



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southern CAD/CAM
File: B-254201
Date: November 16, 1993

George Keritsis for the protester.
Colonel Scott L. Silliman and John F. James, Jr., Esq.,
Department of the Air Force, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Where descriptive literature submitted with protester's offer does not establish that the protester's proposed software complies with material solicitation requirement for X-acceleration software, contracting agency reasonably concluded that the offer is technically unacceptable and should not be considered for award.
2. Protest that it was improper for agency to require offerors to provide certain software, given agency's alleged past practice of furnishing such software to the contractor, is denied because an agency's actions under one procurement do not affect the propriety of its actions under a different procurement.
3. Protest that the agency's requirement for a brand name product was improper because the specified product does not exist involves an alleged solicitation impropriety which, to be timely, had to have been raised prior to the time set for receipt of initial proposals rather than after award of the contract.

DECISION

Southern CAD/CAM protests the award of a contract to Delta Square under request for proposals (RFP) No. F03635-93-R-0076, issued by the Department of the Air Force for a computer visualization workstation and related software. Southern contends that the agency improperly found its offer technically unacceptable.

We deny the protest in part and dismiss it in part.

The RFP, issued on April 1, 1993, sought prices for one Delta Square Part Number Model 2 visualization workstation and related software, or an equal product that satisfies the salient characteristics listed in the solicitation; the visualization station consists of a workstation, visualization software, and software for communication and compilation of source code. According to the agency, the workstation is similar to a powerful personal computer; however, it uses a different operating system.

Section C of the RFP advised offerors that the software for communication and compilation capability should include, among other things, a Fortran compiler and software to accelerate "X" applications. In response to a question raised by a potential offeror, the agency issued amendment No. 1, which defined X-acceleration software as "X11R5 with a software driver to accelerate 'X' applications such as XVIEW, Sunview, Open Look, etc." The RFP also advised offerors that award would be made to the low-priced, technically acceptable offeror.

Five offerors, including Southern and Delta, submitted offers by the May 10 closing date. After its initial evaluation, the agency determined that Delta was the only offeror that had submitted a technically acceptable offer; the remaining offers, including Southern's, were deemed "reasonably acceptable." Following discussions with the five offerors, the agency requested best and final offers (BAFO) by June 25.

After evaluating the offerors' BAFOs, the agency determined that Delta's was the low-priced (\$36,650), technically acceptable offer. This was based in part on the agency's conclusion that the descriptive literature submitted with Southern's lower-priced (\$25,995) BAFO indicated that it did not comply with the solicitation requirements for a Fortran compiler and X-acceleration software. This protest followed.

Southern challenges the agency's determination that the firm's offer was technically unacceptable. According to Southern, the descriptive literature it provided with its BAFO clearly demonstrated compliance with the RFP requirements for X-acceleration software and a Fortran compiler.

In a negotiated procurement, a proposal that fails to conform to a material solicitation requirement is unacceptable and may not form the basis for award. Consulting and Program Mgmt., 66 Comp. Gen. 289 (1987), 87-1 CPD ¶ 229; Compressed Air Equip., B-246208, Feb. 24, 1992, 92-1 CPD ¶ 220. An offeror has an obligation to

submit an offer which fully demonstrates its technical acceptability. See Compressed Air Equip., supra.

In its proposal, Southern offered Sunview, a standard Graphic User Interface and X-application software. The record confirms, and the protester does not refute, that the solicitation plainly required X11R5 software with a software driver in addition to X-applications like Sunview. Notwithstanding this explicit requirement, the descriptive literature Southern submitted with its BAFO does not demonstrate that the firm planned to offer X11R5 software. Given Southern's failure to comply with the RFP's stated requirement, the agency properly rejected the protester's offer as technically unacceptable.' Id.

The protester argues that it discovered, for the first time after its receipt of the agency report, that the description of the X-acceleration requirement in the RFP does not reflect the agency's minimum needs. According to the protester, the agency report indicates that the agency merely desired basic X11 Graphic User Interface software, which the protester alleges is in the public domain and which it routinely furnishes.

The record does not support the protester's assertion that the X11 Graphic User Interface software to which it refers will satisfy the agency's need for X-acceleration software. To the contrary, the agency clearly states that the Graphic User Interface software that Southern proposed (Sunview) is a standard component of the workstation hardware's operating system--which the RFP required to be furnished as a part of the visualization station. According to the agency, this X-application software, without the combination of X11R5 software and a software driver, fails to meet the agency's needs for communication and compilation capability. We see no basis in Southern's submissions or elsewhere in the record to question the agency's conclusion, or the description of the agency's X-acceleration software requirement in the RFP.

'Since we conclude that the agency properly found Southern's offer technically unacceptable based on the firm's failure to offer X11R5 software, we will not address the protester's objection to the agency's determination that its proposed Fortran compiler failed to comply with the RFP requirements. For the same reason, we need not consider the third ground advanced by the agency to support the rejection of Southern's offer--the firm's alleged lack of a PV-WAVE command language multi-user license--which was first raised in the agency's report to our Office on the protest.

In its comments on the agency report, the protester argues for the first time that the agency should not have required offerors to provide X11R5 software since it is in the public domain and in the past the agency itself has provided contractors with public domain software rather than incorporating it as one of the specifications. The fact that the agency may have furnished public domain software in the past is irrelevant to this acquisition; each procurement is a separate transaction, and an agency's actions under one procurement do not affect the propriety of its actions under a different procurement. Unique Presort Servs., Inc., B-251317.4, Oct. 14, 1993, 93-2 CPD ¶ ____.

The protester contends that the agency's requirement for a Delta Square Part Number Model 2 or equal product was improper because, according to the protester, no such item exists, but instead was fabricated by the agency and used in the solicitation so that award could be made to Delta. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1993); Kenneth L. Latham, B-245137, Dec. 18, 1991, 91-2 CPD ¶ 559. Since the RFP specifically listed the requirement for Delta Square Part Number Model 2 or an equal product, the protester should have raised this contention by the time set for receipt of initial proposals on May 10, rather than waiting to challenge the requirement during the latter stages of the protest process. Id. We fail to see, in any event, how the protester was prejudiced by the agency's description of the Delta Square Part Number Model 2 or, for that matter, how the alleged "fabrication" of the part number evidences bad faith on the part of government officials where, as here, the solicitation contained a separate list of eight salient characteristic that equal products would have to satisfy to be acceptable, only one of which the protester has challenged. See Lithos Restoration Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379 (prejudice is an essential element of a viable protest).

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel