



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: VMX, Inc.

File: B-241281.2

Date: March 22, 1991

Robert E. Little, Esq., and John Hardin Young, Esq., Porter, Wright, Morris & Arthur, for the protester.
Pamela Langston-Cox, Esq., Internal Revenue Service, for the agency.
Sylvia Schatz, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where protest raised allegation that protester's offered equipment improperly was rejected as technically unacceptable based on inaccurate advice from a reference; agency refuted allegation in protest report; and protester then did not rebut the agency's response in its comments on the report, allegation is deemed abandoned and is dismissed.

2. Protester whose quote was reasonably found to be technically unacceptable is not an interested party to challenge the evaluation of the awardee and the firm next in line for award, since protester would not be in line for award even if protest were resolved in its favor.

DECISION

VMX, Inc. protests the award of a contract to Bell Atlantic under Internal Revenue Service (IRS) request for quotations (RFQ) No. W-FSC-90-1065, for a voice mail/automated attendant system. VMX principally maintains that (1) the contracting officer improperly determined that its quoted system was unacceptable for failure to satisfy an integration requirement; and (2) the agency improperly evaluated the quotes of Bell Atlantic and Octel, the firm next in line for award, by failing to add to their quotes the cost for the required number of ports, and that the cost of the required additional ports would increase their quotes above VMX's.

We dismiss the protest.

The RFQ required a system offering both a specified minimum current capacity and the ability to accommodate a significant

future growth in demand, including a more than 3-fold increase in number of calls and 10-fold increase in number of voice mail "mail boxes." It specified that contractors must be able to demonstrate that their systems in both single and multiple cabinet configurations could be fully integrated with an NEC NEAX-2400 MMG switch at maximum system growth. Quotes were to be evaluated initially for technical acceptability and then for price.

On August 28, IRS received quotes from five firms, including Bell Atlantic, which submitted the low quote, Octel, the next low, and VMX, third low. In considering VMX's quote, IRS questioned whether VMX's multi-cabinet configuration would fully satisfy the integration requirement since VMX had failed to include information in its quote demonstrating compliance. The agency then requested VMX to demonstrate its system's compliance with this requirement, but instead of agreeing to a demonstration of its equipment, VMX provided the contracting officer with a reference--the name of an employee of Epson America--who VMX believed would attest to its system's compliance with the requirement. IRS reports that when it contacted the reference, she stated that VMX's proposed system had never been connected in a multi-cabinet configuration with the MMG switch, but, instead, had only operated in a multi-cabinet configuration with a different (IMG) switch. The agency notes that VMX's proposed system would require multiple cabinets to accommodate system growth. Based upon the response received from VMX's reference, IRS found VMX's equipment to be technically unacceptable. Only the equipment offered by Bell Atlantic and Octel was found technically acceptable, and award was made to Bell Atlantic based on its low quote.

In its protest, VMX initially alleged that the agency had only asked the reference whether VMX equipment currently was successfully integrated in a multi-cabinet configuration with the MMG switch, rather than whether the equipment ever had been used in the required configuration; VMX claimed that if the contracting officer had asked the right question, she would have found that Epson had in the past successfully used VMX's system in a multi-cabinet configuration with the MMG switch. As indicated above, however, the agency responded in its report that the reference advised that VMX's proposed system had never been connected in a multi-cabinet configuration with the MMG switch, which the agency deemed to provide all the information necessary to make its determination that VMX did not meet the requirement. In its subsequent comments on the agency's report, VMX failed to address this issue again, or the agency's response. In fact, VMX stated in its comments that "the only fact in issue" concerned its argument relating to the evaluation of Bell Atlantic's pricing. Under these circumstances, we deem the issue of VMX's compliance

with the certification requirement to be abandoned. Monarch Enters., Inc., B-239770, Sept. 12, 1990, 90-2 CPD ¶ 203.

In any case, it appears that the agency reasonably determined VMX's proposal to be technically unacceptable. The procuring agency is responsible for evaluating the data supplied by an offeror and ascertaining whether it provides sufficient information to determine the acceptability of the offeror's product; we will only disturb an agency's technical determination in this regard if the protester affirmatively proves that the determination is unreasonable. East West Research, Inc., B-237843, Feb. 22, 1990, 90-1 CPD ¶ 204. The RFQ required contractors to be able to demonstrate that their single and multi-cabinet configurations could be fully integrated with the NEC switch. Although offered the opportunity to demonstrate its proposed equipment, VMX instead chose to rely on a reference to establish the system's acceptability in this regard. In our view, IRS properly relied upon the information supplied by VMX's selected reference--that Epson had only operated a multi-cabinet configuration with the IMG, not the MMG switch--to determine that VMX's system did not meet the integration requirement.

As for VMX's argument that the agency improperly evaluated the quotes of Bell Atlantic and Octel, since VMX's system was determined to be technically unacceptable, VMX would not be in line for award of the contract even if it were to prevail in its challenge of the evaluation of the quotes of Bell Atlantic and Octel. Thus, VMX is not an interested party eligible to challenge the award under our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1990); accordingly, we will not consider this aspect of its protest. See P.B. Inc., B-239010, July 24, 1990, 90-2 CPD ¶ 69.

VMX also complains that requesting it to demonstrate that its system complied with the integration requirement was improper on the ground that proceeding under an RFQ precludes the agency from holding discussions with any quoters. Since, however, IRS' discussions with VMX were held for VMX's benefit, so as to permit it to remedy its failure to demonstrate in its proposal compliance with the integration requirement, we fail to see how VMX was thereby prejudiced and therefore will not consider the matter further. See generally Merrick Eng'g, Inc.--Recon., B-238706.4, Dec. 3, 1990, 90-2 CPD ¶ 444.

The protest is dismissed.



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