



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Saxon Corporation
File: B-232694.2, B-232715.2, B-232716.2, B-232732.2,
B-232833.2
Date: June 13, 1989

DIGEST

Allegation that agency asked for and then refused to consider protester's price modifications, even if true, does not require that discussions be held with all offerors within the competitive range where the agency intends to make award on the basis of initial proposals, since the agency's action did not impinge on the integrity of the competitive system.

DECISION

The Saxon Corporation protests the Air Force's rejection of its proposal modifications under request for proposals (RFP) Nos. F41608-88-R-6264, F41608-88-R-6265, F41608-88-R-6266, F41608-88-R-6267 and F41608-88-R-7583, issued by the Air Force for repair services for ground support equipment at Kelly Air Force Base, Texas. Saxon contends its conversation after initial proposals had been submitted with a contracting official constituted discussions and, therefore, the proposal modifications which it subsequently submitted should have been accepted as part of the discussion process. Saxon also maintains that the agency should have requested best and final offers (BAFOs).

We deny the protests.

Four of the RFP's called for offers to be submitted in late September 1988, the fifth and last called for offers by October 4. Saxon twice submitted to the agency price modifications to its proposals, the first on November 17 and the second on January 17, 1989. The agency did not open the modifications and rejected them as late.

According to Saxon, it submitted the second price modifications at the agency's request. An affidavit from the protester's president asserts that in a telephone

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conversation in mid-January the contracting officer "indicated" that it would be acceptable for the protester to submit price revisions. Saxon states that it did not know that its modifications would not be considered until it received the agency's notification dated March 27 that they had been rejected. The protester maintains that the telephone conversation constituted discussions and the Air Force was therefore required to accept its price modifications which were submitted pursuant to these discussions.

The agency states that it did not conduct oral discussions with Saxon or any other offeror. The contracting officer denies that he told Saxon during the cited phone conversation to submit price modifications and states that, to the contrary, he told the protester that any proposal revisions received after the date for receipt of initial proposals would be considered late and held unopened in the file. Further, the agency states that Saxon's initial prices were so high that even if it chose to hold discussions it would not have done so with the protester because the protester would not have been considered within the competitive range under the solicitations which called for award to the lowest priced acceptable offer.

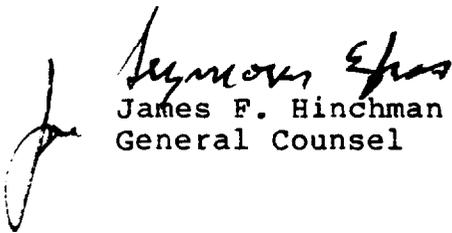
We do not find Saxon's version of the facts to be plausible. First, no other offeror submitted proposal revisions to the agency. If the agency were requesting revised proposals, we think it unlikely that it would only direct such a request to Saxon, one of the highest priced offerors. Second, the agency asserts and Saxon does not deny that Saxon, not the contracting officer, initiated the telephone call. We find this inconsistent with an intent on the agency's part to initiate discussions. Third, at the time of the telephone conversation, the agency had already issued an amendment to the solicitation asking each offeror to extend their original proposal until June 1, 1989. Saxon signed the extension on January 19, 2 days after the conversation and Saxon's submission of the proposal modifications. We again find this inconsistent with the protester's version of the conversation.

We think that the circumstances here show that even if, as the protester argues, it was given permission to submit proposal modifications, that permission was likely the result of a mistake on the part of the contracting officer. It simply does not make sense for the agency to deliberately "indicate" that it would accept price revisions from one of several offerors and then refuse to open or consider them. If in fact such a mistake was made, had the agency intended to make award on an initial proposal basis, we do not

believe that the integrity of the competitive system would be enhanced by requiring that revisions be solicited and considered from all of those offerors within the competitive range. See Rainbow Technology, Inc., B-232589, Jan. 24, 1989, 89-1 CPD ¶ 66. Consequently, we have no basis upon which to object to the agency's refusal to accept Saxon's revised prices.

The protester also seems to argue that, in any event, the agency was obligated to request BAFOs. A contracting agency may make an award on the basis of initial proposals where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. Federal Acquisition Regulation § 15.610(a)(3), Maico Hearing Instruments, Inc., B-229925, Jan. 15, 1988, 88-1 CPD ¶ 42. Here, the RFP specifically provided that the agency could make award based on the submission of initial proposals without any discussions. As indicated above, we have concluded that the agency did not intend to hold discussions with any offeror. In addition, there is no indication in the record that award, which is to be made on the basis of lowest evaluated total price, would result in other than the lowest overall cost to the government. Thus, the agency was not required to solicit either proposal revisions or BAFOs.

The protest is denied.


James F. Hinchman
General Counsel