



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tiernay Turbines Inc.

File: B-226185

Date: June 2, 1987

DIGEST

1. Protest against exclusion of proposal from competitive range based on numerous informational deficiencies, the correction of which would have required a major revision to proposal, is denied where agency's technical evaluation had a reasonable basis.
2. Protests of solicitation's requirements are untimely if not filed prior to closing.
3. When the only evidence on an issue of fact is a protester's statement that conflicts with that of contracting officials, the protester has not carried its burden of proof.
4. Certificate of Competency (COC) procedures do not apply when a small business firm's offer in a negotiated procurement is considered weak under technical evaluation factors relating to experience and past performance since the COC program is reserved for reviewing nonresponsibility matters, not the comparable evaluation of technical proposals.

DECISION

Tiernay Turbines, Inc., protests its exclusion from the competitive range in connection with request for proposals (RFP) No. F04606-86-R-0554, issued by the Sacramento Air Logistic Center, Department of the Air Force, for the acquisition of A/E24U-15/-16 power plants, incorporating two lightweight engine generating sets (LEGS).

The protest is denied.

Tiernay alleges that its proposal was not thoroughly and completely evaluated or that the ratings used to exclude Tiernay's proposal from the competitive range were ratings given to the proposal of another offeror or that it was excluded by the use of a predetermined cut off score. After

receipt of the Air Force's report Tiernay did not pursue the latter two bases of protests but still contends that its proposal was improperly evaluated and now adds that the matter should be referred to the Small Business Administration (SBA) under certificate of competency (COC) procedures.

The Air Force states that Tiernay's proposal was excluded from the competitive range because 11 items in Tiernay's proposal were deficient to the point that a major revision would have been necessary before the proposal would be acceptable.

Of the 11 deficient items, 7 were in the area of Technical Approach: fuel consumption, ease of maintenance, air transportability, pallet modification, audio noise, thermal infrared signature and human factors engineering. Two deficient items, quality program description and narrative discussion, involved Quality Control and two deficient items, subcontractor/vendor control and relevant corporate experience, were evaluated under Contract Management.

With regard to fuel consumption, the Air Force found that Tiernay's proposed fuel usage figures in its proposal did not meet the evaluation standard at 75 percent, 50 percent and 25 percent rated load (power output) and that Tiernay did not show how it arrived at its fuel consumption values.

The Air Force compared Tiernay's proposed fuel usage in gallons per hour (gph) with a standard based on the rated loads given above and showed the compared fuel usage as follows:

<u>Rated Load</u>	<u>Tiernay</u>	<u>Standard</u>
100 percent	8.81 gph	5.2-9.0 gph
75 percent	7.93 gph	4.4-7.6 gph
50 percent	7.12 gph	3.6-6.2 gph
25 percent	6.21 gph	2.8-4.8 gph

Tiernay did not meet the standard at 75 percent, 50 percent and 25 percent rated load.

In failing to show how it arrived at its fuel consumption values, the Air Force found Tiernay did not address installation losses, parasitic losses, fuel characteristics and differences between the required models, 50/60 Hz and 400Hz. Other factors which the Air Force found should have been addressed were the recuperator, gear box and fan which the Air Force states are normally detrimental to fuel consumption.

Tiernay argues that the solicitation only required that the generator set not exceed a fuel consumption of 9.0 gph at a 100 percent rated load, which its equipment met with 8.81 gph. Tiernay states that no fuel consumption requirements were listed for the 75 percent, 50 percent and 25 percent points.

Tiernay also argues that it did not state how it obtained its fuel consumption rates because the above quoted provision of section "M" did not require a detailed discussion and analysis. Finally, Tiernay contests the qualifications of the evaluator of its proposal who stated that other factors such as recuperator, gear box and fan should have been addressed by Tiernay because they are normally detrimental to fuel consumption. Tiernay asserts that the recuperator decreases fuel consumption and the recuperator's fuel saving merits were discussed in its proposal.

Section "M" of the solicitation provided the evaluation factors for award. Under Area "A," Technical Approach, paragraph 2.e. on fuel consumption stated:

"Provide the fuel consumption in gallons per hour and generator set efficiency in kilowatt hours per gallon of fuel at 25 percent, 50 percent, 75 percent, 100 percent and 110 percent loads at sea level at ambient air temperature of 59 degrees F (15 degrees C) using DF-2 diesel fuel."

Paragraph 3.4.3.1 of the purchase description for the generator sets stated that the maximum fuel consumption shall not exceed 9 gph with a minimum goal of 5.2 gph. It also provided that fuel consumption in the idle mode shall not exceed 3.5 gph with a minimum goal of 2 gph. Both the Air Force and Tiernay note that the idle mode is inapplicable to turbine generators such as Tiernay's.

In reviewing protests concerning the evaluation of proposals and the resulting determination of whether a proposal is in the competitive range, our Office's function is not to reevaluate the merits of proposals and make our own determinations. This is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Logistic Services International, Inc., B-218570, Aug. 15, 1985, 85-2 C.P.D. ¶ 173. Procuring officials have a certain degree of discretion in evaluating proposals, and we will examine an agency's evaluation only to ensure that it had a reasonable basis. Maxima Corp., B-220072, Dec. 24, 1985, 85-2 C.P.D. ¶ 708. Generally,

offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Rice Services, B-218001.2, Apr. 8, 1985, 85-1 C.P.D. ¶ 400. Mere disagreement with the agency's evaluation does not itself render the evaluation unreasonable. MetaMetrics, Inc., B-219524, Oct. 3, 1985, 85-2 C.P.D. ¶ 377.

We find no basis to disagree with the Air Force. We think Tiernay should have understood that the Air Force's request for maximum fuel consumption rates at both the 100 percent load and at idle would be used to measure a maximum acceptable fuel usage efficiency at a range of loads in between the two points particularly since the Air Force also called for fuel consumption rates at 25 percent, 50 percent and 75 percent. The fact that Tiernay's generator uses a turbine and maximum fuel consumption at idle is inapplicable does not change the Air Force's concern with fuel consumption throughout the generator's load range. Since Tiernay does not dispute that its fuel consumption rates at the specified loads below 100 percent would not meet the applicable standards, the Air Force properly viewed the proposal as deficient.

The other areas found wanting in Tierney's proposal involve informational deficiencies. First, under Item 10, ease of maintenance, paragraph 2.j. of section "M" called for a discussion of how the ease of maintenance requirements and concepts will be met for the power plant/generator set, including, but not limited to, the tooling operation necessary to remove and replace each of 26 named components, starting from a completely assembled power plant/generator set. The Air Force found Tiernay's submission so deficient as to require a complete new submission on this item. The Air Force states that Tiernay's proposal did not discuss 10 of these components. Tiernay stated that certain components were not applicable to turbines, or in some cases the nomenclature had merely been changed, but the Air Force states Tiernay failed to identify which specific items were deleted and which had name changes. The Air Force asserts that in both cases, identification was necessary for a full evaluation. Additionally, drawings and sketches showing locations of applicable maintenance components were desired by the Air Force in preference to the "location/access" information given.

The Air Force felt that Tiernay's failure to identify specific components, and its failure to cite specific locations, left too much to the evaluator's discretion and could lead to improper assumptions. The Air Force contends that special tools should have been discussed, or the lack of any requirement for these should have been identified.

The Air Force also found the proposal failed to address maintenance and repair of large assemblies such as the engine and alternator and although Tiernay referred to the necessity of a lifting device for the engine and the 560 pound alternator, no detail was provided. The Air Force concluded that Tiernay failed to present the tooling operation necessary to remove and replace the 26 components of the fully assembled power plant/generator set.

Tiernay claims that the RFP did not state that each specific item was to be addressed whether or not it was a component of the proposed engine type nor did it direct that departure from the exact nomenclature be explained. Tiernay contends that it provided a table format instead of drawings or figures to save evaluation time by briefly indicating an assessment of the preliminary design. Tiernay did not address the lifting device in detail because it intended to choose an existing item from the Air Force inventory rather than develop another piece of support equipment and the avoidance of special tooling was specifically stated as a design goal.

The RFP clearly called for a discussion referencing 26 named components. Even if Tiernay's turbines did not contain certain components, Tiernay should have identified which items were deleted and which had name changes so that the Air Force could evaluate those items. Even though special tooling was to be avoided, paragraph 2.j. specifically requested information on the tooling operation necessary to remove and replace the components and Tiernay should have identified either the special tools required or why special tools were not necessary. We agree with the Air Force, therefore, that insufficient information was provided for it to evaluate this aspect of Tiernay's proposal.

Second, with respect to item 12, air transportability and item 13, pallet modification, the Air Force states that Tiernay did not show how the pallet proposed for its LEGS equipment could withstand transport in the required double stacked mode. Tiernay's proposal had inadequate analytical discussion on the pallet modifications needed to accommodate increased load on stanchions or other load bearing members.

Tiernay's position is that it did not intend to provide a stress analysis or other analytical information regarding pallet modifications with its proposal and that this was only justified after contract award and it was unfair of the government to assume this information would be provided prior to award.

Item 12, air transportability, required a detailed plan to meet the air transportability requirements and item 13,

pallet modifications, asked for a description of the modifications of the pallet necessary for stacking of two power plants during transport. To the extent that Tiernay's refusal to provide the necessary descriptions amounts to a challenge to the Air Force's interpretation of what was required, we find the Air Force's request for the modification data justified under those items. To the extent Tiernay is challenging the solicitation's requirements, we dismiss this aspect of Tiernay's protest as untimely since it was filed after the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1986).

Item 22, audio noise, required an analysis of the noise level requirements of the generator set and a discussion of how it will be met. The Air Force states that Tiernay's proposal does not address how the generator set would meet the requirements of nondetectability. Tiernay has not shown how it has complied with this item.

Similarly, item 23, thermal infrared signature, required the offeror to provide a detailed analysis of how it planned to reduce the generator sets thermal infrared signature and to limit visibility to stated levels.

The Air Force states that Tiernay's proposal does not contain any actual or projected temperature values for how the proposed LEGS design will meet the required temperature differences for ambient air and terrain surface temperatures in accordance with the generator set purchase description, paragraph 3.1.3. Tiernay contends that its proposal demonstrated it was acquainted with the problem of thermal infrared signature suppression and the techniques required to provide an optimum solution but it acknowledges it did not provide the specific temperature values under which its equipment could operate. We find it reasonable of the Air Force to rule this section of Tiernay's proposal inadequate since the failure to provide the specific temperature data did not allow the Air Force to evaluate whether Tiernay would meet the stated temperature goals.

In regard to item 32, human factors engineering design, the RFP requested the inclusion of a statement that a human factors engineering analysis and design had been made and as to how the design would meet all of the requirements of the statement of work, the power plant purchase description and the generator set purchase description. The Air Force states that Tiernay did not provide a statement on the analysis and design as was required and it did not address the requirements in the relevant section of the power plant and generator set purchase descriptions. The Air Force states Tiernay merely promised future examination and discussions on this area.

Tiernay argues that the Air Force's expectation of a detailed human factors engineering design prior to the actual establishment of a preliminary baseline is unrealistic. The solicitation, however, called for such a statement. Tiernay's argument here, therefore, is with the requirements of the solicitation, not with how the Air Force evaluated its proposal and this basis of protest, filed after closing, is untimely. 4 C.F.R. § 21.2(a)(1).

Under Area "C," Quality Control, item 1, quality program description, and item 2, narrative discussion, the Air Force found Tiernay's proposal inadequate because Tiernay's Quality Manual, which was continually referred to in its proposal, was not provided and the narrative discussion of how each functional element of MIL-Q-9858 was to be implemented was too general in nature. Further, Tiernay had been placed under a method "C" surveillance on the Defense Logistics Agency Quality Alert List regarding a contract for the same generator set referenced in Tiernay's proposal. The Air Force found this indicated problems with Tiernay's quality control.

Tiernay insists that it did deliver one copy of its Quality Manual with its proposal and that this was intended to supplement the proposal's quality control discussion. Moreover Tiernay states that the method "C" corrective action has now been lifted.

The RFP requires the submission of 10 copies of the offeror's quality control volume. The Air Force states that Tiernay did not provide it with its Quality Manual although Tiernay insists it provided one copy. Tiernay was, in fact, required to provide 10 copies of the Quality Manual if Tiernay considered it a part of its proposal. In any event, when the only evidence on an issue of fact is a protester's statement that conflicts with that of contracting officials, the protester has not carried its burden of proof. Printer Systems Corp., B-213978, May 22, 1984, 84-1 C.P.D. ¶ 546. Since Tiernay's proposal lacked specifics as to its quality control and Tiernay was still under a method "C" surveillance at the time the proposal was evaluated, the Air Force reasonably found Tiernay inadequate in this area.

The Air Force found that Tiernay's failure to adequately state how it would comply with Area "D" Item 12, sub-contractor/vendor control, was due to the failure to discuss how Tiernay would document, control, obtain government approval, or return results to the vendor. Tiernay again states its Quality Manual would have provided the necessary information but for the same reasons given above under the

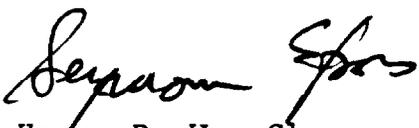
Quality Control area we find the Air Force's assessment of this aspect to have been reasonable.

Finally, with respect to Area "D," item 14, relevant corporate experience, the Air Force states that of the eight previous contracts described by Tiernay, only four evidenced the required corporate experience because the others dealt with unrelated systems or contracts which did not require the offeror's involvement in design, manufacture or assembly of end items. The Air Force found the entire presentation for this item to be incomplete, confusing, and difficult to analyze since it listed so many nonrelated contracts and gave sketchy information at best. Of the four contracts evaluated, the Air Force found that one showed serious time slippage due to problems with the engine requiring government modification. Two contracts were performed 12 years ago and the solicitation required that the contracts be within the last 5 years. The fourth contract was for an Aircraft Ground Air Cycle Air Conditioner and did not qualify as a power production system or related item.

Tiernay challenges the Air Force's assessment of its prior relevant contract experience but does not show how it was unreasonable given the information which Tiernay provided. Accordingly, we find no basis to disturb the Air Force's evaluation.

After receipt of the agency report on this protest Tiernay urges that it has a right to request a COC from the SBA. To the extent that Tiernay is arguing that its company experience and past performance concern responsibility and should have been referred to the SBA, we note that referrals to the SBA are only required where contracting officers find small businesses to be nonresponsible. The Air Force did not find Tiernay nonresponsible but considered its proposal weak under evaluation factors listed in the solicitation. It is not improper in a negotiated procurement for an agency to include traditional responsibility factors among the technical evaluation criteria and an evaluation based on such criteria is not subject to the COC procedure. B & W Service Industries, Inc., B-224392.2, Oct. 2, 1986, 86-2 C.P.D. ¶ 384.

The protest is denied.

for 
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General Counsel