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# DECISION



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

FILE: B-211063, B-211063.2, DATE: December 6, 1983  
B-211063.3  
MATTER OF: Radix II, Incorporated, et al.

## DIGEST:

1. Where protest against alleged deficiencies in solicitation specifications was not filed until after deadline for initial proposal submission, protest is untimely and not for consideration since alleged deficiencies should have been apparent prior to deadline.
2. Function of GAO is not to reevaluate proposal; GAO will not disturb procuring agency's evaluation of proposals submitted in response to solicitation unless evaluation was arbitrary or in violation of procurement laws and regulations. Record shows that agency's evaluation of protesters' proposals was reasonable.
3. Where protester merely alleges that a proper evaluation of its proposal would show invalidity of reasons set forth by contracting agency for finding it unacceptable, protester has not met its burden to affirmatively prove its case.

TWC, Inc., Alfred Engineering, Incorporated, H & H Electric, Inc., Foley Company, and Radix II, Incorporated (Radix), the latter the electronics and software supplier of the others, protest the rejections of proposals submitted under United States Corps of Engineers (Omaha District) request for technical proposals (RTP) No. DACA45-83-R-0001. The RTP is the first step of a two-step formally advertised procurement for an Energy Monitoring and Control System (EMCS) at Ellsworth Air Force Base. TWC, Inc., also protests the rejection of its alternate proposal which was based upon supplying other than Radix equipment.

We deny the protests in part and dismiss them in part.

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The four proposals based upon supplying the Radix equipment were rejected on two bases. However, we will not consider the second basis because we conclude that the first basis was adequate in itself to reject the proposals.

The first basis for rejection was that the proposals contained insufficient information regarding the applications software; in particular, the programs used by the computer to monitor energy usage in the buildings and to direct the adjustments or changes needed to achieve the desired operations. While, in the "Proposal Overview" portion of the proposals, the offerors stated they would "provide all software as required in this project," in the "Overview of EMCS System Software" portion, it was stated that:

"It is the main strength and uniqueness of . . . [the proposed equipment] that it contains no pre-conceived program on the behavior and management of field processes; as a matter of fact, there are no 'canned' programs whatsoever in the machine."

Further, the "EMCS Application Software" portion of the proposals did not discuss what programs would be provided by the contractor or how they would operate.

RTP paragraph 1 in describing the work to be performed by the contractor stated: "Furnish and load all software to complete a system for various buildings." Paragraph 2.1.3.3.3 required:

"The manufacturer's or developer's written description of the system, command and applications software. In addition a concise sequence of operation for command and applications software is required."

Further, paragraph 14 of technical specifications section 13A, "Energy Monitoring and Control System (EMCS) Medium System Configuration," described the requirements for applications programs and identified several different programs which had to be provided by the contractor.

After comparing what the RTP required of offerors in their proposals and what the four proposals contained, the

evaluation personnel concluded that the proposals failed to identify what programs were included and indicated instead that no preconceived programs were to be inserted into the computer. This was considered to be a major deficiency in the proposals because, instead of buying a computer and an operable system, the government would be getting what the contractor believed was necessary information and criteria for the government to write its own programs for the computer.

The protesters' response to the above is as follows. First, they contend that the RTP specifications were ambiguous and contradictory. Second, they argue that the conclusions in the agency evaluation show an arbitrarily narrow interpretation of what was in the proposals and an equally arbitrary interpretation of what was required under the terms of the RTP. In that connection, the offerors state that they obligated themselves in their proposals to "provide all software as required" and they argue that the "preconceived programs"/"canned programs" terminology if read fairly and reasonably with all other pertinent proposal parts shows that the Radix equipment offered "includes a generalized 'robotics algorithm' which is driven by tables containing site-specific information" that would be provided by Radix. The offerors argue that, to avoid this reasonable reading of the proposals, the agency has interpreted the specification into a requirement that a proposal parrot back the list of required software as a list of provided software--a requirement that would be an arbitrary gloss on the specifications and would serve no useful purpose.

The contention that the RTP specifications were ambiguous and contradictory is not for our consideration, since it was filed with our Office untimely. 4 C.F.R. § 21.2(b)(1) (1983). The alleged ambiguities and contradictions were protested only after the offerors learned that the proposals had been rejected. Radix then stated:

"Furthermore, following a careful review of the Technical Specifications . . . , it has become clear that the document, as it stands, contains such a high percentage of technical defects, discrepancies, and unclear language that it would be impossible for the Government to obtain a viable system under its guidelines . . . ."

It is clear that the matters about which Radix is complaining could have been ascertained prior to the deadline for the submission of initial proposals and the protest on these matters should have been filed prior to that deadline.

Concerning the rejection of the proposals as being technically unacceptable, the evaluation of proposals and the determination of the relative merit of an offeror's technical proposal is primarily a matter of administrative discretion on the part of the contracting agency. The function of our Office is not to evaluate anew the proposals submitted and make our own determination as to their relative merits. Rather, that function is the responsibility of the contracting agency, which must bear the burden of any difficulties resulting from a defective evaluation. We have repeatedly held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and that this discretion will not be disturbed by our Office unless shown to be arbitrary or in violation of the procurement laws and regulations. Frank E. Basil, Inc.; Jets Services, Inc., B-208133, January 25, 1983, 83-1 CPD 91.

Furthermore, the protester has the burden of affirmatively proving its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448. The fact that the protester does not agree with the agency's evaluation of its proposal does not itself render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

We do not believe that the agency position has been shown to be arbitrary or in violation of the procurement laws and regulations. The protesters state that a fair reading of the proposals in their entirety would indicate that the problems raised by the agency do not exist notwithstanding the use of the no "preconceived programs"/"canned programs" terminology. However, in view of this terminology we cannot say that the interpretation of the agency is arbitrary. The RTP required, as noted above, a "written description of the system, command and applications software," as well as "a concise sequence of operation" for the software. It also identified several different programs that had to be provided. Thus it was imperative that an offeror show in detail what software would be provided and

how it would work to accomplish what was required of it. The offeror could not leave to the imagination of the proposal evaluators what it intended to provide. Further, the blanket promise to "provide all software as required" is not an adequate response to a request for proposals which requires an affirmative response by means of a narrative or other descriptive information. Automated Datatron, Inc., B-184924, March 2, 1976, 76-1 CPD 148.

Next, we consider the TWC, Inc., protest against the rejection of its alternate proposal. That proposal was found unacceptable for numerous reasons. We mention only some of these reasons. The proposal was found to contain less than was necessary to constitute the required overall system one-line and a block diagram. The proposal portion relating to the applications software was found to consist of a restatement of what was in the RTP without sufficient information to show how the various programs would work or that they would accomplish their purposes. The various relays that would be used for the project were not identified in the proposal. TWC, Inc., states basically that these deficiencies are not in its proposal as might be seen in any proper evaluation of that proposal.

As noted above, the function of our Office is not to evaluate anew any submitted proposal and make our own determination as to its relative merit. Frank E. Basil, Inc.; Jets Services, Inc., supra. Accordingly, we believe that TWC, Inc., has failed to meet its burden of affirmatively proving that the evaluation of its alternate proposal by the contracting agency was arbitrary or in violation of the procurement laws and regulations.

*Milton F. Fowler*  
for Comptroller General  
of the United States