

DOCUMENT RESUME

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[Refusal to Consider Late Revised Proposal]. B-189246. August 31, 1977. 5 pp.

Decision re: Techniarts; 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: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Defense Supply Service.

Authority: A.S.P.R. 3-805.3. A.S.P.R. 3-805.4. B-187177 (1977).

The protester objected to the rejection of its late proposal revision. The protester failed to respond in a timely manner to an amendment issued after the initial receipt of initial proposals and some discussions, but prior to the request for base and final offers. The agency may change its evaluation criteria even though initial proposals have been received and negotiations conducted. The agency notified offerors of the revised evaluation criteria by an amendment to the request for proposals and extended the deadline for proposal submission; the protester's revised proposal which arrived late may not be considered. However, the agency should consider the earlier proposal submitted by the protester in determining the competitive range. (Author/SC)

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**DECISION**

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

R. Ayer  
P. McIl

FILE: B-189246

DATE: August 31, 1977

MATTER OF: Techniarts

**DIGEST:**

1. Agency may change its evaluation criteria even though initial proposals have been received and negotiations conducted.
2. Where agency notifies offerors of revised evaluation criteria by RFP amendment and extends deadline for proposal submission, protester's revised proposal which arrives late may not be considered. However, agency should consider earlier proposal submitted by protester in determining competitive range.

Techniarts protests the rejection of its proposal in response to request for proposals (RFP) MDA 903-77-R-0182 issued by the Department of the Army's Defense Supply Service (Army) for the design, installation, and testing of an Audio-Visual System for a conference room used by the Army's Criminal Investigation Command. The Army by letter of May 31, 1977 informed Techniarts that:

"Your proposal in response to our Solicitation Number MDA903-77-R-0182, Modification Number 5, was received late and in conformance with Section C, Article C-20, can not be considered."

The issue presented is whether Techniarts' failure to timely respond, by either acknowledgment or revised proposal, to an amendment issued after receipt of initial proposals and some discussions, but prior to any request for best and final offers, provides a reasonable ground for the Army's refusal to further consider Techniarts' proposal. For reasons which follow we believe that the Army properly rejected Techniarts' late proposal revision but the Army should consider Techniarts' proposal as submitted prior to the late revision.

On January 10, 1977, the Army issued the RFP with a January 28, 1977 closing date. Amendment 1 to the RFP set January 24, 1977,

B-189246

as the date for the pre-proposal conference and also extended the date set for receipt of initial proposals to February 4, 1977. Techniarts was one of four companies which attended the January 24, 1977 pre-proposal conference. As a direct result of the conference Amendment 2 was issued clarifying the RFP's equipment requirements and extending the closing date to February 11, 1977. The Army then decided that the solicitation's specifications were deficient to the extent that no company could properly make a proposal. Amendment 3 was thereupon issued with new specifications and a new closing date of March 11, 1977. Amendment 4 further extended the closing date for receipt of initial proposals to March 18, 1977.

On March 18, 1977 the Army received proposals from each of the four companies which had attended the pre-proposal conference. The proposals were opened and subjected to a technical evaluation. On April 6, 1977 Techniarts and another offeror were contacted by the Army and asked to supply information concerning certain features of the equipment they proposed to furnish and how they would meet certain specification requirements. The Army also requested from the two offerors:

"\* \* \* descriptive literature on equipment; performance specifications; basic schematic of audio system, visual equipment system layout in projection room; company background, experience, references for similar projects (none detailed) and additional information pertaining to training requirements or certification that all requirements in Section IV of the audio-visual System Plan will be complied with."

Both offerors were given until April 12, 1977 to respond, and both offerors met the deadline.

On April 25, 1977 the Army decided that the procurement was not being conducted on the basis of uniform submittal requirements. On an effort to cure the deficiency the Army on May 9, 1977 issued Amendment 5. This amendment was sent to each of the four offerors. The amendment further extended the closing date for the receipt of proposals to May 27, 1977 at 4:00 p.m. Three of the four offerors met the deadline. Techniarts' response did not arrive until 4:45 p.m.

B-189246

Techniarts questions whether the Army may issue an amendment which makes substantial changes in the evaluation method, without changing the technical requirements, once proposals have been received and negotiations opened.

The Army explains that the solicitation revision consisting of eight pages was designed to improve the award selection evaluation criteria. It maintains that once these criteria were revised, the Army was required to notify the offerors of the change, even if negotiations had been conducted by the prior requests for clarification of proposals. We agree. ASPR 3-805.4(a) provides in pertinent part that "when, either before or after receipt of proposals, changes occur in the Government's requirements such change or modification shall be made in writing as an amendment to the solicitation." ASPR 3-805.4(b) further provides that the stage in the procurement cycle at which the changes occur in part shall govern which firms should be notified of the changes. It is clear, therefore, that a solicitation may be revised at any point in the procurement cycle. Moreover, we have held that a change in the evaluation criteria constitutes a change in the Government's requirements within the meaning of the above cited regulation, and therefore offerors should be notified of the change by a written amendment to the solicitation. Informatics, Inc., American Management Systems, Inc., National CSS Inc., B-187177, March 1, 1977, 77-1 CPD 152.

However, Techniarts' central contention is that the Army lacked a reasonable basis for excluding it from the competition notwithstanding its late response to Amendment 5. It is Techniarts' position:

"\* \* \* that the deadline so specified in the amendment as a deadline for receipt of offers was not applicable to this firm since this firm's offer was received and opened and negotiations with this firm were opened and no cut off date was yet established."

The "late Proposal, Modifications or Proposals and Withdrawals" clause of the RFP provided in pertinent part that:

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and

"(i) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers \* \* \*.

"(ii) \* \* \* the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

"(iii) it is the only proposal received.

"(b) Any modification of a proposal, except a modification resulting from the Contracting Officer's request for 'best and final' offer, is subject to the same conditions as in a. (i) and (ii) above.

"(c) A modification resulting from the Contracting Officer's request for 'best and final' offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation."

As the facts show, Techniarts' revised proposal was hand-carried and there is no evidence of Government mishandling. Techniarts argues that the deadline for proposals established in the amendment was not applicable because negotiations had already been opened with it, and that these negotiations were not closed by a cut-off date for best and final offers. It is clear that under ASPR 3-805.3(d), discussions or negotiations are to be concluded by establishing a cut-off date for the submission of best and final offers. However, as ASPR 3-805.4 and paragraph (b) of the "Late Proposal, Modifications or Proposals and Withdrawals" clause indicates revised or modified proposals may be required from offerors at any stage in the procurement cycle, and such a proposal must be submitted by the exact time specified for its receipt, unless the conditions set forth in the clause are found to exist. Since Techniarts modified proposal was received late, and the conditions set forth in the clause do not exist, that proposal may not be considered.

B-189246

Finally Techniarts argues that the Army should reject its whole proposal because of its admittedly late response to Amendment 5. We agree with the protester that rejection of its late proposal should not result in the automatic rejection of its earlier proposal. The Army has advised us that it contemplates negotiations with the other three offerors upon receipt of our decision. We recommend that the Army also consider Techniarts' earlier proposal (without that firm's response to amendment Number 5) and if that proposal is determined to be within the competitive range then negotiations should be conducted with Techniarts as well as with the other three offerors.

The protest is sustained in part.

*R. F. K. H.*  
Deputy Comptroller General  
of the United States