

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-222481**DATE:** June 24, 1986**MATTER OF:** Ridge, Inc.**DIGEST:**

1. Although the burden in a negotiated procurement is on the offeror to submit with its proposal sufficient information for the agency to make an intelligent evaluation, contracting agency's determination that offeror's general offer of compliance and specific responses to the specifications of "[n]oted and accepted" are sufficient is not unreasonable where the solicitation merely required a statement accepting all terms and conditions of the solicitation and provided for simple statements of acknowledgment in response to the specifications.
2. General Accounting Office will not review an affirmative determination of responsibility unless the possibility of fraud or bad faith on the part of procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Technical specifications which merely describe the items offerors are to agree to supply in the event they receive the award are not definitive responsibility criteria which instead establish standards related to an offeror's ability to perform the contract.
3. Whether awardee will meet its contractual obligations to the government is a matter of contract administration, which is the responsibility of the procuring agency and is not encompassed by the General Accounting Office's bid protest function.
4. Claims of possible patent infringement do not provide a basis for the General Accounting Office (GAO) to object to an award since questions of patent infringement are not encompassed by GAO's bid protest function.

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Ridge, Inc. (Ridge), protests the award of a contract to TFI Corporation (TFI) under request for proposals No. F09650-85-R-0461, issued by the Department of the Air Force for the supply of a micro-focus real time x-ray imaging system. Ridge challenges the Air Force's determination that TFI's proposal is technically acceptable and the agency's affirmative determination of TFI's responsibility. We deny the protest in part and dismiss it in part.

The solicitation required offerors to include in their proposals a "statement accepting all terms and conditions of the solicitation." In addition, it provided that:

"Technical proposals shall follow the Specifications format with appropriate responses to each paragraph, indicating how the requirement contained therein will be satisfied. A simple statement of acknowledgement is sufficient where implementing procedures or organizations are not involved."

The solicitation indicated that award would be made on the basis of the low technically acceptable offer.

In response to the solicitation, the Air Force received proposals from TFI and Ridge. The agency found the best and final offers (BAFO's) subsequently submitted by these firms to be technically acceptable. A preaward survey on TFI, which included the demonstration of a micro-focus x-ray imaging system, resulted in a favorable recommendation as to that firm's responsibility. Accordingly, the agency made award on the basis of TFI's low offer of \$315,731, which was \$159,924 less than Ridge's offer of \$475,655. Ridge, having expressed prior to award its belief that the Scanray Microfocus X-ray System Type MF-160/200 which it believed TFI was offering did not conform to the specifications, thereupon protested the award, first to the agency and then to our Office.

Ridge claims that TFI "cannot" or "will not" meet the specifications set forth in the solicitation, specifications which it considers to constitute definitive responsibility criteria. Ridge has provided our Office with a copy of the descriptive literature for the Scanray Microfocus X-ray System Type MF-160/200 and has noted various specifications which an unmodified Scanray Type MF-160/200 System allegedly

would not meet. In addition, Ridge claims that it holds a patent on an automatic tube focusing mechanism required by the specifications and argues that since it has not licensed the use of this feature by other firms, TFI will be unable to meet this requirement without infringing on Ridge's patent.

We view Ridge's references to the differences between the Scanray Microfocus X-ray System Type MF-160/200 and the specifications as a challenge to the agency's affirmative determination of the technical acceptability of TFI's proposal. In negotiated procurements, any proposal that fails to conform to the material terms and conditions of the solicitation should be considered unacceptable and not form the basis for award. AT&T Information Systems, Inc., B-216386, Mar. 20, 1985, 85-1 C.P.D. ¶ 326. Generally, however, we will not disturb an agency's determination of the technical acceptability of a proposal absent a clear showing that the determination was unreasonable or in violation of procurement statutes and regulations. Moreover, the protester bears the burden of affirmatively proving its case, and mere disagreement with a technical evaluation does not satisfy this requirement. Management Systems Designers, Inc., B-219601.2, Jan. 23, 1986, 86-1 C.P.D. ¶ 75; see APEC Technology Limited, B-220644, Jan. 23, 1986, 65 Comp. Gen. _____, 86-1 C.P.D. ¶ 81.

The Air Force has provided our Office with a copy of the proposal--both the initial and best and final offers--submitted by TFI. In response to a question from our Office as to whether TFI submitted descriptive or commercial literature in support of its proposal, the Air Force has advised us that the material provided our Office includes all of the documentation concerning TFI's proposal and has indicated that "the inclusion [in proposals] of product descriptive literature was not necessary" because the x-ray imaging system to be supplied was "not an off-the-shelf item." The Air Force reports that "[a]t no time did TFI ever indicate they were furnishing a commercial piece of equipment."

Our examination of TFI's proposal reveals neither descriptive literature on the Scanray Type Microfocus X-ray System MF-160/200 nor any reference to that system. Instead, the proposal primarily consists of a response--often merely the statement of "[n]oted and accepted"--to each paragraph of the specifications. TFI generally

indicated that the "[m]inimum needs of the Government as listed in specifications will be complied with," with "[n]o exceptions . . . taken to the specification." In addition, it responded with statements of "[n]oted and accepted" to 11 of the 12 paragraphs in the technical specifications, including the paragraph requiring automatic tube focusing, that Ridge believes cannot be met by an unmodified Scanray Type MF-160/200 System. As for the 12th paragraph, TFI promised in its best and final offer (BAFO) to supply the oil-cooled high tension generator required by the specifications.

The Air Force maintains that TFI has proposed meeting the requirements of the specifications. Ridge's claims to the contrary, based upon descriptive literature not included in TFI's proposal and describing a system not referenced in that proposal, provide our Office no basis upon which to question the agency's determination in this regard.

We recognize that Ridge also questions whether the statements of "[n]oted and accepted" are sufficient responses to the specifications. We note in this regard that in a negotiated procurement the burden is on the offeror to submit sufficient information with its proposal such that the agency can make an intelligent evaluation of its proposal. See The Communications Network, B-215902, Dec. 3, 1984, 84-2 C.P.D. ¶ 609. Further, a blanket offer of compliance is not sufficient to comply with a solicitation requirement for the submission of detailed technical information which an agency deems necessary for evaluation purposes. AEG Aktiengesellschaft, B-221079, Mar. 18, 1986, 65 Comp. Gen. _____, 86-1 C.P.D. ¶ 267.

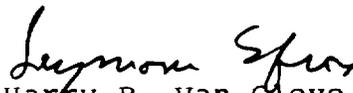
The solicitation here, however, did not require the submission of descriptive literature or detailed technical information. On the contrary, it required a "statement accepting all terms and conditions of the solicitation." Although the solicitation also required technical proposals to include "appropriate responses to each paragraph" of the specifications, it provided that a "simple statement of acknowledgment is sufficient where implementing procedures or organizations are not involved." Moreover, when TFI failed to address in its initial proposal several paragraphs of the solicitation, the agency, in its request for BAFO's, merely indicated that "[a]cceptance or denial of these paragraphs has been omitted." Accordingly, we see no basis upon which to question the agency's determination that TFI's statements of "[n]oted and accepted" were adequate responses to the specifications in these circumstances.

As for Ridge's challenge to TFI's ability to meet the specifications, we note that our Office will not review an affirmative determination of responsibility unless the possibility of fraud or bad faith on the part of procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have not been applied. ABC Appliance Repair Service, B-221850, Feb. 28, 1986, 86-1 C.P.D. ¶ 215. Ridge has not shown fraud or bad faith on the part of the procuring officials. While it alleges that the technical specifications constitute definitive responsibility criteria which have not been applied, we have previously held that purchase descriptions and specifications which merely describe the items offerors are to agree to supply in the event they receive the award, as do the technical specifications here, are not definitive responsibility criteria. Definitive responsibility criteria instead establish standards related to an offeror's ability to perform the contract, such as specific experience in a particular area. See Victaulic Co. of America, B-217129, May 6, 1985, 85-1 C.P.D. ¶ 500; Vulcan Engineering Co., B-214595, Oct. 12, 1984, 84-2 C.P.D. ¶ 403.

Further, whether TFI actually will meet its contractual obligations to the Air Force is a matter of contract administration, which is the responsibility of the procuring agency and is not encompassed by our bid protest function. Presto Lock, Inc., B-218766, Aug. 16, 1985, 85-2 C.P.D. ¶ 183; BUR-TEL Security Protection Systems, B-218829, May 16, 1985, 85-1 C.P.D. ¶ 561; see 4 C.F.R. § 21.3(f)(1) (1986).

Finally, we note that claims of possible patent infringement do not provide a basis for us to object to an award since, like questions of contract administration, questions of patent infringement are not encompassed by our bid protest function. Presto Lock, Inc., B-218766, supra, 85-2 C.P.D. ¶ 183 at 3; Sewer Rodding Equipment Co., B-214952, June 5, 1984, 84-1 C.P.D. ¶ 599.

The protest is denied in part and dismissed in part.

for 
Harry R. Van Cleave
General Counsel