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DECISION

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

[Protest Concerning NASA RFP]

FILE: B-194157.2

DATE: March 14, 1980

MATTER OF: DLG03506
Robinson Industries, Inc.--Request for Reconsideration

DIGEST:

1. Prior GAO decision that solicitation did not authorize offeror to submit in one proposal multiple designs for rotor blades for wind-driven generators was not intended to imply that offeror was precluded by terms of solicitation from submitting alternate proposals.

2. Record shows that protester did not submit alternate proposals. Solicitation stated that proposed contracted effort was divided into Phase I design and an option Phase II prototype fabrication. Offerors were specifically instructed to prepare their proposals to be fully responsive to both phases. Protester did not propose separate manufacturing methods for each of the six blade designs it offered.

3. GAO believes that protester should have raised its contention that methods for manufacture of rotor blades could only be made after an adequate design had been developed prior to closing date for receipt of proposals. While GAO has decided protests against agency decisions to procure by means of a total approach as opposed to separate procurements, protests based on solicitation improprieties must be filed prior to closing date for receipt of proposals.

4. GAO is without authority to determine whether documents belonging to procuring agency can be released. Protester must make application to agency under the Freedom of Information Act for their release.

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Robinson Industries, Inc. (Robinson), requests reconsideration of our decision in Robinson Industries, Inc., B-194157, January 8, 1980, 80-1 CPD 20, denying its protest concerning request for proposals (RFP) 3-856451Q, issued by the National Aeronautics and Space Administration (NASA), Lewis Research Center, Cleveland, Ohio. AGC00885

Robinson contended that NASA had erroneously determined that its proposal for the design and fabrication of low-cost rotor blades for large wind-driven generators was outside the competitive range. We found that Robinson's proposal contained little or no information as required by the RFP regarding tooling and fabrication methods, a quality assurance program, and techniques for predicting stresses, deflections and fatigue limits during the manufacturing process. We also concluded that Robinson had not indicated how the six blade concepts it proposed were to be evaluated. In this regard, our decision questioned Robinson's assertion that NASA had the "option" to select whichever blade concept it believed should be developed since the RFP contained no specific language authorizing the submission of multiple blade design concepts.

Robinson claims that our prior decision erred in concluding that the RFP has no provision for authorizing multiple design concepts. Robinson alleges that a specific requirement of the RFP is for the contractor to develop under Task II of Phase I one or more low-cost blade concepts in sufficient detail for evaluation. Also, Exhibit "A" of the RFP states, according to Robinson, that the purpose of the contract is to develop designs and fabrication techniques for the production of low-cost wind turbines. Finally, Robinson asserts that there is no one best blade for all operating environments because some blades are undesirable in highly populated areas. Consequently, Robinson believes that NASA had the responsibility to express a preference for the type of blade it wanted, especially when Robinson gave it several choices.

With respect to tooling and manufacturing methods, Robinson alleges that its Wind Systems Division manager presented a movie showing some of that individual's actual blade manufacturing experience. Robinson states still photos of many facets of blade operations were also

presented to cognizant NASA personnel. Moreover, Robinson contends that the performance record of its Wind Systems Division manager in developing designs for 20 different helicopter and wind tunnel blade projects and for the manufacturing and overhauling of 38 different models of blades is conclusive evidence of the company's capability to perform in this area. Robinson believes that it submitted six designs that met the requirements of the RFP and that each of the six designs offered varying characteristics and varying development. Each design, however, required additional new facilities according to Robinson so that manufacturing methods could not be fully developed until NASA selected one of the six offered blade designs.

We think that Robinson has confused the difference between the submission of multiple designs under one proposal and the submission of alternate or separate proposals. Our prior decision discussed the requirement of paragraph 5 Ca 7 of the RFP's Special Instructions that if the offeror believed a lower cost approach could be taken, which also satisfies all project objectives, he had to present his proposed approach, as an alternative, in separate sections of his cost and technical proposals. We concluded that this section of the RFP did not authorize offerors to submit numerous separate blade design concepts but, instead, was intended to inform offerors that some limited variation in their blade design from the RFP blade specifications would be permitted provided that the variation was specifically enumerated and that it resulted in lower manufacturing costs.

In reaching the foregoing conclusion, we did not intend to imply that an offeror was precluded by the terms of the RFP from submitting more than one proposal. However, the record shows that Robinson did not submit alternate or separate proposals. Paragraph 1 of the RFP ~~s Special~~ Instructions stated that the proposed contracted effort was divided into a Phase I design and an option Phase II prototype fabrication. While the Government would decide whether or not to conduct Phase II within 10 months after the date of the contract, offerors were specifically instructed to prepare their proposals to be fully responsive to both Phase I and Phase II. Furthermore, section 5 Cb set forth specific manufacturing related items that were required in the

offeror's technical and management proposal such as material selection and general method of construction; criteria and techniques for predicting combined stresses, deflections, fatigue limits and expected life; identification and discussion of quality assurance procedures; and a preliminary plan for manufacturing 100 blades at the rate of two blades per week.

Robinson did not propose separate manufacturing methods for each of the six blade designs that it offered. As we pointed out at page 5 of our decision, the company vaguely stated that it would acquire a facility for blade fabrication as soon as NASA had made the determination concerning the "optimum type of blade to be built." As to blade testing, Robinson's proposal indicated only that the test facilities would be located at a convenient place and that the testing instrumentation would be leased. In short, Robinson stated only that it would meet any manufacturing requirements but did not state how such requirements would be met.

In arguing that each blade design requires its own separate manufacturing facility, we believe that Robinson is implying that the design of the rotor blades was at that point in time paramount to any considerations of manufacturing capability. If Robinson felt so strongly that methods for the manufacture of the rotor blades could only be made after an adequate design had been developed, then it should have protested NASA's decision to obtain both a blade design and a prototype blade in one procurement. We have decided protests against agency decisions to procure by means of a total approach as opposed to separate procurements. See Allen and Vickers, Inc., et al., 54 Comp. Gen. 445 (1974), 74-2 CPD 303. However, any protest based on improprieties apparent from the face of an RFP must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1) (1979). As we stated in our prior decision, the deadline for receipt of proposals in this procurement was August 14, 1978. Therefore, any protest against NASA's procurement approach by Robinson would now be untimely under our Bid Protest Procedures.

Robinson also contends that our decision confirms its right to review the proposals of the three awardees. The company thus requests copies of the awardees' proposals so that it may review them and then submit specific comments on their technical merits.

In our prior decision we pointed out that it is the responsibility of the protester to present the evidence needed to affirmatively establish the allegations made in its protest. Furthermore, where, as here, the documents sought are those belonging to the procuring agency, we have held that this Office is without authority to determine whether such documents can be released and the protester must make application to the agency under the Freedom of Information Act, 5 U.S.C. § 552 (1970) (FOIA), for their release. See Systems Research Laboratories, Inc. - Reconsideration, B-186642, May 5, 1978, 78-1 CPD 341, and the cases cited therein.

In any event, we would consider to be untimely a protest by Robinson using the information that it seeks. A protester who challenges an award on one ground should diligently pursue information which may reveal additional grounds of protest concerning a competitor's proposal. See Tymshare, Inc., B-193703, September 4, 1979, 79-2 CPD 172, and the cases cited therein. Separate grounds of protest asserted after a protest has been filed must independently satisfy the timeliness requirements of our Bid Protest Procedures. Cardion Electronics, 58 Comp. Gen. 591 (1979), 79-1 CPD 406. Here, it seems quite clear that rather than seeking out within a reasonable period of time information which may reveal certain additional, separate bases for protest, Robinson has waited about 8 months since the last award was made under the RFP. In our view, Robinson has failed to diligently pursue the issue of whether the proposals submitted by the three awardees were, in fact, technically acceptable.

As to the remaining arguments made by Robinson in its request for reconsideration, we believe that they present no evidence demonstrating any error in fact or law and no arguments not previously considered.

Our decision of January 8, 1980, is affirmed.

Milton J. Socolar

FOR THE Comptroller General
of the United States