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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: C&W Equipment Company

File: B-251416

Date: April 1, 1993

Robert Tumser for the protester.
Ronald E. Cone, Department of Energy, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protest alleging that offer was improperly rejected as technically unacceptable is denied where protester's proposal did not conform to required specifications for a radiological laundry system.

DECISION

C&W Equipment Company protests the award of a subcontract¹ to H-M Milnor Company under solicitation No. 97-EGC30, issued by Martin Marietta Energy Systems, Inc. in its capacity as a prime management contractor for the Department of Energy at its Oak Ridge, Tennessee, facility. The solicitation contemplated the award of a subcontract to provide advanced engineering data for the design of a radiological laundry system for the Oak Ridge diffusion plant, with an option to install the system itself. C&W alleges that its proposal was improperly rejected as technically unacceptable.

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

The solicitation called for the submission of a technical proposal and fixed prices for two line items--the advanced engineering data relating to the design of the radiological laundry system and an option for the installation of that system at Oak Ridge. Award was to be made to the low priced

¹We review subcontract awards by prime management and operating contractors under a "federal norm" standard; *i.e.*, to determine whether they are consistent with the policy objectives set forth in statutes and regulations which apply directly to federal agency procurements. Elma Eng'g, 70 Comp. Gen. 81 (1990), 90-2 CPD ¶ 390.

technically acceptable offeror. The design of the laundry system had to conform to the specification incorporated into the solicitation which contained two requirements pertinent to this protest: (1) paragraph 5.2.6, which required an automatic lint collection system with a "remote" collector; and (2) paragraph 5.2.1.1.a, which required an inclined loading conveyor with a minimum of six compartments.

Four initial proposals were received by September 9, 1992. Written discussions were initiated on September 18 and offerors were informed of those areas where their proposals were found to be noncompliant. In C&W's case, the protester was informed, among other things, that its proposed laundry equipment did not comply with the requirements of paragraph 5.2.6 relating to the lint collection system and paragraph 5.2.1.1.a relating to the six-compartment laundry conveyor. Best and final offers (BAFO) were received on October 23 and C&W's low priced BAFO of \$910,739.20² was found to be technically unacceptable because of the firm's failure to provide the required lint collection system and loading conveyor. Award was then made to H-M, at a price of \$1,026,015.³

C&W argues that its proposal is technically compliant with the solicitation requirements for a lint collection system and that, although its offer described a four-compartment loading conveyor, this was a "typographical error that should have been disregarded by Martin Marietta.

The determination of the relative merits of proposals is primarily the responsibility of the contracting activity, which must bear the burden of any difficulties resulting from a defective evaluation. Computerized Project Mgmt. Plus, B-247063, Apr. 28, 1992, 92-1 CPD ¶ 401. In reviewing challenges to the evaluation of a technical proposal in the context of an award of a subcontract by a government contractor "by and for the government," we will not reevaluate the proposal and independently judge its merits,

²This price includes a 12 percent evaluation differential because C&W's equipment was foreign made. While the protester objects to the use of the differential, its objection is irrelevant because its price is low with or without the differential. Moreover, the proposal was properly found to be unacceptable.

³H-M's price included \$32,000 for the separately priced advanced engineering data. C&W objects to the separate pricing of this item as it argues that the price of data is normally included in the overall price of a laundry system. This objection, however, ignores the solicitation format which required the separate pricing of the engineering data.

but instead will consider whether the evaluation was reasonable and in conformance with the policy objectives in the relevant federal statutes and regulations. Id. The fact that a protester disagrees with the government contractor's judgment does not render the evaluation unreasonable. See L.S. Womack, Inc., B-244245, Sept. 30, 1991, 91-2 CPD ¶ 309. Finally, in a procurement conducted "by and for the government," a proposal that fails to conform to the material terms and conditions of a solicitation is unacceptable and may not form the basis for award. Id.

With respect to its lint collection system, C&W does not dispute that the solicitation required a remote collector and does not maintain that it offered a remote collection system, i.e., --one which conveyed potentially radioactive lint to a remote containment area. Rather, C&W simply states that its automatic system is in compliance with the solicitation and argues that a remote lint collector is unnecessary because any products, including lint, coming out of the washer through a barrier wall will be free of contamination. C&W further maintains that the requirement in paragraph 5.2.1.1.a for a remote collector in the dryer portion of the laundry system is inconsistent with another part of the specification requiring dryers to have "internal filters."

In view of the fact that the specification clearly called for a "remote" lint collector and C&W admittedly did not offer one, we conclude that Martin Marietta had a reasonable basis for finding that C&W was not in compliance with paragraph 5.2.6 of the specification. To the extent that C&W objects to the requirements of paragraph 5.2.6 as unnecessary, or incompatible with another part of the specification, its protest is untimely because, under our Bid Protest Regulations, protests based on alleged improprieties apparent on the face of a solicitation must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1992); Computerized Project Mgmt. Plus, supra.

Finally, we disagree with C&W's assertion that its offer of a four-compartment loading conveyor (instead of a six-compartment conveyor as required by paragraph 5.2.1.1.a of the specification) was a typographical error which should have been overlooked by Martin Marietta. In its initial proposal, and following discussions with Martin Marietta during which its noncompliance with the six-compartment conveyor requirement was pointed out, C&W continued to offer a four-compartment conveyor in its BAFO. While the protester maintains in its comments on the agency report that its proposal was in fact based on a supplier quotation for a six-compartment conveyor, there is no evidence in the

record which shows that the quotation was contained in its proposal. Accordingly, we find that Martin Marietta had a reasonable basis for concluding that the protester's proposal was unacceptable for failure to conform to the loading conveyor requirement as well.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel