



The Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: Montgomery Furniture Company

File: B-229678

Date: March 1, 1988

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### DIGEST

Protester's proposal was properly rejected as unacceptable where firm took exception in its best and final offer to warranty provision of solicitation deemed to be material. An offeror should not anticipate a further opportunity to revise its proposal after it makes its "best and final" submission.

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### DECISION

Montgomery Furniture Company protests the award of a contract to Madison Furniture Industries under request for proposals (RFP) No. FCNO-J7-2026-N, issued by the General Services Administration (GSA) for executive office furniture. Montgomery complains that GSA improperly rejected its offer on the ground that the firm's best and final offer (BAFO) had not complied with the solicitation's warranty requirement.

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

The RFP was issued on March 5, 1987, contemplating the award of an indefinite quantity requirements contract for traditional executive office furniture for the period between July 1, 1987, and June 30, 1988, with an option for the government to extend the contract period for up to 1 additional year. Item groups were to be evaluated by geographical zone and award was to be based on the lowest overall aggregate price by group for each zone. Initial proposals were submitted and discussions were held. Montgomery's initial offer was found acceptable. BAFOs were requested for submission by September 25, 1987.

Montgomery's BAFO offered the lowest price for zone 3 of group 11 items, calling for artificial leather executive chairs. However, GSA rejected Montgomery's BAFO as unacceptable because it contained language which took

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exception to the solicitation's warranty provision. Award was made to Madison Furniture Industries, the second low offeror, on November 6, 1987.

The solicitation's warranty requirement provided that:

"The Contractor warrants that for a period of 14 months . . . all supplies . . . will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract."

Montgomery's BAFO, however, contained the following provision:

"One year limited warranty covering labor and materials from date of delivery against defects of workmanship and materials. . . . No warranty for fabrics against colorfastness or wearability."

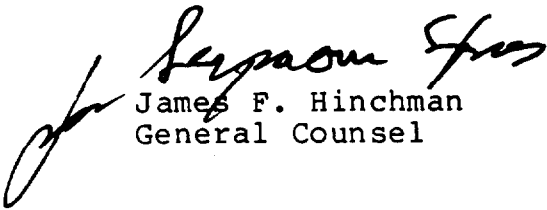
Montgomery's BAFO thus offered a warranty of 12 months, rather than the required 14 month warranty. In addition, Montgomery clearly declined to warrant the material for colorfastness and wearability as required. Our previous decisions have consistently held that warranty provisions in a solicitation are material to the acceptability of an offer and must be met without qualification, because they affect the government's rights under the resulting contract. Conrac Corp., SCD Division, B-225646, May 11, 1987, 66 Comp. Gen. \_\_\_, 87-1 CPD ¶ 497; Environmental Tectonics Corp.--Reconsideration, B-225474.2, et al., Apr. 9, 1987, 87-1 CPD ¶ 391. Where, as here, an offeror in its BAFO takes exception to material terms of the RFP, the agency properly may reject the offer as unacceptable. Id.

Montgomery also protests GSA's failure to negotiate the warranty terms of the protester's BAFO. Where material exceptions are present in a BAFO, an offeror should not anticipate a further opportunity to revise its proposal after it makes its "best and final" submission. See Weinschel Engineering Co., Inc., 64 Comp. Gen. 524 (1985), 85-1 CPD ¶ 574; Conrac Corp., 66 Comp. Gen. at \_\_\_, 87-1 CPD ¶ 497 at 7. The record shows that Montgomery had a fair opportunity along with the other offerors to submit a BAFO with its most favorable terms by the September 25, 1987, closing date. Contrary to Montgomery's position, GSA was under no obligation to discuss the material exception taken to the RFP's warranty provision in the BAFO, and the firm was properly excluded from the procurement. Id. Accordingly, we deny this protest issue.

Montgomery further argues that "no one in industry will give a warranty to Montgomery Furniture or anyone else for more than a year, and most of the suppliers for man-made materials refuse to even give this warranty or statement." In this regard, it is evident that adequate competition was obtained and other offerors complied with the solicitation's warranty requirements.

The protester also alleges that the warranty requirement is confusing as to when it is to begin. However, this does not excuse the protester's failure to meet the warranty's general terms. Further, to the extent that Montgomery contends that the warranty provision is restrictive of competition or ambiguous, its protest is untimely. Our Bid Protest Regulations require that any protest, such as this one, based upon alleged improprieties in a solicitation which are apparent prior to the closing date for the receipt of initial proposals must be filed prior to the closing date for the receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1987); Cryogenic Consultants, Inc., B-225520, Mar. 4, 1987, 87-1 CPD ¶ 249. Since the closing date was May 22, 1987, and the protest was not filed until November 24, 1987, we will not consider this issue.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel