



Comptroller General
of the United States

Washington, D.C. 20548

Rosenoff R

Decision

Matter of: Amray, Inc.
File: B-256949
Date: August 5, 1994

DECISION

Amray, Inc. protests the rejection of its offer as technically unacceptable under request for proposals (RFP) No. 9-BE2-03-3-57B, issued by the National Aeronautics and Space Administration (NASA) for a field emission scanning electron microscope system. Amray alleges that the agency had no basis for rejecting its proposal and challenges the responsibility of its competitor, Philips Electronics Instrument Company.

We dismiss the protest.

On September 8, 1993, NASA issued an invitation for bids (IFB) for the microscope system. Amray and Philips submitted bids. Because both bids were found nonresponsive for failing to meet mandatory design and functional specifications, the IFB was canceled and NASA converted the procurement to a competitive negotiation. As a result, the subject RFP was issued to each firm on December 10 with the same mandatory design and functional specifications that were contained in the earlier IFB. The RFP was accompanied by a cover letter to each firm listing deficiencies found in its earlier submitted bid. In Amray's case, NASA detailed 23 areas in which Amray's microscope system failed to meet the specifications.

Amray and Philips submitted proposals in response to the RFP. Amray offered the same microscope system it had bid earlier. In a cover letter to its offer, Amray submitted a response to NASA's December 10 technical findings in which the firm admitted that its microscope system did not meet 13 of the 23 specifications highlighted by the agency. In other areas, while not admitting that its system did not meet specifications, Amray indicated a deviation. For example, while the specifications called for a 17-inch color monitor, Amray indicated that it was providing two smaller monitors.

On April 5, 1994, Amray was informed that its proposal had been rejected because its offered system did not meet "20 of the specifications." Amray also was advised that the agency

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intended to negotiate a contract with Philips, which had submitted a significantly lower price.

In its protest filed on April 7, Amray: (1) challenged the rejection of its offer by stating that NASA's determination that its proposal was "deficient in 20 areas . . . is totally untrue"; and (2) stated that, to its knowledge, Philips had never delivered an electron microscope system to a customer in the United States.

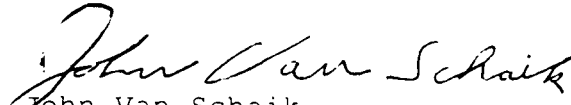
Amray's challenge to the rejection of its proposal is supported only by reference to an exchange of correspondence it had with NASA concerning its bid under the earlier IFB in which the protester indicated "compliance" or "partial compliance" with specifications that had been called into question by NASA. As of December 10, however, when the RFP was issued following cancellation of the IFB, Amray was on notice from NASA of 23 areas in which its offered microscope system did not meet the specifications. As indicated above, Amray submitted an offer in response to the RFP for the same system it had earlier bid, specifically admitting that the system did not meet many of the RFP's specifications.

Our Bid Protest Regulations require protests to set forth a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4) (1994), and we will dismiss a protest that, on its face, does not state a valid basis of protest. 4 C.F.R. § 21.3(m). Amray's challenge to the rejection of its technical proposal states no valid factual basis of protest. Notwithstanding the earlier exchange of correspondence with NASA prior to the issuance of the RFP, Amray knew when the RFP was issued that its microscope system was considered by the Navy to be technically unacceptable for failure to comply with numerous specifications and the protester admitted so in its offer proposing the same system. Therefore, we find that the protester has failed to provide any factual support for its allegation that NASA did not have a basis for rejecting its offer and we dismiss this aspect of the protest.

We also dismiss Amray's allegation with respect to Philips not having delivered a microscope system to a customer in the United States. At best, this constitutes a challenge to the firm's responsibility. We do not review challenges to affirmative determinations of responsibility absent a showing that they were the product of fraud or bad faith or that a definitive responsibility criterion was not met.

4 C.F.R. § 21.3(m)(5). Amray has not alleged, much less shown, the existence of any circumstance permitting our review of the allegation.

The protest is dismissed.


John Van Schaik
Acting Assistant General Counsel

¹In its comments on the agency report, Amray requested certain documents that had been withheld by NASA relating to Philips' bid and proposal and the record of the technical evaluation of proposals. This request is untimely since it was not filed within 2 days after Amray received the agency report. 4 C.F.R. § 21.3(f). In any event, the Philips' documents are irrelevant to the protest since Amray never challenged the technical acceptability of that firm's proposal; further, the substance of the evaluation record relating to Amray's proposal was conveyed to the protester in documents which were released by NASA--Amray simply never responded to the agency's detailed findings.