

DECISION

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

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FILE: B-212378.7**DATE:** February 13, 1984**MATTER OF:** Foley Company**DIGEST:**

1. GAO will not disturb agency's evaluation of technical proposal absent showing that evaluation was arbitrary or in violation of procurement laws or regulations. Record does not show that agency evaluation of protester's proposal was arbitrary.
2. Protest concerning alleged deficiencies in solicitation specifications is untimely and not for consideration since protest initially raising these issues was not filed with our Office until well after the closing date for receipt of technical proposals.

Foley Company (Foley) protests the rejection of its proposal submitted under United States Corps of Engineers (Sacramento District) request for technical proposals No. DACA05-83-R-0046, the first step of a two-step formally advertised procurement for an Energy Monitoring and Control System (EMCS) at the Defense Depot, Ogden, Utah.

The protest is denied in part and dismissed in part.

Foley's proposal was based upon supplying equipment to be provided by Radix II, Incorporated (Radix). Originally, Radix, as well as several other firms intending to use Radix equipment, was a party to this protest. However, some protests regarding this solicitation were dismissed as untimely. Great Salt Lake Electric, Inc., B-212378.5, August 26, 1983, 83-2 CPD 260; TWC Energy Systems, Inc., B-212378.4, August 10, 1983, 83-2 CPD 199. The remaining protests, including Radix's, were closed without any action on the merits due to the failure either to comment on the agency report or express a continued interest in having our Office consider the matter. Foley submitted a timely request that we consider its protest on the existing record.

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Foley's proposal was found unacceptable because it contained insufficient information concerning the requirement for total action response time. Paragraph 13.8.1 of the solicitation stated the requirement as follows:

"Under system normal heavy load, no more than 10 seconds shall lapse from the time a digital status alarm or analog change alarm occurs at a IMUX [Intelligent Multiplexor] until the change occurs at the operator's console. This condition shall apply when one or more of the system digital or analog alarms has required an update on the operator's console. The total action-response time from initiation of a control command from the operator's console to display of the resulting status change on the operator's console shall not exceed 20 seconds under system normal heavy load conditions assuming a zero response time for operation of the IMUX control device."

In addition, paragraph 1.1.3.2.1 required offerors to provide a complete description of all equipment and indicated that the failure to show that the product offered conforms to the specifications will require the rejection of the offer.

With respect to this requirement, Foley's technical proposal stated in section 5.4, "End to End Blind Display Calculation," that the analog response time is 15.6425 seconds and that this time is reduced by 5 seconds for full duplex evaluation. The agency concluded that this information was inadequate since it failed to discuss the total action-response time as required by paragraph 13.8.1 of the solicitation. By letter dated May 10, 1983, Foley was informed of this deficiency and was requested to provide an analysis of the total system reaction time to demonstrate compliance with the solicitation requirement. Radix responded and offered no additional information. On July 5, 1983, the agency informed Foley that its proposal was unacceptable because it failed to address the specific requirement for total action-response time. Foley argues that its proposal did comply with this requirement and, therefore, should not have been rejected.

We have often stated that the evaluation of proposals and the determination of the relative merit of an offeror's technical proposal are primarily matters of administrative discretion on the part of the contracting agency. The function of our Office is not to evaluate anew the proposals submitted and make our own determination as to their relative merits. Rather, that function is the responsibility of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. We have repeatedly held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and that this discretion will not be disturbed by our Office unless shown to be arbitrary or in violation of the procurement laws and regulations. Frank E. Basil, Inc.; Jets Services, Inc., B-208133, January 25, 1983, 83-1 CPD 91.

Furthermore, the protester has the burden of affirmatively proving its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448. The mere 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.

In our view, the agency has not acted in an arbitrary manner or in violation of the procurement laws or regulations. Radix, on behalf of Foley, submitted a detailed letter to our Office explaining how the equipment it intended to supply met the total action-response time requirement. However, the solicitation also required that a complete description of all equipment and materials required by the plans and specifications be submitted with the proposal and this requirement encompasses the submission of data for hardware, software and system functionality as defined in paragraph 13.8.1. Foley was informed that additional information was required; yet, the response submitted merely referred the agency to the original technical proposal submitted. In view of the solicitation requirement that an offeror clearly demonstrate that its proposal meets or exceeds all the specification requirements and the specific requirement that data be submitted with the proposal for hardware, software and system functionality as defined in the bid set for paragraph 13.8, we do not find the agency action in rejecting Foley's proposal to be improper.

Finally, we note that numerous allegations were raised concerning the adequacy of the specifications utilized by the agency. Our Bid Protest Procedures require that protests based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date. 4 C.F.R. § 21.2(b)(1) (1983). Foley's protest, initially raising these issues, was filed with our Office well after the closing date for receipt of technical proposals. Consequently, Foley's protest concerning the alleged deficiencies in the specifications is untimely and will not be considered. Q.S. Incorporated, B-203503, May 4, 1982, 82-1 CPD 417.

The protest is denied in part and dismissed in part.

for Milton J. Auster
Comptroller General
of the United States