



The Comptroller General
of the United States

Washington, D.C. 20548

310 Halperin - PL

Decision

Matter of: ARO Corporation

File: B-227055

Date: August 17, 1987

DIGEST

1. Agency decision to negotiate, requesting competitive proposals instead of sealed bids, is not justified solely by the agency's alleged need for price discussions to assure a fair and reasonable price, where the record does not show such discussions were necessary.
2. When protester successfully challenges the use of competitive negotiations versus sealed bids, it is entitled to the costs of filing and pursuing the protest.

DECISION

ARO Corporation protests the Defense Logistics Agency's (DLA) method of acquiring hand operated grease lubricating bucket pumps under request for proposals (RFP) DLA700-87-R-1609. ARO contends that DLA should have solicited sealed bids instead of competitive proposals.

We sustain the protest.

ARO contends that the contracting officer was required by the Competition in Contracting Act of 1984 (CICA) to solicit sealed bids because all of the requirements for sealed bidding were present in this procurement.

DLA argues that it determined that competitive negotiation was the best acquisition method to meet the government's requirements because, based on a prior procurement, DLA anticipated the need for price discussions. DLA states that it expected to conduct discussions in order to guarantee that prices were fair and reasonable.

CICA, 10 U.S.C. § 2304(a) (Supp. III 1985), eliminated the previous specific statutory preference for formally advertised procurements (now "sealed bids"). CICA now provides agencies should use the competitive procedure or combination of procedures that is best suited for the

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circumstances of the procurement. T-L-C Systems, B-225496, Mar. 27, 1987, 87-1 C.P.D. ¶ 354. CICA, 10 U.S.C. § 2304(a)(2), further provides criteria for determining whether a procurement should be conducted by the use of sealed bids. Specifically, CICA requires contracting agencies to solicit sealed bids if all of the following conditions are met:

- "(1) time permits the solicitation, submission, and evaluation of sealed bids;
- (2) the award will be made on the basis of price and other price-related factors;
- (3) it is not necessary to conduct discussions with the responding offerors about their bids; and
- (4) there is a reasonable expectation of receiving more than one sealed bid."

ARO argues that because the solicitation completely and accurately sets forth the requirements of the government, there is no need for any discussions. We note in this regard that the pump is being procured through a Commercial Item Description and is identified by a national stock number. Technical proposals were not required and relative technical merit was not a consideration in proposal evaluation, which was limited to price.

DLA's argument to support its determination to solicit competitive proposals rather than sealed bids is that it wants to have the opportunity to conduct discussions if the prices received are considered to be unreasonable. Specifically, DLA states that based on the wide range of prices submitted in response to a 1985 RFP for bucket pumps, it anticipated the need to conduct price discussions with offerors in order to guarantee that prices were fair and reasonable.

We do not find that DLA's prior experience under the 1985 RFP to be indicative of the need to conduct price discussions. Even though there was a wide range in prices on the prior procurement, it appears from the record that DLA made award, without discussions, to the lowest offeror at a price that DLA considered fair and reasonable. We therefore have no basis to conclude that discussions are necessary to guarantee that award will be made at a fair and reasonable price for this item. Should DLA determine that the lowest bid is not fair and reasonable, it then could cancel the solicitation and complete the procurement through negotiation. See Federal Acquisition Regulation, 48 C.F.R. § 14.404-(1)(c)(6) (1986).

Under the circumstances present in this case, DLA has not shown that it is necessary to conduct discussions in order

to obtain a fair and reasonable price. Accordingly, we find no adequate justification for soliciting competitive proposals instead of sealed bids.

We recommend that DLA cancel the RFP and resolicit requesting sealed bids. In addition, we find ARO entitled to the costs of filing and pursuing the protest. See Southern Technologies, Inc., B-224328, Jan. 9, 1987, 87-1 C.P.D. ¶ 42.

The protest is sustained.

for 
Comptroller General
of the United States