



Comptroller General
of the United States

Washington, D.C. 20548

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REDACTED VERSION

Decision

Matter of: E-Systems, Inc.

File: B-258667.2

Date: March 23, 1995

Daniel A. Perkowski, Esq., McAleese & Associates, P.C., for the protester.

Claude P. Goddard, Jr., Esq., Jenner & Block, for RJO Enterprises, Inc., an interested party.

Eric Lile, Esq., and Robert C. Peterson, Esq., Department of the Navy, for the agency.

Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee's proposal qualified its offer to provide hardware required to make its product compliant by designating the hardware as optional is denied where protester's interpretation of the proposal's language is unreasonable when read in context.

DECISION

E-Systems, Inc. protests the award of a contract to RJO Enterprises, Inc. under request for proposals (RFP) No. N00612-92-R-0242, issued by the Department of the Navy for an indefinite quantity of versamodule eurocard (VME) chassis. E-Systems contends that RJO's proposal did not comply with all of the RFP's specifications; rather, the protester argues, the proposal suggested that RJO will provide a compliant chassis, in some instances, only at additional cost to the Navy.

We deny the protest.

The chassis is part of a communications system to be used in support of the Navy's anti-submarine warfare operation

*The decision issued on March 23, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

center modernization program. The chassis houses VME boards and provides power, frequency standard, controller and external connections. The RFP sought fixed prices for a base year with 4 option years and provided that technical factors were more important than price but that the importance of price would increase with the degree of equality of proposals.

The Navy received six offers by the initial closing date. Four proposals, including those of RJO and E-Systems, were included in the competitive range. Based upon the average of the technical scores assigned by five evaluators, RJO received 50.82 of 60 possible technical points, while E-Systems received 52.47. RJO's price was [deleted], while E-Systems's was [deleted]. Following discussions, both firms submitted best and final offers (BAFO). RJO reduced its price significantly to \$81,571,439, while E-Systems raised its price slightly to [deleted]. With respect to the technical evaluation, based upon the offerors' responses to the discussion questions, the Navy increased RJO's and E-Systems's technical scores by approximately 1 point each. The agency determined that despite E-Systems's slightly higher technical score, there was no technical superiority in its proposal. Accordingly, given that RJO's price was more than [deleted] less than the protester's, the contracting officer determined RJO's proposal to be the "best value" to the Navy and awarded the contract to that firm.

E-Systems challenges the award by arguing that RJO's proposal qualified its commitment to provide a chassis in conformance with all of the RFP specifications and, in some instances, failed to demonstrate compliance with the requirements. The protester contends that language in RJO's proposal showed that RJO will only provide certain hardware required by its chassis design to allow for chassis configuration at additional cost through change orders to the contract and failed to commit to providing other hardware which may be required during contract performance. Additionally, E-Systems contends that RJO's proposal did not sufficiently demonstrate that it can provide a chassis meeting certain specifications.

While the protester presents several examples of language in RJO's proposal which it views as qualifying RJO's offer or improperly limiting RJO's contractual obligations, we have independently reviewed each of the examples presented by E-Systems and do not reach the same conclusion. While our decision does not specifically address each and every argument concerning RJO's compliance with each of the specifications mentioned by the protester, we have considered all the protester's arguments. We discuss below the protester's central arguments in support of its position

that the Navy unreasonably concluded that RJO's proposal was technically acceptable and that it would deliver chassis meeting all of the specifications.

The RFP set forth "design, construction, performance, and testing requirements" for the chassis, including the following specifications:

"3.1 Equipment Description. The VMEC [VME chassis] shall be a general purpose equipment chassis for use in military command, control, communications, computer and intelligence (C4I) systems intended for shipboard, submarine, shore, patrol aircraft, and portable shelter installations. The VMEC configuration can be tailored to individual system requirements through the specification of options for the size and type of VME boards; the number and configuration of RED/BLACK compartments; the front panel display, indicators and controls; the rear panel connectors; and the operational applications.

"3.5.6 Partitioning. The design of the VMEC shall permit the chassis to be physically configured as one, two, three, or four separate compartments.

"3.5.6.1 RED-BLACK separation. Any of the VMEC compartments may be RED or BLACK . . . RED-BLACK separation through compromising paths such as power lines and internal cabling shall be maintained."

E-Systems contends that the Navy should have "detected" that RJO's proposal described the hardware required to enable its chassis to meet these specifications as "optional" features which the agency could obtain only at an additional, unspecified price. Based on its reading of RJO's proposal "from cover to cover," E-Systems characterizes RJO's approach as "devious," in that it attempted to give the

¹The RFP explained that a RED compartment contains boards which process unencrypted, classified information. A BLACK compartment contains boards which process only encrypted or unclassified information. RED and BLACK VMEC compartments were to be physically and electronically isolated to preclude the inadvertent transfer of unencrypted RED data to a BLACK compartment.

appearance that all necessary hardware would be furnished while, at the same time, stating that such hardware was "optional equipment." E-Systems contends that a reasonable evaluation by the Navy should have discerned that RJO's discussion of its compliance with RED-BLACK specifications always related back to, and reinforced, the approach that RED hardware items were optional features." E-Systems contends that RJO listed such hardware as optional to set the stage for high-priced change orders and that its strategy was to offer "artificially low chassis prices needed to win the contract, and then charge higher prices for its compliance with RED hardware requirements."

The evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Steward-Davis Int'l, Inc., B-250254; B-250254.2, Dec. 17, 1992, 92-2 CPD ¶ 423. Thus, our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. A protester's mere disagreement with the agency does not render the evaluation unreasonable. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

Here, the protester essentially disagrees with the agency's interpretation of RJO's proposal as offering to perform all the RFP requirements. We point out, initially, that it is undisputed that RJO's proposal addressed all of the requirements which E-Systems alleges have not been met. For example, the proposal listed as one of the features of RJO's proposed chassis "18-slot card cage may be partitioned into 1-4 sections for RED/BLACK applications." It stated further that:

"[Deleted.]"

The issue for our review is whether the Navy reasonably concluded that RJO's use of the term optional to describe these features, in this context, did not qualify that firm's obligation to provide chassis in accordance with the RFP specifications. We find that the agency reasonably concluded that the proposal was acceptable.

First, RJO's proposal sought to demonstrate compliance with each of the challenged specifications; there is no indication that RJO intended to take exception to any specification. In this regard, RJO's BAFO specifically stated that it "takes no exception to the terms and conditions of this solicitation." Second, we do not agree

with the protester that the use of the term optional in the proposal can reasonably be read in the manner suggested by the protester.

Concerning its use of the term optional, RJO explains that the statement of work defined a one-compartment chassis as the standard chassis and that its proposal described a one-compartment chassis as its standard version and listed the two-, three-, and four-compartment chassis as "user-specified features." While the necessary hardware for RED/BLACK partitioning was described as "[optional RJO VMEC Features," the term optional connoted that the Navy would not obtain the feature unless it specified it for a particular chassis. This usage was consistent with the RFP which, in specification 3.1, used the term option to describe the differing configurations required. RJO points out, and the record shows, that the proposal nowhere stated or indicated that the optional hardware would have to be separately purchased or would require any additional cost. The agency's interpretation of the proposal as acceptable, in our view, was reasonable.

E-Systems next argues that the Navy "failed to detect RJO's non-compliance" with a separate requirement in the RFP that the chassis permit the insertion of boards of varying sizes. The specification provided, in pertinent part, as follows:

"3.5.4.1 Adaptive sizing. The VMEC subrack shall permit insertion of a 3U, 6U (160 mm) or 9U (160 or 220 mm) board into any board slot in any of the VMEbus backplanes."

The protester states that the awardee's proposal described a capability in its design which would enable its chassis to meet the specification, "but only under circumstances where a full complement of adapters are furnished with each chassis." E-Systems complains that RJO "failed to affirmatively state that it would provide a complete set of adapters with each chassis."

RJO responds that the adapters are a standard feature of its proposal and that it will provide the required number of adapters under the contract with each and every chassis. RJO does not agree, however, that it must provide a complete set of adapters with each chassis. Instead, it contends that in some chassis fewer adapters will be required, while in others more adapters will be ordered by the Navy. RJO asserts that the Navy will determine how many adapters it requires for each particular chassis as orders are placed.

We see nothing unreasonable about RJO's approach or the agency's acceptance of that approach. The Navy points out that the RFP contemplated flexibility and specifically

contemplated that the chassis configuration would be tailored to individual system requirements through specification of options for the size and type of boards. The agency states that it expects that the particular needs of the using activity will be defined prior to placing the order. While the protester asserts that there was no "provision in the RFP for the 'by order' tailoring of chassis" under the contract, we see no reason why the tailoring could not be done by the contractor prior to delivery as contemplated by RJO rather than after delivery by the user activity.

E-Systems argues further that it is unrealistic to expect that the Navy will know what adapters it requires at the moment the Navy places each chassis order. The Navy disputes this, and it is not the function of our Office to determine whether the Navy is capable of administering this contract in the manner in which it intends. Nevertheless, even assuming the protester is correct that the Navy will not know, at the time of ordering, how the chassis will be tailored in terms of the size and type of boards, and therefore will not know the appropriate adapters to order, the Navy could order the full complement to allow for any possible configuration of boards. Finally, there is no support in the record for the protester's contention that RJO would be entitled to additional payment beyond the fixed contract price for providing adapters necessary to meet the adaptive sizing specification.

Next, E-Systems argues that the Navy should have found RJO's proposal unacceptable for failing to offer a chassis which would comply with a number of other specifications. We have considered these allegations and find them to be without merit. For example, E-Systems contends that RJO's proposal did not adequately demonstrate compliance with air cooling requirements. E-Systems asserts that RJO failed to provide "data" or "engineering detail" to support its approach.

In our view, the Navy reasonably concluded that RJO proposed a chassis which would meet the air cooling requirements. As the agency explains, while the RFP admonished that paraphrasing specifications or using phrases such as "standard procedures will be employed" would be inadequate to demonstrate compliance, the RFP did not dictate the level of detail required to demonstrate compliance. The RJO proposal described its chassis cooling method, provided an illustration, and referenced its thermal modeling results, empirical experience with other chassis, and laboratory tests of the proposed chassis showing compliance with the cooling specifications. We therefore find the agency's evaluation to be reasonable in this regard.

In its comments on the agency's initial report, filed on December 6, E-Systems raised a number of additional allegations not contained in its initial protest. For example, the protester challenged the agency's determination that RJO's proposal complied with the system reset, backplane reset, and backplane power switch specifications. We find these issues to be untimely and will not consider them.

Under our Bid Protest Regulations, protests of other than apparent solicitation improprieties must be filed within 10 working days after the basis of the protest is known, or should have been known whichever is earlier, 4 C.F.R. § 21.2(a)(2) (1995). Where a protester initially files a timely protest and later supplements it with new and independent bases for protest, the later raised allegations must independently satisfy the timeliness requirements. Dial Page, Inc., B-256210, May 16, 1994, 94-1 CPD ¶ 311.

Here, E-Systems knew of its additional protest bases when it received the agency report on November 9, 1994. Thus, E-Systems had until November 25, 10 working days later, to raise new protest grounds. Telephonics Corp., B-246016, Jan. 30, 1992, 92-1 CPD ¶ 130. Indeed, E-Systems filed additional protest grounds on November 25 which have been addressed in this decision. The additional allegations first raised in its December 6 comments, however, were untimely filed.²

Finally, E-Systems alleges that RJO's proposal "falsely disparage[d]" E-Systems, its known competitor in the procurement. In the statement to which the protester refers, RJO's proposal simply stated that the firm had performed an industry-wide chassis evaluation and explained why it had not considered E-Systems's chassis. There is simply no indication in the record that this statement had any effect on the evaluation panel or the selection decision. We point out in this regard that the record shows

²In its initial protest, E-Systems complained that the RJO proposal was noncompliant with several other specifications. The agency report responded to each of these allegations in its report. The protester states that it "expressly requests a GAO decision on the record" on any issues raised, "even if not otherwise addressed in these comments." Notwithstanding the protester's request, since it has failed to rebut the agency's position on a number of these issues, we consider them abandoned and will not consider them. See South Capitol Landing, Inc., B-256046.2, June 20, 1994, 94-2 CPD ¶ 3.

that the evaluation was based on the factors stated in the RFP and the agency considered E-Systems's proposal to be slightly superior technically to RJO's proposal.

The protest is denied.

Robert P. Murphy
General Counsel