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James Vickers PL I

DECISION



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

FILE: 3-191797

DATE: June 29, 1978

MATTER OF:

Resdel Engineering Corporation

DIGEST:

1. Protest filed within 10 working days of debriefing is timely under 4 C.F.R. § 20.2 (b)(2) where letter from contracting officer advising initial proposal was unacceptable did not contain sufficient information regarding reasons for rejection and therefore protester was entitled to wait for debriefing.
2. Record does not support allegation that only certain offerors were given opportunity to examine model of item to be produced, as solicitation advised of availability of model and it was within judgment of offerors whether to avail themselves of opportunity.
3. Proposal containing number of informational deficiencies in several major areas renders proposal materially deficient since proposal could not be made acceptable absent major revision.

Resdel Engineering Corporation (Resdel) has protested the finding by the contracting officer that its initial proposal was unacceptable under solicitation No. DAAB07-78-R-2702 issued by the United States Army Communications and Electronics Materiel Readiness Command.

The solicitation was for 4,000 Platoon Early Warning Systems (PEWS) and 12 proposals were received in response to the solicitation. Six of these proposals were found to be unacceptable, including Resdel's proposal, and by letter of March 7, 1978, Resdel was so advised.

Initially, the Army takes the position that the protest was not timely filed under our Bid Protest Procedures (4 C.F.R. part 20 (1977)). Resdel received the March 7 letter either March 10 or 13, 1978, and by letter of March 29, 1978, requested a debriefing, which was held on April 19, 1978. Resdel subsequently protested to our Office on April 27, 1978. The contracting officer argues that the contents of the letter of March 7, 1978, conveyed to Resdel the basis of its protest. Therefore, Resdel should have protested to our Office within 10 working days of March 13, 1978, when it received the letter, as 4 C.F.R. § 20.2(b)(2) requires that a protest be filed within 10 working days after the basis of the protest is known or should have been known. Resdel contends that the March 7 letter only stated that its proposal had been found unacceptable and listed the three major evaluation areas where its proposal was deficient (Production Engineering, Production and Manpower Application and Qualifications) but did not give sufficient reasons to form the "basis of protest."

Upon our review of the record, we do not find that the reasons given in the March 7 letter for rejection of Resdel's proposal rise to the specificity we have required to place an offeror on notice of the basis for its protest. See Systems Analysis and Research Corporation, B-187397, February 4, 1977, 77-1 CPD 90; contrast Power Conversion, Inc., B-186714, September 20, 1976, 76-2 CPD 256. While the March 7 letter advised of the actions taken regarding Resdel's proposal, we do not find it supplied sufficient information to permit the intelligent filing of a protest. Further, we cannot say that the delay from March 13, 1978, until March 29, 1978, in requesting the debriefing was unreasonable. Development Associates, Inc., 56 Comp. Gen. 580 (1977), 77-1 CPD 310. Therefore, we will consider the protest on the merits.

Resdel's initial basis of protest is that certain information was provided to some offerors but not to Resdel and possibly other offerors, nor was Resdel made aware of its availability. Resdel argues that

at the debriefing it was advised that, prior to the submission of proposals, drawings, specifications and a physical model were made available to certain offerors for examination. Resdel contends that it was not advised that this "show and tell" as it is known in the industry, was being held.

The contracting officer responds that the solicitation at provisions C.41 and F.2 advised all offerors that specifications, plans and other items would be available for examination at Fort Monmouth, New Jersey, from November 11, 1977, to November 28, 1977, from 8:30 a.m. to 4 p.m. While Resdel argues that these two clauses only referred to documentation, not physical models, provision F.2 specifically noted that "Models of PEWS" would be available. The contracting officer further states that there was no specific meeting scheduled but that offerors viewed the items at their convenience.

Based on our review of the record, we cannot say that the fact that information may have been gained by some offerors which chose to avail themselves of the opportunity to view the items and not by others constituted an impropriety by the Government. Whether Resdel chose to inspect the items available was its decision to make as an offeror in reading the solicitation and preparing its proposal and not the fault of the Government. Further, the record does not support Resdel's contention that a "show and tell" was held.

Secondly, Resdel contends the finding that its proposal was unacceptable was arbitrarily made.

The technical evaluation found Resdel's proposal to be unacceptable because of a lack of detail in many areas and concluded that the proposal could only be raised to an acceptable level by a major revision and rewrite. Resdel states that what was lacking from its proposal were "routine" matters which it should have been requested to supply before being

found unacceptable. Further, the contracting activity was familiar with Resdel's record of performance based on past contracts and the agency did not consider this information in its evaluation.

Our Office has held that a contracting agency may exclude a proposal as submitted from the competitive range for "informational" deficiencies when those deficiencies are so material as to preclude any possibility of upgrading the proposal to an acceptable level except through major revisions and additions which would be tantamount to the submission of another proposal. 53 Com. Gen. 1 (1973) and 52 Comp. Gen. 382 (1972).

Upon our review of Resdel's proposal and the technical evaluation report, we cannot say that the determination to exclude the proposal from the competitive range was arbitrary as alleged by Resdel. In several major areas, Resdel's proposal did not contain sufficient information for the evaluators to determine what Resdel was proposing. Moreover, the evaluation of a proposal must be performed on the proposal as submitted and may not encompass peripheral knowledge assumed by the offeror to be possessed by the Government due to its familiarity with the offeror as a result of its status as a prior contractor. Comten-Comress, B-183379, June 30, 1975, 75-1 CPD 400.

Finally, while Resdel generally contends the procurement and evaluation of proposals were not conducted in accordance with the Armed Services Procurement Regulation, our review has disclosed no violation of this regulation.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States