

Halperin

**DECISION**



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

**FILE:** B-220393 **DATE:** January 14, 1986  
**MATTER OF:** Thomas Engineering Company

**DIGEST:**

1. Protest alleging that specifications in request for proposals unduly restrict competition and create a sole source procurement is untimely when not filed before the closing date for receipt of initial proposals.
2. Protest that discussions were allegedly inadequate is denied where protester repeatedly indicated it could not meet mandatory requirement, and, therefore, proposal was properly determined to be technically unacceptable.
3. Where a proposal is properly rejected as technically unacceptable, offered cost is irrelevant as the proposal could not be considered for award.

Thomas Engineering Company (TEC) protests the award of a contract to Honeywell Information Systems (Honeywell) under request for proposals (RFP) No. FGA-D1-XU319-N-8-13-85 issued by the General Services Administration (GSA) for data communications equipment, including visual display terminals, printers and modems. TEC argues that its proposal generally satisfied the requirements of the RFP but, because GSA failed to conduct adequate discussions with TEC, TEC's proposal was rejected as being technically unacceptable. In addition, TEC complains that award was made at a price 83 percent greater than TEC's offered price.

We dismiss the protest in part and deny it in part.

Proposals were received from TEC, Honeywell and Micro Research by the closing date of August 13, 1985. The record shows that on August 15, 1985, GSA's technical team phoned TEC to clarify whether TEC's proposal conformed to the

034274

minimum requirements outlined in the RFP. On August 16, TEC confirmed in writing its answers to questions raised by GSA the previous day. TEC notified GSA that its offered terminals did not comply with the RFP mandatory requirement for a 72 line vertical scroll. On that date, TEC's proposal was evaluated as being technically unacceptable due to its failure to comply with "mandatory requirement" C.3.(a)(1)(f) of the RFP - 72 line vertical scroll on the display terminals. Micro Research's equipment initially appeared to meet the RFP's minimum requirements, but ultimately did not pass a benchmark demonstration, and, therefore, was rejected as technically unacceptable. Honeywell's equipment was determined to be technically acceptable. Price negotiations were conducted with Honeywell and award was made to that company on September 30.

TEC argues that it was improper for GSA to reject its proposal as technically unacceptable without discussions concerning TEC's ability to provide the required 72 line vertical scroll on its display terminals. TEC contends that in any case the 72 line vertical scroll feature is not essential to meet the government's minimum needs and that it was included to eliminate competition, and that requiring this feature resulted in a sole source award to Honeywell.

GSA states that both Honeywell and Micro Research submitted offers which complied with the 72 line scroll requirement. Moreover, GSA argues that TEC's contention, raised after the award to Honeywell, that the 72 line scroll requirement exceeds the government's minimum needs and, therefore, is unduly restrictive of competition is an allegation of a solicitation impropriety which is untimely raised. GSA states that, since the RFP clearly required terminals to have the 72 line vertical scroll, it was incumbent upon TEC to protest this point prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1985). We agree.

Our Bid Protest Regulations require that protests based upon solicitation improprieties which are apparent before the closing date for receipt of proposals must be filed prior to that date. 4 C.F.R. § 21.2(a)(1). We view a protest that a requirement exceeds the government's minimum needs, is unduly restrictive of competition, or tends to create a sole-source procurement, to be a complaint against the solicitation. See Julie Research Laboratories, Inc., B-219364, Aug. 23, 1985, 85-2 C.P.D. ¶ 222; Unico, Inc., B-218950, July 29, 1985, 85-2 C.P.D. ¶ 106. Therefore, TEC's protest against the solicitation, filed after award,

is untimely. 4 C.F.R. § 21.2(a)(1); Unico, Inc., B-218950, supra.

TEC argues that it was given an insufficient opportunity to negotiate the possibility of providing the 72 line vertical scroll capability. As noted above, in response to a GSA inquiry on August 15, TEC admitted its offer did not comply with this mandatory requirement. The record further indicates that, in a conversation between a TEC representative and GSA, on September 20 (10 days prior to award to Honeywell) TEC indicated that the 72 line scroll capability could be provided in 3 to 6 months, and therefore was not available at the time. Although TEC offered to deliver terminals without the 72 line scroll capability and later add that feature at no additional cost, GSA determined that the feature would be required immediately so that it could conduct a benchmark test on the offered equipment, as provided for in the RFP.

Whether a proposal is technically acceptable is within the discretion of the contracting agency and this Office will not disturb an agency's decision to exclude an offeror from the competitive range unless that determination is unreasonable. B & D Supply Co. of Arizona, Inc., B-210023, July 1, 1983, 83-2 C.P.D. ¶ 50. When an agency determines that a proposal is technically unacceptable, it is not required to conduct discussions with the offeror. B & D Supply Co. of Arizona, Inc., B-210023, supra. As discussed below, we cannot conclude that GSA's determination that TEC's proposal was unacceptable was unreasonable.

Although TEC argues that GSA should have conducted more detailed discussions with it prior to rejecting the TEC offer as technically unacceptable, TEC has not shown that any inadequacy in discussions prejudiced it by depriving the firm of an opportunity for award. See Employment Perspectives, B-218338, June 24, 1985, 85-1 C.P.D. ¶ 715. TEC stated that it would take 3 to 6 months for it to provide the required 72 line scroll capability and, therefore, it did not have equipment available for benchmark testing and installation. The RFP made it clear that the 72 line scroll requirement was essential and mandatory and that failure to meet it would require rejection of a proposal. Under these

circumstances, we conclude that it was reasonable for GSA to reject TEC's offer as technically unacceptable without any additional discussions.

TEC also argues that its proposal was improperly rejected due to TEC's failure to provide an RS-422 printer/terminal interface. GSA states, however, that TEC's proposal to meet the interface requirement was considered acceptable. We find that this factual question need not be resolved here since TEC's offer was properly rejected for other reasons, as stated above.

Finally, TEC contends that acceptance of its offer could save GSA thousands of dollars. However, TEC's offered price is irrelevant here because its offer properly was rejected as technically unacceptable. Logistic Services International, Inc., B-218570, Aug. 15, 1985, 85-2 C.P.D. ¶ 173.

The protest is dismissed in part and denied in part.

*for Seymour Epps*  
Harry R. Van Cleve  
General Counsel