



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Murdock Enterprises, Inc.

File: B-230943

Date: July 12, 1988

DIGEST

Protest that agency accepted a nonconforming best and final proposal is denied when the only reasonable reading of the proposal is that, while it referred to the wrong packaging specification, it nevertheless represented an offer to meet all the solicitation's material requirements.

DECISION

Murdock Enterprises, Inc., protests the award of a contract to the John Johnson Co. under request for proposals (RFP) No. DAAE07-87-R-J021, issued by the United States Army Tank-Automotive Command for canvas cover kits for cargo vehicles. Murdock alleges that Johnson's best and final offer materially deviated from the specifications and that the Army improperly accepted a nonconforming offer.

We deny the protest.

The solicitation, issued February 11, 1987, restricted the acquisition of the cover kits to General Motors part number 14072479. The Army received four proposals by the March 13 closing date. A purchase description, ATPD 2076 (May 17, 1982), for Commercial Truck Cargo Box Cover Kits was added to the RFP by amendment on September 14 to provide specification and quality assurance test data. This amendment called for best and final offers by September 30, and the three offerors in the competitive range all revised their prices in response. Johnson revised its price from \$366.14 per kit to \$319.12 per kit and specifically noted that its best and final offer would meet the requirements of ATPD 2076. Johnson also submitted an alternate offer at a price

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of \$305.30 per kit, with commercial packaging similar to that furnished by Johnson to the government through General Motors instead of the packaging level required by the RFP.

On January 20, 1988, the Army determined that, due to varying delivery schedules, offerors were not proposing on an equal basis, and the agency therefore reopened discussions with revised offers due by February 5. Johnson maintained its price of \$319.12 but referenced "ATPD 1190(SM)" instead of ATPD 2076 in its February 5 offer. The reference went unnoticed by the Army. On February 8, the Army notified offerors that discussions were concluded and requested best and final offers by February 16. Johnson submitted a best and final offer on February 15, stating that the offer was identical to the February 5 offer, with all terms and conditions the same.

The Army awarded a contract to Johnson on March 3. By letter of March 25, Johnson informed the Army that the firm had erroneously referred to ATPD 2076 as ATPD 1190(SM) in its February 5 offer. At about the same time, Murdock, the second low offeror, having been furnished a copy of Johnson's offers on March 25 pursuant to a Freedom of Information Act request, called the Army to inquire as to what ATPD 1190(SM) referred. Army personnel responded, according to Murdock, that ATPD 1190(SM) refers to a purchase description for a cargo box cover kit of a different and lesser quality than that required by ATPD 2076. Murdock protested to our Office on April 5, alleging that the Army had accepted a nonconforming offer from Johnson.

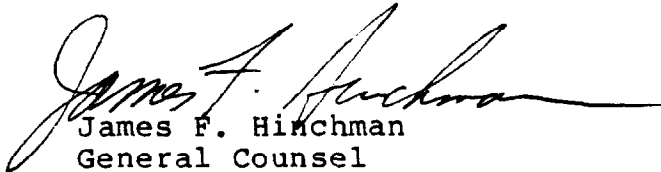
The Army responds that the purchase description referred to by Johnson in its February 5 offer did not create an ambiguity as to what was being offered. Johnson's March 1987 offer took no exception to providing the General Motors part number required, and its September 30, 1987, offer referred to the correct purchase description number. The Army points out that Johnson's February 5 and February 15, 1988, offers maintained Johnson's September 30, 1987, price and changed only the delivery schedule in accordance with the revised solicitation.

The Army further states that, although agency personnel initially may have informed Murdock that purchase description ATPD 1190(SM) actually existed, subsequent research and affidavits from the personnel involved confirm that it does not exist. The Army also notes that ATPD purchase descriptions are numbered 2001 through 4000, and that the only other purchase description close to ATPD 1190(SM), DAPD-1190, was for a 55-ton semitrailer, and was canceled in 1972. The Army speculates that Johnson confused a packaging

specification, number MIL-STD-1190(SM), with the purchase description number here, since Johnson's September 30, 1987, alternate offer included commercial packaging, and the packaging specification is, according to the agency, "very similar to the commercial packaging specification."

We do not find the Army's acceptance of Johnson's offer objectionable, since we do not think it reasonable to view the offer as nonconforming. Moreover, Johnson's last offer was at \$319.12 per kit, exactly the same unit price stated in the firm's September 1987 conforming offer. Obviously, Johnson was intending to identify the kit that was being offered at \$319.12 and not the packaging specification. In these circumstances, we think Johnson's specification of MIL-STD-1190(SM) was an inadvertent and inconsequential error, as asserted by the firm, and that acceptance of Johnson's offer clearly obligated the firm to furnish the item packaged, acceptably, on the same basis on which offers were invited; the record shows that is exactly what the Army is getting from Johnson at a price that is less than that proposed by any of the firm's competitors.

The protest is denied.


James F. Hinchman
General Counsel