

McArthur



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

Matter of: TVI Corporation  
File: B-261865.2  
Date: December 11, 1995

## DECISION

TVI Corporation protests the award of a contract to Deployable Hospital Systems, Inc. (DHS) under request for proposals (RFP) No. N00244-95-R-5343, issued by the Department of the Navy for portable shelters. TVI contends that DHS did not submit a technically acceptable offer and cannot meet the RFP requirements at the price offered.

We dismiss the protest.

Section B of the RFP was a price schedule calling for prices on the listed parts of the shelter. Section C set out the specifications for the shelter and provided that "[t]he effort required hereunder shall be performed in accordance with the following specifications and in accordance with all other terms and conditions set forth herein." Section M provided that award would be made to the offeror submitting the lowest-priced, technically acceptable offer. There was no requirement for the submission of technical proposals or other information relating to the technical characteristics of the product being offered.

TVI contends that the agency could not reasonably conclude that the awardee's proposal was technically acceptable and thus eligible for award without investigating the features of the product the awardee planned to provide. By submitting the offer it did under a solicitation which did not require a technical proposal describing the offeror's method for meeting the RFP requirements, DHS obligated itself to supply a conforming product. See Aeroflex Lab., Inc., Comstrom Div., B-250488, Jan. 5, 1993, 93-1 CPD ¶ 12. Since nothing on the face of the offer limited, reduced, or modified DHS's obligation to meet RFP requirements, the proposal represented an unequivocal offer to provide the shelters in accordance with RFP requirements. Protective Plastics, Inc., B-257659, Oct. 27, 1994, 94-2 CPD ¶ 168. Accordingly, we see no basis to object to the agency's conclusion to accept the offer without requiring anything further.

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To the extent that the protester contends that the agency should have required submission of technical proposals in order to judge the offerors' technical acceptability, the protest is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1995), protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. Decade Computer Servs., Inc., B-261405, Sept. 21, 1995, 95-2 CPD ¶ 144.

TVI's objection to the award is based upon its prediction that DHS will not deliver a shelter meeting requirements. TVI asserts that the shelter which DHS intends to provide will not meet the minimum aluminum alloy requirements or the specified wind and snow load requirements of the RFP. Nor, TVI argues, will DHS be able to develop an alternative design within the RFP's required delivery schedule and for what TVI alleges is a "low ball" price.

TVI's allegations essentially challenge the Navy's affirmative determination of DHS's responsibility, a determination that our Office will not review absent a showing of possible fraud or bad faith on the part of procurement officials or the misapplication of definitive responsibility criteria in the solicitation. Scientific-Atlanta, Inc.; Magnavox Elec. Sys. Co., B-258711; B-258711.2, Dec. 8, 1994, 94-2 CPD ¶ 229 (awardee's ability to make on-time delivery of compliant articles).<sup>1</sup> TVI does not allege that the solicitation contained definitive responsibility criteria, and we find nothing in the record to indicate fraud or bad faith on the part of procurement officials.

As a result of TVI's protest, the agency issued a cure notice to DHS, to clarify the awardee's intentions regarding the protested requirements. The agency has provided our Office with correspondence in response from DHS and its aluminum supplier, Alcoa, showing that the aluminum alloy being used by the awardee equals or exceeds the specified alloy in quality. The awardee has also represented that its shelter design will meet wind and snow load requirements. The protester offers nothing to show that basing a determination on this correspondence would constitute fraud or bad faith on the part of the agency. Whether DHS ultimately delivers on time, becomes insolvent, or provides a shelter that meets requirements

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<sup>1</sup>Where a fixed-price contract is to be awarded, we likewise do not consider allegations that the awardee submitted a below-cost offer. See Intown Properties, Inc., B-256742, July 11, 1994, 94-2 CPD ¶ 18.

are issues of contract administration over which we do not exercise bid protest jurisdiction. Guardian Moving & Storage Co., Inc., B-257215, Sept. 12, 1994, 94-2 CPD ¶ 100.

The protest is dismissed.

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of the United States