

G. Ruppert



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Reinhold Industries
File: B-236892.2
Date: January 30, 1991

Lynn Thompson for the protester.
Eileen B. White, Esq., Department of the Navy, for the agency.
George M. Ruppert, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Agency request made to offerors after best and final offers to extend offer acceptance period did not reopen discussions where agency gave no indication of an intent to reopen discussions; no new common cutoff date was established; and request for extension was made for purpose of processing award to the otherwise successful offeror.
2. Agency decision not to reopen negotiations after receipt of best and final offers (BAFO) to give protester the opportunity to incorporate its late price reduction of approximately eight percent of the contract price was unobjectionable where protester had a fair opportunity to submit a BAFO with its most favorable terms, and agency determined that any further delay in the procurement was not in the government's best interest.
3. Agency is not required to reopen discussions after receipt of best and final offers to consider a late price reduction submitted by other than the otherwise successful offeror, that is, the offeror that has been identified as in line for the award.

DECISION

Reinhold Industries protests the award of a contract to HITCO under request for proposals (RFP) No. N00024-89-R-6000, issued by the Department of the Navy for quantities of transducers and sonar windows and domes. Reinhold primarily alleges that the agency improperly refused to consider a price reduction it offered in responding to the agency's request for a 30-day extension in the acceptance period.

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We deny the protest.

The Navy received two offers, from HITCO and the protester, by the initial closing date, and conducted written technical discussions with both offerors from February to May 1990. On June 13, after determining both technical proposals acceptable, the contracting officer opened the price proposals, issued written discussion questions concerning the price proposals, and requested that offerors extend their offers until September 1. On July 9, the contracting officer issued an amendment reducing the quantities and requested offerors to submit their updated price proposals for the reduced quantities by July 13, to be valid until September 1. On July 16, the agency issued a request for best and final offers (BAFO), advising offerors to submit any desired changes to their technical and price proposals by July 18.

After evaluating the BAFOs, on August 27 the contract award review panel recommended award to HITCO based on the firm's technically acceptable, low priced proposal (approximately \$3.4 million for the base year plus options). The contracting officer adopted the recommendation and began to prepare the paperwork necessary for award. When the contracting officer realized that the proposals might expire before she could award the contract, her representative telephoned both offerors and requested that they extend their BAFOs for another 30 days. Both offerors agreed to the extension in writing. However, Reinhold included in its letter of confirmation a price reduction of \$774,274, which, if considered, would have made Reinhold's price approximately \$284,000 lower than HITCO's. On September 13, the agency notified Reinhold that the telephonic request for an extension of its offer did not reopen discussions and that Reinhold's revised price was a late revised proposal and therefore could not be accepted.

Reinhold alleges that the agency's telephone request for extension of the acceptance periods reopened discussions, and that its price reduction therefore should have been accepted. Alternatively, Reinhold argues that, even if its price reduction was a late modification, it should have been accepted under FAR § 52.215-10(g), which permits a late modification of an "otherwise successful proposal" that makes its terms more favorable to the government; Reinhold argues that its technically acceptable proposal was an "otherwise successful proposal."

The Navy did not reopen discussions in requesting offerors to extend their proposal acceptance periods. Rather, the record shows that the agency contacted offerors for the extensions solely to afford it the additional time that might be necessary to complete the processing of HITCO's award. Reinhold was not

advised that proposal revisions other than the acceptance period extension were being requested, or that proposal revisions were due by a common cutoff date. A request for an acceptance period extension does not automatically constitute an opening of discussions. Glar-Ban, B-225709, Apr. 14, 1987, 87-1 CPD ¶ 406.

Nor do we believe the Navy was required to reopen discussions based on Reinhold's offered price reduction. It is within the contracting officer's discretion to determine when the negotiation and offer stage of a procurement is finished; an offeror has no legal right to insist that negotiations be reopened after BAFOs have been submitted. Marshfield Realty Partners Ltd. Partnership, B-227863, Aug. 14, 1987, 87-2 CPD ¶ 159. The contracting officer's decision in this regard should be based on whether the late modification indicates that further negotiations would be highly advantageous to the government. Nelson Elec., Marine Div., B-227906, Sept. 21, 1987, 87-2 CPD ¶ 286.

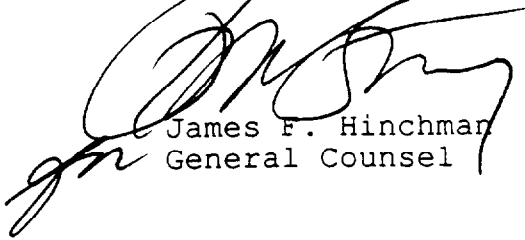
Although we do not consider the potential eight percent cost saving indicated by Reinhold's proposed reduction unimportant, we believe the decision not to reopen discussions was within the contracting officer's discretion. Both offerors had been afforded the same opportunities to revise and update their proposed prices and HITCO's price was determined to be fair and reasonable. The Navy had completed the selection process and was attempting to complete the administrative requirements attending the award process when the price reduction was offered; indeed, as stated above, the acceptance period extension was prompted in the first place by the need for more time to complete this processing. Considering these factors, together with the Department of Defense (DOD) policy discouraging multiple proposal revisions to avoid the possible unfair treatment of offerors (see DOD FAR Supplement § 215.611(c), which requires agency head approval of multiple proposal revisions), the contracting officer determined that the potential cost savings here did not warrant reopening negotiations at that juncture. Again, we find this determination reasonable.

Reinhold's alternative argument also is without merit. It is well-settled that the term "otherwise successful" in FAR § 52.215-10(g) limits this exception for accepting a late proposal modification with terms more favorable to the government to late modifications from the offeror already in line for the contract award, here, HITCO. Environmental Tectonics, Corp., B-225474, Feb. 17, 1987, 87-1 CPD ¶ 175.

Reinhold also argues that the specification calls for use of a Reinhold propriety material (HRX-161-16-16), and a Reinhold patent (U.S. Patent No. 3,858,165), and that HITCO should not

have been found technically acceptable because it has no agreement with Reinhold to use this material or patent in performing the contract. However, the solicitation does not specifically require use of Reinhold's material or patent, and the Navy reports that neither is required for performance. As Reinhold has not rebutted the agency's fairly detailed response in this regard, this argument does not provide a basis for questioning the Navy's determination that HITCO is technically acceptable.

The protest is denied.



James F. Hinchman
General Counsel