The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Irvin Industries Canada Ltd.

File: B-227375

Date: September 24, 1987

DIGEST

1. Contracting agency reasonably evaluated the protester's proposal under step one of two-step sealed bid procedure as being technically unacceptable where the proposal ignored important requirements of the purchase description; since major proposal revisions would have been necessary to make the proposal acceptable, rejection of the proposal without discussions was proper.

2. Protester's allegation that certain material solicitation requirements, with which its proposal failed to comply, overstated the agency's needs or otherwise were not essential, will not be considered were the protester did not timely protest inclusion of the requirements in the solicitation.

3. Protest that contracting agency should be estopped from finding the protester's proposal technically unacceptable on basis that agency had previously told protester the proposed design was acceptable, is without merit where allegation is unsupported by the record.

DECISION

Irvin Industries Canada Ltd. protests the rejection of its technical proposal, without discussion, as being technically unacceptable under letter request for technical proposals (RFTP) No. F41608-87-R-0806. The RFTP initiated step one of a two-step sealed bid procurement1/ conducted by the San

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1/ Two-step sealed bidding is a hybrid method of procurement that combines the benefits of sealed bids with the flexibility of negotiations. Step one is similar to a negotiated procurement in that the agency requests technical proposals, without prices, and may conduct discussions. Step two consists of a price competition conducted under sealed bid procedures among those firms that submitted acceptable proposals under step one. See Federal Acquisition Regulation (FAR), 48 C.F.R. subpart 14.5 (1986).

Antonio Air Logistics Center, Department of the Air Force, for automatic mechanical parachute rip cord releases. We deny the protest in part and dismiss it in part.

The RFTP purchase description required that a release device be capable, upon removal of the arming pin, of pulling the rip cord of a parachute after a preset time delay and only at or below a preset altitude. The device was required to include a pressure-sensing device to block timer operation and prevent the pulling of the rip cord above the preset altitude. The release was required to be wholly mechanical and powered by a spring that exerts pull on the rip cord through a connecting power cable.

In this case, the Air Force determined that only one firm submitted a technically acceptable proposal and that no other firm's initial proposal could be made acceptable except through the submission of essentially a new proposal. The agency therefore continued negotiations on a sole-source basis with the firm that submitted the acceptable proposal, and rejected the other proposals. The Air Force, in the letter to Irvin rejecting its proposal, cited several deficiencies in the proposal, four of which involved the failure to conform to what the Air Force considers essential requirements of the RFTP's purchase description: (1) an external altitude adjustment mechanism; (2) a fail-safe mechanism that would activate the release at the appropriate time-delay setting in the event the pressure-sensing device failed; (3) a housing case capable of withstanding a crush load of 800 pounds applied vertically over a maximum area of one inch; and (4) a safety feature that prevents the timer mechanism from being set or the power cable from being extended unless the power spring is fully cocked.

Irvin does not dispute its failure to meet the requirements cited by the Air Force, but challenges them as overstating the agency's needs or as otherwise nonessential. Regarding the requirements for an external altitude adjustment and casing capable of withstanding 800 pounds (deficiency Nos. 1 and 2 above), Irvin proposed an internal altitude setting device preset at 14,000 feet which Irvin alleges is the setting always used by the Air Force, and also proposed a casing crush-load capability of 400 pounds which Irvin alleges in its experience has proven adequate. The fail-safe mechanism (No. 3), according to Irvin, simply is not feasible, and Irvin finally contends that compliance with the fourth requirement was not necessary since Irvin's device accomplished the same purpose--to prevent the inadvertent use of a release with an uncocked power spring--through a different approach. Irvin concludes that its proposal improperly was found technically unacceptable or, alternatively, that the Air Force should be estopped from

rejecting Irvin's proposal because the Air Force allegedly advised Irvin before the RFTP was issued that its design was acceptable.

The regulations prescribing the procedures for two-step sealed bidding provide that if there are not sufficient acceptable proposals to ensure adequate price competition under step two, the contracting officer must identify the nature of deficiencies and request additional information regarding proposals that may be made acceptable. FAR, 48 C.F.R. § 14.503-1(f)(1). We have held that an agency must make reasonable efforts to qualify as many technical proposals as is possible for the purpose of obtaining full and open competition under step two. Angstrom, Inc., 59 Comp. Gen. 588 (1980), 80-2 CPD ¶ 20; A.R.E. Manufacturing Co., Inc., B-224086, Oct. 6, 1986, 86-2 CPD ¶ 395.

The regulations also provide, however, and we have held, that the agency may reject, without discussions, a step-one proposal that is technically unacceptable, FAR, 48 C.F.R. § 14.503-2(i), meaning that the proposal fails to meet essential requirements of the solicitation or could be made acceptable only through extensive revisions. See Midcoast Aviation, Inc., B-223103, June 23, 1986, 86-1 CPD ¶ 577. While a proposal need not comply with all the details of the specifications to be considered capable of being made acceptable, it must comply with the essential requirements. A.R.E. Manufacturing Co., Inc., B-224086, supra.

Thus, the basic issue here is whether the Air Force reasonably evaluated Irvin's proposal as being technically unacceptable. Since evaluating proposals basically involves the exercise of the contracting agency's discretion, we will not question the results of an evaluation unless shown to be unreasonable. See Datron Systems, Inc., B-220423 et al., Mar. 18, 1986, 86-1 CPD ¶ 264.

The Air Force asserts that the requirements are essential and do not, as Irvin asserts, overstate its needs. Specifically, the Air Force states that, although the altitude setting generally is set at 14,000 feet, Irvin's proposed design prevents externally verifying the altitude setting. The Air Force further states it needs the capability to adjust the altitude setting to maintain its readiness for missions over widely varying terrains and to protect the safety of aircrews. The Air Force also defends the specified crush-load capacity of 800 pounds as necessary to protect the release device in the event a parachute is dropped from the cockpit to the flight deck, or from a pallet in combat areas; the Air Force claims such incidents previously have resulted in damage where case strengths have

been less than 800 pounds. The fail-safe mechanism protects aircrews in the event the altitude sensing device fails, the Air Force explains, while the fourth requirement protects them from human error.

Because Irvin's proposal ignored at least the first three requirements (while offering an allegedly acceptable alternative to the fourth), and significant modifications would have to be made to Irvin's proposed release device to comply with these requirements, the Air Force reasonably determined that the proposal was unacceptable and properly rejected it. See A.T.A. Training Aids U.S.A., Inc., B-218442, supra. In addition, although Irvin's proposal states its design accomplishes the purpose of the fourth requirement in a manner not specified in the RFTP, the proposal does not contain details as to how the design does so. No matter how capable an offeror may be, if the offeror submits an inadequately written and technically unacceptable proposal, the proposal may be rejected without discussion, Baker & Taylor Co., B-218552, June 19, 1985, 85-1 CPD ¶ 701, and an agency should not permit an offeror an opportunity to remedy major proposal defects when such defects can only be cured through major revisions. A.T.A. Training Aids U.S.A., Inc., B-218442, supra.

Moreover, regardless of the agency's explanation, we think it is too late for Irvin to challenge the essential nature of the requirements. To be timely, a protest relating to an alleged solicitation impropriety apparent on the face of a solicitation must be filed prior to the date for submission of offers. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987). The requirements in issue here were clearly set forth as material provisions of the RFTP with which offerors were required to comply, and Irvin did not protest their inclusion in the solicitation until after its proposal had been rejected. Therefore, this aspect of Irvin's protest is untimely filed and not for consideration. See A.T.A. Training Aids U.S.A., Inc., B-218442, June 26, 1985, 85-1 CPD ¶ 725.

We find no merit to the protester's contention that the Air Force should be estopped from determining Irvin's proposal to be unacceptable. The record does not support Irvin's allegation that the Air Force indicated to Irvin that its proposed parachute release (for which Irvin previously had submitted an unsolicited proposal), satisfied the purchase description in this RFTP, or otherwise satisfied the Air Force's actual needs. While there is evidence of the Air Force's prior interest in Irvin's release device, the record just as clearly shows that the Air Force consistently

represented to Irvin that its release failed to satisfy the Air Force's needs reflected in the current purchase description.

The protest is denied in part and dismissed in part.

for Seymour Efros
Harry R. Van Cleve
General Counsel