

DECISION



118391
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-204801

DATE: May 17, 1982

MATTER OF: National Fleet Supply, Inc.

DIGEST:

1. Agency determination to reject low offer as technically unacceptable is not unreasonable where record shows that offeror, after being granted substantial time by agency, failed to submit technical data as required by solicitation.
2. While protester might have been misled by solicitation requirement for certain data, protester was not prejudiced because its offer properly was found to be technically unacceptable because of its failure to provide other required data.

National Fleet Supply, Inc. protests a contract award for rebuilt engine assemblies to J.W. Watson & Company by the Defense Construction Supply Center (DCSC) pursuant to RFP No. DLA700-81-R-1715. For the reasons discussed below, this protest is denied.

The RFP was issued on February 24, 1981, calling for 76 new or rebuilt engines and requiring that offerors proposing rebuilt engines identify and make available to the Government on request the original equipment manufacturer's (OEM) specifications and rebuild criteria. The solicitation warned that failure of an offeror proposing rebuilt engines to properly identify the OEM data would render its proposal technically unacceptable.

On May 4, the contracting officer concluded that National, which offered rebuilt engines, had not identified acceptable technical data in its proposal. National had identified a truck service manual for both data requirements. The contracting officer called National to request additional data consisting of a listing of replacement parts needed during the rebuild process. During an inquiry on May 27, National was informed that its proposal was technically unacceptable and was again requested to submit additional information by May 29 concerning the rebuild criteria required by the solicitation. After several time extensions, National finally advised DCSC on July 17 that it was unable to submit the required OEM specifications and rebuild criteria because "they [were] proprietary." Again, the agency concluded that because of the lack of required OEM data, National's proposal was unacceptable and could not be considered for award. On August 27, DCSC awarded the contract to the next low offeror, Watson.

National objects to the rejection of its proposal. Although National does not argue that it supplied the required OEM specifications and rebuild criteria, it does maintain that it was not treated fairly in that the agency did not provide it adequate time to obtain these items and improperly accepted non-OEM rebuild criteria proposed by Watson. In this connection, it questions the agency's determination on May 4 that Watson's proposal was acceptable while the record shows that the actual data was not submitted until July 13. The protester contrasts the agency's treatment of Watson with its almost immediate determination that the protester's proposal was unacceptable because of the data cited in its offer.

The record shows that National identified a service manual in its initial offer rather than rebuild manual while Watson identified an overhaul manual. The agency's technical personnel, viewing a service operation as different from a rebuild or overhaul operation, advised the contracting officer that what National identified was unacceptable while Watson's identified data was acceptable. National then was given almost two months to correct the deficiencies in its data.

We think the agency's treatment of National was reasonable. There is nothing in the record to indicate that the agency's view that the service manual was inadequate is arbitrary. Also, we believe National was given a reasonable period to correct the deficiency. Moreover, National does not argue that it could have obtained the data had the agency allowed it extra time.

We also see nothing unfair with respect to the corresponding treatment of Watson. The solicitation did not require automatic submission of the data; it required only identification of the data. Therefore, once the agency determined that the data identified in Watson's offer was acceptable, it properly could view the proposal as acceptable without also requiring submission of the data.

We do note that the protester viewed the requirement for rebuild criteria as more stringent than the agency did. National read the solicitation as requiring actual OEM publications while the agency accepted Watson's "Remanufactured Product Specifications" which had been compiled and printed by Watson from various OEM publications. The contracting officer reports that the agency's technical engineer found Watson's submission to be acceptable because all the data incorporated therein was developed by the OEM. The solicitation does refer to the "item manufacturer's rebuilt criteria" and thus could have been interpreted as National read it. However, even if National was misled, we do not believe it was materially prejudiced by it because it was also unable to furnish the other required OEM data, which Watson did furnish.

Finally, the protester points out that the award documents reflect a different overhaul manual than that identified in Watson's initial offer. The agency states that the "short answer * * * is that Watson could revise or correct its offer at any time up to the time for receipt of best and final offers." Based on the record

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before us, we have no basis to conclude that the changes which occurred with respect to the overhaul manual resulted from other than the usual negotiation process.

The protest is denied.

Milton J. Aoulan
for Comptroller General
of the United States