21718 Kratzer Corr

DECISION

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

118279

FILE: B-203503 DATE: May 4, 1982

MATTER OF: Q.S. Incorporated

DIGEST:

1. Protest that specifications unduly restrict competition, filed well after the closing date for receipt of initial proposals, is untimely under GAO Bid Protest Procedures which require protests based upon alleged solicitation improprieties that are apparent prior to the closing date to be filed before that date.

2. Allegation that procuring agency refused to clarify specifications, filed more than ten working days after the closing date for receipt of initial proposals, at which time the basis for protest arose, is untimely and will not be considered.

3. Since the purpose of a site inspection conference, at which attendance is not mandatory, is to allow offerors to apprise themselves of site conditions which may increase the cost of performing the contract, an offeror's failure to attend the conference does not in itself mean that the firm necessarily will not be able to submit an acceptable proposal.

4. The determination that a proposal is technically unacceptable is within the contracting agency's discretion and will not be disturbed absent a clear showing that it was unreasonable.

5. Contracting personnel's alleged expressions of satisfaction with proposal during operational demonstration do not preclude the contracting officer from subsequently finding the proposal technically unacceptable if that finding is rationally supported.

6. Where a proposal is determined to be technically unacceptable, the procuring agency need not consider the price associated with the proposal before rejecting it.

Q.S. Incorporated protests the award of a contract to Martin Marietta Data Systems under request for proposals (RFP) DAHC 26-80-R-0009 issued by the Army Computer Systems Selection and Acquisition Agency. The RFP is for an automated patient appointment and scheduling system. Q.S. contends that the specifications are unduly restrictive and that the Army improperly refused to clarify allegedly ambiguous specifications. These contentions are dismissed as untimely filed. Q.S. also contends that the Army acted unreasonably in determining its proposal to be technically unacceptable. We deny this portion of the protest.

The Department of Defense provides medical care to active and retired service members and their dependents at various medical treatment facilities. Each medical treatment facility serves 80,000 to 200,000 patients and is divided into functional subdivisions called clinics. Currently, each care provider (that is, physician, nurse, therapist, or any other person whose duties include the delivery of medical care to patients) within the clinic manually prepares a schedule of availability for various types of medical appointments. Patients are required to contact the staff of a clinic to make an appointment against these schedules. The Tri-Service Patient Appointment and Scheduling (TRIPAS) System described by the RFP was developed to automate and centralize the process of creating care provider schedules and making appointments for and registering patients.

Eight proposals were submitted in response to the RFP. The Army conducted a preliminary technical evaluation of the proposals, and found that the proposals submitted by Q.S. and two other firms were susceptible of being made acceptable and were in the competitive range. The Army informed each offeror of perceived deficiencies and requested written clarification of ambiguities it found in the proposals. Following an operational demonstration and the clarification of the ambiguities noted in Q.S.'s proposal, the Army determined that the proposal was deficient in a number of significant respects. The Army concluded that the deficiencies could not be corrected without the submission of a proposal for a new software system, which in the Army's view would be tantamount to the submission of a new offer. Therefore, the Army rejected the proposal as technically unacceptable.

ALLEGED SOLICITATION IMPROPRIETIES

Q.S. contends that several of the functional specifications it failed to meet were unduly restrictive of competition and that the Army fashioned the specifications to favor a particular firm. For example, Q.S. objects to the specification which requires the system to generate an error message when a user attempts to make an appointment which conflicts with an appointment already scheduled by the same patient. The specification requires the message to include the time, clinic, and care provider of the previously scheduled appointment. Q.S. believes such a detailed message is unnecessary since the RFP also requires the system to have the ability to display all active appointments of a patient, and the user can search through this display to find the conflicting appointment.

Another example concerns the RFP requirement that certain software features be operational prior to the submission of proposals in a system installed by the offeror. Q.S. complains that the determination of which software features had to be operational was arbitrary.

We will not consider these and other similar arguments lodged by Q.S. concerning the alleged restrictiveness of the RFP. Our Bid Protest Procedures provide that protests based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date. 4 C.F.R. § 21.2(b)(1)(1981). Since Q.S. filed its protest against apparent solicitation improprieties well after the amended closing date for receipt of initial proposals, we will not consider the contention of undue restrictiveness.[1]

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[1]With respect to several of the allegations of undue restrictiveness, Q.S. notes that it objects to the specification "as interpreted by the Army." The intended implication would seem to be that these improprieties were not apparent prior to the closing date and, therefore, it was not necessary to file a protest prior to the closing date. Q.S. does not, however, contend that the Army's interpretation of these specifications was inaccurate or unreasonable. Moreover, the arguments proffered by Q.S. do not depend upon the Army's eventual interpretation or application of the specifications, but rather arise from the specifications as written. Thus, we believe that each of the alleged improprieties was apparent, or should have been apparent to Q.S., prior to the closing date.

Q.S. argues that it actually filed a protest with the Army prior to the closing date. The record indicates that Q.S. pointed out in general terms its belief that the procurement was not competitive in a pre-closing date letter to the Army. Assuming, without deciding, that this letter constitutes a protest, the subsequent Army response that the RFP represents the Government's needs and that a competitive environment exists for the procurement constitutes adverse action concerning the protest. Our Bid Protest Procedures provide that where a protest has been filed with the procuring agency, any subsequent protest with our Office must be filed within ten working days of notification of initial adverse agency action concerning the protest with the agency. 4 C.F.R. § 21.2(a). Since Q.S. did not file a protest with our Office within that time, the firm's protest is untimely in any event.

FAILURE TO CLARIFY SPECIFICATIONS

Q.S. next complains that the Army did not respond to Q.S.'s request to clarify certain other specifications. The firm allegedly submitted the request before proposals were due and the specifications involved evidently were not the subject of the correspondence mentioned above. Q.S. does not state which specifications it regarded as unclear or ambiguous, nor does it document the request for clarification. In any event, this contention also was untimely filed. The basis for this protest issue arose when the Army received initial proposals without responding to or taking action consistent with Q.S.'s request. The protest on this issue therefore had to be filed within ten working days after initial proposal receipt. 4 C.F.R. § 21.2(b)(2). Hence, Q.S.'s protest filed five months after the closing date is untimely in this regard.

SITE INSPECTION

Q.S. contends that some offerors did not attend site inspection conferences and that attendance was necessary to prepare a valid offer. Q.S. argues that unless the site visits were completely unnecessary the firms which submitted proposals but did not attend must have been given additional information by the Army to assist in the preparation of their proposals.

We reject Q.S.'s speculation that the Army acted improperly. Attendance at a site inspection conference was not mandatory. Rather, the purpose of the site visit, as stated by the RFP, was to allow offerors to apprise themselves of

the general and local conditions that may affect the cost of performing the contract. The fact that a firm did not attend thus would not necessarily mean that the firm could not submit an acceptable proposal. See Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD 20.

TECHNICAL EVALUATION

Next, Q.S. contests the Army's determination that its proposal is technically unacceptable. Q.S. contends that many of the deficiencies cited by the Army were a result of the Army's failure to understand Q.S.'s proposal or of the Army's misinterpretation of the specifications. Q.S. requests that we evaluate its proposal and make an independent determination concerning its technical acceptability.

We note initially that it is not our function to evaluate proposals anew and make our own determination of the relative merits or technical acceptability of proposals, since that judgment, particularly with respect to technical considerations, is primarily a matter for the contracting officials. See Decilog, B-198614, September 3, 1980, 80-2 CPD 169. Therefore, we will not disturb an agency's determination of technical unacceptability unless it is shown to be unreasonable or in violation of the procurement laws and regulations. See Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10 at p. 14; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. The fact that a protester does not agree with the agency's evaluation of its proposal does not in itself render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

We have examined the deficiencies in Q.S.'s offer cited by the Army, and the arguments proffered by Q.S. Without discussing each one, we find that although the protester disagrees with the Army concerning the existence and significance of the deficiencies enumerated by the Army, it has not shown that the Army's evaluation was unreasonable. On the contrary, we find that the record amply supports the Army's determination that the system offered by Q.S. does not meet the Government's needs as stated in the RFP.

Many of the deficiencies cited by the Army relate to the capability of the proposed system to create schedules. The RFP defines a schedule as an array of times in which a care provider is available for patient appointments of various types. Functional specifications outline the information which must be contained in a schedule display in order to enable an appointment clerk to make an appointment which

meets the patient's needs. In this regard, the specifications require the capability for the user to enter into the system a number of parameters which essentially govern the schedule creation function. One such parameter is the type of appointment. The system must provide the capability to enter a number of types of appointment, including but not limited to physical examinations, well-baby visits and consultation visits. The various appointment types, once entered into the system, would be available to the care provider in the process of creating a schedule. The system also must provide the capability to associate an appointment type with a time slot when creating a schedule. Thus, a physician could, for example, create a schedule representing availability at 9:00 on Monday to conduct a physical examination and at 10:00 to conduct a consultation visit. Subsequently, an appointment clerk could make a 9:00 appointment for a patient who requests a physical examination and a 10:00 appointment for a patient who requests a consultation visit.

In Q.S.'s system, appointment type may be entered and stored as a two digit code field (for example, "PE" for physical examination). Q.S. contends that this field essentially meets the entire appointment type requirement. The Army points out, however, that in Q.S.'s system, this code can only be entered at the time a patient appointment is made, not, as the specifications require, at the time a schedule is created. Thus, under Q.S.'s system, the physician has no real control in the creation of his or her work schedule other than selecting the times of general availability. We believe that the Army's conclusion that the appointment capability offered by Q.S. does not meet the Army's needs as stated by the RFP is reasonable.

Several other deficiencies cited by the Army derive from Q.S.'s failure to provide the capability to enter type of appointment in connection with the schedule creation function. For example, the specifications require that the system possess the capability to assign an appointment duration and starting time for each type of appointment; search for and display available appointment slots based upon appointment type; and lengthen, shorten, and revise time slots based upon appointment type. Clearly, the inability of Q.S.'s system to designate appointment type in the course of establishing a schedule precludes it from meeting these requirements since each is dependent on the appointment type capability. These deficiencies indicate a substantial difference in the operational capabilities of the system contemplated by the RFP and the system offered by Q.S.

The Army found Q.S.'s system to be deficient in a number of other ways. For instance, the RFP requires the capability to enter as schedule parameters the duration of appointment slots and the maximum number of patients per appointment slot. Q.S.'s system, however, provides a maximum field which, as stated by the proposal, may be used to designate either the duration or the maximum number of appointments, but not both.

Another example is Q.S.'s deficiency with respect to the RFP requirement for the capability to display or print each patient's pending and past appointment activity, including for each appointment the clinic, care provider, and type of appointment. Q.S. contends that it meets this requirement and has submitted as evidence a printout which contains the required information. That printout, however, is of a clinic display (that is, a list of all patients that have an appointment with a particular clinic), not of a patient display (a list of all appointments held by a particular patient). A patient display generated by Q.S.'s system and submitted by the Army for the protest record clearly lacks the required information.

Viewed cumulatively, these, as well as other similar deficiencies not here discussed, clearly establish that Q.S.'s system fails in substantial ways to function as required by the RFP. We conclude that Q.S. has not shown that the Army's determination that the proposal is technically unacceptable is unreasonable.

Q.S. also complains that the finding of technical unacceptability is contrary to opinions expressed by the Army staff present at the operational demonstration that was conducted after the firm submitted its initial proposal. According to Q.S., those personnel appeared to find the firm's proposal acceptable as demonstrated.

We do not agree that the fact that Army personnel at the operational demonstration may have expressed general satisfaction with Q.S.'s system precluded the contracting officer from exercising his judgment to find the offer technically unacceptable, if that judgment is reasonable. See ABT Associates, Inc., B-196365, May 27, 1980, 80-1 CPD 362. Since, as discussed above, the rejection of Q.S.'s proposal is supported by the record, any comments which may have been made at the demonstration are irrelevant.

Last, Q.S. argues that whatever the results of the technical evaluation, the Army should have considered its proposed price and the potential cost savings to the Government before rejecting its bid. This contention is without merit. Where an offeror's proposal is properly found to be technically unacceptable, it is in effect an offer to do something other than what the Government requires, and the price at which the firm offers to perform does not matter. James L. Decker, B-202051, August 20, 1981, 81-2 CPD 158.

The protest is dismissed in part and denied in part.

Milton J. Socolar

Acting Comptroller General
of the United States