

DECISION

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

27254

FILE: B-212267, B-212267.2 **DATE:** January 24, 1984

MATTER OF: Radix II, Incorporated; Northwest Electric
Company

DIGEST:

1. GAO will not object to solicitation specification as premised on erroneous technical assumptions since contracting agency has broad discretion in determining its needs and it has not been shown that the agency's technical assumptions are in error. The fact that the protester disagrees with the agency's technical assumptions does not invalidate the determination.
2. Where the solicitation provides specific weightings for evaluating technical, experience and price considerations, and states which technical elements will be given greater weight in evaluation, the solicitation properly apprises offerors of the criteria to be employed in evaluation of proposals.

Radix II Incorporated and Northwest Electric Company protest request for proposals (RFP) No. DACA45-83-R-0017 issued by the U.S. Army Corps of Engineers for a Supervisory Control System for the NORAD Cheyenne Mountain Complex. The protesters contend that performance would be impossible under this solicitation due to numerous specification ambiguities, inconsistencies and other defects. We deny the protests.

Of the two protesters, only Radix has presented a detailed statement of its objections to the solicitation. Northwest, which was familiar with Radix because of past business dealings between the two firms, has adopted Radix's material, in toto, as its own statement of protest. Therefore, there is no substance to Northwest's protest apart from Radix's and our observations as to the merits of Radix's protest apply equally to Northwest's.

The Supervisory Control System is to monitor and control the air supply to personnel and electronic equipment

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located throughout the Cheyenne Mountain Complex and to operate an automated fire suppression system. The System consists of a central computer and control station, system and command software and applications programs; interface devices and multiplexers; temperature, humidity and pressure sensors; remotely controlled dampers, valves and fans; and necessary ductwork and wiring. The contractor selected will develop the design for the system, and furnish and install equipment needed for the system.

Radix and Northwest filed their protests with this Office prior to the agency's receipt of initial proposals. Subsequently, the Corps received three proposals, two of which were determined to be technically acceptable. The Corps then selected a contractor and, after making the appropriate findings, proceeded to award despite the protests.

As background, Radix points out that the Corps of Engineers has responsibility for procuring Energy Management Control Systems (EMCS) for Defense Department installations. Radix contends that the Corps has systematically used this authority to eliminate from contention the small business firms, such as itself, that first developed this technology in order to benefit certain favored large business firms.

Radix argues further that the Supervisory Control System being procured here is in effect an EMCS and that the specification is based upon the Corps of Engineers' EMCS Guide Specification. To this end, Radix has prepared an 83 page document entitled "Deficiencies and Conditions of Impossible Performance in the EMCS Guide Specification," which, despite its title, has been adapted in large measure to deal with the specification for the Supervisory Control System at Cheyenne Mountain. This document contains extensive comments pointing out where, in Radix's view, the specification is unclear, contradictory, incomplete or technically unsound and asks some 350 questions seeking clarifications, explanations or reconciliations of alleged inconsistencies.

The protesters also contend that the evaluation criteria are deficient, in that they permit subjective judgments. Radix further requests that our Office investigate whether the Corps of Engineers has conducted the EMCS program in a manner prejudicial to Radix. Finally, Radix argues that the Corps' detailed explanations of the specification provided in response to Radix's protest proves that the specification was unclear and incomplete.

A protester who objects to the requirements in a solicitation bears a heavy burden. The contracting agency has the primary responsibility for determining its minimum needs, the method of accommodating them and the technical judgments upon which they are based, since it is most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. Four-Phase Systems, Inc., B-201642, July 22, 1981, 81-2 CPD 56; METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44. This is particularly true where highly technical supplies or services are involved, as is the case here. Therefore, our Office will not question agencies' decisions concerning the best methods for accommodating their needs absent clear evidence that those decisions are arbitrary or otherwise unreasonable. Four-Phase Systems, supra. A mere difference of opinion between the protester and the agency concerning the agency's needs is not sufficient to upset agency determinations. Julian A. McDermott Corporation, B-191468, September 21, 1978, 78-2 CPD 214. Moreover, the fact that other qualified offerors find an RFP adequate for preparation of proposals casts doubt on an assertion that the RFP specification inhibited competition or prevented offerors from preparing proposals properly. See Diesel-Electric Sales & Services, Inc., B-206922, July 27, 1982, 82-2 CPD 84.

Here, Radix contends that major portions of the specification are illogical, contradictory and technically unsound. For example, Radix asks "to which . . . variable . . . does the error percentage of [paragraph] 4.2.10 apply?" The problem with this comment, and a number of other similar comments, is that the protested specification does not contain the provision in question. In other cases, Radix's comments cross-reference non-existent provisions. When the Corps pointed this out to Radix, it explained that it never received an answer to these comments when it questioned prior solicitations that contained the offending provisions. We cannot agree that these criticisms of prior solicitations, regardless of their merit, are relevant when protesting a solicitation that does not contain the provisions in question.

Radix also fails to properly quote the provisions it disagrees with in a number of instances, sometimes in substantive manners. For example, in its analysis of paragraph 12.7, Radix asserts that paragraph 14.9 requires a printing speed of 360 alarms in 30 seconds and then goes on to criticize this speed as inconsistent with other specification requirements. However, paragraph 14.9 requires a printing speed of 180 alarms in 30 seconds.

In other cases, it appears that Radix simply failed to read the specification with due care. For example, it asserts that paragraph 12.2, concerning multiplexors, is identical in all aspects with paragraph 12.3, dealing with intelligent multiplexors, and goes on to ask what purpose "besides maximizing the confusion" this duplication serves. In fact, the provisions are not identical either in their text or their meaning. As the Corps points out, the specification requires that the intelligent multiplexor report only the status of values that have changed since the last report, while the multiplexor, which is not required to do so, reports the status of all values.

In other instances, Radix's comments significantly distort or mininterpret specification requirements. For example, Radix criticizes paragraph 5.4.3 which requires that the contractor provide definitions of terms and functions used in its software manual. Radix argues at length that it is not clear which terms require definition and then asks:

"Is there a generic class of 'terms and functions' the bidder can restrict his definitions to or does he/she need to write a complete dictionary of Computer Science?"

If we agreed that this question was reasonable, we would need only note our belief that some risk is inherent in most contracts and offerors are expected to allow for risks in their offers. Cincinnati Bell Telephone Company, 62 Comp. Gen. 124 (1983), 83-1 CPD 41. However, we think the requirement for defining terms in a software manual is, in context, reasonably clear.

Similarly, Radix criticizes paragraph 14.14 which states that the system operator must be able to enter a command in the keyboard which causes the system to display or print an index of the commands available. Radix asks exactly what does "index" mean, even though the meaning should be clear to any reader.

Other portions of Radix's protest involve interpretations that we believe are unreasonable. For example, Radix asserts that under paragraph 14.8, the system must sound an alarm for any and all contract closures and any and all analog changes, that is, for essentially all changes detected by the sensors or for all operations of remote switches, etc. Radix ridicules this concept of constant alarms for some four pages and urges the creation

of a "real" alarm system in addition to the "government alarms," warning that the "insane 'government alarms' will of course, produce permanent brain damage in Operators." The Corps of Engineers replies that the specification clearly states that the purpose of the alarms is to notify the operator of an alarm condition, which, while not described in paragraph 14.8, are specified elsewhere in the drawings and tables pertaining to the particular sensor or control device.

We have held that solicitations must be interpreted by reading them as a whole and construing them in a reasonable manner, and whenever possible, effect must be given to each word, clause or sentence. JVAN, Inc., B-202357, August 28, 1981, 81-2 CPD 184. When paragraph 14.8 is construed in the manner Radix suggests, the result is clearly unreasonable or, in Radix's own words, nonsensical. Consequently, while certain portions of subparagraphs 14.8.1.1 and 2 might admit of the interpretation Radix suggests if read in a vacuum, in context they cannot mean that any and all changes in status should cause an alarm.

Similarly, Radix ridicules paragraph 4.11, which specifies overvoltage protection for communication cables and conductors linking the various item of equipment. In doing so, Radix states that the specification "appears to indicate that the Government expects to take a 12 VDC modem cable--and plug that cable into 480 VAC High Voltage power line," which "specified exercise is clearly ludicrous." Again, we think Radix is suggesting an unreasonable interpretation. In this regard, the Corps notes that high voltage of the levels specified are normally found in the areas where the communication lines will be located and that such voltages have inadvertently been applied across communications lines in the past.

Radix also indicates that it believes the specifications have been drafted to favor particular suppliers in a number of instances, without explaining why it thinks so. Radix's comments upon paragraph 4.10 and 14.4 are typical; it simply asks whose equipment the government is attempting to specify. This questioning of motives is not adequate: the protester bears the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Todd Logistics, Inc., B-203808, August 19, 1982, 82-2 CPD 157.

As illustrated by the examples cited, we have carefully reviewed Radix's arguments, the Corps' explanations and the specification itself, and we can find no argument that the Corps has failed to answer in a satisfactory manner, in the most part because Radix's arguments are illogical or the result of faulty interpretation. Such arguments do not satisfy the heavy burden of proof placed on protesters, and we deny Radix's protest against the specification accordingly.

Radix also contends that the evaluation criteria are subjective because technical considerations constitute 60 percent of the evaluated score and this, in turn, depends upon how the evaluators view each of some 429 separate items in the specification.

It is a fundamental principle of federal procurement law that offerors must be apprised of the criteria to be employed in the evaluation of proposals and their relative weights. Price Waterhouse & Co., B-203642, February 8, 1982, 82-1 CPD 103. Although agencies are required to identify major evaluation factors, they are not required to identify explicitly the various aspects of each factor that might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria, Human Resources Research Organization, B-203302, July 8, 1982, 82-2 CPD 31, and they are not required to disclose in advance every detail of the evaluation process. CMD, Inc.; DMC, Inc., B-209742, May 25, 1983, 83-1 CPD 565.

Here, the solicitation states that technical, experience, and price considerations will be weighted 60, 15 and 25 percent, respectively, and that the greatest weight will be given to Command and Application Software; Central Hardware; Field Panels; and overall configuration of the system in evaluating technical proposals. In our opinion, this identification of the relative weight given technical, experience and price considerations, and of those areas to be given greatest weight in technical evaluation, comport with the requirement that offerors be apprised of the criteria to be employed in evaluating proposals. Moreover, because the Corps has clearly specified those portions of the specification to be given greatest weight in evaluation, the matter cannot be said to depend upon the subjective views of the evaluators on the significance of 429 separate items.

With respect to Radix's contention that, in carrying out its charter to procure energy management systems for Defense agencies, the Corps of Engineers has favored certain big business firms, to the detriment of small business firms like Radix, the protester has the burden of proof and misconduct will not be inferred on the basis of inference or supposition. Arctic Corner, Incorporated, B-209765, April 15, 1983, 83-1 CPD 414; A.R.F. Products, Inc., 56 Comp. Gen. 201 (1976), 76-2 CPD 541. As to Radix's request that we investigate the Corps' exercise of its responsibilities in this area, it is not the practice of our Office to conduct investigations pursuant to our bid protest function. Stoker Yale, Inc., B-207016, July 6, 1982, 82-2 CPD 21.

Finally, we cannot agree that the Corps' explanations of the specification in response to Radix's specific challenges show that specification provisions in question were unclear or incomplete. Our Bid Protest Procedures, 4 C.F.R. Part 21, call for procuring agencies to submit a documented report in response to a protest, and where the protest concerns the adequacy of the specification, analysis of the specification is not only proper, but required. Consequently, we do not interpret the Corps' explanations of the challenged aspects of the specification as evidence of specification deficiencies.

The protests are denied.

for Milton J. Fowler
Comptroller General
of the United States