



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Industrial Airsystems, Inc.--Reconsideration

File: B-231479.2

Date: September 22, 1988

DIGEST

The general requirement for meaningful discussions in a negotiated procurement does not mandate that an agency tell an offeror that its price is too high where no technical proposals are submitted, award is to be based on price only, and the agency has no basis to think the firm's offered price is unreasonable. In such circumstances, the request for best and final offers in itself constitutes meaningful discussions.

DECISION

Industrial Airsystems, Inc., requests that we reconsider our May 19, 1988, dismissal as untimely of its protest of the Defense Logistics Agency's (DLA) failure to conduct meaningful negotiations under request for proposals (RFP) No. DLA700-87-R-3380 for portable duct heaters.^{1/} On reconsideration, we agree that the protest was timely, but we deny it on the merits.

Industrial, which lost the competition to Engineered Air Systems, Inc. (EAS), because EAS offered a lower price, argued that DLA, in requesting best and final offers (BAFOs), should have alerted Industrial to the fact that its initial offer was too high in price. We dismissed the protest because it was not filed within 10 working days after March 21, when BAFOs were due--section 21.2(a)(2) of our Bid Protest Regulations, 4 C.F.R. Part 21 (1988), requires that a protest of other than an apparent solicitation impropriety be filed within 10 working days

^{1/} We also dismissed as untimely Industrial's protest of the RFP's evaluation factors. The firm concedes that dismissal was warranted as to that issue.

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after the basis for it was or should have been known. In requesting reconsideration, Industrial argues that it did not become aware of its basis for protest until May 12, when it received notice that the contract had been awarded to another offeror at a lower price. Industrial filed its protest on May 18.

On reconsideration, we agree that the protest on this issue was timely. While Industrial knew in March that it was not being afforded any discussions other than by way of the BAFO request, the record now shows that the firm had no reason to recognize the implication of that knowledge until it learned of the award price. Since the protest was filed within 10 working days after that time, we will consider it on the merits.

The RFP included eight line items. The first five represented a total of 170 duct heaters, for delivery to five different locations. Item No. 6 was for a preliminary manual, item No. 7 was for a final manual, and item No. 8 was the first article test requirement. The low total offer was \$951,580, with an average of \$5,306 per heater, and the next low total was \$1,275,540, with an average of \$7,453 per heater.^{2/} EAS' offer for the heaters was \$6,500 each and, with a price of \$7,964 for the two manuals and \$251,190 for the first article, the firm's offer was third low at \$1,364,154. Industrial's offer was next, and highest, at \$8,900 per heater, for a total of \$1,513,000; unlike the other three offerors, Industrial did not price item Nos. 6 through 8.

DLA noted that EAS offered to deliver the items in 370 days, whereas the RFP required delivery in 280 days. DLA then decided to issue an amendment to the solicitation changing the delivery time to 370 days and requesting BAFOs. The initial low offeror remained low after BAFOs, but was found nonresponsible. EAS was second low at \$1,122,895, having reduced its per item price from \$6,500 to \$5,950, and its first article price from \$251,190 to \$103,431. Industrial was next in line at a total of \$1,343,000, reducing its per unit price from \$8,900 to \$7,900 (the firm still did not price item Nos. 6 through 8). The remaining offeror did not acknowledge all RFP amendments. DLA selected EAS' offer for

^{2/} We are using the precise figures because the record shows that DLA inadvertently posted an abstract of all the offers it received.

award, since it was the lowest one received from a responsible concern.

Industrial argues that in view of the general requirement that discussions in a negotiated procurement point out the deficiencies in the offeror's proposal, DLA, in requesting BAFOs, was obligated to advise the firm that its initial offer was too high. We disagree.

Industrial is correct that in conducting negotiations an agency, as a general matter, must tell the offeror of the proposal's weaknesses, that is, the discussions must be meaningful. See American District Telegraph Co., B-228308, Jan. 22, 1988, 88-1 CPD ¶ 59. A request for BAFOs, however, in itself constitutes meaningful discussions where a proposal contains no technical uncertainties. See Information Management, Inc., B-212358, Jan. 17, 1984, 84-1 CPD ¶ 76. Here, the RFP was clear that the lowest-priced offer would be chosen as the awardee, and there could be no technical concerns about an offer since no technical proposals were submitted.^{3/}

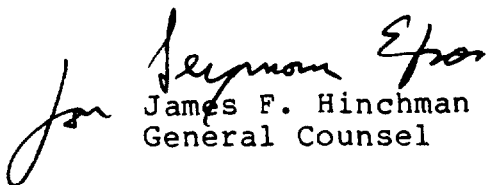
Further, even where technical proposals are required, the government has no responsibility to tell an offer its price is too high unless the government has reason to think the price is unreasonable. See Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54. DLA advises that it has no recent procurement history for the portable duct heaters, so that it had no basis, other than the prices the other offerors had submitted, to tell Industrial that the price the firm wanted to charge the government was unreasonably high. Moreover, although Industrial's initial price per heater (\$8,900) was more than the other offerors'--EAS in particular (\$6,500)--the firm's initial total price, \$1,513,000, was not that much more than EAS', \$1,364,154, since EAS priced item Nos. 6 through 8 and Industrial did not.

Finally, and in any event, we cannot say that Industrial was prejudiced in the competition by not being told that it initially offered price was high, since Industrial did take the opportunity, in responding to the BAFO request, to reduce the per unit price to \$7,900 in its BAFO; in fact,

^{3/} There is no reason apparent from the record why DLA chose to purchase the duct heaters through a negotiated procurement instead of by sealed bidding, which would appear to be the appropriate method in these circumstances.

the firm's total offer would have been successful if EAS had not reduced its offer also. (Our calculations show that, with EAS' price reduction, Industrial would have had to reduce its per unit price another \$1,300 to be the lower offeror.)

The protest is denied.

 James F. Hinchman
General Counsel