



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EG&G Flow Technology, Inc.

File: B-235830

Date: September 1, 1989

DIGEST

Agency properly awarded contract to low, technically acceptable, responsible offeror where protester's allegations that awardee failed to meet certain specifications of the solicitation are not supported by the record.

DECISION

EG&G Flow Technology, Inc. (EG&G) protests award of a firm-fixed price contract for a quantity of liquid flow calibrators and commercial data to Flow Management Systems, Inc. (FMSI) under request for proposals (RFP) No. F33659-88-R0032, issued by the Newark Air Force Base, Ohio. EG&G alleges that the Air Force relaxed its minimum requirements through discussions, and that it, like FMSI, should be allowed to offer an item conforming to the lesser requirements.

We deny the protest.

Offerors were advised in the RFP to propose liquid flow calibrators based upon performance specifications set forth in the purchase description and that items meeting or exceeding these specifications would be acceptable. Award was to be made to "the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price and other factors . . . considered." Federal Acquisition Regulation (FAR) § 52.215-16 (FAC 84-17), incorporated by reference in the RFP.

According to the initial evaluation, EG&G was technically acceptable while FMSI and two other offerors were considered susceptible of being made acceptable with clarifications. After conducting written discussions with the three unacceptable offerors, the agency determined that all three were acceptable considering the clarifications provided.

Consequently, best and final offers (BAFOs) were sought from all four offerors, including EG&G. FMSI's offer for a first article, seven calibrators, and data was \$824,037.20. EG&G lowered its prices in its BAFO, but was second low at \$1,189,837. Upon learning of the award to FMSI, EG&G filed a protest with the agency and our Office.

EG&G contends that FMSI was not technically capable, at the time of the technical evaluation, of meeting the RFP's specifications. As such, EG&G believes that the Air Force must have relaxed its minimum requirements through discussions, which did not include EG&G, and that it should not have awarded the contract to the offeror with the lowest price. We disagree.

We find no evidence of record to support EG&G's allegation that FMSI's proposal, as clarified through discussions, does not meet the original RFP performance specifications. The contracting agency is responsible for evaluating the information supplied by an offeror and ascertaining whether it is sufficient to establish the technical acceptability of its offer, since the contracting agency must bear the burden of any difficulties incurred by reason of a defective evaluation. See Sony Corp. of Am., 66 Comp. Gen. 286 (1987), 87-1 CPD ¶ 212. We will not disturb the agency's determination unless it is shown to be unreasonable. Everpure, Inc., B-231732, Sept. 13, 1988, 88-2 CPD ¶ 235.

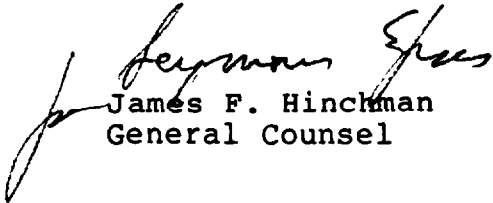
EG&G, which has not been provided access to FMSI's proposal, claims that, at the time of the Air Force technical evaluation, FMSI had not demonstrated the software necessary to conduct calibration fluid temperature or flow rates as provided in sections 2.4 and 2.9 of the purchase description. According to the purchase description, offerors were to propose a personal computer meeting certain specifications to control the operation of the calibrator, in particular, to control the flow adjusting values. Section 2.9 required a temperature control package that would enable control within + or - 1 degree fahrenheit over a specified temperature range and required that water for the heat exchanger be recirculated to conserve energy.

The Air Force noted no deficiency concerning FMSI's proposed computer control under section 2.4 and the only question concerning the section 2.9 temperature control package was how FMSI's unit would meet the recirculated water, energy conservation requirement. FMSI's detailed explanation of compliance with that requirement was found acceptable by the Air Force. Our review of the allegations and FMSI's proposal reveal no basis for disturbing the Air Force's reasonable determination that FMSI offered a technically

acceptable unit. Thus, EG&G's belief that the Air Force relaxed its minimum requirements amounts to mere speculation which alone is insufficient to sustain a protest. Independent Metal Strap Co., Inc., B-231756, Sept. 21, 1988, 88-2 CPD ¶ 275.

To the extent EG&G is arguing that FMSI is not responsible, our Office does not review an affirmative determination of responsibility absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the RFP were not met. Bid Protest Regulations 4 C.F.R. § 21.3(m)(5) (1988). Since EG&G has failed to make any of the required showings, we will not review the contracting officer's affirmative determination of responsibility. Armament Eng'g. Co., B-228239, Oct. 9, 1987, 87-2 CPD ¶ 349.

Accordingly, the protest is denied.


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General Counsel