



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Adrian Supply Company

File: B-237531

Date: February 12, 1990

Sam Zalman Gdanski, Esq., for the protester.
Norman J. LeCompte, Jr., Esq., Hershner, Hunter, Moulton,
Andrews & Neill, for North Coast Electric Company, an
interested party.
Douglas P. Larsen, Jr., Esq., Office of the General Counsel,
Department of the Navy, for the agency.
Anne B. Perry, Esq., Paul Lieberman, Esq., and
John Mitchell, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Offeror who initially took exception to a number of solicitation requirements was properly found technically acceptable where offeror explicitly withdrew all exceptions in its best and final offer, except for one exception with respect to which the agency had incorporated the offeror's proposed alternative into the solicitation by amendment.
2. Contracting agency's affirmative determination of responsibility is not reviewed by the General Accounting Office absent a showing of possible fraud or bad faith, or misapplication of definitive responsibility criteria specified in the solicitation.

DECISION

Adrian Supply Company protests the award of a contract to North Coast Electric Company under request for proposals (RFP) No. N00406-89-R-0805, issued by the Department of the Navy for two portable transformer/substations and support drawings, manuals and reports, for the Puget Sound Naval Shipyard. Adrian alleges that the awardee was permitted to deviate from the RFP specifications and will be using a nonresponsible subcontractor.

We deny the protest in part and dismiss it in part.

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The solicitation was issued on May 26, 1989, and two proposals were received by the July 7 closing date for receipt of initial proposals. The initial proposals submitted by North Coast and by Adrian both contained several exceptions to the solicitation. After an initial technical evaluation, discussions were conducted with both offerors and, as a result, both submitted revised lists of exceptions and clarifications. North Coast submitted a letter, on August 23, which specifically withdrew all of its exceptions other than an exception to section 5.4.5(b) of the specifications, which required certain porcelain insulators, an exception also taken by Adrian. As an alternative, North Coast proposed to use glass polyester insulators which met the RFP's functional requirements. Upon reexamination, the Navy technical evaluator determined that porcelain was not necessary, and amended the specifications on August 25 to remove the requirement for porcelain. Adrian, on August 25, also submitted a letter withdrawing its earlier exceptions, other than its exception to the porcelain insulators.

On August 29, a request for best and final offers (BAFO) was issued to both offerors, with a closing date of September 7. Neither offeror took any new exceptions under its BAFO, and both offers were determined to be technically acceptable, with North Coast the apparent low offeror. The contracting officer determined that North Coast was responsible based on North Coast's successful performance of previous contracts for the contracting activity, and based on a favorable report from the Defense Contract Administration Services Management Area, Seattle, which indicated that North Coast had performed satisfactory on all prior government contracts, with a zero percent delinquency rate. Award was made to North Coast on September 8. After requesting and obtaining certain information from the Navy concerning the conduct of the procurement, Adrian filed a protest in our Office on October 23, alleging that the Navy allowed North Coast to take exceptions to the specifications that were not permitted to Adrian, and that North Coast's subcontractor is not responsible.

We find no evidence in the record to support Adrian's allegation that North Coast's BAFO contained exceptions to the amended specifications. The contracting agency is responsible for evaluating the information supplied by an offeror and ascertaining whether it is sufficient to establish technical acceptability of its offer, since the contracting agency must bear the burden of any difficulties incurred by reason of a defective evaluation. EG&G Flow Technology, Inc., B-235830, Sept. 1, 1989, 89-2 CPD ¶ 2.

Accordingly, we will not disturb the agency's determination unless it is shown to be unreasonable. Id.

Here, the record establishes that North Coast, in its clarification letter of August 23, withdrew all of the exceptions it had taken in its initial proposal, except one which was the subject of an amendment which permitted the technical approach proposed by North Coast. It is of no consequence that the agency inadvertently failed to specifically reference this letter in the initial contract award. The August 23 letter was subsequently incorporated into by North Coast's contract by the Navy through administrative modification, and North Coast was already bound by this letter, which was a part of its BAFO at the time of award. Adrian's allegation that the Navy relaxed its specifications for North Coast, therefore, is contradicted by the record, and the Navy reasonably determined that North Coast's BAFO was technically acceptable.

Adrian also alleges that North Coast is nonresponsible by virtue of the fact that the subcontractor it intends to use is nonresponsible, and that as a result North Coast will be unable to meet the performance schedule. Contracting agencies do not generally directly review the responsibility of the subcontractors that an awardee may use; rather, it is incumbent upon the prime contractor to review the responsibility of its subcontractors to ensure that they will comply with contract requirements. Further, the question of a subcontractor's responsibility is essentially one of the factors used to determine the prime contractor's responsibility. See Federal Acquisition Regulation § 9.104-4(a); Howell Constr. Co.--Reconsideration, B-237231.2, Nov. 3, 1989, 89-2 CPD ¶ 425. To the extent that the protester challenges North Coast's responsibility, our Office generally does not review affirmative responsibility determinations since a contracting agency's determination that a particular offeror is responsible is based in large measure on subjective judgments. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1989). The limited exceptions to this rule are when there is a showing of possible fraud or bad faith, or when the solicitation contains definitive responsibility criteria which allegedly were misapplied. Aero Technology Co., B-235277, July 7, 1989, 89-2 CPD ¶ 22. There is no evidence of these circumstances present here.

In addition, to the extent that Adrian alleges that North Coast will not comply with the specifications or will need extensions of the delivery date, these concern matters of contract administration, which are not for our consideration

under our Bid Protest function. 4 C.F.R. § 21.3(m)(1)
(1989); Eastern Technical Enters., Inc., B-235421, Aug. 3,
1989, 89-2 CPD ¶ 105.

Accordingly, the protest is denied in part and dismissed in
part.

Ronald Berger

James F. Hinchman
General Counsel