

DOCUMENT RESUME

D3262 - [A2213309]

[Alleged Improper Evaluation of Technical Proposals]. B-188550.  
August 4, 1977. 6 pp.

Decision re: Automatic Informational Retrieval Systems, Inc.; by  
Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1700).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government  
(806).

Organization Concerned: Immigration and Naturalization Service;  
National Educational Consultants, Inc.

Authority: 4 C.F.R. 20.2(b)(1). 54 Comp. Gen. 60. 50 Comp. Gen.  
110. 53 Comp. Gen. 382. 55 Comp. Gen. 1315. 54 Comp. Gen.  
612. B-186846 (1977)..

The protester alleged improper evaluation of technical proposals for microfilming services. The allegations that the solicitation specifications were deficient was untimely and was not considered. The rejection of the protester's proposal was reasonable since the proposal was impossible to evaluate because it did not offer a firm, all-inclusive price and did not accept a weekly production rate as a firm contract requirement as required by the solicitation. Consideration of the agency's experience with the protester under a prior subcontract in evaluating their proposal was proper, since the solicitation provided for evaluation of the offeror's prior experience.  
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Proc II

**DECISION**



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

**FILE:** B-188550

**DATE:** August 4, 1977

**MATTER OF:** Automatic Informational  
Retrieval Systems, Inc.

**DIGEST:**

1. Protest alleging specifications for microfilming were deficient because of unrealistic weekly production rate and certain other stated requirements is untimely under Bid Protest Procedures because it was not filed before closing date for receipt of initial proposals.
2. Where protester's proposal was impossible to evaluate because it did not offer a firm, all-inclusive price and did not accept weekly production rate as firm contract requirement, rejection of proposal was reasonable.
3. Where solicitation provides for evaluation of offeror's prior experience and requires submission of list of relevant projects performed by offeror, agency, in addition, may consider its own experience with offeror under prior subcontract for such services in evaluating offeror's proposal.

Automatic Informational Retrieval Systems, Inc. (AIRS) protests the award of a contract to National Educational Consultants, Inc. (NEC) under request for proposals (RFP) CO-14-17 issued by the Immigration and Naturalization Service (INS) of the Department of Justice. The RFP solicited offers to microfilm approximately 32 million documents within 43 weeks at a firm fixed-price per document. Prices were required to be all-inclusive with no additional charges for supplies, transportation or any other service necessary to perform the contract.

In support of its protest, AIRS points out that its proposed price of \$.00698 per document was substantially below the \$.01538 price proposed by NEC. It contends that AIRS's superior technical proposal was not properly evaluated because of INS's lack of technical competence and because some of the evaluators were not familiar with evaluation requirements of the RFP. Finally, AIRS contends that its previous experience with INS as subcontractor to a defaulted prime contractor improperly prejudiced INS against AIRS.

The RFP required a technical proposal showing a thorough understanding of the problems and a specific plan for achieving the required microfilming rate of 825,000 documents per week. The plan had to indicate the number of work shifts, personnel and cameras and describe the production and maintenance schedules. It stated that the offeror should include in its proposal any terms and conditions it wanted incorporated in any resultant contract. The proposal evaluation plan was as follows:

"Proposals will be evaluated on the basis of four areas of consideration with a maximum number of earned points assigned to each area. The total number of points for each offeror will be obtained by summing all of the points earned in each of the four areas of consideration.

<u>Category</u>	<u>Assigned Points</u>
A. <u>Offeror's Experience:</u> The offeror's previous experience and demonstrated capabilities in micro-filing a large volume of documents in poor condition.  The offeror should list projects in which relevant experience was gained, giving the title and brief description. Name and phone number should be given of the representative of the organization for whom the work was done.	1-20
B. <u>Resources Available:</u> The offeror should list all equipment and personnel needed to complete the work, and indicate what equipment and personnel are now available to the offeror and what would be acquired.	1-20
C. <u>Technical Approach:</u> Competence demonstrated in the technical narrative for performing the scope of work. (Proposals which do not meet a minimum score of 10 points in this category will be considered nonresponsive and will not be evaluated further.)	1-25

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D. Cost or Price: 1-35

Total Maximum Points 100

Evaluation of the cost or price factor will be computed by multiplying the maximum point score (e. g., 35) by a fraction representing the ratio of the lowest responsive offer to the particular vendor's proposed cost or price as illustrated below:

$$\frac{\text{Price of Lowest Technical Acceptable Offer}}{\text{Vendor's Price}} \times 35 = \text{Vendor's Point Score}$$

The initial proposal submitted by AIRS stated that performance would be in accordance with all terms and conditions of the solicitation "except those to which specific exception has been made." It stated that although all work would be completed within approximately 43 weeks, the 825,000 documents per week rate should be considered a goal and not a "demand" criteria and that AIRS would "request proper consideration when extremely poor documents are incurred." The proposal disclaimed any liability for records received in improper sequence prior to filming, and for defects in Government furnished film and cartridges. It stated that defects in such cartridges would be corrected by AIRS for \$4.00 per hour if the National Micrographics Association found that such defects were not the fault of AIRS. AIRS further stated that it was impossible to guarantee any definite diazo density and that clear and printable diazo copies should be the standard for acceptability. AIRS requested weekly billings and said that it could not accept monthly billings.

This proposal was rated as unacceptable by INS. AIRS was so informed by letter. Nevertheless, AIRS was requested to submit all information required by the solicitation which it previously had not submitted. Specific attention was called to two deficiencies. The first was that the proposal did not state a specific plan as to how the microfilming rate of 825,000 documents per week would be achieved and the second was that there was an apparent conflict in the proposal between the paragraph stating that all work would be accomplished within 43 weeks and a paragraph stating that the poor condition of the records "play havoc with the total completion ability and projected rate" of 825,000 documents per week which should be considered only as a goal. The INS letter stated that where the meaning of a proposal is clear and the evaluators can assess its validity, the contracting officer shall not disclose a

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weakness "which is inherent in the offeror's management or technical judgment or is the result of his own lack of competence or inventiveness in preparing his proposal." INS further stated that upon receipt of AIRS's response, its proposal would be further evaluated and that negotiations would be continued only if its proposal was rated technically acceptable and within the competitive range.

AIRS's response to the first point was, in essence, a claim that its proposal did in fact contain a specific production plan. With regard to the second deficiency, it stated it could find no apparent conflict and reiterated that the prescribed rate should be considered a goal rather than a rigid requirement. Again it made no firm commitment to the 825,000 per week rate except to say again that it would adhere to it but would request consideration wherever it encountered a series of defective records causing unusually slow progress in microfilming.

INS found the revised AIRS proposal to be technically unacceptable because of its failure to offer a firm inclusive price and to commit itself to a weekly production rate of 825,000 documents. AIRS was scored 11 for experience, 7 for resources, 12 for technical approach and 35 for price for a total of 65 points. NEC, the successful offeror, received 20 for experience, 17 for resources, 22 for technical approach and 15 for price for a total of 74 points.

AIRS takes sharp issue with the scoring of its proposal in comparison with NEC's winning proposal. It has submitted numerous arguments and articles from technical publications purporting to show that the specifications and the evaluations were deficient in almost every respect. However, to the extent that AIRS's protest is based on deficiencies apparent in the solicitation, including the specifications, it is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976). Protests based upon such alleged improprieties must be filed prior to the closing date for receipt of initial proposals. We believe that AIRS's objections to the required 825,000 weekly production rate, the density range specified in the solicitation and all other requirements, including that for a firm all-inclusive price per document, to which AIRS took exception in its proposal, are untimely. Thus, they will not be resolved in this decision.

A technically unacceptable or inferior proposal need not be accepted solely because its price is low. Austin Electronics, 54 Comp. Gen. 60 (1974) 74-2 CPD 61. This is true whether the contract is to be awarded on a fixed-price basis or on a cost reimbursement basis. See, e.g., 50 Comp. Gen. 110 (1970); 53 id. 382

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(1972). Moreover, it is not the function of this Office to evaluate proposals or to make independent judgments as to the precise numerical scores which should have been assigned to the proposals. Therefore, determinations by procuring agencies regarding the technical merits of proposals will be questioned by this Office only upon a clear showing of unreasonableness, abuse of discretion or a violation of the procurement statutes and regulations. Group Operations, Incorporated, 55 Comp. Gen. 1315 (1976), 76-2 CPD 79.

In the light of these principles, we have reviewed the report of INS and the proposals of NEC and AIRS. The agency report indicates that NEC's proposal was rated substantially higher in each evaluation category except for cost. In essence, AIRS's proposal reflected only a commitment to use its best efforts to resolve the anticipated problems. It placed responsibility upon INS for several contingencies which the RFP indicated should be assumed by the contractor. From our review of the proposals, it appears that the INS evaluators could rationally evaluate the proposals as they did. The fact that AIRS disagrees with the INS evaluations of its proposal and that of NEC, does not render the evaluations unreasonable. Metis Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44. The refusal of AIRS to offer a firm, all-inclusive price per document to be filmed, to accept the weekly production rate as a firm requirement rather a goal, and to agree to other RFP requirements, rendered its proposal and flexible price impossible to evaluate on the same basis as the proposals from the other offerors. Under these circumstances, the technical qualifications of the INS evaluators, which AIRS challenges, the adequacy of its production plan for reaching its "goal" and the validity of the agency's views concerning the technical merits of the successful offeror are of academic interest only. In our opinion, AIRS did not have a reasonable chance for award without substantial and basic changes to its approach. In addition, the fact that AIRS was permitted to revise its technically unacceptable proposal certainly did not prejudice AIRS.

Accordingly, we find that INS's proposal was properly rejected. The other matters raised by the protester, namely, the technical qualifications of the evaluators and the method of evaluating the proposals need not be considered. With regard to prejudice because of AIRS's prior performance as a subcontractor, INS states that it did not assure AIRS that its prior performance would not be considered. Rather, according to INS, AIRS was assured only that AIRS would not be held responsible for problems on the prior

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contract which it did not cause. We note that under the RFP evaluation criteria, prior experience was required to be evaluated. See Virgin Islands Business Association, Inc., B-186846, January 16, 1977, 77-1 CPD 114.

Therefore, the protest is denied.

  
Deputy Comptroller General  
of the United States