

12.11.85

DECISION



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

FILE: B-221966.2 **DATE:** May 30, 1986
MATTER OF: Par Steel Products Co., Inc.

DIGEST:

1. Protester's best and final offer properly was rejected as being technically unacceptable where protester failed to rectify technical deficiency brought to protester's attention prior to the date for submission of best and final offers.
2. Protest of solicitation requirement based on allegedly defective solicitation drawings filed after closing date is untimely.
3. Protest allegation that procuring activity already knew which firm it wanted to do business with is denied where protester has not met its burden of affirmatively proving its case. Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition.
4. Where protest is without merit, GAO will deny claim by protester for proposal preparation costs.

Par Steel Products Co., Inc. (Par Steel), protests the award of a contract to White Office System, Inc. (White), under solicitation No. FNP-C5-1855-N-11-27-85, issued by the General Services Administration (GSA) for the procurement of a high density moveable filing system. Par Steel contends that GSA improperly rejected as technically unacceptable its lower priced offer.

The protest is dismissed in part and denied in part.

The closing date for receipt of initial proposals was November 27, 1985, and Par Steel submitted a timely proposal. GSA evaluated Par Steel's proposal and, by letter of December 24, 1985, advised Par Steel of the deficiencies in Par Steel's offer. Par Steel submitted its best and final

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offer on January 4, 1986. Award was made to White on January 30, 1986, and, on February 6, 1986, Par Steel lodged a protest with our Office.

By letter of February 20, 1986, GSA notified Par Steel that its best and final offer, which essentially offered the same model as Par Steel had offered in its initial proposal, had been rejected because it was technically unacceptable. GSA listed the deficiencies which it contended Par Steel failed to correct in its best and final offer as follows: (1) the failure of Par Steel's design layout to allow for sprinkler risers near the roll-up door or to make allowances for sliding fire doors and an emergency door, (2) a low profile tract which allegedly did not conform to specifications, (3) Par Steel's failure to explain how it planned to comply with the specification requirement that a one-pound effort of the crank disk move a minimum 6,000-pound payload and (4) Par Steel's failure to offer at least the minimum size carriage wheels specified in the solicitation.

We find that Par Steel's offer properly was rejected as technically unacceptable because of its failure to adequately address the deficiency concerning sprinklers. Based on this finding, we need not address the other reasons for which GSA found Par Steel's offer unacceptable.

The solicitation required offerors to submit a design layout of the proposed moveable shelf system proposed and provided drawings of the building area where the system was to be located. The solicitation further stated that the agency would review the design layout to determine if the proposal met the solicitation requirement. After evaluation of Par Steel's initial offer, GSA notified Par Steel of deficiencies in its offer and, among other things, stated that Par Steel's design did not allow for sprinkler risers near the roll-up door of the system. Thus, Par Steel was on notice of this deficiency in its proposal prior to submission of its best and final offer. GSA points out that this deficiency affected the safety of the proposed system since Par Steel's layout did not make allowances for the sprinkler system. Par Steel's best and final offer did not address GSA's concern about the sprinklers.

Par Steel argues that rejection of its proposal on this basis is improper. Par Steel specifically argues that the building design drawings provided in the solicitation were inadequate to show where the sprinklers were and this inadequacy was the reason it could not address this requirement.

Par Steel also contends that GSA could not determine from the drawings it submitted if Par Steel's design allowed sufficient space for the sprinkler risers and points out that the solicitation did not require offerors to provide drawings to scale. Par Steel further stated that, since the contractor was to provide detailed drawings prior to beginning construction it was unnecessary to show access to the sprinkler risers in its offer.

Par Steel's allegation that it could not address the sprinkler access deficiency because the building drawings were defective is untimely. If Par Steel believed that the requirement to show by drawings access to the sprinkler risers, which GSA clearly advised Par Steel of in discussions, was unreasonable because the agency failed to provide precise drawings of the location of the sprinklers, it was required to protest this allegedly unreasonable requirement at the latest before the next closing date, which was the date for receipt of best and final offers. 4 C.F.R. § 21.2(a)(1) (1985). Thus, this aspect of Par Steel's protest is untimely.

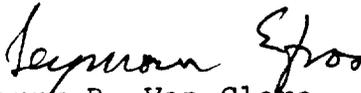
Furthermore, while the solicitation did not require Par Steel to submit detailed drawings prior to award, GSA clearly noted Par Steel's plan as deficient concerning sprinkler access and, under these circumstances, Par Steel was obligated to address this matter in its best and final offer. Par Steel concedes that GSA could not determine from Par Steel's drawings whether or not Par Steel allowed sufficient space for the sprinklers, and Par Steel did not clarify this deficiency in its best and final offer. We find that GSA properly rejected Par Steel's best and final offer as technically unacceptable. A proposal that has not been made technically acceptable after discussions properly may be rejected after best and final offers and the proposal may not be considered for award irrespective of the proposed price. Eastern Computers, Inc.; Compucorp, Inc., B-218270; B-218270.2, June 28, 1985, 85-1 C.P.D. ¶ 741.

Finally, Par Steel asserts that it believed during this procurement that the government already knew who they wanted to do business with and were unwilling to give any information to anyone other than its desired potential contractor. Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Bancroft Investors, B-219915, Nov. 18, 1985, 85-2 C.P.D. ¶ 564. The record does not support this allegation

and, therefore, Par Steel's allegation is properly to be regarded as mere speculation. See Mechanical Equipment Co., Inc., B-213236, Sept. 5, 1984, 84-2 C.P.D. ¶ 256.

The protest is dismissed in part and denied in part.

Par Steel has requested that it be paid proposal preparation expenses. However, since we find the protest to be without merit, we deny the claim for costs. Joseph L. DeClerk and Associates, Inc., B-220142, Nov. 19, 1985, 85-2 C.P.D. ¶ 567.

for 
Harry R. Van Cleve
General Counsel