

DECISION

DIGEST

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-186915

DATE: March 23, 1977

MATTER OF: Harris Corporation

DIGEST:

1. Agency did not unreasonably restrict competition by reissuing request for proposals only to those firms which had submitted offers in response to original solicitation which was canceled due to unreasonable prices.
2. Protest concerning specifications in original solicitation is untimely because it was not filed prior to the closing date for receipt of initial proposals.
3. Protest concerning specifications or procurement procedure with respect to solicitation reissued only to those firms which had submitted offer under earlier solicitation is dismissed because competition was validly restricted upon resolicitation and issues do not relate to the reasons for protester's exclusion from the resolicitation.

Harris Corporation (Harris) protests the awards made by the Commerce Department (Commerce) to Ampro Corporation (Ampro) and Scientific Radio Systems, Inc. (SRS) under request for proposals (RFP) No. 6-35192 for leased nationwide services to provide continuous VHF-FM broadcast of recorded weather information.

Harris complains that competition was limited because award was made after reissuance of the solicitation to only those offerors which had responded to the initial solicitation. In addition, the protester argues that competition was unduly restricted because offerors were required to conduct and bear the expense of complete site surveys on 313 sites in order to formulate proposals. Finally, the protester alleges that SRS, one of the successful offerors, was allowed to determine its price after award, based on costs derived from post-award site surveys.

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The RFP contemplated that the contractor integrate an automatic audio system, touch-tone control system, VHF-FM transmitters, antenna systems and other equipment located at selected sites within the continental United States. This integrated system was to be capable of being operated remotely from Government offices. The contractor was to test, deliver, install and maintain each system within a geographical area designated by the Government and at a site selected and prepared by the contractor. The RFP requested firm fixed price offers for either the entire system or for only the recorder services or only the transmitter services specified.

Timely offers were received from four firms. Ampro and Broadcast Electronics offered to supply only the recorder services, SRS offered to supply the transmitter services and an Ampro-SRS joint venture offered to supply the complete system.

Technical and financial evaluations were made of the four timely proposals received. Broadcast Electronics Corporation's offer to supply recorder services was found to be outside of the competitive range. The Ampro-SRS joint venture was found to be inferior in terms of its management proposal and more costly than the two independent offers of these firms. Discussions thus were held with Ampro, the sole remaining recorder services offeror, and with SRS, the only firm to respond to the RFP's transmitter services requirement, to clarify technical matters and to ascertain whether significant price reductions could be obtained within the confines of the solicitation's requirements. The proposals submitted by Ampro and SRS were found to be technically sound. However, the submission of amended proposals did not significantly lower the prices offered. On March 17, 1976, Commerce sent a notification of cancellation to the original offerors indicating that the agency had determined that all otherwise acceptable proposals received were at unreasonable prices.

Meanwhile, on March 18, 1976, Commerce received a new set of amended proposals from Ampro and SRS, dated March 15, 1976. However, Commerce determined that because the offers were received after the March 17 cancellations were mailed, discussions concerning them should not be conducted.

The contracting officer after examining the March 15, 1976 offers by Ampro and SRS, decided that acceptable cost proposals might be obtained. Consequently on May 10, 1976, Commerce

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issued a solicitation (No. 6-35192(R)), which was identical to the original one except for a limited number of minor technical changes. Commerce explains that the solicitation was sent only to the original offerors because time was of the essence. Proposals were submitted by Ampro, SRS and Broadcast Electronics. Technical evaluations indicated that all three proposals were technically compliant with the specifications. However, Broadcast Electronics submitted a cost proposal which only offered to sell rather than lease the equipment to the Government. Consequently, the Broadcast Electronics proposal was found to be unacceptable.

Discussions were then held with Ampro and SRS. The contracting officer decided that due to inadequate price competition, cost and pricing data would have to be requested of these two firms and an audit made of their offers. However, in order to avoid further delay in commencement of the work, letter contracts were issued to both Ampro and SRS to permit immediate commencement of work on the weather radio system pending the results of the audit and the final definitization of the contract through the negotiation process. Thereafter, Harris protested to this Office.

Commerce asserts that the resolicitation was issued only to those firms which had already prepared proposals because there was insufficient time to allow others to prepare proposals due to an urgent need to enter into a contract for the weather radio program. This urgent need was based on the public interest in the weather services and the commitment by NOAA to the Congress to proceed expeditiously with the project. Commerce asserts that unrestricted resolicitation would have materially delayed implementation of the Government program due to the long period of time necessary for proposal preparation and review. The original solicitation and amendments thereto eventually allowed 112 days between the issuance of the RFP and the final date for submission of proposals. Commerce asserts that such a lengthy delay to accomplish an unrestricted resolicitation would have been unjustified in May 1976.

Harris, in response, contends that the urgency of the procurement was based on the availability of funds rather than on the immediate need for a weather radio system. Harris asserts that if the need for a contract had been urgent, Commerce would have conducted additional negotiations on the original RFP.

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prior to canceling it. However, Commerce points out that the solicitation cancellation was due to the fact that, after more than one month of negotiations, the price offered by Ampro and SRS still exceeded the projected budget allocation. The reason Commerce resolicited the requirement was that, after canceling the solicitation, Commerce received a new set of amended proposals from Ampro and SRS which significantly reduced the offered prices.

In light of these facts, we cannot sustain the protester's assertion that no urgency existed with respect to the resolicitation. Furthermore, it is our opinion that the practical effect of Commerce's limiting the participants upon resolicitation and negotiating only with offerors previously considered was to vitiate the resolicitation and essentially reinstate another round of negotiation. We see no legal reason why the agency could not simply have reopened negotiations forthrightly because in the circumstances none of the offerors under that solicitation would have been prejudiced by such action. Therefore, Harris' protest in this regard is without merit.

The protester next asserts that the original solicitation unduly restricted competition because it, in effect, required offerors to conduct site surveys on 313 sites in order to propose mandatory one-time costs for the project. Section 20.2(a) of Title 4 of the Code of Federal Regulations requires, in part, that: "protests based upon improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals." Since this issue was not raised until nearly six months after the closing date for receipt of initial proposals, this aspect of the protest is clearly untimely.

Harris also has made the same assertions with respect to the site information required from offerors on the resolicitation. Inasmuch, as we regard the resolicitation as essentially a continuation of the initial solicitation and the objection concerning the site surveys was not timely raised initially, we must decline to consider the objection. We note however that the agency has provided a detailed explanation in support of its position that the solicitation requirement for "service area coverage information" could have been satisfied by the offeror without complete site surveys.

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Finally, Harris argues that one of the successful offerors was allowed to determine its price after contract award because the firm was awarded a letter contract prior to its submission of cost and pricing data. However, the purpose of the cost and pricing data was to verify whether the fixed price offered was unreasonably high rather than to permit the contractor to negotiate a higher price. Therefore, we find no merit to Harris' contention.

Accordingly, the protest is denied.

Arthur
Deputy

Comptroller General
of the United States

CONTRACTS

Negotiation

Competition

Failure to solicit proposals from all sources

Resolicitation

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Negotiation

Requests for proposals

Failure to solicit

Resolicitation

Not unduly restrictive of competition

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Protests

Timeliness

Solicitation improprieties

Apparent prior to closing date for
receipt of proposals