



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Radio Systems, Inc.

File: B-255080

Date: January 10, 1994

Herbert A. Kronenfeld for the protester,
Timothy A. Chenault, Esq., United States Coast Guard, for
the agency;
Andrew T. Pogany, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Agency may exclude proposal from the competitive range where the agency reasonably determines that because of the proposal's high price it has no reasonable chance of being selected for award.

2. Contention that specifications issued by contracting agency should be more restrictive to meet the needs of the user agency is not generally reviewable by the General Accounting Office since the use of broadened or less stringent specifications is consistent with the requirement for full and open competition.

DECISION

Radio Systems, Inc. (RSI) protests its exclusion from the competitive range under request for proposals (RFP) No. DTCG23-93-R-HAV046, issued by the United States Coast Guard. We deny the protest.

The RFP sought proposals for a reliable waterproof two-way communication device to be used during rescue operations on land, in water, or on a vessel. The RFP, issued on June 16, 1993, advised offerors that award would be made to the responsible offeror whose proposal was determined to be the most advantageous to the government, cost and other factors considered. The 2 major factors stated were technical (with 16 subfactors) and price. While price was not the most important factor, the RFP stated that its importance would not be ignored and that, depending on the degree of equality among technical proposals, "price may be the deciding factor for selection."

Four proposals were received and evaluated. One proposal was found to be technically unacceptable. Three proposals, including RSI's, were found to be capable of being made technically acceptable; however, because RSI's proposal was 350 percent higher priced than the low offeror, the contracting officer determined that RSI did not have a reasonable chance for award and eliminated it from the competitive range.¹ This protest followed.

RSI does not argue that had it been afforded the opportunity to discuss and revise its proposal, it could have significantly reduced its price. -- Rather, in its comments on the agency report, RSI argues that the "specification writers for the Coast Guard [were] operating in a vacuum," because "key specifications" were omitted from the solicitation which will result in a "radio that will [not] function reliably over prolonged use in varied rescue situations." For example, RSI argues that the RFP fails to contain testing procedures for immersion (submersibility) in which full shock and vibration testing is performed. In short, RSI argues that since the RFP fails to contain "critical requirements," the RFP should "be significantly rewritten to protect the best interests of the government." RSI believes that it submitted the "only responsible offer" that meets the actual requirements of the government (that is, for an item that exceeds the stated specifications contained in the RFP).

Initially, we point out that the competitive range is determined by comparing all of the acceptable proposals and proposals reasonably capable of being made acceptable in a particular procurement, 52 Comp. Gen. 718 (1973), and an acceptable proposal may be eliminated by comparing the relative ranking of the other proposals to the proposal in question. See Jack Faucett Assocs., B-224414, Sept. 16, 1986, 86-2 CPD ¶ 310; Cosmos Eng'rs, Inc., B-218318, May 1, 1985, 85-1 CPD ¶ 491. Consequently, a proposal need not be included in the competitive range simply because it is technically acceptable or capable of being made acceptable when it is determined that it has no reasonable chance for award, based on price or other factors. See id.

Here, the record shows that, compared to the two proposals included in the competitive range, RSI's proposal was exorbitantly priced. We have no basis to question the agency's decision to exclude RSI's proposal from the competitive range based on its high price.

¹Since no award has yet been made and since further negotiations with the firms remaining in the competitive range are contemplated, we are unable to reveal the actual prices offered by RSI and the other competing offerors.

RSI contends that the agency will not obtain a reliable radio based on the specifications. It asserts that the RFP should have contained more stringent specifications which its high quality device alone would have met. We generally will not consider an allegation that the government's interest as a user of the product is not adequately protected by appropriate test or other specification provisions. Assurance that sufficiently rigorous specifications are used is ordinarily of primary concern to procurement personnel and user activities. It is they who must suffer any difficulties resulting by reason of inadequate equipment. We therefore do not resolve such issues pursuant to our bid protest function--since use of broadened or less rigorous specifications is consistent with the requirement for full and open competition--absent evidence of possible fraud or willful misconduct by procurement or user personnel acting other than in good faith, neither of which is alleged by the protester. See Miltope Corp.--Recon., B-188342, June 9, 1977, 77-1 CPD ¶ 417, aff'd, Miltope Corp.--Recon. (Second), B-188342, July 1, 1977, 77-2 CPD ¶ 3.²

The protest is denied.

Robert P. Murphy
 Robert P. Murphy
 Acting General Counsel

DECISION

When a contractor files a protest, the protest is filed with the agency and the contractor is notified of the protest. The contractor must file a protest within 10 days of the date of the award of the contract. The protest must be filed with the agency and the contractor is notified of the protest. The contractor must file a protest within 10 days of the date of the award of the contract.

²RSI's contention that the RFP should have contained additional and more rigorous specifications is also untimely under our Bid Protest Regulations because protests of alleged improprieties apparent on the face of a solicitation must be filed prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1993).