



Comptroller General
of the United States

Washington, D.C. 20548

Lebowitz

145974

Decision

Matter of: Compressed Air Equipment

File: B-246208

Date: February 24, 1992

Leonard Jolley for the protester,
Jonathan H. Kosarin, Esq., and David R. Forbes, Esq.,
Department of the Navy, for the agency,
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of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Agency properly rejected protester's proposal as technically unacceptable where protester's equipment did not meet the solicitation's technical specification requirements.
2. Protest of alleged solicitation impropriety apparent from the face of the solicitation is dismissed as untimely where protester failed to file its protest prior to the closing time for receipt of initial proposals.
3. Protester which properly was determined technically unacceptable and thus ineligible for award is not an interested party to challenge the technical acceptability of the awardee's proposal since protester would not be in line for award even if its protest were sustained.

DECISION

Compressed Air Equipment protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. N00181-91-R-0086, issued by the Department of the Navy for rotary air compressors and associated technical manuals and training for use in repairing Navy vessels. The protester essentially argues that its proposal was improperly evaluated.

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

The solicitation, issued on May 3, 1991, contemplated the award of a firm, fixed-price contract for five air compressors. The solicitation included technical specifications for the equipment in the areas of air

delivery, electrical components, controls and instrumentation, and general requirements. With respect to controls and instrumentation, the solicitation specifically required that the equipment include the following nine shutdown indicators: (1) high air end discharge temperature, (2) high sump pressure, (3) starter failure, (4) main motor overload, (5) fan motor overload, (6) low voltage, (7) reverse rotation, (8) sensor failure, and (9) microprocessor failure. The solicitation required firms to submit descriptive literature with their initial proposals. The solicitation stated that the award would be made to the responsible offeror whose offer, conforming to the solicitation, would be most advantageous to the government.

Nine firms, including the protester, submitted initial proposals by the June 3 closing date. The technical representation section of the protester's initial proposal showed that the protester would furnish equipment including all but two of the required shutdown indicators, specifically, the shutdown indicators for sensor failure and microprocessor failure. The protester submitted no descriptive literature with its initial proposal.

By letter dated July 31, the contracting officer conducted written discussions with the protester, informing the firm of various technical deficiencies in its initial proposal, including its failure to specify that its equipment would include shutdown indicators for sensor failure and microprocessor failure and its omission of descriptive literature. By letter of the same day, the protester submitted a revised proposal and descriptive literature. In its revised proposal, the protester referenced its initial proposal and generally stated that its equipment would include an electrical signal panel which would indicate the cause of a shutdown. The protester's descriptive literature showed that while the electrical signal panel would include six shutdown indicators, it did not include the sensor failure and microprocessor failure shutdown indicators as specifically required by the solicitation.

Because the protester's equipment did not meet the technical specification requirements of the solicitation with respect to the sensor failure and microprocessor failure shutdown indicators, by letter dated September 24, the contracting officer informed the protester that its proposal was rejected as technically unacceptable. On September 24, the agency awarded a contract to Ingersoll-Rand, the low, technically acceptable offeror. On September 25, the agency verbally notified the protester of the award. By letter of September 27, the protester filed an agency-level protest challenging the rejection of its proposal as technically unacceptable. On October 11, the protester filed a protest

with our Office arguing that its proposal was improperly rejected as technically unacceptable and contending that it should have been awarded the contract since its price was less than Ingersoll-Rand's price. By letter of October 18, the agency denied the protester's agency-level protest.

In a negotiated procurement, a proposal that fails to conform to a material solicitation requirement is unacceptable and may not form the basis for award. Electro-Voice, Inc., B-243463, Apr. 3, 1991, 91-1 CPD ¶ 346; Picker Int'l, Inc., 68 Comp. Gen. 265 (1989), 89-1 CPD ¶ 188. An offeror has an obligation to submit a proposal which fully demonstrates the technical acceptability of its offered product. Where an offeror fails to set forth clearly in its proposal technical information that convinces the procuring agency that the proposed product meets the agency's minimum needs, the agency may reasonably find the proposal technically unacceptable. Worldwide Sec. Servs., Inc., B-244693; B-244693.2, Oct. 21, 1991, 91-2 CPD ¶ 351.

Here, in its initial proposal, the protester individually listed seven shutdown indicators which would be included on its equipment. The protester, however, did not list the sensor failure and microprocessor failure shutdown indicators. Although the omissions were pointed out in discussions, the protester in its revised proposal still did not state that its equipment would include the sensor failure and microprocessor failure shutdown indicators as required by the solicitation's technical specifications. Rather, the protester referenced its initial proposal and generally stated that its equipment would include an electrical signal panel which would indicate the cause of a shutdown. The protester's descriptive literature showed that the electrical signal panel would include six of the shutdown indicators; however, none of these shutdown indicators was for sensor failure or microprocessor failure. Therefore, because the protester never stated that it would furnish equipment meeting the solicitation's technical specification requirements, we have no basis to question the contracting officer's rejection of the protester's proposal as technically unacceptable.¹ Since the contracting officer

¹In its comments to the agency report filed in response to this protest, the protester, while arguing again that its electrical signal panel essentially met the solicitation's technical specification requirements for a sensor failure shutdown indicator, offered no statement to rebut the agency's position concerning its failure to include a microprocessor failure shutdown indicator. In our view, the protester's failure to address the agency's position concerning the microprocessor failure shutdown indicator is
(continued...)

reasonably concluded that the protester's proposal was technically unacceptable, its lower price in comparison to Ingersoll-Rand's price is not relevant. See GTE Int'l, Inc., B-241692, Feb. 19, 1991, 91-1 CPD ¶ 186.

For the first time in its comments to the agency report, the protester raised two additional issues. First, the protester alleged that the specifications were "written around" Ingersoll-Rand's equipment. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Here, the protester's general manager admits that he was very familiar with Ingersoll-Rand's equipment since he was a former employee of that firm. However, the protester failed to raise the issue concerning an alleged solicitation impropriety apparent from the face of the solicitation prior to the June 3, 1991, closing time for receipt of proposals. Thus, the protester's allegation is dismissed as untimely.

Second, the protester alleged that Ingersoll-Rand's equipment did not meet the agency's technical specification requirements and therefore its proposal also should have been rejected as technically unacceptable. Under our Regulations, a party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. 4 C.F.R. §§ 21.0(a), 21.0(b); Discount Mach. & Equip., Inc., B-240426.6, Jan. 23, 1991, 91-1 CPD ¶ 66; ISC Defense Sys., Inc., B-236597.2, Jan. 3, 1990, 90-1 CPD ¶ 8. Since the protester's proposal properly was rejected as technically unacceptable and the protester was not eligible for award, and since the record shows that there was another

¹(...continued)

a sufficient basis in and of itself to find that the contracting officer reasonably rejected the protester's proposal as technically unacceptable. Moreover, the awardee states that the protester's item does not use a microprocessor as required by the specifications, and the protester's descriptive literature does not show a microprocessor as part of the item. If that is the case, then the protester's item does not meet the specifications for a microprocessor control unit with specified features.

offeror besides Ingersoll-Rand which submitted a technically acceptable proposal, we find that the protester is not an interested party to challenge the technical acceptability of the award to Ingersoll-Rand.²

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



James F. Hinchman
General Counsel

²Even if the protester were an interested party, its allegation concerning the technical acceptability of Ingersoll-Rand's proposal is untimely as the protester did not diligently pursue the information forming this basis of protest. See Adrian Supply Co.--Recon., B-242819.4; B-242819.5, Oct. 9, 1991, 91-2 CPD ¶ 321.