



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Watson Industries, Inc.

File: B-238309

Date: April 5, 1990

Dr. Benjamin Okwumabua, for the protester.
James K. White, Esq., Office of the General Counsel,
Department of Commerce, for the agency.
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of
the General Counsel, GAO, participated in the preparation of
this decision.

DIGEST

1. It is not permissible to make award to an offeror whose technical proposal may have been lost by the government prior to opening of proposals; to do so would be inconsistent with protecting the integrity of the competitive bidding system.
2. Protester's acknowledgment of a solicitation amendment containing agency's specifications in itself is not an adequate basis to find its proposal technically acceptable in the absence of a detailed written proposal as required by the solicitation establishing how the protester would meet the government's requirements.
3. Protest alleging bias must present convincing evidence, since procurement officials are presumed to act in good faith.

DECISION

Watson Industries, Inc., protests the award of a fixed price contract to Russ Bassett Company under request for proposals (RFP) No. 52-SOBC-9-00037, issued by the Bureau of the Census, Department of Commerce. Watson contends that the Bureau improperly rejected its low, technically acceptable offer.

We deny the protest.

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The RFP was for production and supply of an indefinite quantity of 12-drawer microfilm cabinets. In addition to providing unit prices for the minimum and maximum number of cabinets, offerors were required to submit a separate technical proposal. Each technical proposal was to include technical literature; a paragraph by paragraph, written description of how the proposed product satisfied each specification; the make and model of the proposed item; and cross references from the technical proposal paragraphs to the technical literature. Award was to be made to the lowest responsive, responsible offeror, price and other factors considered.

Based upon inquiries by prospective offerors, the Bureau twice relaxed the specifications concerning, among others, cabinet dimensions, construction, and color. As a result, 13 offerors, including Watson, submitted proposals by the November 14, 1989, closing date. According to the agency's contract specialist, when she opened Watson's Federal Express envelope November 14, she found an original and two copies of the completed solicitation, but no technical proposal or literature. In the absence of a technical proposal or any indication of the make and model of the item offered, Watson's proposal could not be evaluated and was rejected as technically insufficient. The second low offeror, Russ Bassett, was awarded the contract at a price approximately \$69.00 higher per unit than the price proposed by Watson. Upon learning of the award, Watson filed its protest with our Office.

Watson first contends that it in fact enclosed with its offer copies of a technical proposal and descriptive literature before sending them by Federal Express to the Bureau. It has enclosed a copy of its ostensible technical proposal as part of its protest. The agency maintains that these items were not in the envelope when it was opened at the Bureau. We need not decide whether the envelope contained the items; however, since the result is the same. First, we note that since the proposal package was in the possession of a third party, it is possible that both the protester and the agency are correct. In that situation, Watson retains ultimate responsibility for the loss. An offeror is responsible for ensuring the receipt of its proposal by the procuring agency. See Photonics Technology, Inc., B-211234, Apr. 11, 1983, 83-1 CPD ¶ 378.

Second, if we assume that the Bureau lost or misplaced Watson's technical proposal, Watson still cannot prevail. Where an offeror has complied with the proposal submission requirements of a particular solicitation, but the proposal or some portion thereof has been lost after being received

at the procuring activity prior to opening of proposals, the general rule is that the offeror may not then submit what is purported to be a copy of that proposal, as the award of a contract on the basis of self-serving statements as to the contents of the proposal initially submitted would not be consistent with the maintenance of the competitive system. See 52 Comp. Gen. 593 (1973); Antenna Prods. Corp., B-223154, Aug. 11, 1986, 86-2 CPD ¶ 176; Prestex, Inc.; Putnam Mills Corp., B-205478; B-205478.2, Feb. 17, 1982, 82-1 CPD ¶ 140. Even if Watson could prove that the Federal Express package submitted contained its technical proposal, in the absence of the original proposal that was in the envelope, there is no certainty that the proposal presented after the closing date for receipt of offers is identical to the technical proposal received and lost. Although we have allowed award to be based on the late submission of a copy of a proposal, after the agency list the original, we did so only where the record "clearly and convincingly establish[ed] that the duplicate [was] identical to the original offer" Physio Control Corp., B-234559; B-234559.2, June 26, 1989, 89-1 CPD ¶ 599. There is no basis for such a conclusion here.

Watson next contends that even absent its technical proposal, the Bureau should have evaluated its offer as acceptable based upon Watson's acknowledgment of an amendment which included the final version of the specifications and upon its telephone conversations with the Bureau in which Watson clearly identified itself as a manufacturer of microfilm cabinets. Watson adds that any information the Bureau lacked could have been supplied during the preaward survey "required" by the RFP. We disagree.

Under this solicitation, it was each offeror's responsibility to submit a technical proposal which would establish how it would meet the specification requirements. The RFP advised offerors of the form the proposals must take, the specific requirements their technical proposals must meet, and since an award was possible on the basis of initial offers, that each initial offer should contain the offeror's best terms from price and technical standpoints. No matter how competent a contractor may be, a technical evaluation must be based on information in, or submitted with, the proposal. See Southeastern Center for Elec. Eng'g Educ., B-230692, July 6, 1988, 88-2 CPD ¶ 13. At best, under the circumstances, Watson made only a blanket offer of compliance which is not an adequate substitute for the detailed and complete technical information necessary to

establish that the products offered by the firm met the Bureau's requirements. Aydin Corp. (West), B-237450, Jan. 18, 1990, 90-1 CPD ¶ 69.1/

Further, we do not find that the Bureau was required to conduct a preaward survey of Watson as the low-priced offeror in order to obtain the information which would be found in Watson's technical proposal. In the absence of any technical proposal, it would be inappropriate to use a pre-award survey, normally used for making responsibility determinations, as a substitute for information not present in the proposal. See Southeastern Center for Elec. Eng'g Educ., B-230692, supra. Since the agency's technical evaluation was dependent upon the information furnished in the technical proposals, it was Watson's responsibility to submit a technical proposal that was adequately written. Where an initial proposal is nonexistent or contains insufficient information, an agency has no obligation to provide the offeror an opportunity to furnish the missing information. See Union Natural Gas Co., B-231461, Sept. 13, 1988, 88-2 CPD ¶ 231. Thus, we find the Bureau reasonably excluded Watson's offer from consideration for award, and was not required to conduct discussions with it in order to obtain the missing information. See Imagineering Sys. Corp., B-228434.2, Feb. 4, 1988, 88-1 CPD ¶ 109.

Finally, Watson alleges that the Bureau was biased in favor of Russ Bassett. In particular, Watson observes that the original specifications for the microfilm cabinets are identical to Russ Bassett's specifications and Watson infers that Russ Bassett furnished the specifications to the Bureau. Even though Watson claims to be able to meet the final specifications as relaxed through two RFP amendments, it argues that those amendments were but a "trick and disguise to mask" the agency's biased intentions. Watson also speculates that the Bureau willfully disposed of its technical proposal.

1/ We have examined Watson's technical proposal, as submitted with its protest, and find that it consists of highlighted technical literature, a statement that Watson will "meet and comply" with the stated specifications, and a brief history of the firm's experience as a manufacturer. Based upon our review, we cannot conclude that this proposal would have been found technically acceptable if the Bureau had evaluated it. For example, there is no paragraph by paragraph description of how Watson proposed to meet the specifications and the highlighted model identified in the literature has only 11 drawers instead of the 12 specified in the RFP.

Any contention that the government acted with prejudice in excluding a protester from a contract award must be supported by convincing evidence that agency procurement officers had specific and malicious intent to harm the protester, since they are presumed to act in good faith. Mictronics, Inc., B-234034, May 3, 1989, 89-1 CPD ¶ 420. Our review of the record fails to disclose any evidence of bias towards Russ Bassett's products or a willful disposal of Watson's proposal. Further, notwithstanding the agency's apparent use of Russ Bassett specifications in the original RFP, any possible prejudice was eliminated by the Bureau's twice relaxing those specifications such that Watson and 12 other offerors competed. Watson's allegations are based solely on inference and supposition, and thus insufficient to meet its burden of proof. Mictronics, Inc., B-234034, supra.

Accordingly, the protest is denied.

Robert P. Murphy
for James F. Hinchman
General Counsel