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DECISION

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

[Request for Reconsideration]

FILE: B-194356.2 DATE: April 6, 1981

MATTER OF: Galaxy Aircraft Instruments Co., Inc. - Reconsideration

DLG04712

DIGEST:

Prior decision holding agency should conduct discussions with offerors rather than proceed with an award on the basis of initial proposals is affirmed. Record indicates it is likely that conducting discussions will result in an award at a price lower than if made on basis of initial proposals, discussions would be neither time consuming nor costly, and services being procured are not urgently needed. In any event, passage of time since receipt of proposals necessitates receiving new offers for services.

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The Department of the Air Force requests reconsideration of our decision Galaxy Aircraft Instruments Co., Inc., B-194356, May 28, 1980, 80-1 CPD 364, wherein we held the Air Force should conduct discussions with all offerors within the competitive range under a solicitation for aircraft engine maintenance services, rather than proceed with an award on the basis of initial proposals. We did so because the record indicated it was likely that an award could be made at a lower price than if made on the basis of initial proposals, discussions would be neither time consuming nor costly, and the services to be procured were not urgently needed. For the reasons discussed below, we affirm our decision.

The Air Force essentially argues that the decision is not in accordance with our prior decisions regarding the legality of an award on the basis of initial proposals. In this regard, the Air Force cites numerous cases where we held that an award on the basis of initial proposals is not legally objectionable so long as the

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conditions set forth in Defense Acquisition Regulation (DAR) § 3-805.1 (Defense Acquisition Circular 76-7, April 29, 1977) are satisfied. See, e.g., Telos Computing, Inc., B-190105, March 27, 1978, 78-1 CPD 235; J.K. Rishel Furniture Co., B-183817, September 17, 1975, 75-2 CPD 162; 47 Comp. Gen. 459 (1968); and 47 Comp. Gen. 279 (1967). Since the Air Force determined that award would be made at a reasonable price, and since adequate price competition existed and offerors were warned of the possibility of an award on the basis of initial proposals, the Air Force argues that it could have properly made an award without holding discussions under DAR § 3-805.1(v).

The Air Force has misinterpreted our holding. We ruled that, based on the circumstances before us, the Air Force should conduct discussions with all offerors within the competitive range, including Galaxy, instead of proceeding with an award. Unlike the cases cited by the Air Force, we were not faced with determining the legality of an awarded contract, but with a preaward situation which indicated the potential savings to be gained by conducting discussions outweighed the limited cost or administrative inconvenience of conducting such discussions. Additionally, the record reflected confusion on the part of the Air Force concerning whether it could properly conduct discussions with Galaxy, since Galaxy failed to acknowledge a material amendment. Thus, we "sustained" Galaxy's objections to the Air Force's plans to make an award on the basis of initial proposals, since such an award appeared unwise.

We do not agree, as alleged by the Air Force, that our decision "radically departed from the historical limits and nature of GAO review." As recognized by 44 Comp. Gen. 221, 223 (1964), our Office will recommend a a procuring agency take a given course of action if we believe such action is required by public policy embodied in the competitive procurement statutes and believe the action proposed by the agency to be "undesirable." This is true, even if the action proposed to be taken by the procuring agency may not be legally objectionable.

It appears that some confusion was generated by the concluding statement in the decision "sustaining" the protest. In light of the fact that our recommendation was for a course of action indicated by the particular circumstances involved as related to the purposes of competitive negotiation procedures, rather than on the basis of strict legal requirements, it was perhaps misleading to conclude our decision as we did. We did not intend to suggest that an award as contemplated by the Air Force would have violated the protester's legal rights.

Nevertheless, we continue to believe that our recommendation was correct and that the Air Force should conduct discussions in this procurement, as well as in similar cases. Although the Air Force is concerned that our reference to Galaxy's offer as "competitive" will foster an "auction atomsphere," we do not think that to be the case; no prices were disclosed in our decision and a mere reference to an offer as "competitive" does not run afoul of the prohibition regarding auction techniques contained in DAR § 3-805.3(c). In any event, given the passage of time since offers were originally submitted, we believe revised offers would have to be solicited.

Milton J. Socolar

Acting Comptroller General
of the United States