

DECISION

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

FILE: B-221079

DATE: March 18, 1986

MATTER OF: AEG Aktiengesellschaft

DIGEST:

1. Descriptive literature clause requirement under Federal Acquisition Regulation relating to sealed bid invitations for bids is not applicable to request for proposals under negotiated procurement.
2. Protest against alleged apparent solicitation impropriety--inclusion of a descriptive literature requirement in a solicitation--is untimely when filed after the closing date for receipt of initial proposals.
3. Blanket offer to supply compliant equipment does not satisfy a solicitation requirement for descriptive literature sufficient to permit technical evaluation of the equipment offered.
4. Awardee's submission of catalogues for standard model accompanied by cover letter explaining how equipment would be modified to comply with solicitation specifications satisfies the requirement for descriptive literature sufficient to permit technical evaluation.
5. Agency request for technical information which was required under solicitation but omitted from protester's proposal does not constitute discussions. Having requested and evaluated such technical material, the agency properly awarded on the basis of initial proposals without discussions where the solicitation

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explicitly provided that award might be made on the basis of initial proposals.

6. Allegation of inadequate notice of award is not for consideration since notice requirement does not apply to contracts outside the United States.

AEG Aktiengesellschaft (AEG) protests the award of a contract for solid state frequency converters to Merlin Gerin GmbH under request for proposals (RFP) No. DAJA37-85-R-0932 issued by the Army.

AEG asserts that its proposal was improperly rejected by the Army for failure to contain certain descriptive literature, that the awardee submitted inadequate literature and that the award was based on relaxed specifications.

We find the protest without merit.

The RFP, section M-1 stated:

"AWARD TO LOW OFFERORS (Whether or not negotiations are conducted) Unless all offers are rejected, award(s) will be made to the low responsible offeror(s) who submit responsive and technically acceptable offer(s) conforming to the solicitation."

Section L-7(c) of the RFP stated that:

"The Government may award a contract on the basis of initial offers received without discussion. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint."

In addition, note A to section B of the RFP provided that the "offeror is required to submit with his proposal detailed descriptions and/or illustrations for item offered to enable a technical evaluation and a current price list."

On August 20, 1985, six offers were received and all except AEG's included the required descriptive literature. AEG's price was second low at DM1,309,148. Merlin Gerin's fourth low price was DM1,822,280 (\$565,925.47; \$1 = DM3.22). Because no descriptive literature was included with AEG's proposal, the Army states that its evaluating

engineer called AEG on August 21, and requested that the relevant technical data be delivered by August 22 so that a technical evaluation could be conducted. On August 22, according to the Army, an AEG representative submitted the requested technical data; this material consisted of two catalogues which described AEG's standard products. AEG disputes this sequence of events and contends that it was not requested to deliver such data on August 21, and that it did not deliver any catalogues in response to such a request. In any event, the Army evaluated AEG's offer on the basis of the two standard model AEG catalogues. The Army concluded that the lowest price offer from Invertomatic was technically unacceptable, as were the next two low priced offers from AEG and Siemens AG. On September 30, 1985, the Army awarded to Merlin Gerin as the lowest priced, technically acceptable offeror.

AEG first protested the award to the Army. The Army's denial of the protest advised that AEG's proposal could have been rejected, without evaluation, for failing to contain the required descriptive literature but that an evaluation had been conducted based on the catalogues for standard AEG models and was found technically unacceptable.

AEG does not dispute the substance of the evaluation since the standard AEG products will not meet the specifications without certain modifications. Rather, AEG, notwithstanding the evaluation, asserts mainly that the Army improperly rejected its proposal for failure to contain descriptive literature without including the requisite solicitation provision requiring such literature and warning that failure to submit same would result in rejection. In support of its position, AEG cites the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.201-6(P) (1984), which requires inclusion in a solicitation of language found at FAR, 48 C.F.R. § 52.214-21, if descriptive literature is required under an invitation for bids. As the Army correctly points out, the procurement at issue was negotiated and the FAR requirement, which pertains only to sealed bid procurement procedure, is inapposite.

The RFP explicitly required the submission of descriptive literature sufficient to permit the evaluation of proposal technical acceptability. To the extent that AEG is protesting the inclusion in the RFP of this requirement, the protest is untimely under our Bid Protest Regulations since it relates to an alleged solicitation impropriety which was apparent prior to the closing date for receipt of initial proposals, but was not filed until after the closing date. 4 C.F.R. § 21.2(a)(1) (1985). Moreover, AEG's

assertion that it was not required to submit descriptive literature because its products had been used by and were well known to the Army is without foundation. When an RFP requires the submission of information bearing on technical adequacy, the protester must demonstrate technical sufficiency in its proposal; there is no requirement that the government ferret out information with respect to informationally deficient proposals, nor may the protester assume that an agency will use documents in its possession to obtain information regarding a proposal unless these documents are specifically incorporated by reference in the proposal--which was not done here. See Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 C.P.D. ¶ 232; Aqua-Tech, Inc., B-210593, July 14, 1983, 83-2 C.P.D. ¶ 91; Credit Bureau Reports, Inc., B-209780, June 20, 1983, 83-1 C.P.D. ¶ 670; C.A. Parshall, Inc., B-200334, Feb. 19, 1981, 81-1 C.P.D. ¶ 112. A blanket offer of compliance is not sufficient to comply with a solicitation requirement for the submission of detailed technical information which an agency deems necessary for evaluation purposes. McKenna Surgical Supply, Inc., 56 Comp. Gen. 531 (1977), 77-1 C.P.D. ¶ 261; Cincinnati Electronics Corp., B-216798.2, July 1, 1985, 85-2 C.P.D. ¶ 1; Falcon Systems, Inc., B-214562, Sept. 10, 1984, 84-2 C.P.D. ¶ 270.

While AEG disputes the Army's version of the manner in which it obtained the AEG catalogues, we view this as irrelevant to the outcome of the protest. Without the catalogues, AEG's proposal was clearly unacceptable since it only contained the blanket offer of compliance with the specification, which, as noted above, is inadequate when descriptive literature is requested. Therefore, whether the Army utilized catalogues that it had on file or received them from AEG is immaterial as the record is clear none was submitted with the proposal. Further, since the evaluation based on the catalogues is not disputed, we cannot object to the Army's finding that the protester's product does not meet its needs.

AEG alternatively argues that the Army's request for catalogues constituted discussions which, under the circumstances, were not meaningful. To the extent that AEG was provided an opportunity to amplify its offer by submission of required material which it had not otherwise provided in its proposal, it was given an opportunity that was not provided to any of the other offerors. Therefore, AEG, if anything, was given a competitive advantage, not a disadvantage. This provides no basis for sustaining the protest.

While AEG also asserts that none of the other offerors provided the requisite technical material, in fact all of the other five offerors did submit technical information, including brochures and in some cases cover letters explaining how standard products would be modified to meet certain requirements contained in the solicitation. Based on this technical data, two of the other five offerors were found technically unacceptable. Merlin Gerin's offer included technical literature on its standard model converters with a cover letter which explained how the standard converters would be modified to comply with RFP requirements concerning noise level and overload capability. Merlin Gerin proposed to add housing cabinets to accomplish the required noise suppression, and oversized converters to achieve the specified overload capability. The cover letter provided dimensional specifications for both of these features. The cover letter also indicated that a surcharge would be applied to the proposal price for providing these features, or that a lower price was offered in the event that the agency could utilize the company's standard units. Based on this information, the Army concluded that Merlin Gerin's offer, with the housing cabinets and oversized converters, was technically acceptable.

AEG seems to view Merlin Gerin's technical data submissions as improper because they were not all contained in a standard catalogue. While AEG characterizes Merlin Gerin's cover letter as inadequate because it merely parrots back the RFP specifications, this is incorrect since the letter provides an explanation of how Merlin Gerin proposed to modify its standard unit to comply with the requirements.

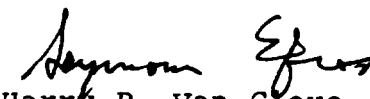
We find that Merlin Gerin's proposal containing standard product literature appropriately modified and clarified by a cover letter provided the Army reasonable technical assurance that the converters were technically acceptable. See Thermal Reduction Co., Inc., B-211405, Aug. 8, 1983, 83-2 C.P.D. ¶ 180. Since the Merlin Gerin cover letter made it clear that a standard model would be appropriately modified, specifying the manner in which the modification would be accomplished, we have no basis to find that the agency determination was erroneous or arbitrary.

Moreover, the fact that Merlin Gerin included a lower-priced alternate proposal which did not meet the RFP specifications did not affect the acceptability of its higher-priced technically acceptable alternate.

AEG also protests that the award was made to Merlin Gerin on the basis of relaxed specifications different than those contained in the solicitation. This is factually incorrect. While the award document clearly incorporated the Merlin Gerin upgraded specifications contained in its cover letter indicating the surcharge for upgraded overload capacities, description pages contained in the award document also contained a notation referring to a lower overload capability for three items. This appears to relate to the alternate offer; however, it is clear from the award document that award was made for the surcharged priced in accordance with Merlin Gerin's cover letter. An appropriate amendment to the award document was subsequently made in the form of an administrative change to correct the error in the item description. While AEG makes a lengthy recitation of what it asserts reflect "suspicious circumstances" in this respect, there is no indication of any irregularity in the Army's award procedures.

AEG also objects that it received an inadequate notice of award which lacked certain information required by FAR, § 15.100(c) (Federal Acquisition Circular 84-7, April 30, 1985). However, under paragraph (a)(4) of that section, such notice requirements do not apply to a contract, as here, for supplies or services purchased and used outside the United States.

Accordingly, we deny the protest in part and dismiss it in part.

for 
Harry R. Van Cleave
General Counsel