



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Royal Zenith Corporation
File: B-227933
Date: October 28, 1987

DIGEST

1. Protest challenging specifications as unduly restrictive and contracting agency's decision to use negotiated procedures instead of sealed bids is untimely where filed after due date for initial proposals.
2. Protester whose proposal for printing presses was dropped from the competitive range because the presses it offered did not meet all solicitation requirements was not treated unfairly when two other offerors whose proposals also contained similar infirmities were kept in the competitive range because the other two offerors agreed during discussions to modify their presses to meet the solicitation requirements.

DECISION

Royal Zenith Corporation protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DMA800-86-R-0174, issued by the Defense Mapping Agency (DMA) for two five-color offset printing presses. We dismiss the protest in part and deny it in part.

The RFP, issued on December 12, 1986, called for one 50-inch and one 61-inch printing press, including delivery, installation and operator and maintenance training. The RFP reserved DMA's right to make either multiple awards or a single award for both presses. The RFP also required offerors to propose equipment meeting a number of detailed specifications, including printer speeds and stock sizes. Specifically, both presses were to have a slow speed of not more than 2500 IPH (impressions per hour); the 50-inch press was to be capable of handling stock (paper or other materials) as small as 21 by 28 inches; and the 61-inch press was to be capable of handling stock as small as 28 by 36 inches.

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Three offerors, the protester, Rockwell International, and Atlantic Graphic, submitted proposals by the closing date of February 13, 1987. A DMA technical panel evaluated and numerically scored the proposals and conducted discussions with each offeror. On March 9, contracting officials forwarded to each offeror a list of questions relating to their proposals. The letter sent to Royal Zenith asked the firm 16 questions about the equipment proposed, including whether it met the slow speed and minimum paper size requirements. Royal Zenith responded to DMA's questions by letter dated March 20 which stated that the slow speed of both presses it proposed was 3300 IPH, not 2500 IPH as required by the RFP; that the minimum stock size for its 50-inch press was only 23 5/8 by 28 inches, not the required 21 by 28 inches, and for its 64-inch press (offered to meet the requirement for a 61-inch press), 23 5/8 by 39 3/8 inches, not the required 28 by 36 inches.

In early April, all three offerors held demonstrations of their proposed equipment for DMA. DMA then conducted another evaluation of the offerors' technical proposals. By letter dated June 3, the contracting officer informed Royal Zenith that its proposal was found to be technically unacceptable and was eliminated from the competitive range because the presses it offered did not meet the slow speed or the minimum stock size requirements. The other two offerors were found technically acceptable and remained in the competitive range.

On July 1, contracting officials conducted a debriefing to explain further to Royal Zenith the reasons its proposal was excluded from the competitive range. On July 10, Royal Zenith protested to our Office that the procurement should have been conducted using sealed bids instead of negotiated procedures; that certain technical requirements of the RFP were unduly restrictive; and that its proposal should not have been excluded from the competitive range.

On July 27, DMA notified our Office of its determination pursuant to the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(c)(2) (Supp. III 1985), that urgent and compelling circumstances significantly affecting the interests of the United States would not permit withholding the award until our decision on the protest. Award then was made to Rockwell International on July 31. Performance of the contract has begun. After learning that award for both presses had been made to Rockwell, Royal Zenith added to its protest the contention that none of the three offerors met the RFP requirements for minimum stock size and that by rejecting only Royal Zenith's proposal based on that deficiency, DMA failed to apply the specifications uniformly.

As a preliminary matter, Royal Zenith argues that the procurement should have been conducted using sealed bids instead of negotiated procedures and challenges as unduly restrictive certain technical requirements in the RFP. Both issues clearly are untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), protests challenging alleged improprieties apparent on the face of an RFP generally must be filed before the due date for initial proposals. Here, both DMA's decision to use negotiated procedures and the technical requirements which Royal Zenith challenges were clear from the face of the RFP; accordingly, Royal Zenith's protest on these grounds should have been filed before the due date for initial proposals, February 13. Since the protest was not filed until almost 5 months later, after Royal Zenith was advised that its proposal had been rejected, both of these issues are untimely and will not be considered. Lake Hartwell Marine Construction Co., B-226387, May 18, 1987, 87-1 CPD ¶ 524.

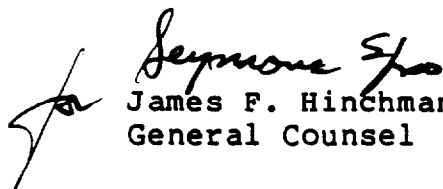
Royal Zenith also argues that it was treated unfairly because its proposal was eliminated from the competitive range while the similarly flawed proposals of Atlantic Graphic and Rockwell were kept in the competition.

Royal Zenith concedes that its proposal failed to satisfy the minimum stock size and the slow speed requirements for both presses. Although DMA informed Royal Zenith of these deficiencies, the firm's letter of March 20 again took exception to these requirements. In this respect, when a proposal is included in the competitive range, it may properly be rejected as technically unacceptable if the offeror fails to correct deficiencies pointed out by the agency. Inco, Inc., B-213344, June 28, 1984, 84-1 CPD ¶ 686.

Rockwell's proposal also took exception to the minimum stock size requirement for the 61-inch press and Atlantic Graphic's proposal took exception to the minimum stock size and the minimum press speed requirements for the 50-inch press. The agency reports, however, that both offerors during the April demonstration indicated that their presses would be modified to meet all the solicitation requirements, including those relating to stock size and press speed. Since Royal Zenith made no such representation during negotiations, the agency properly excluded Royal Zenith from the competitive range while retaining the two other offerors.

Since Royal Zenith clearly did not offer conforming presses,
we cannot conclude that the protester was treated unfairly
or that the award was improper.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel