

DECISION

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

FILE: B-214562

DATE: September 10, 1984

MATTER OF: Falcon Systems, Inc.

DIGEST:

Where protester's proposal for peripheral computer equipment failed to demonstrate that it would meet the contracting agency's need for equipment capable of operating in high humidity conditions, GAO has no basis to question the agency's decision to reject protester's proposal as technically unacceptable.

Falcon Systems, Inc. protests its exclusion from the competitive range under request for proposals (RFP) No. DEA84-1, issued by the Drug Enforcement Administration (DEA), Department of Justice. Falcon contends that it submitted a proposal which offered technically responsive hardware and that any proposal deficiencies could have been remedied during negotiations. We deny the protest.

The RFP solicited offers for the urgent replacement of peripheral computer equipment (controllers, terminals, and printers) for DEA's Automatic Teleprocessing System (DATS), a nationwide multi-station teleprocessing system supporting DEA's law enforcement efforts. DEA rejected Falcon's proposal for failing to meet various RFP mandatory requirements as well as for informational deficiencies which, in the view of the agency's technical evaluators, rendered the proposal technically unacceptable.

Whether a proposal is technically acceptable is within the discretion of the contracting agency and this Office will not disturb that agency's decision to exclude an offeror from the competitive range unless that determination is unreasonable. TechDyn Systems Corporation, B-206228, June 28, 1982, 82-1 CPD ¶ 628. Moreover, we have held that it is the responsibility of each offeror to establish that what it proposes will meet the government's needs. Duroyd Manufacturing Company, Inc., B-195762, Nov. 16, 1979, 79-2 CPD ¶ 359.

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The RFP expressly and repeatedly placed potential offerors on notice that failure to meet all mandatory requirements would render a proposal technically unacceptable. For example, the RFP's "Evaluation of Proposals" clause is clear in this regard. Paragraph IV.3 states:

"Proposals to be acceptable and eligible for evaluation must be prepared in accordance with and comply to the instructions given in . . . the Solicitation Document and must meet all mandatory requirements."

As indicated above, DEA rejected Falcon's proposal for its failure to conform with various mandatory requirements. Since Falcon does not dispute that all mandatory requirements were essential minimum needs of the agency, we need consider only one material deficiency to properly resolve this matter. Paragraph F.3.6.4 of the RFP's mandatory specifications provided:

"The equipment shall be engineered and constructed to withstand any probable combinations of operating conditions specified below, without physical or electrical damage or any degradation in performance from that specified herein:

Temperature range: 60 to 95 degrees Fahrenheit

Relative humidity range 20% to 90% non-condensing."

Falcon concedes that it failed to respond to these requirements but asserts that its failure was accidental and due to the inadvertent omission of a page from its proposal. Falcon notes that its proposal contained a blanket offer to comply with all mandatory requirements and states that its equipment does in fact meet the 90 percent humidity requirement which negotiations would have disclosed to the agency.

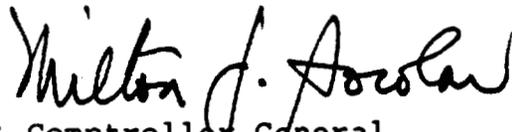
DEA states that this omission is not merely an informational deficiency because other technical data submitted by Falcon demonstrates that its proposed equipment does not meet the 90 percent humidity requirement. DEA explains that Falcon is merely a dealer and does not manufacture the equipment which it proposed to provide

DEA. Instead, Falcon offered equipment manufactured by five different firms. The published specifications and technical literature provided by the manufacturer of the proposed controller, various printers and terminals consistently list maximum relative humidity levels of less than 90 percent (generally 80 percent). Therefore, Falcon's proposal did not meet this mandatory requirement and its proposal could not have been made acceptable with or without negotiations.

Falcon contends that DEA should have, in effect, ignored the manufacturer's specifications, stating that they are "recommended ranges, however, in practice, the units will operate in the 20 percent--90 percent humidity levels required by this RFP." As DEA points out, however, the manufacturer's brochures and specifications do not describe the stated humidity levels as "recommendations," but as "requirements" which "must" be met. Further, it is undisputed that the equipment is to be installed in areas of the United States in which high humidity levels are common, such as Southern Florida and the Gulf Coast, and in buildings where air conditioning is not available on weekends and nights. Moreover, the equipment must be available at all times since inoperable equipment could seriously jeopardize the lives of DEA agents and confidential informants.

We agree with DEA that its evaluators reasonably concluded that Falcon's equipment was unacceptable. In this regard, Falcon has submitted a letter from the manufacturer of the equipment in response to a Falcon telephone inquiry supporting Falcon's position that the equipment would function at a 90 percent humidity level despite the published specifications. We do not believe, however, that an agency is obligated to rely on self-serving patchwork representations from an offeror that the proposed equipment will exceed published specifications, especially where the safety of human lives is at issue. Moreover, a blanket offer of compliance by an offeror is not an adequate substitute for detailed and complete technical information in a proposal establishing that what it proposes will meet the government's needs. See 53 Comp. Gen. 1 (1973).

The protest is denied.



Acting Comptroller General
of the United States