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DECISION



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

FILE: B-201018

DATE: June 19, 1981

MATTER OF: Communication Consultants, Inc.

DIGEST:

1. Allegation that specifications are unduly restrictive of competition filed after closing date for receipt of proposals is untimely under 4 C.F.R. § 20.2(b)(1) (1980).
2. Protest that technical proposal was improperly rejected for failing to comply with specification provision is timely where protester received oral advice of rejection and on same date wrote contracting officer expressing disbelief of rejection for alleged deviation from minor specifications. Letter constituted protest to contracting officer and subsequent protest to GAO within 10 working days after initial adverse agency action is for consideration.
3. While protester argues proposal was functionally equivalent to specification under which proposal was rejected, procuring agency has adequately established that rejected proposal was not equivalent for its needs.

Communication Consultants, Inc. (CCI), has protested the award of a contract to Rockwell International by the Department of Health and Human Services (HHS) pursuant to request for proposals (RFP) No. SSA-80-0242.

[Protest of Bid Rejection as Technically Unacceptable]

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The RFP solicited proposals for an Automatic Call Distributor (ACD) for the telephone system at the Social Security Administration, Phoenix, Arizona. CCI's proposal was rejected as technically unacceptable for failing to comply with certain mandatory specifications.

CCI argues that since its proposed cost was so much lower than that of the successful offeror (\$152,000 vs. \$360,510), its proposal should not have been rejected because it failed to meet a minor portion of the specifications.

The RFP required that the offered system show the percentage of time on line or percentage of time not available when the position is occupied as part of the minimum information to be provided in daily reports of group telephone activities. CCI's proposed system does not show the time on line as a percentage, but instead as actual time (number of minutes).

HHS argues that the protest was untimely filed because, in actuality, CCI is protesting the propriety of the specifications contained in the RFP, which should have been protested prior to the closing date for receipt of proposals. Section 20.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 20 (1980)) requires protests based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals be filed prior to the closing date.

CCI, in rebuttal, contends that it is not protesting an impropriety in the solicitation or specification, but whether CCI's proposal met the specification from a functional standpoint and the manner in which the award was made to the higher priced offeror.

In CCI's initial protest letter filed on October 24, 1980, the following statement is contained:

"We have met the bid specifications, functionally, since the specifications in question ask for 'time on line or

not available when the position is occupied' (RFP Section F.5.3.d. and F.5.4.C.) in the form of a percentage and we provide this information in the form of 'actual' time (number of minutes). * * *

"We have been told by SSA we were disqualified for not meeting these minor specifications that are clearly based upon Rockwell's offerings and, therefore, unfair and restrictive of competition. * * *

"In its present form, this restrictive RFP does not allow competition by the largest vendor of ACD equipment in the country, ROLM Corporation. In fact, ROLM/New England did not even bid on the * * * installation because of the restrictive and non-functional specifications."

We believe it is clear from the above that one allegation CCI is making in its protest is that the specifications were restrictive. We agree with HHS that this allegation is untimely under 4 C.F.R. § 20.2(b)(1) (1980), since the protest was not filed before the closing date for receipt of proposals but filed after rejection of CCI's proposal.

As regards the remaining allegation that CCI's proposal was improperly rejected because it offered the functional equivalent of features required by the specifications, we find this allegation to have been filed timely.

On September 29, 1980, the contracting officer verbally advised CCI that its proposal had been found technically unacceptable for failing to comply with the two specification sections. On that date, CCI wrote the following letter to HHS:

"You have verbally informed us that our bid response to the S.S.A., Phoenix, Arizona ACD system as

outlined in Solicitation No. SSA-RFP-80-0242 has been declared 'nonresponsive.'

"If, as you stated, we are being declared non-respondant because we are not complying with only two of the most minor of the hundreds of specifications in the entire RFP, please inform us of this in writing."

CCI did not receive a reply to the above correspondence, which it views as a protest to HHS, and after receiving the notice of award dated October 15, 1980, CCI filed the protest with our Office on October 24, 1980.

While HHS argues that this letter was merely a request for written confirmation of oral advice previously given, we believe this letter should be viewed as a protest to the agency. The letter shows CCI believed these specifications to be trivial or minor and was looking for a response from HHS in answer to this allegation. The next communication CCI received was the award notice. This was the initial adverse agency action on the protest and CCI's protest to our Office, filed within 10 working days of the notice, is timely. 4 C.F.R. § 20.2(b)(2) (1980).

CCI contends that by its equipment furnishing the actual minutes of time on line or not available when the position is occupied, HHS personnel can easily manually convert this figure to a percentage; therefore, its equipment was functionally equivalent. CCI argues that because of HHS's desire for these features, it ignored the lowest cost proposal and spent over \$200,000 more for the system.

The project officer, in responding to the protest, has submitted a detailed explanation as to why CCI's proposed system is not functionally equivalent to the required system. The explanation discusses HHS's requirement for a Management Information System (MIS), which was to be an integral

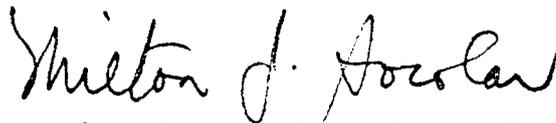
part of the ACD under the solicitation's mandatory specification. In addition to the fact that percentages are more meaningful, these percentages plus other types of information are to be supplied every half hour, at the end of each shift and workday and on demand. Since the system can involve as many as 16 groups, the project officer estimates that 15 minutes of each half hour would be spent converting real time numbers into information useable by management.

Finally, HHS states that if CCI's use of manual conversion had been accepted, a determination would have to have been made of the costs associated with these conversions to be added to CCI's proposal because the RFP was structured to consider all costs for the 10-year system life.

While CCI continues to dispute the above reasoning, we find HHS has adequately explained why CCI's system was not equivalent to the mandatory specification.

Regarding the cost difference and the potential savings if HHS had selected CCI's proposal, HHS disputes the cost difference cited by CCI because this did not take into account costs for the 10-year system life, but only initial equipment cost and installation. This dispute is academic because no matter how advantageous from a price standpoint a proposal may be, award cannot be made on a technically unacceptable proposal, as here. AM International, Inc., AM Varityper Division, B-195082, January 3, 1980, 80-1 CPD 11.

The protest is dismissed in part and denied in part.



Acting Comptroller General
of the United States