

DECISION

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

*U. Yamamura
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30127*

FILE: B-215679 **DATE:** January 2, 1985
MATTER OF: CBM Electronic Systems, Inc.

DIGEST:

1. Where an offeror's proposal has been determined to be unacceptable, the fact that offeror's price is lower is irrelevant when its proposal is not being considered for award.
2. The composition of a technical evaluation panel is within the discretion of the contracting agency, and the GAO will not object in the absence of evidence of fraud, bad faith or conflict of interest.
3. GAO Bid Protest Procedures require that protests based upon alleged improprieties that are apparent on the face of the request for proposals be filed prior to the closing date for receipt of initial proposals.
4. Claim for proposal preparation costs is denied where there is no showing that the agency acted arbitrarily or capriciously in rejecting the proposal and the proposer did not have a substantial chance of receiving the award.

CBM Electronic Systems, Inc. (CBM) protests the Rural Electrification Administration, Department of Agriculture (REA), award of a contract to Wang Laboratories, Inc. (Wang) and the exclusion of its proposal from the competitive range under request for proposals No. RFP-3-REA-84 (RFP). The contract was awarded for the installation of WangNet Local Area Network.

The protest is dismissed in part and denied in part.

The REA technical evaluation panel found that the CBM proposal was technically unacceptable for several reasons. The contracting officer concurred in the panel's finding

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and gave no further consideration to the CBM proposal. The panel found the Wang proposal to be fully responsive and recommended negotiations with Wang. Since Wang's cost proposal of \$80,073.79 was significantly higher than REA's estimate of \$55,000, REA negotiated with Wang and the parties agreed to a contract price of \$59,108.63.

CBM, contending that its \$21,137 proposal is technically acceptable, alleges that it was improperly excluded from the competitive range without an evaluation cost. In this regard, CBM alleges that this was improper in view of the weight given price (60 out of 100 points) in the RFP's "Criteria for Evaluating Proposals," as opposed to the low weight (10) given the technical proposals in determining the competitive range. It also contends that the technical evaluation panel was unqualified and that the firm was unfairly denied the opportunity to negotiate while Wang was allowed to negotiate. Additionally, the protester alleges that the only way a company could have met the 60-day deadline was to have advance inside knowledge of the parts required under the contract and to know that it would be the successful proposer. Finally, CBM alleges that it submitted the required list of materials. CBM has requested the cost of proposal preparation.

At the outset we note that, while the RFP clearly contemplates a rating for competitive range purposes based on price and technical proposals, it also states that the rating would be developed for "each proposal meeting the minimum technical requirements." Although the word "technical" suggests to CBM that the panel reviewed just the technical proposal which represented only 10 of 100 points, the record shows that the panel also evaluated two other factors, management (10 points) and experience (20 points). Thus, the panel's "technical" evaluation actually involved 40 of the 100 points.

The solicitation specified that installation shall be completed within 60 days after award. The agency found that CBM's proposal did not meet this requirement because it included a master schedule which indicated that the work could be completed in 12 weeks. In addition to being 24 days beyond the 60-day requirement, the 12-week estimate was based on the assumption that there would be no

delays in the shipment of material and was subject to change upon completion of a detailed site survey. The REA contracting officer determined that CBM's proposed schedule was a material deviation from the requirements of the solicitation and would not satisfy the government's operational needs. Additionally, the agency found that the CBM proposal did not include the required list of materials.

Further, the solicitation specified that proposals "should present sufficient information to reflect a thorough understanding of the work requirements and a detailed, practical program for achieving the objectives of the performance work statement." The technical evaluation panel found that CBM's proposal failed to address the protester's experience in working with Wang systems, the installation of the Input/Output Processors and did not provide the names and contacts for similar completed projects.

We agree with the evaluation of the panel that CBM's proposal did not demonstrate a complete understanding of the government's requirements, and patently deviated in two respects. First, CBM has not argued that its proposal complied with the 60-day requirement. Second, our copy of the CBM proposal contains no list of materials and CBM, despite the allegation to the contrary, has not supplied the list of materials.

The procuring agency is responsible for evaluating an offeror's proposal and ascertaining whether the proposal meets its requirements. We will not disturb this technical determination by the agency unless it is shown to be unreasonable. The fact that the protester does not agree with the agency's evaluation does not in itself render that evaluation unreasonable. Since the REA found CBM's proposal unacceptable, the fact that CBM may have offered a lower price is irrelevant since its proposal was not being considered for award. Fil-Coil Company, Inc., B-213078, Feb. 22, 1984, 84-1 CPD ¶ 219.

CBM also alleges that the technical evaluation panel members did not possess the necessary qualifications to properly evaluate the technical proposals. CBM asserts that the engineering staff, rather than software computer personnel, should have evaluated its proposal.

The composition of a technical evaluation panel is within the discretion of the contracting agency, and we will not object in the absence of evidence of fraud, bad faith or conflict of interest. New York University, B-195792, Aug. 18, 1980, 80-2 CPD ¶ 126. CBM has presented no such allegations, and we have no basis upon which to further consider the matter.

CBM alleges that REA should have entered into negotiations with it to correct the deficiencies. In a negotiated procurement, discussions generally are required to be conducted with offerors in the competitive range. Blurton, Banks & Associates, Inc., B-211702, Oct. 12, 1983, 83-2 CPD ¶ 454. In this case, CBM was not in the competitive range and the REA was therefore not required to enter into discussions with CBM.

CBM also alleges that a company would have had to have some advance inside knowledge of the parts required and know that it would be the successful offeror in order to meet the 60-day deadline for the installation of the WangNet because the "lead time" for the acquisition of the materials in the RFP would have been 30-45 days. CBM asserts that this is unfair because it would allow that company to order materials ahead of time. During the debriefing, CBM asked REA why it did not pursue a sole-source procurement rather than issuing the RFP because Wang wrote the specifications, submitted a proposal, and is the only firm that can certify the completion of the WangNet installation.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), require that protests based upon alleged improprieties that are apparent on the face of the request for proposals be filed prior to the closing date for receipt of initial proposals. These assertions are based on matters evident from the RFP. Therefore, they are dismissed as untimely because CBM's protest was received well after the closing date.

The protest is denied in part and dismissed in part.

With regard to CBM's request for proposal preparation costs, there is no basis for the recovery of such costs in the absence of a showing that the agency acted arbitrarily

B-215679

or capriciously in rejecting the proposal and that the offeror had a substantial chance of receiving the award. Everhart Appraisal Service, Inc., B-213369, May 1, 1984, 84-1 CPD ¶ 485. There is nothing in the record that would support the granting of proposal preparation costs.

for 
Comptroller General
of the United States