

DECISION



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

FILE: B-194157

DATE: January 8, 1980

MATTER OF: Robinson Industries, Inc.

DIGEST:

1. Contracting agency may exclude proposal, as submitted from competitive range for informational deficiencies when those deficiencies are so material as to preclude any possibility of upgrading proposal to an acceptable level except through major revisions. Record reveals that protester's proposal contained little or no information as required by solicitation regarding fabrication methods and quality assurance program. Also, protester's proposed design concepts were not specifically defined.
2. RFP contains no provision authorizing multiple design concepts as contended by protester. Rather, solicitation informed prospective offerors that some limited variation in their design concept from the technical specifications would be permitted provided that variation was specifically enumerated and that it resulted in lower manufacturing costs.
3. Protester's proposal stressed experience of its personnel almost to exclusion of manufacturing and design concepts. Technical evaluations are not based upon expertise in abstract, but upon degree to which offeror's written proposal adequately addresses evaluation factors specified in solicitation.
4. Protester's arguments concerning weighting of evaluation factors are untimely. Protests based on patent solicitation improprieties are required to be filed with GAO prior to closing date for receipt of initial proposals.

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5. GAO will not review protester's contentions that rotor blades which will be produced by awardees give no promise of success. GAO no longer reviews affirmative determinations of responsibility except where fraud is alleged or solicitation contains definitive responsibility criteria which have allegedly not been applied. Protester has alleged neither exception.
6. Even assuming protester's position as to its cost proposal is correct, a technically unacceptable proposal need not be accepted solely because its price is low.
7. GAO does not conduct investigations pursuant to its bid protest function for purpose of establishing protester's speculative statements. In absence of evidence demonstrating that awardees' proposals were technically inferior to protester's, GAO must assume protester's allegations are speculative.
8. Whether contract performance should be suspended pending GAO decision on protest is matter for contracting agency to decide. Record shows that agency awarded contracts during pendency of protest in order to avoid schedule delays and potential cost increases.

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Robinson Industries, Inc. (Robinson), protests the award of contracts to other offerors under request for proposal (RFP) 3-856451Q, issued by the National Aeronautics and Space Administration, Lewis Research Center, Cleveland, Ohio (NASA). The RFP called for the design and fabrication of low-cost rotor blades for large wind-driven generators.

After learning that NASA had found its proposal to be outside the competitive range, Robinson filed a protest with the agency on November 2, 1978. By letter dated February 7, 1979, NASA denied the protest stating the following:

"* * *The team reported to the Source Selection Official that none of your blade concepts were judged to have significant potential for low cost manufacturing. Your program was not specific as to how different concepts would be evaluated. The RFP requested that you explain how you intend to organize your effort and that you show all levels of operation and management. This was to include identification of the essential program elements, the phasing of these elements, the functional interrelationships among them, and the manner in which each activity will be managed to assure realization of the program objectives. Your proposal was found to be loosely organized with many individual consultants tied together through use of telephone conference calls. The RFP requested each offeror to submit a preliminary plan for manufacturing 100 blades at a rate of two per week, including a statement of facilities and equipment available either within its own plant or through some other source such as a subcontractor. Your proposal did not indicate, what, if any, manufacturing capability would be available to you. The specification required that blade concepts be developed and presented in sufficient detail to allow the Government to evaluate the proposed general configuration including shape, size, surface characteristics and root end fittings. Your proposal did not define any root end adapter concepts. Apparently, you left such concept to be defined by some unidentified committee at some time in the future. Your program was judged to be of high risk with little chance of producing an end product with a cost weight factor lower than any of the higher ranked offerors."

Robinson contends that it is not true that its proposal failed to define any root end adapter concept. Robinson alleges that a sketch for each blade concept was included with its proposal. Furthermore, Robinson believes that NASA's statement that it left the root

end adapter concept to be defined in the future by some unidentified committee is a "gross misrepresentation" because anyone who understands rotor blade design knows that root end adapter and main blade structure must be evolved simultaneously if a truly cost-effective, low-weight design is desired.

With respect to its failure to explain available manufacturing capability, Robinson argues that an explanation of manufacturing methods and facilities could not be finally planned and procured until after NASA exercised its option to select which of the six blade design concepts it had proposed would be developed under phase one of the RFP.

Robinson also asserts that NASA is incorrect in stating that its proposal was loosely organized through the use of conference telephone calls. According to Robinson, the excellence of the members of its management team, their past relationships in the blade industry, and the unique concept of monthly meetings is a cost-effective way of expeditiously performing the contract employment. Robinson claims that employing a staff of equal competence and accomplishment would increase the phase one design costs by a factor of three or four.

The determination of whether a proposal is within the competitive range, particularly with respect to technical considerations, is primarily a matter of administrative discretion. Dynamic Science, Inc., B-188472, July 20, 1977, 77-2 CPD 39. Our function is not to evaluate anew proposals submitted and make our own determinations as to their acceptability or relative merits, but to examine the record and apply a standard of review to determinations already arrived at by the contracting agency. Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380. Thus, we have repeatedly stated that the judgment of the agency as to technical evaluation will not be disturbed by us unless clearly shown to be without a reasonable basis. See Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458, and the cases cited therein. Unless such a finding is made, or there is an abuse of discretion, or a violation of procurement statutes or regulations, that judgment will not be disturbed. Piasecki Aircraft

Corporation, B-190178, July 6, 1978, 78-2 CPD 10. Moreover, the fact that the protester does not agree with the agency's evaluation of its proposal does not render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

Specifically, we have held that a contracting agency may exclude a proposal, as submitted, from the competitive range for "informational" deficiencies when those deficiencies are so material as to preclude any possibility of upgrading the proposal to an acceptable level except through major revisions and additions which would be tantamount to the submission of another proposal. Environmental Science and Engineering, Inc., B-189172, December 15, 1977, 77-2 CPD 465. Here, the RFP emphasized that the offeror's technical and management proposal, which would be the most important factor in the selection for award of a contract, should be specific and complete. Moreover, paragraphs 5 Ca and 5 Cb of the Special Instructions set forth in detail the general and special items, respectively, that the offeror was required to include and/or discuss in his technical and management proposal. Overall, the offeror was asked to show his proposed methods of solving technical problems in sufficient detail as to permit a comprehensive engineering evaluation by NASA.

Based on our review of Robinson's proposal, we agree with NASA that the proposed blade concepts were not specifically defined and that there was no indication how the various concepts were to be evaluated in order to determine which was the best one. Also, Robinson's proposal contained little or no information as required by the RFP regarding tooling and fabrication methods; a quality assurance program; and techniques for predicting stresses, deflections and fatigue limits during the manufacturing process. Robinson merely stated in its proposal that it would acquire a new building for blade fabrication "as soon as determination had been made" concerning the optimum type of blade to be built. As to blade testing, Robinson's proposal indicated only that test facilities would be located at a "convenient spot" and that instrumentation for the testing would be "leased" unless by the time testing must commence it appeared capital investment for acquisition of instrumentation would be advantageous.

With respect to Robinson's explanation why manufacturing methods and facilities could not be fully stated, we fail to understand the rationale for its assertion that NASA had the "option" to select whichever of the six proposed blade concepts it believed should be developed. The only mention of submitting more than one proposal in the RFP was in paragraph 5 Ca (7) of the Special Instructions. This section stated that if the offeror believed a lower cost approach could be taken, which also satisfies all project objectives, he had to present his proposed approach, as an alternative, in separate sections of his cost and technical proposals. The offeror was then required to delineate in these separate sections his proposed deletions, alterations, and/or additions to the RFP's statement of work and the associated price reductions attributable to each. However, we do not believe the above-mentioned RFP section authorized offerors to submit numerous separate blade design concepts. Rather, we think that this section was intended to inform offerors that some limited variation in their blade design from the RFP's blade specifications would be permitted provided that the variation was specifically enumerated and that it resulted in lower manufacturing costs.

Robinson acknowledges that its proposal was sparse and also hurriedly prepared. Nevertheless, Robinson asserts that the members of its management team are preeminently qualified by training and experience to design and build the blades required by the RFP. In support of this argument, Robinson offers evidence of previously completed blade projects directed by its Wind Systems Division Manager. According to Robinson, this individual has achieved widespread industry recognition because of his unique ability to organize staff and facilities to develop blade designs, manufacturing methods and management systems.

We do not question the fact that the members of Robinson's team possess outstanding qualifications. However, technical evaluations are not based upon expertise in the abstract, but upon the degree to which the offeror's written proposal adequately addresses the evaluation factors specified in the solicitation. Didactic Systems, Inc., B-190507, June 7, 1978, 78-1 CPD 418. No matter how capable a firm may be it must

demonstrate the qualifications required by the RFP in its proposal. Genasys Corporation, B-190504, September 11, 1978, 78-2 CPD 182. In our opinion, Robinson's proposal stressed personnel experience almost to the exclusion of manufacturing and design concepts. In short, Robinson stated that it had the people to get the job done without having stated how it would be done.

With regard to the technical experience of its personnel, we also note that Robinson objects to the weighting of personnel qualifications as the least important of the evaluation factors listed in the RFP. Robinson claims that this situation enhances the production of an "unsatisfactory" blade and penalizes the offeror whose organization has the experienced personnel to design and fabricate a "satisfactory" blade. In Robinson's opinion, to ignore the effectiveness of an offeror's organization is to invite excessive contract performance costs and leave the contractor, the Government, and all potential wind turbine operators open to large liability claims when the blades start failing before their required blade life expires.

It is our opinion that Robinson's arguments concerning the weighting of the RFP evaluation factors are untimely since the method of proposal evaluation was readily apparent from the face of the solicitation. Protests based on patent solicitation improprieties are required to be filed with this Office prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 20.2(b)(1) (1979). Here, the deadline for receipt of proposals, as extended, was August 14, 1978. Robinson did not begin to question NASA's evaluation criteria until 6 weeks after this date when it filed its November 2, 1978, protest with that agency.

To the extent that Robinson's arguments concerning the potential failure of blades to meet blade life requirements challenge the three successful offerors' abilities to build the required low-cost blades, they represents an objection to the contracting officer's affirmative determinations of these firms' responsibilities. We no longer review protests against affirmative determinations of responsibility unless fraud is alleged on the part of procurement officials or the

solicitation contains definitive responsibility criteria which have not been applied. Berlitz School of Languages, B-184296, November 28, 1975, 75-2 CPD 350; Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Neither exception has been alleged here. Consequently, we will not review Robinson's contentions that the blades which will be produced by NASA's contractors give no promise of success.

Regarding the evaluation of cost, NASA indicates that Robinson's phase one cost proposal ranked 10th out of the 12 proposals received and that it was almost four times higher than the lowest cost proposal. Robinson contends that NASA is in gross error as to its cost comparison and that it was actually the third low offeror, lower than one of the three multiple awardees. However, even assuming Robinson's position is in fact correct, a technically unacceptable proposal need not be accepted solely because its price is low. Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61. This is true whether the contract is to be awarded on a fixed-price basis or on a cost-reimbursement basis. See Automatic Informational Retrieval Systems, Inc., B-188550, August 4, 1977, 77-2 CPD 80, and the cases cited therein.

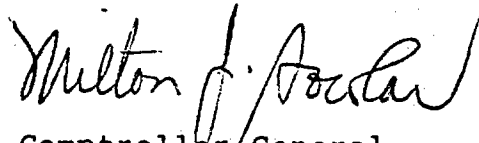
Robinson requests that NASA provide information as to what factors or elements of the three awardees' blade designs were considered superior to each of its designs. In addition, Robinson asks that it be permitted to review the proposals of these firms so that it may offer comments in writing regarding the predictability of blade life, blade performance, and manufacturing costs.

It is the responsibility of the protester to present evidence sufficient to affirmatively establish the allegations made in its protest. Reliable Maintenance Service, Inc. -- request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. It is not the practice of our Office to conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative statements. Mission Economic Development Association, B-182686, August 2, 1976, 76-2 CPD 105. In the absence of evidence demonstrating that the awardees' proposals were in fact technically inferior to its own, we must

assume that Robinson's allegations are speculative.
See Dependable Janitorial Service and Supply, B-190231,
January 3, 1978, 78-1 CPD 1.

Finally, we note that Robinson objects to the fact that NASA entered into two of the three blade design contracts during the pendency of this protest. However, we have consistently taken the position that whether contract performance should be suspended pending our decision on a protest is a matter for the contracting agency to decide. See Joseph Legat Architects, supra, and the cases cited therein. The record shows that NASA awarded these contracts in order to avoid schedule delays and potential cost increases because of failure to timely deliver Government-furnished blades to the wind turbine contractor.

The protest is denied.



For The Comptroller General
of the United States