

DOCUMENT RESUME

03641 - [A2713912]

[Procurement Procedures with Regard to Solicitation of Firm Fixed Price Offers from Small Businesses]. B-189118. September 22, 1977. 4 pp.

Decision re: Bogue Electric Mfg. Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government (806)

Organization Concerned: Department of the Air Force: Sacramento Air Logistics Center, McClellan AFB, CA.

Authority: 4 C.F.R. 20.2(b)(1), (2). 46 Comp. Gen. 371. 46 Comp. Gen. 373. 54 Comp. Gen. 783. B-188179 (1977). B-186841 (1976). A.S.P.R. 3-805.1. A.S.P.R. 3-501.1.

The protester objected to the award of any contract under a solicitation for firm fixed price offers from small businesses. Protests regarding solicitation requirements and alleged improper action by the procuring agency in requesting extensions of the proposal acceptance period with no opportunity for revisions were untimely. The protest alleging improper action by the procuring agency in requesting proposal acceptance date extensions after previous extensions had expired was denied. The protest based on the agency's failure to conduct oral or written discussions was denied since the solicitation provided that an award based on initial proposals could be made without negotiations. (Author/SC)

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**DECISION**



*Martin Proc II*

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

FILE: B-189118

DATE: September 22, 1977

MATTER OF: Bogue Electric Manufacturing Company

**DIGEST:**

1. Protest alleging that solicitation contained unrealistic and arbitrary requirements is untimely under Bid Protest Procedures when not filed before closing date for receipt of initial proposals.
2. Protest alleging improper action by procuring agency in requesting extensions of proposal acceptance period with no opportunity for revisions is untimely when submitted more than 10 working days after alleged improper action.
3. Protest alleging improper action by procuring agency in requesting proposal acceptance date extensions after previous extensions have expired is denied since offeror may waive its right to stand by the expired acceptance date.
4. Protest based on agency's failure to conduct oral or written discussions is denied where solicitation stated that award based upon initial proposals may be made without negotiations and where adequate competition resulted in receipt of seven proposals, with no exceptions, offering reasonable prices.

On May 24, 1977, Bogue Electric Manufacturing Company (Bogue) protested the award of any contract under request for proposals (RFP) No. F04606-77-0097 issued by the Sacramento Air Logistics Center (SALC) McClellan Air Force Base, California. The solicitation called for

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firm fixed price offers from small businesses for an estimated 425 motor generator sets. The due date for the proposals was February 4, 1977. The time within which the Government could accept a proposal was 60 days which, after the receipt of proposals, was extended twice for 30 days each with the offerors being told that no other revisions to the offers would be accepted. On June 3, 1977, SALC again requested an extension pending resolution of this protest. The RFP reserved to the Government its right to make award on the basis of the initial proposals without further negotiations.

Bogue contends that the required extensions to the proposal acceptance period without the opportunity for revisions were improper, arbitrary and imposed undue burdens upon small businesses. It also contends that the solicitation imposed an unrealistic and arbitrarily low limitation on progress payments prior to first article approval. Bogue further objects to a number of other alleged deficiencies and specific clauses in the RFP and the fact that a pre-proposal conference was not held. Bogue asserts that it was customary for SALC to conduct negotiations for its large competitive generator procurements "regardless of solicitation verbiage that award may be made on initial proposals" and that it was not informed that negotiations were not contemplated until the day it submitted its protest.

To the extent that Bogue's protest is based upon improprieties apparent on the face of the RFP, it is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976), which require that protests based on such alleged improprieties be filed prior to the closing date for receipt of the initial proposals. We believe that Bogue's objections to the limitation on progress payments prior to first article approval and all of its objections to other alleged deficiencies in the RFP therefore are untimely.

We also believe that its objections to the first two extensions of the proposal acceptance period are untimely under Section 20.2(b)(2) which requires that protests other than those covered in Section 20.2(b)(1)

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shall be filed not later than 10 working days after the basis of the protest is known or should have been known, whichever is earlier. The first request for an extension took place on March 4, 1977, the second request was made on April 26, 1977 and Bogue's protest was received on May 24, 1977.

Bogue also objected on June 7, 1977 to SALC's third request on June 3, 1977 for an extension of the acceptance period pending resolution of this protest. Bogue complains that the contracting officer is requiring the reinstatement without revision of expired bids. It is well settled that a bidder may waive its right to stand by the original acceptance date following its expiration, if it is still willing to accept an award on the basis of the bid as submitted and such action does not compromise the integrity of the competitive bidding system. In this case all offerors were asked to extend pending resolution of the protest and in such circumstances the integrity of the competition has not been compromised, 46 Comp. Gen. 371, 373 (1966); Suburban Industrial Maintenance Company, B-188179, June 28, 1977, 77-1 CPD 459. Although 46 Comp. Gen. 371 involved an advertised procurement, the same rationale applies to a negotiated procurement. Riggins & Williamson Machine Company, et al, 54 Comp. Gen. 783 (1975), 75-1 CPD 168.

Bogue's objection to the lack of a pre-proposal conference is not only untimely under Section 20.2(b)(2) of our Bid Protest Procedures but is without merit. Under Armed Services Procurement Regulation (ASPR) § 3-501.1, the decision as to whether such a conference should be held is within the discretion of the contracting officer. There is no evidence indicating that the decision not to hold a pre-proposal conference was unreasonable.

ASPR § 3-805.1 (1976 ed.) generally requires the conduct of oral or written discussions but it also specifies exceptions to this rule. One of these exceptions is where it can be clearly demonstrated from the existence of adequate competition that acceptance of the most favorable initial proposal without discussions would result in a fair and reasonable price provided the solicitation notified the offerors of this possibility. Where these conditions exist, the contracting officer is permitted,

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though not required, to make an award without discussions.  
Fodel Films, Inc., B-186841, October 29, 1976, 76-2 CPD  
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Thus, under the terms of the solicitation and ASPR § 3-805.1, there is no requirement for oral and written discussions in the circumstances prevailing in this case. Bogue's contention that because negotiations were customarily conducted by SALC in previous procurements of a similar nature, negotiations were required in this case is without legal support. Seven proposals were received, no exceptions were taken and the prices offered were considered to be within an acceptable range. The agency's determination that adequate competition existed and that oral or written negotiations were not required cannot, in our opinion, be reasonably termed arbitrary or capricious.

Accordingly, this protest is denied.

  
Deputy Comptroller General  
of the United States