



Comptroller General
of the United States

6042610

Washington, D.C. 20548

Decision

Matter of: Computing Devices International

File: B-258554.3

Date: October 25, 1994

Joseph J. Petrillo, Esq., Petrillo & Associates, for the protester.

John L. Formica, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency acted properly in amending a solicitation and requesting a second round of best and final offers, in response to two protests, notwithstanding the disclosure of certain information about the awardee's proposal, where the record shows a reasonable possibility that the solicitation failed to adequately advise offerors of the actual basis for award as was contended by the protesters.

DECISION

Computing Devices International (CDI) protests the Department of the Air Force's decision to amend request for proposals (RFP) No. F19628-94-R-0007, and to request and evaluate best and final offers (BAFO) submitted in response to the amended RFP.

We dismiss the protest.

The RFP requires the successful contractor to supply a hard disk subsystem for use on E-3 aircraft. The solicitation provides for the award of a firm, fixed-price contract, and states that award will be made to the responsible offeror whose offer, conforming to the solicitation, is determined most advantageous to the government; price and other factors considered. The RFP states that technical factors are more important than cost, and lists the following technical evaluation factors in descending order of importance:

- (1) Manufacturing/First Article Test,
- (2) Master Schedule, and
- (3) Interim Contractor Support.

With regard to the Master Schedule technical evaluation factor, the RFP states that:

"[t]he offeror's master schedule will be evaluated for the credibility of their proposed schedule, how well it accounts for all required and optional program elements, and how well it allows for efficient installation into the fleet."

The RFP also includes the standard "Time of Delivery" clause set forth at Federal Acquisition Regulation (FAR) § 52.212-1, which states, in pertinent part, that "[t]he [g]overnment will evaluate equally, as regards time and delivery, offers that propose delivery of each quantity within the applicable delivery period specified" in the RFP.

The Air Force received proposals from CDI, Aydin Corporation, and Miltope Corporation, by the RFP's closing date of June 1, 1994. Discussions were held, and BAFOs received and evaluated. The agency determined that CDI's proposal offered the best overall value to the government, based on technical and price considerations, and made award to that firm.

Aydin and Miltope subsequently filed protests with our Office, contending, among other things, that the agency's selection of CDI for award based in part on CDI's offer of an accelerated delivery schedule, was inconsistent with the RFP. The protesters argued that the RFP does not suggest that an offer will receive a more favorable evaluation should it propose an accelerated delivery schedule.

On September 29, the agency informed our Office that after reviewing the protests and the solicitation, it had concluded "that the way the [g]overnment would evaluate schedule acceleration was unclear." The agency stated that because of this, it would "amend the solicitation to clearly state our evaluation criteria and allow all offerors an opportunity to submit a second . . . BAFO against the clarified criteria."

CDI protests that, contrary to the view of the protesters and the agency, the RFP is clear as to the evaluation of delivery schedules, and that because of this, no improprieties occurred that warrant the amendment of the solicitation and the request for a second round of BAFOs.¹

¹CDI also contends that the Air Force should not have considered the protests of Aydin and Miltope because they were untimely filed under our Bid Protest Regulations. This argument is without merit. When a contracting agency
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Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Oshkosh Truck Corp.; Idaho Norland Corp., B-237058.2; B-237058.3, Feb. 14, 1990, 90-1 CPD ¶ 274. An agency may amend a solicitation, and request and evaluate a second round of BAFOs where the record shows that the agency made the decision to take this action in good faith, without the specific intent of changing a particular offeror's technical ranking or avoiding an award to a particular offer. See PRC, Inc., 72 Comp. Gen. 530 (1992), 92-2 CPD ¶ 215; Unisys Corp., 67 Comp. Gen. 512 (1988), 88-2 CPD ¶ 35; Burns & Roe Servs. Corp., B-248394, Aug. 25, 1992, 92-2 CPD ¶ 124. We will not object to an agency's proposed corrective action where the agency concludes that the award, because of perceived flaws in the procurement process, was not necessarily made on a basis most advantageous to the government, so long as the corrective action taken is appropriate to remedy the impropriety. Id.

The protester does not claim, nor is there any evidence in the record, that suggests the agency is acting in other than good faith. On the contrary, as recognized by the agency, the RFP can reasonably be read as stating that the delivery schedule offered must be within the range specified in the RFP and that no preference will be given for an accelerated delivery schedule. The record thus supports the agency's conclusion that Aydin and Miltope may have been misled by the RFP with regard to the evaluation of delivery schedules. As Aydin and Miltope had contended in their protests, offerors must be advised of the basis upon which their proposals will be evaluated, and where a solicitation does not set forth a common basis for evaluating offers which ensures that all firms are on notice of the factors for award and can compete on an equal basis, the solicitation is materially defective. Unisys Corp., supra; The Faxon Co., supra. Under the circumstances, we have no basis to conclude that the agency's proposed corrective action of amending the solicitation to clearly reflect the evaluation factors it will use in evaluating proposals and allowing offerors to submit a second round of BAFOs in response to the RFP as amended, is inappropriate. Id.

CDI also contends that because during the agency's debriefings offerors were informed of CDI's extended price

¹(...continued)

recognizes the validity of a protest and proposes to take corrective action, it is irrelevant whether the protest complied with our Bid Protest Regulations. The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425.

for the base and option years of the contract, and of the significant strengths of CDI's proposal, the agency's proposed corrective action will result in technical leveling and technical transfusion, as well as an improper auction. Where, as here, the corrective action proposed by the agency is not improper, the prior disclosure of information in an offeror's proposal does not preclude the corrective action, and the reopening of discussions and request for BAFOs does not constitute improper technical leveling, technical transfusion, or an improper auction.² Unisys Corp., supra; Sperry Corp., 65 Comp. Gen. 715 (1986), 86-2 CPD ¶ 48. The possibility that a contract may not be awarded based on true competition on an equal basis has a more harmful effect on the integrity of the competitive procurement system than the fear of an auction; the statutory requirements for competition take priority over the regulatory prohibitions of auction techniques and technical transfusion and leveling. Unisys Corp., supra.

The protest is dismissed.



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²The agency states that it plans to reveal information about Miltope's proposal and Aydin's proposal to equalize the competition.