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DECISION



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

FILE: B-207573.3

DATE: April 13, 1983

MATTER OF: Solarwest Electric--Reconsideration

DIGEST:

1. Prior decision that awardee's proposal met request for proposals performance-based specification is affirmed because protester has not shown that decision was erroneous.
2. Protester which failed to prove that agency's technical evaluation was unreasonable cannot provide evidence in request for reconsideration that was available during initial consideration of protest and which should have been presented at that time.

Solarwest Electric (Solarwest) requests that we reconsider our decision in Solarex Corporation; Solarwest Corporation, B-207573, B-207573.2, December 10, 1982, 82-2 CPD 521, which denied a protest against an award to Solenergy Corporation under request for proposals (RFP) No. 8000-82-02 issued by the National Park Service, Western Regional Office, Department of the Interior (Interior).

For the reasons which follow, we affirm the decision.

The RFP was for a solar electric photovoltaic power system principally consisting of an array of photovoltaic (solar) cells, a battery system to store electrical energy for use when adequate sunlight was unavailable, and backup diesel generators. The system was to be installed at Anacapa Island, California. The RFP required that the system support an average continuous load of 1,000 watts (1 kW). We held that Solenergy's proposed use of the diesel generators to support a part of the 1-kW requirement was in accord with the RFP because the diesel generators were a required part of the system. As a basis for this determination, we noted that the specifications required that the system include "load management switching equipment for back-up diesel generators" and that amendment 2 required that "Solar battery charging using the diesel generators shall be included."

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Solarwest argues that the diesel generators were not a part of the system to be procured, but rather a part of Anacapa Island's existing system. Solarwest contends that the solicitation referred to the diesel generators as a means of describing the operation of "load management equipment" and "battery charging."

We initially note that this is the first time that Solarwest has raised this argument. During the pendency of the protest, Solarwest instead argued that the RFP required the 1-kW requirement to be exclusively supported by the photovoltaic array. We nevertheless gave careful consideration to the solicitation's language and remain of the view that the RFP required that the diesel generators (even if Government-furnished equipment) be a part of the photovoltaic system.

Solarwest contends that the diesel generators could not be used because the RFP intended that a photovoltaic system rather than a diesel generator system support the 1-kW requirement. Solarwest argues that our decision would have allowed Interior to accept any system which was not expressly prohibited by the RFP. We disagree. The requirement that the procured system support a continuous load of 1-kW was a performance-based specification. While performance-based specifications provide greater latitude in the manner in which offerors may perform the required task than definitive specifications, offerors must still meet the RFP's minimum requirements. See A. B. Dick Company, B-207194.2, November 29, 1982, 82-2 CPD 478. The RFP required that "the system" include diesel generators. As a required part of the system, the diesel generators could be used, in conjunction with other required parts of the system, to meet the performance-based specification.

Interior agreed with Solenergy's determination that the effective maintenance of the diesel generators required that they be periodically operated. Solenergy would use the maintenance energy to support a part of the 1-kW requirement. We noted that Solenergy would not rely on the diesel generators any more than necessary to insure their effective operation. Solarwest contends this is incorrect. Solarwest has provided a 1980 draft report from the University of California, Santa Barbara, regarding Anacapa Island's energy needs. Solarwest also cites State of California statutes and regulations regarding the maintenance test operation of

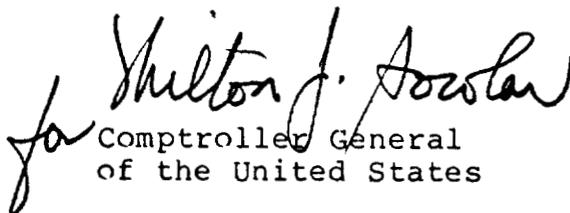
emergency generators at health care facilities. Solarwest argues that the fact that Solenergy would run maintenance tests in excess of what is necessary to operate emergency generators at health care facilities proves that Solenergy would use the diesel generators to provide more than maintenance energy.

We will not consider this information because it appears that it was available during our initial consideration of the protest and could have been provided at that time.

Our Bid Protest Procedures, 4 C.F.R. § 21.9(a) (1982), require that requests for reconsideration contain a detailed statement of the factual and legal grounds for such action. In addition, the request must specify any errors of law made or information not previously considered by our Office. Space Age Engineering, Inc.--Reconsideration, B-205594.3, September 24, 1982, 82-2 CPD 269. Information not previously considered refers to that which a party believes may have been overlooked by our Office or to information to which a party did not have access during the pendency of the original protest; additional information obtained under a Freedom of Information Act request would be an example of the latter. Any other interpretation would permit a protester, an agency or interested party to present information to our Office piecemeal, disrupting a procurement for an indefinite time. Id.; B&M Marine Repairs, Inc. -- Request for Reconsideration, B-202966.2, February 16, 1982, 82-1 CPD 131.

Interior's determination regarding the maintenance operation of the diesel generators is a technical judgment which will not be disturbed by our Office absent a clear showing by the protester that the agency acted arbitrarily or unreasonably or otherwise violated procurement statutes or regulations. See Holmes and Narver, Inc., B-206138, January 11, 1983, 83-1 CPD 27. We had no information during our initial consideration of the protest which would have given us any reason to believe that Interior's technical judgment regarding the diesel generators maintenance requirements was unreasonable. Solarwest knew of Interior's position during our initial consideration of the protest and should have provided the information it has now submitted at

that time. Parties to a protest that withhold or fail to submit all relevant information to our Office in the expectation that our Office will draw conclusions beneficial to them do so at their own peril, since it is not our function or province to prepare for parties to a protest defenses to or positions on allegations clearly raised. SAFE Export Corporation--Reconsideration, B-205501.2, January 17, 1983, 83-1 CPD 40.

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of the United States