

15303

DECISION



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

FILE: B-201487

DATE: June 2, 1981

MATTER OF: Dynamic Key punch Incorporated

DIGEST:

1. Allegation that protester's proposal was improperly determined technically unacceptable is denied where record demonstrates that agency determination was reasonable since protester's proposal did not respond adequately to RFP requirements.
2. Protester's lower cost is not basis to consider its technically unacceptable offer, since once offer is properly eliminated as technically unacceptable, it is irrelevant whether it might provide lower cost.

Dynamic Key punch Incorporated (Dynamic) protests the rejection of its proposal by the Federal Trade Commission (FTC) for the alleged failure of Dynamic to adequately respond to request for proposals (RFP) 11-80, issued by the FTC, and the award of the contract to another offeror, Rehab Group, Inc. (Rehab).

Dynamic argues that it submitted an acceptable proposal. Dynamic also contends that it was in the Government's interest to award to Dynamic at its price which was lower than that offered by Rehab. Dynamic's protest essentially challenges the FTC's technical evaluation that Dynamic's best and final offer did not satisfy the RFP requirements.

With respect to the technical evaluation, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and such discretion must not be disturbed unless shown to be arbitrary or in violation of procurement statutes and regulations. Pacific Consultants, Inc., B-198706, August 18, 1980, 80-2 CPD 129. Our Office will not

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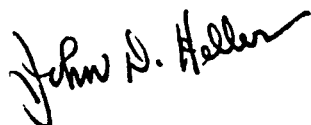
substitute its judgment for that of the procuring agency by making an independent determination. John M. Cockerham & Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180. Additionally, the burden is on the offeror to clearly demonstrate the merits of its proposal or run the risk of having the proposal rejected. Logicon, Inc., B-196105, March 25, 1980, 80-1 CPD 218.

Dynamic disagrees with the FTC's conclusion that it did not meet the RFP requirements and states that its proposal adequately demonstrated its ability to perform the work. Dynamic contends that although its responses were brief, they were to the point.

FTC refers to seven RFP requirements to which Dynamic failed to adequately respond. The record indicates that the following four RFP requirements were not addressed at all in Dynamic's proposal: (1) the requirement for the preparation of or need for keying instructions; (2) the provision for ensuring the confidentiality and security of data; (3) a discussion of any potential conflict of interest concerning the vendor's work; and (4) the requirement to ensure quality control. Under these circumstances, we cannot say that the FTC's decision to reject Dynamic's proposal was unreasonable. The fact that the protester does not agree with the agency's evaluation of its proposal does not render the evaluation unreasonable. Del Rio Flying Service, Inc., B-197448, August 6, 1980, 80-2 CPD 92.

With regard to the allegation that the award to Rehab resulted in greater cost to the Government for the work, our Office has held that, once an offer has properly been determined to be technically unacceptable, a lower price which that offer might provide is irrelevant since the offer cannot be considered for the award. Logicon, Inc., supra. Thus, this allegation is without merit.

The protest is denied.



Acting Comptroller General
of the United States



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FILE: B-199377.2

DATE: June 2, 1981

MATTER OF: Security Assistance Forces & Equipment
International Inc. -- Reconsideration

DIGEST:

Previous decision denying protest is affirmed since protester alleges no errors of law and presents no persuasive evidence of factual errors except for one item of questionable validity which should have been presented during development of initial protest since protester was aware of such fact.

Security Assistance Forces & Equipment International Inc. (SAFE) requests reconsideration of our decision, Security Assistance Forces & Equipment International Inc., B-199377, March 17, 1981, 81-1 CPD 200. In that decision, we denied SAFE's protest which was based on the refusal of the U.S. Army Contracting Agency, Europe, to permit preproposal inspection of the components inside the control boxes of alarm systems for which the agency was soliciting proposals for a service contract. In view of the fact that all necessary documentation was available and SAFE had not explained why such inspection in addition to the site inspection was vital to proposal preparation, we held that such refusal had not been shown to be unreasonable. SAFE now alleges the decision was based on several errors of fact. For the reasons discussed below, our initial decision is affirmed.

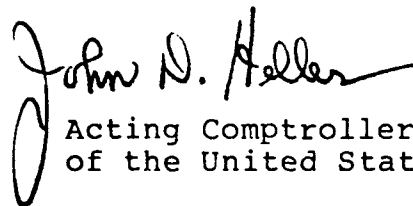
In our decision, we referred to the agency's statement that the banking facilities in which the alarm systems were located were reluctant to endure interruptions of service which would result from an interior inspection of the control boxes. It cited recent events such as a "hostage taking crisis" at one bank and an "attempted break-in" at another to support the reasonableness of its refusal. SAFE now contends these incidents took place after the agency's refusal to permit inspection and therefore could not have been valid reasons for the

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refusal. SAFE did not, however, rebut the agency's report in this regard during our initial consideration of its protest. Moreover, in our view, it does not matter whether these events took place before or after the refusal because the incidents were mentioned by the contracting officer as illustrations as to why there would be reluctance to disconnect the alarms. The agency's and the banks' concern over this matter appears to have been fully warranted.

SAFE again contends the servicing documentation is not sufficient without an interior inspection for purposes of proposal preparation. This point was fully treated by both SAFE and the agency in connection with the initial decision and we remain of the opinion that SAFE has not presented persuasive evidence on which we could conclude that the agency's refusal to permit interior inspection, in addition to the on-site inspection, was unreasonable. We note that in a previous protest with respect to similar alarm systems, SAFE characterized the equipment as low technology, which could be maintained by any good electronics technician. See Security Assistance Forces & Equipment International Inc., B-194838, February 6, 1980, 80-1 CPD 95.

Finally, SAFE alleges the alarm systems do not have to be disconnected during an interior inspection of their components. To the extent this allegation may be valid and of some significance, it should have been raised in SAFE's rebuttal to the agency's report. This information was available to SAFE at the time it responded to the agency's report and it will not be considered at this time. See Decision Sciences Corporation--Request for Reconsideration, B-188454, December 21, 1977, 77-2 CPD 485.



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