to recover its proposal preparation costs and the costs of filing and pursuing

^{1/} As noted above, Elme increased its price by \$650 for each of the 52 spreaders for a total increase of approximately \$34,000 to its original price.

the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R § 21.6(d) and (e) (1986). The protester should submit its claim for costs directly to the contracting agency. 4 C.F.R. § 21.6(f).

The protest is sustained.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a prominent initial "M".

Acting Comptroller General
of the United States