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DECISION



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

FILE: B-208271

DATE: April 5, 1983

MATTER OF: Advanced ElectroMagnetics, Inc.

DIGEST:

1. Agency evaluation of protester's proposal and determination that the proposal is not technically acceptable are upheld where the record fails to establish unreasonableness of agency's assessment of proposal deficiencies.
2. Evaluators are not required to seek information on an offeror's capacity from another agency. Such information should have been included in protester's proposal.
3. An agency is not required to refer a small business firm's acceptability to the Small Business Administration for a certificate of competency determination where the firm's proposal was found to be technically unacceptable and thus not within the competitive range.
4. Where no evidence is presented to support an alleged biased evaluation of a proposal by the procuring agency, the allegation must be rejected.
5. Protester's allegedly lower price is not a reason to consider its technically unacceptable proposal since once an offer is properly eliminated from the competitive range its price is irrelevant.

Advanced ElectroMagnetics, Inc. (AEMI) protests the award of a contract to Emerson Electric Company, Rantec Division, under request for proposals (RFP) No. F33615-82-R-1817, issued by the Department of the Air Force, Wright-Patterson AFB, Ohio, for the manufacture and installation of radio frequency absorber material for an anechoic chamber facility. An anechoic chamber is a room free from echoes and reverberations so as to permit precision scientific measurements. Essentially, AEMI alleges that the Air Force evaluators did not objectively and fairly evaluate

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its proposal, inasmuch as its "technical presentation was not given the same evaluation and weight as that of [its] big business competitor." AEMI further contends that the reasons given by the Air Force for finding its proposal to be technically unacceptable are not valid. For the reasons discussed below, we deny the protest.

The RFP, issued April 8, 1982, contemplated that a fixed-price contract would be used for the proposed procurement and contained the following technical evaluation criteria in descending order of importance:

- "A. Special Technical Factors: Evaluation will be based on evidence that the contractor has the expertise, facilities and personnel required to perform the tasks * * *. Areas of concern for this criteria are: Design for the chamber interior, how the installation of the absorber will be completed and description of the measurements conducted.
- "B. Compliance with Requirements: Evaluation will be based on evidence that the contractor will comply with the requirements outlined in * * * the statement of work. * * * Any deviations from the statement of work shall be fully explained and justified as to how they meet or beat requirements.
- "C. Understanding of the Problem: Evaluation will be based on evidence of a clear understanding of the performance levels needed in the chamber and the delivery schedule milestones."

In addition, the RFP stated that price considerations would be secondary to technical factors. The Government specifically reserved the right to award the contract at other than the lowest price.

Four firms submitted proposals on or before the May 14 closing date for receipt of proposals. The agency conducted a technical evaluation and the evaluators rated the proposals from AEMI and another firm technically unacceptable. The contracting officer determined that these two technical proposals were so deficient that they should not be included in the competitive range and therefore the agency did not conduct discussions with those firms. Best

and final offers were requested from the two remaining offerors on June 22, and a contract was awarded to Rantec on July 2.

The protester challenges the technical evaluation of its proposal since it believes that its proposal was technically acceptable and should not have been excluded from the competitive range. Further, AEMI maintains that it has the technical personnel, facilities and proven experience to more than adequately perform the work required by the RFP.

The Air Force states that the protester's proposal was technically unacceptable, since it did not address many of the requirements of the specifications. Specifically, the Air Force's evaluation team found AEMI's discussion of its absorber installation design to be cursory and inadequate. While AEMI did discuss its proposed method of fabricating absorber material, AEMI failed to describe its manufacturing facilities and capabilities. Further, AEMI did not, in the evaluators' view, present an acceptable design for absorber installation for the floor location but rather proposed to develop an absorber specifically for that location. The Air Force viewed this approach as a "high risk development effort" which it considered undesirable since it was not interested in advancing the "state-of-the art" in absorber design. The Air Force evaluators also found that AEMI did not adequately discuss particle shedding, isolation from test area, and power density requirements nor did it adequately understand the basic concept relating to the "movable receiver end wall" of the chamber. Also the agency states that AEMI failed to discuss accomplishment of required cross-polarization tests.

AEMI argues that the Air Force's conclusions concerning the technical deficiencies of its proposal stem from a biased evaluation. AEMI attempts to explain its position on some of these issues, and simply disagrees with the Air Force on others. For example, AEMI states that it presented a "very conservative" design for the floor location which would permit "optimum state-of-the-art" performance of the anechoic chamber configuration specified under this fixed-price research and development contract. Further,

AEMI contends that a routine inquiry by the contracting officer of the Small Business Administration (SBA) would have disclosed that its manufacturing facilities and capabilities were adequate to perform this contract. AEMI requests our Office to submit all technical proposals to an independent technical reviewer for reevaluation.

The evaluation of technical proposals and the determination of who is, and who is not, in the competitive range is a matter within the discretion of the procuring activity since the agency is responsible for identifying its needs and the best methods of accommodating them. Texas Medical Instruments, B-206405, August 10, 1982, 82-2 CPD 122. Our review of the evaluation of technical proposals is thus necessarily limited--we do not independently evaluate proposals and make our own determination as to their acceptability. Nor do we refer proposals to independent technical reviewers for evaluation. Our review is confined to determining whether the agency's evaluation of a proposal is unreasonable, arbitrary, or violative of procurement laws and regulations. Struthers Electronics Corporation, B-186002, September 10, 1976, 76-2 CPD 231. Therefore, where, as here, there is disagreement between the protester and the agency as to specific technical deficiencies raised by agency evaluators, we do not resolve these particular differences but, as indicated above, review the evaluation record to determine whether there is a reasonable basis for the agency's overall conclusion. Westinghouse Electric Corporation, 57 Comp. Gen. 328 (1978), 78-1 CPD 181.

We are unable to conclude that the procuring agency's overall determination that the protester's technical proposal was unacceptable was arbitrary or unreasonable. For example, although the solicitation clearly stated that "technical * * * risks and * * * probability of success will be assessed," our review of AEMI's proposal indicates that AEMI did not in fact present an absorber installation design for the floor location, as required, but merely presented a proposed "approach" to its design which would be subsequently "verified" during contract performance. The Air Force considered this "approach" methodology undesirable since it involved a "high risk development effort." While the protester argues that its "approach"

was "conservative" and was not to be a high risk effort, we have no basis for second-guessing the judgment of the agency's own evaluators in this regard. Moreover, the problem was aggravated by AEMI's failure to discuss its manufacturing facilities and capabilities, as required by the solicitation, so that a proper assessment could be made of the probability of success of its "approach" methodology. In this regard, AEMI also complains that it should not have been downgraded for an inadequate description of its manufacturing facilities and capabilities. The protester notes that the evaluators easily could have found that AEMI's facilities were in fact adequate by contacting the SBA. However, proposals are evaluated on their own merits and evaluators are not required to refer to other agencies or to materials outside the proposal to verify matters which should have been described in the proposal. See Mutual of Omaha Insurance Company, B-210710, January 4, 1982, 82-1 CPD 2.

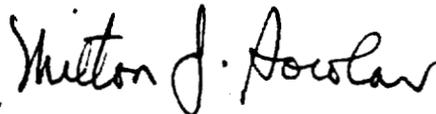
If AEMI is arguing that the matter of its capability and facilities should have been referred to SBA for determination under its certificate of competency (COC) procedures, its argument is also without merit. AEMI was not found nonresponsible; rather, the protester's proposal was found to be technically unacceptable when evaluated under the criteria specified in the solicitation. In these circumstances, a proposal from a small business, such as AEMI, may be rejected as technically unacceptable even where part of the determination is based on responsibility-type considerations (manufacturing facilities and capabilities) without referral of the question to SBA for possible issuance of a COC. Systec, Inc., B-205107, May 28, 1982, 82-1 CPD 502.

Concerning AEMI's allegation of a biased evaluation, where a protester alleges improper conduct on the part of the procuring agency, it has the burden of affirmatively proving its case. We will not attribute unfair or prejudicial motives to individuals on the basis of inference or supposition. A.R.F. Products, Inc., 56 Comp. Gen. 201, 208 (1976), 76-2 CPD 541; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. There is simply nothing in the record to support AEMI's contention of a biased evaluation and as the protester has offered no evidence to support its claim, the allegation must be rejected.

AEMI also complains that the Air Force failed to take into consideration its discount which, if properly evaluated, would have lowered its price below that of its competitors. Once, as here, an offer is determined to be technically unacceptable, a potentially lower price which that offer might provide is irrelevant since that offer is no longer within the competitive range and cannot be considered for award. Century Brass Products, Inc., B-190313, April 17, 1978, 78-1 CPD 291. Therefore, since we have already concluded that the Air Force acted within its discretion in rejecting AEMI's proposal because of technical deficiencies, the allegedly lower price that AEMI might offer is of no consequence.

Finally, AEMI complains that even though the solicitation required the successful offeror to employ minority businesses in the performance of the contract, the contracting officer did not even make an effort to contact AEMI, a minority business, to request further information or clarification concerning its technical presentation before rejecting its proposal. The agency, having determined the AEMI proposal to be technically unacceptable and therefore not within the competitive range, had no duty to negotiate with AEMI simply because the firm is a minority business; the regulations require written or oral discussions only with offerors who submit proposals within the competitive range. See DAR § 3-805.1(a); Conwed Corporation, B-179295, February 19, 1974, 74-1 CPD 74.

The protest is denied.

for 
Comptroller General
of the United States