



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Spectrum Controls Systems, Inc.

File: B-275505

Date: February 27, 1997

L.E. Mueller for the protester.

Robert W. Pessolano, Esq., Department of the Army, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that agency improperly evaluated awardee's proposal is denied where record establishes that the agency reasonably determined that awardee's proposal complied with the solicitation specifications.
2. Technically unacceptable proposal cannot be considered for award regardless of potential cost savings to the government.

DECISION

Spectrum Control Systems, Inc. protests the award of a contract to Johnson Controls, Inc. under request for proposals (RFP) No. DACA 27-96-R-0063, issued by the Department of the Army, for the expansion of the Energy Monitoring and Control System (EMCS) at Wright Patterson Air Force Base, Ohio.

We deny the protest.

The RFP sought proposals for installing heating ventilating and air conditioning (HVAC) control and monitoring equipment in 14 existing buildings, interfacing and connecting the new equipment to the existing EMCS system, and furnishing all necessary hardware and software to accomplish the expansion. The RFP contemplated the award of a firm, fixed-price requirements contract for a base requirement with several options. The solicitation set forth a 9,200-point technical/management evaluation scheme and provided that technical factors were more important than price in the award selection. The RFP stated that the agency would consider only the base requirement in evaluating price. The agency issued four amendments to the solicitation, two of which are relevant to this protest. Amendment No. 1 added drawings ME1 and ME3, and amendment No. 3 changed note 5 of drawing ME1 to the following:

"The contractor shall provide operator interface from the central station computer in one of three methods, as follows.

A. Method One, the contractor shall provide interface between the existing Staefa Controls central station computer in Building 30022 and existing Staefa Controls instrumentation points in Building 10262 and 10266.

B. Method Two, the contractor shall provide interface between the existing Johnson Controls central station computer in Building 30022 and existing Staefa Controls instrumentation points in Building 10262 and 10266.

C. Method Three, the contractor shall provide interface between the new central station computer in Building 30022 and existing Staefa Controls instrumentation points in Building 10262 and 10266."

The agency received proposals from Johnson and Spectrum by the closing date for receipt of proposals. Johnson's proposal was evaluated as technically acceptable and Spectrum's proposal was evaluated as technically unacceptable but susceptible of being made acceptable, and both proposals were included in the competitive range. The agency conducted written discussions with both offerors and requested revised proposals. The agency concluded that numerous technical features of Spectrum's proposal, such as the power line conditioner, the remote terminal unit and the resident application software, remained noncompliant with the RFP's specifications.¹ While Spectrum's proposal was evaluated as technically unacceptable, the agency did a comparative analysis of the two proposals and made award to Johnson on the basis that its proposal represented the best overall value to the government.

TECHNICAL EVALUATION

Spectrum challenges the evaluation of Johnson's proposal and the agency's decision to make award to that company on the grounds that Johnson's proposal did not meet the RFP's specifications. Specifically, Spectrum contends that because Johnson proposed to replace two of the Staefa Controls field control panels located in building 10262, the proposal did not comply with note No. 3 of drawing No. ME1 which states that: "[t]he contractor shall integrate all expansion hardware and software with the existing system, without requiring changes to the existing system." [Emphasis added.]

¹Spectrum does not refute the agency's contention that its proposal failed to meet various requirements of the solicitation.

The agency explains that the "existing system" that it did not want changed consists of the Staefa Controls instrumentation points; it does not include the field control panels at issue. According to the agency, numerous field control instrumentation points are attached to various pieces of HVAC equipment to control operation and to monitor usage. These field control instrumentation points cannot directly interface with the computer; they must send their information to the computer through the field control panels. As we understand the agency's position, the existing Staefa Controls field control panels cannot be used with the Johnson Controls central station computer, and the solicitation permitted replacement of these panels since the amended note No. 5 for drawing No. ME1, which gave the offerors three different methods to interface with the existing Staefa Controls instrumentation points, included using a Johnson Controls central station computer.

We agree. Although the solicitation could have been more precise about what was meant by "the existing system," the only reasonable interpretation, given the Note 5 options for interfacing with the instrumentation points, is that "the existing system" did not include the field control panels. To read the RFP otherwise would be inconsistent with one of the clearly permitted interface alternatives which, as noted, would require replacement of the Staefa Controls field control panels. Therefore, we find no merit in this protest allegation.

AWARD DECISION

Spectrum also protests the selection of Johnson's higher-priced proposal for award, asserting that the agency did not adequately determine that the price premium associated with Johnson's proposal was justified.

Spectrum's allegation that its proposal was more advantageous than Johnson's based on its lower price also is without merit. A proposal that is technically unacceptable cannot be considered for award, even where it is the lowest-priced proposal received and thus would offer cost savings to the government. Color Ad

Signs and Displays, B-241544, Feb. 12, 1991, 91-1 CPD ¶ 154. Since the agency found Spectrum's revised proposal to be technically unacceptable, the fact that Spectrum proposed a lower price than the awardee is irrelevant.

The protest is denied.²

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²Spectrum in its comments on the agency report raised a new argument that the agency's evaluation of its proposal was faulty because the evaluator most familiar with its proposed system did not participate in the evaluation of the revised proposals. This objection is untimely. Our Bid Protest Regulations require that a protest be filed within 10 days after the basis of the protest is known, or should have been known. Section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)). Each new protest ground must independently satisfy the timeliness requirement of our Regulations, which do not contemplate the piecemeal presentation or development of protest issues. RRRS Enters., Inc., B-241512; B-241512.2, Feb. 12, 1991, 91-1 CPD ¶ 152. It is clear that Spectrum had all of the information it needed to raise this allegation at the latest when it received the agency report on December 10. While Spectrum was granted an extension of time in which to file its comments, such an extension does not toll our timeliness requirements. See Coulter Corp. et al., B-258713; B-258714, Feb. 13, 1995, 95-1 CPD ¶ 70.