COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

40054

B-179281 October 10, 1973

AIRMAIL

ABA Industries, Incorporated
Post Office Box 517
Pinellas, Florida 33565

Attention: Mr. Bruce W. Marting
Vice President

Gentlemen:

Further reference is made to your telefax message dated July 24, 1973, and subsequent correspondence, including your letter of September 13, 1973, protesting against the rejection of your proposal under Request for Technical Proposals No. N00173-73-B-0018 (RFTP -0018), issued by the Naval Research Laboratory (NRL), Washington, D.C.

RFTP -0018 constituted the first step of a two-step formally advertised procurement. ABA's technical proposal submitted in response thereto was determined to be unacceptable, and the basis of your protest is that the determination, which precluded your firm from participating in step two, was arbitrarily made.

The instant procurement is for 18 antenna systems and data. Technical proposals submitted by four firms were independently evaluated by NRL's Advanced Projects Office and its Technical Branch, which concurred in the determination that all proposals except that submitted by ABA were acceptable.

NRL advised ABA of the respects in which its proposal was found unacceptable and provided ABA an opportunity to revise the proposal. After discussion with NRL, ABA submitted a revised proposal which was also considered unacceptable for two of the same reasons which had led to the initial rejection. NRL then issued the second step invitation for bids to the three technically acceptable firms and has made an award thereunder on the basis of urgent need, despite the pendency of your protest, under the authority of ASPR 2-407.8(b)(3)(i).

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During the course of this protest, we have received a number of submissions from ABA, several reports from NRL and, at your request, we have conducted a conference attended by ABA and NRL technical representatives. We believe that it is clear from this record that the aspect of ABA's proposal which was determinative of its rejection was the proposed composition of the antenna reflector.

The instant procurement was for parabolic, or bowl-shaped, antennas mounted upon pedestals. The solicitation advised offerors that the evaluation of proposals would include consideration of the following criteria, among others:

"(2) State the proposed pertinent performance characteristics and environmental limitations of the offered design - compare item by item to the NRL requirements."

* * * * *

"(5) State the proposed materials for the antenna dish, the reflecting surface material and finish. Indicate nominal dish thickness and estimated weight."

The procuring activity's environmental requirements were set forth in paragraph 3.2.1.1 of the solicitation specification:

"3.2.1.1 Environment

"The antenna, RF system and positioner shall meet all performance requirements of this specification within the following environmental conditions.

Parameters	Operating	Non-Operating & Storage
High temperature	+60°C	+70°C
Low temperature	-35°C	-50°C
Humidity	0-100%	0-100%
Altitude	0-10,000 ft	0-30,000 ft
Salt atmosphere	Seashore regions	Seashore regions
Sand and dust	Desert regions	Desert regions
Solar radiation	360 BTU/hr/sq ft	360 BTU/hr/sq ft
Rain	4 inches/hr	4 inches/hr
Wind	50 mi/hr	125 mi/hr (stowed)"

Additionally, paragraphs 3.2.1.2 and 3.2.1.3 of the system specifications respectively required a mean time between failure of not less than 2400 hours and a useful equipment life of 10 years. In short, the solicitation described a highly reliable system capable of operating without overhauling or recalibration over a 10-year period in seashore and desert regions with wind velocities of up to 50 miles an hour.

It is our understanding that the three technically acceptable offerors proposed furnishing antenna reflectors, or "dishes", of solid aluminum. APA, however, proposed to use a dish the core of which was plastic foam encased in a sandwich of fiberglass cloth. A reflective aluminum surface was to be sprayed upon the dish, after which the entire dish was to be coated with white paint.

You maintain that the fiberglass dish satisfies all requirements of the specifications, including those relating to the environment, and that the rejection of your proposal is attributable to a bias against your method of construction as opposed to conventional solid aluminum dishes. On the other hand, the rejection of your proposal resulted to a considerable extent from the doubts expressed by the contracting officer's technical advisors concerning the ability of your reflector to withstand an environment of heat, high wind velocity, salt atmosphere, and sand and dust in desert regions. It is reported that in "the unanimous opinion of the NRL technical evaluators * * * [your] product could not withstand desert solar radiation and 50 MPH winds with blowing sand without cracks or other imperfections which would distort signals."

The solicitation requested offerors to provide some recent instances of design, production and field experience with equipment similar to that being procured. Your firm provided five such references, of which NRL was able to contact four. NRL stated in its first supplemental report:

"* * * Three of the references claimed no environmental difficulties, but they are situated on the Eastern Seaboard of the United States, with dissimilar environment to that specified in the RFTP. The fourth was at White Sands, New Mexico, with desert, sand, wind, and heat but differing operational conditions from that projected for the antennas concerned. White Sands reported infrequent intermittent

operations and no use or restricted use during high winds. In the opinion of the contact there, local sandstorms which can strip the paint off a car would do the same to the dish, consequently their dishes are stowed, or "buttoned up" and either not used at all, or used with the reflective painting turned away from the wind. The contact, who has also installed a similar system (MPS-36) on Kwajalein, stated it also was never used in high winds. By contrast, the antennas on this procurement must be operational twenty-four hours a day under the very conditions in which those at White Sands and Kwajalein are not utilized or fully utilized."

You responded as follows to this portion of the first supplemental report:

"NRL states that three references claim no environmental difficulties. They state that WSMR [White Sands Missile Range] has the proper environmental conditions, but dissimilar operating conditions. They imply the WSMR user is not satisfied with the equipment. AMA contacted the same individual, and he expressed a high regard for the system, including 3-4 years of operation with no failure, no degradation of operating parameters, and no degradation of surface characteristics.

"The project engineer at WSMR commented on the remarkable performance of the dishes in operating satisfactorily in a 180 mph hurricane for a period of 2-3 hours. He also remarked that they were exceptionally pleased with several characteristics of the foam fiberglass dish including its light weight and extreme rigidity relative to an aluminum reflector.

"None of these comments were reported by NRL. We consider this an arbitrary and capricious action in either not investigating the matter thoroughly or in withholding pertinent facts."

In view of your response, NRL again contacted the user and advised our Office:

"The Government, in its first reply, never intimated satisfaction or dissatisfaction of White Sands Missile Range with its equipment. That wasn't the question.

> The question was the experience of White Sands with the equipment under environmental and operational conditions of the RFTP, particular the effect of desert heat, high wind and blowing sand. The answer was the White Sands system was operated infrequently or intermittently, not continuously as in the Government's projected application, and never during high winds. A recheck with the WSMR project engineer * * * verified that in his opinion, local sandstorms, which can strip the paint from a car, would do the same to the dish. Consequently, under such conditions, it was 'stowed' or 'buttoned up' or pointed away from the wind and not used at all, not even in the latter restricted configuration as first understood and reported. The same is reported of the unit at Kwajalein Atoll.
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> "As for the dish's 2-3 hours satisfactory operation in a 180 MPH hurricane claimed by ABA, * * * [the engineer] stated the storm he described hit a military site near Bremen, Germany, in 1972 and not White Sands, New Mexico, as ABA intimates. The 180 MPH wind, he stated, was hearsay; he knew of no official documentation of such velocity. That strength storm, however, is unlikely since * * * [the engineer] reported no severe damage to buildings which normally would collapse in 180 MPH winds. The weather service at White Sands reported that winds of 90 knots (104 MPH) are the highest recorded there. Further, according to * * * [the engineer], the unit in Germany was in the installation phase, it was 'stowed' or 'buttoned up' and non-operational at the time. For this reason and because no wind blown sand was involved, * * * [the engineer] hadn't mentioned the incident to the Government previously."

In further support of your contention that the foam-fiberglass dish meets specification requirements, you have provided analyses and test reports. NRL's position is that this literature contains deficiencies as a result of which it has not been demonstrated that the foam-fiberglass dish will withstand the user's environment. Although we have examined your submissions and NRL's comments, for the reasons stated below we believe it would serve no useful purpose to recount these essentially technical arguments at length.

From the development of the record in this case and our participation in a conference attended by your firm and NRL, we are convinced that you have had ample opportunity to present your position and that NRL has considered the material which you have submitted. There remains, however, a difference in professional opinion between the parties to this protest as to the suitability of the foam-fiberglass dish for the use intended.

In similar circumstances, we have stated:

> "It is not our function to resolve technical disputes of this nature. The determination of whether a proposal is technically acceptable is a matter of administrative judgment, and we will not disturb that judgment absent a clear showing that the agency acted arbitrarily or unreasonably. 48 Comp. Gen. 314 (1968). * * *"

52 Comp. Gen. 382, 385 (1972).

On the basis of our examination of the record, we are unable to conclude that NRL's determination that your proposal was unacceptable was arbitrarily or unreasonably made. Accordingly your protest is denied. The copy of your technical proposal which you provided our Office is returned.

Sincerely yours,

PAUL G. DEMBLING
For the Comptroller General
of the United States

Enclosure