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DECISION



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

FILE: B-203428, B-203643,
B-204354

DATE: October 9, 1981

MATTER OF: Telemechanics, Inc.

DIGEST:

1. Concept of responsiveness is not applicable to negotiated procurements. Therefore, the protester's argument that the awardee's proposals were non-responsive is without merit.
2. GAO does not review affirmative determinations of responsibility except for reasons not present here.
3. Whether the awardee will fulfill its contractual obligations is a matter for the contracting agency in the administration of the contract and does not affect the validity of the awards.
4. Determination that awardee's proposals were technically acceptable is a matter which falls within the contracting agency's administrative discretion, and not subject to question by our Office unless clearly arbitrary or unreasonable.
5. Question of the legal rights to certain drawings is a dispute between private parties which must be settled by the courts rather than by GAO.

Telemechanics, Inc. (Telemechanics), protests the award of contracts to Artisan Electronic Corporation (Artisan) under request for proposals (RFP) Nos. DLA900-81-R-0613, -3900, -4423, issued by the Defense Electronics Supply Center, Defense Logistics Agency (DLA).

All three solicitations were issued to fill military supply requirements for several components to be used in equipment manufactured by the Teletype

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Corporation (Teletype). Telemechanics is licensed by Teletype to manufacture the parts in question in accordance with drawings supplied by Teletype. The record indicates that Artisan is not a licensee. Telemechanics argues that Artisan's proposals should have been rejected because Artisan cannot possibly possess the authentic Teletype drawings needed to manufacture the requested parts.

We find no basis to question the awards.

The technical description in each of the solicitations listed a part number and stated that the part had to be in accordance with a specified Teletype drawing, which the solicitations advised DLA did not have in its possession. Nevertheless, in order to maximize competition to the greatest extent practicable, the RFP's further provided that offerors could propose to furnish items which were equal in all material respects to the ones requested. However, if this was done, the RFP's also required that the offerors submit sufficient technical data on both the specified Teletype items and the alternates to enable DLA to evaluate the acceptability of the offered products.

Telemechanics offered its own parts which DLA found acceptable because, as Teletype's licensee, Telemechanics has access to all the technical data needed to produce the specified components. Artisan, on the other hand, offered its parts as alternate items which, according to Artisan, were equal to the Teletype items. As required by the RFP, Artisan also furnished technical data on both its own parts and the Teletype parts so that DLA could evaluate the acceptability of the products offered. This data consisted of drawings for both the Artisan and Teletype parts. DLA's technical personnel reviewed these drawings and concluded that the Artisan parts were in accordance with the Teletype drawings and were therefore acceptable. Since Artisan was the low offeror on each of these procurements, DLA awarded Artisan all three contracts.

Telemechanics argues that Artisan's proposals should have been rejected as nonresponsive since Artisan does not have access to the authentic Teletype drawings

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necessary to prove that its parts are acceptable alternate items. Beside the fact that Artisan did furnish DLA drawings, which are purportedly the applicable Teletype drawings, we note that the concept of responsiveness applies to bids submitted in formally advertised procurements and is not directly applicable to negotiated procurements such as involved here. While a proposal in a negotiated procurement must ultimately conform to the solicitation, the fact that an initial proposal may not be in full accord with the RFP requirements is not reason to reject the proposal if the deficiency is reasonably subject to being made technically acceptable through negotiations. Executone of Redding, Inc., B-199931, February 10, 1981, 81-1 CPD 86. This basis for protest is therefore without merit.

Telemechanics also argues that Artisan is not a responsible offeror--in other words, Artisan is not capable of delivering conforming products. However, upon reviewing the technical data submitted, DLA concluded that Artisan is capable of delivering conforming products and, therefore, is a responsible offeror.

Our Office does not review affirmative determinations of responsibility except where the protester alleges fraud on the part of the procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Tamar Productions, Inc., B-201622, April 27, 1981, 81-1 CPD 325. Since neither exception is applicable here, we have no basis to question DLA's determination that Artisan is a responsible offeror. Insofar as Telemechanics is arguing that Artisan will not fulfill its contractual obligations, we note that this is a matter for the contracting agency in the administration of the contracts and does not affect the validity of the awards. Impact Instrumentation, Inc., B-198704, July 28, 1980, 80-2 CPD 75.

It is clear from its correspondence that Telemechanics' major concern is that Artisan has in its possession, or at least claims to have in its possession, Teletype drawings. Telemechanics does not

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believe that these drawings, if they exist, are authentic and, moreover, does not believe that Artisan has any right to use them since Artisan is not a Teletype licensee.

Our copy of DLA's protest report contains photocopies of the drawings Artisan submitted for DLA's evaluation. Artisan has restricted access to these drawings on the grounds that they are proprietary. Among these drawings are the purported Teletype drawings. Although it is impossible to determine whether these are "authentic" Teletype drawings, we note that the RFP's only required sufficient technical data to determine the acceptability of the alternate items. DLA has concluded that Artisan's technical data was sufficient to prove the acceptability of its proposed items, and we have held that such a determination is clearly a matter which falls within the contracting agency's administrative discretion and not subject to question by our Office unless clearly arbitrary or unreasonable. See, e.g., TM Systems, Inc., 56 Comp. Gen. 300 (1977), 77-1 CPD 61. In this connection, Telemechanics was afforded the opportunity to furnish DLA "authentic" drawings for comparison purposes and refused to do so. Therefore, we will not question DLA's determination.

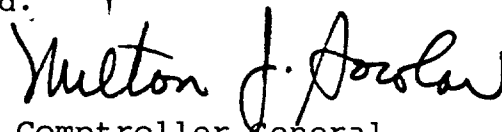
As to the question of Artisan's legal right to the Teletype drawings, we have held that our Office will not adjudicate a dispute between private parties as to rights in proprietary data. Celesco Industries, Inc., B-196597, August 30, 1976, 76-2 CPD 203. Court action rather than a protest to our Office is the appropriate remedy. Dillon Lumber Co., Inc., B-188631, April 8, 1977, 77-1 CPD 249. We have also held that, until those rights are established in a proper forum, we will not disturb an ongoing procurement. ERA Industries, Inc., B-197406, May 3, 1977, 77-1 CPD 300.

Since Telemechanics has not alleged any wrongdoing on the Government's part, we find that the question of whether Artisan has any legal right to the Teletype drawings is essentially a dispute between private parties and Telemechanics must therefore seek redress in the courts.

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Protests denied.

A handwritten signature in cursive script that reads "Milton J. Arnold".

Acting Comptroller General
of the United States