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DECISION



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

FILE: B-194771

DATE: August 21, 1979

MATTER OF: McCarthy Manufacturing Co., Inc.

DIGEST:

CNG 00881

1. [Protest against evaluation criteria and specifications] filed after closing date for receipt of step-one technical proposals is untimely.
2. Procuring agency need not include protester in second step of two-step formally advertised procurement where record supports agency's finding of technical unacceptability following several agency attempts to permit protester to comply with specifications in RFP and eliminate features not desired by agency.

McCarthy Manufacturing Co., Inc. (McCarthy), has protested the rejection of its step-one technical proposal under a two-step formally advertised procurement for an audio listening facility issued by the Library of Congress (Library). In a letter dated April 23, 1979, the Library advised McCarthy that it would not be asked to participate in step-two. McCarthy filed a protest with our Office on May 2. The Library reaffirmed its rejection of McCarthy's proposal on June 5, after the two parties could not come to an agreement. The Library, pending our decision on the protest, has not gone forward with step-two.

The RFP stated that the "technical proposals should be based upon the General requirements and Specifications enclosed." The Library received three proposals, one of which was McCarthy's. (McCarthy submitted three different designs, but the Library determined that only slight differences existed among the three and treated them as one.) The Library intends to issue step-two solicitations to the other competitors.

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During step-one, the protester's attempts to achieve technical acceptability were accompanied by expressed reservations as to certain of the specifications. Further, in a letter dated June 28, commenting on the agency report recommending that we deny the protest, McCarthy complained that the evaluation criteria were "totally illogical and blatantly prejudiced," and also criticized the specifications. 4 C.F.R. § 20.2(b)(1) (1979) states in pertinent part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals."

The RFP stated that proposals had to be received by October 10, 1978. Clearly, McCarthy's complaints here after the closing date concerning the specifications and evaluation criteria must be considered untimely and will, therefore, not be considered. John M. Cockerham and Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180. The other bases of protest are timely since they relate to the sufficiency of the proposal, and McCarthy filed with our Office within 10 days of learning that its proposal was considered unacceptable. See 4 C.F.R. § 20.2(b)(2) (1979).

McCarthy believes that its initial proposal was in compliance with the RFP but that the Library vaguely requested additional information not required by the RFP. Additionally, it feels that the agency made little effort to understand its proposal. The protester considers its proposal to embody the state-of-the-art and, if implemented, will "resolve some problems that are inherently involved in the system that was specified for [the Library]." McCarthy notes that it pointed out what it saw as problems with the RFP to the Library on several occasions.

The record makes it clear, however, that, from the first, the Library did not feel McCarthy was complying with the RFP. The following excerpt from the April 23 letter to the protester summarizes the Library's basic position:

"The required design features, of which you disapprove, cannot be changed for our purposes. While you indicate that we have no communication with listeners until the audio path is made through the switches, you fail to realize that the access was purposely designed in this manner. We have no desire for an activated communications path until the proper listening assignment is made and its path has been originated purposefully.

"Overall, it is the opinion of our technical staff that your offer is generally vague, incomplete, and lacks engineering drawings or precise explanations to support several of your statements. This has been discussed with you on several occasions, both verbally and in writing."

Through a series of letters and meetings covering a period of several months, the Library made an effort to obtain more information, to inform McCarthy of the deficiencies in its proposal, and provide an opportunity to correct those deficiencies. Despite the claims of superior design, the Library found McCarthy's proposal deficient in several respects even after several proposal revisions. The technical monitor of the Library's evaluation team evaluated the three proposals on February 28. McCarthy was given 41 of a possible 100 points, which was significantly lower (about 40 percent) than the scores of the other two proposals.

Since an agency has the responsibility for determining its needs, the judgment of specialists and technicians as to the adequacy of technical proposals will be questioned by our Office only upon a showing of unreasonableness or abuse of discretion. Struthers Electronics Corporation, B-186002, September 10, 1976, 76-2 CPD 231. Mere good faith differences of opinion regarding an agency's decision on the adequacy of a proposal does not establish the unreasonableness of the agency's opinion. Guardian Electric Manufacturing Company--Request for Reconsideration, B-191871, May 9, 1979, 79-1 CPD 321 We cannot conclude, upon a review of the record, that

the Library was unreasonable or arbitrary in its rejection of McCarthy's proposal. As was pointed out above, the Library expended considerable time and effort to permit McCarthy to comply with the RFP. Despite this, McCarthy continued to insist and still maintains that its proposal is superior to the one described in the RFP. However, the Library does not desire and need not accept the nonconforming or surplus features in McCarthy's proposal, and properly may demand compliance with the RFP.

McCarthy claims that it was prejudiced in the evaluation because the Library hired Atlantic Research Corporation (Atlantic) to evaluate the proposals. Atlantic, the protester claims, is a prior competitor for projects on which McCarthy was the successful contractor. Also, since Atlantic cannot be viewed as an "independent consulting firm" because it is involved in design and sales, a conflict of interest is implied. This issue was initially raised in response to the agency report, and the Library has not replied. However, we feel this matter is of no consequence here because Library technical personnel conducted an independent evaluation. The Library's February evaluation, in which McCarthy was awarded 41 out of a possible 100 points, was completed before the results of the evaluation of Atlantic were known, which awarded McCarthy 48 out of a possible 100 points. Also, Atlantic, like the Library, awarded the other two competitors substantially higher scores than McCarthy. Furthermore, both before and after Atlantic's results were known, the Library's complaints about McCarthy's proposal remained essentially the same--it was vague, incomplete, lacked adequate engineering drawings, and was nonconforming. Therefore, without deciding the propriety of Atlantic's role, we deny this aspect of the protest. In any event, the Atlantic appraisal is supporting evidence that the Library's independent evaluation was not unreasonable.

Finally, McCarthy notes that it is the only one of the prospective contractors that has experience with the type of system the Library wants. It points out that it has worked on numerous Government procurements and has never been turned down on the first step of any procurement. However, we have consistently held that while good reputation and experience may be helpful, they are not the determinative factors. "An offeror must demonstrate its qualifications in the proposal submitted" in response to

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specific RFP requirements." University of New Orleans,
B-184194, January 14, 1976, 76-1 CPD 22. See also
Paragon Mechanical Co. and Arnold M. Diamond, Inc.,
B-188816, November 23, 1977; 77-2 CPD 396. Piqua
Engineering, Inc., B-188069, April 12, 1977,
77-1 CPD 254.

The protest is accordingly denied.


Deputy Comptroller General
of the United States