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Mrs. Susan

Proc. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-186999

DATE: February 8, 1977

MATTER OF: Radix II, Inc.

DIGEST:

1. Contract award action was not required to be delayed under ASPR § 2-407.8(b)(3) during pendency of "conditional" protest because protest became operative only if award was made at a higher price or under non-conforming specifications and neither of these eventualities was deemed to have occurred. Contracting officer is not required to speculate whether protester would consider such conditions met.
2. Where protester failed to show agency acted arbitrarily in evaluating awardee's technical proposal, GAO will not disturb determination that adequate descriptive literature was submitted. Fact that awardee, unlike protester, persuaded agency that proposed equipment was acceptable did not, in circumstances, unfairly place awardee in unequal competitive position.
3. Where protester's response to GAO request for additional statement of protest merely lists specification paragraph which contractor allegedly failed to meet, agency's failure to address matter is not admission because record shows agency was uncertain of protester's interpretation of specification. Protester could have explained reasons for its objection with its additional statement in support of protest and substantive argument raised in response to agency report is dismissed because protest procedures do not contemplate unwarranted piecemeal development of protest issues.
4. Where award is made for full quantity for which prices were requested, agency is assured of lowest total price, and protest against mathematically unbalanced pricing is denied.

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Radix II, Incorporated (Radix) protests the award of contract No. DAAG 39-76-C-0122 for nine High Speed Data Acquisition Test and Control (DATAC) systems to C3, Inc. under Request for Proposals No. DAAG 39-75-C-9717, issued by the U.S. Army, Harry Dismond Laboratories (HDL).

Prior to contract award, Radix submitted a "conditional" protest stating an intention to "formalize" the protest if an award was made to another offeror at a higher price than was offered by Radix or if the accepted products did not meet the Government's specifications. Award was made to C3, Inc. at a lower evaluated price but a post-award protest ultimately materialized concerning, among other reasons, the successful offeror's compliance with the specifications.

As a preliminary matter, Radix objects to the agency's award during the pendency of its "conditional" protest. Armed Services Procurement Regulation (ASPR) § 2-407.8(b)(3) (1978 ed.) prohibits an award during the pendency of a protest except in certain specified circumstances not relevant here. In our opinion it was reasonable for the contracting officer to decide that award could be made notwithstanding the "protest" because the factors which would have caused it to become operative--award at a price higher than Radix's or under non-conforming specifications--were not considered to be present. In the contracting officer's judgment--and we think reasonably--neither of these eventualities occurred and, therefore, the potential protest was not brought into being. In this connection, we think the contracting officer was not required to speculate whether Radix would consider that these conditions were met. Other bases of protest were submitted only after award. Therefore, we find no violation of the cited ASPR provision in this instance.

The remaining bases for Radix's detailed protest generally concern (1) the adequacy of supporting documentation furnished with the successful offeror's revised proposal; (2) whether C3, Inc. proposed to satisfy the Government's requirements; (3) whether the agency evaluated all proposals on the same basis; and, (4) whether the contractor's pricing was so unbalanced as to require rejection of its proposal.

The nine computer systems in question were procured pursuant to negotiation procedures. Initially, Radix proposed a system which included the Interdata 8/16 Processor and C3, Inc. proposed to

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utilize the Interdata 7/16 Processor. Subsequently, C3, Inc. revised its proposal and substituted the 6/16 Processor and provided the Government with standard manufacturer's literature for the 6/16 Processor. Because Interdata's general literature indicated that its 6/16 Processor was equipped with a single memory board, both C3, Inc. and Radix were advised during negotiations that the 6/16 Processor with only a single memory board would not satisfy the memory expansion requirements of the Government's specifications and therefore would be considered "nonresponsive." Ultimately Radix switched from the 6/16 Interdata Processor to an allegedly more expensive processor of another manufacturer while C3, Inc. continued to propose to furnish an Interdata 6/16 Processor and yet comply with the Government's memory expansion requirement.

The record shows that C3, Inc. revised its proposal, in pertinent part, as follows:

"The memory modules of the proposed Interdata Model 6/16 Processor are not restricted to a single memory board or single chassis slot. For example, a 64 KB memory system can occupy two boards or slots, with 32 KB of memory on each board. Thus, if one board were removed, the system would still be fully functional, except for the memory reduction to 32 KB."

The procuring agency thereafter independently sought and obtained verification from the equipment manufacturer's representative as to whether the 6/16 Processor would accommodate either one or two memory boards. Agency personnel were advised that, for business reasons, the manufacturer of the 6/16 Processor did not advertise in its commercially available descriptive literature the two memory board capability provided by the twin chassis version of its Model 6/16. In this connection, the Interdata literature submitted with C3, Inc.'s proposal states that the Model 6/16 standard chassis is a 7-inch rack mountable with 8 subassembly slots and that Model 6/16 also is available with a 14-inch dual chassis that provides 16 subassembly slots. C3, Inc.'s amended proposal offered the extended chassis which, as confirmed with the manufacturer's representative, could accommodate two memory boards. When this issue was raised by Radix after award, C3, Inc. furnished relevant portions of the Interdata Model 6/16 maintenance manual, including the installation specification which illustrates the two memory board performance capability of the twin chassis. It is noted that this specification is dated August 1975, indicating that this capability predates this procurement.

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Radix contends that the Government used a double standard in evaluating proposals in that it was discouraged from bidding the 6/16 Processor. The evidence, however, indicates that the Government's initial objection was based on substantial evidence available to it and that both offerors were similarly advised. Moreover, because the Government learned of the 6/16 Processor's additional capability through C3, Inc., the information subsequently obtained was considered part of the C3, Inc. proposal and was not divulged to other vendors. The record indicates that when both Radix and C3, Inc. were informed that a Model 6/16 Processor with a single-board memory would not be acceptable, C3, Inc. proposed the twin chassis and two memory boards, whereas Radix offered a different manufacturer's equipment. Both were found to be technically acceptable, but because C3, Inc. offered the lowest total evaluated price, it was awarded the contract. In our opinion, the agency's negotiations regarding the acceptability of the Model 6/16 Processor did not unfairly place C3, Inc. in an unequal competitive position.

The protester also contends that it was required to submit in support of its revised proposal more detailed descriptive literature than C3, Inc. was required to submit in support of its 6/16 Processor with two memory boards and that C3, Inc.'s revised proposal was not subjected to technical scrutiny. Moreover, the protester contends that the descriptive literature submitted by C3, Inc. did not indicate that the awardee's proposal could meet the specification's performance requirements.

As to the adequacy and evaluation of the descriptive literature submitted by C3, Inc., we have held that this Office does not interfere in an agency's decision concerning the adequacy of descriptive data, stating:

"Whether the quoted information is adequate for the purpose intended is essentially an engineering determination. We have recognized the primacy of the using agencies in making such determinations. See 17 Comp. Gen. 554, 557. In the absence of patently arbitrary acts, we will not disturb the purely technical judgments made by the procuring activities in the course of establishing specifications and determining compliance therewith. * * *"
B-162403, February 2, 1968.

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In the instant case, HDL was able to determine, based on the commercially available descriptive literature concerning the Interdata 6/16 Processor, and through its own investigations regarding the capability of the Twin Chassis Model 6/16, that the system offered by C3, Inc. was both available and capable of satisfying the specification's performance requirements. Clearly C3, Inc. offered to furnish such a system and assumed the responsibility of complying with the specifications. Moreover, the record shows that the units ultimately furnished are capable of accommodating two memory boards without chassis modification and that the memory boards are equipped with a jumper enabling them to work interchangeably. The protester has not shown the acceptability determination to be erroneous and we have discovered no basis for finding such action to be arbitrary.

In reply to a request by this Office for an additional statement in support of its protest, Radix also questioned C3, Inc.'s compliance with other specifications contained in the solicitation. The firm, however, merely listed the relevant specification paragraph number without further explanation. In this connection the record shows that during the debriefing Radix had requested information regarding C3, Inc.'s proposal in the context of the particular specification but the agency representatives were not prepared at the time to provide the facts requested. The agency's memorandum of the debriefing also reflects the author's uncertainty concerning Radix's interpretation of the specification in question. Although at the time Radix submitted the details of its protest it possessed a copy of C3, Inc.'s proposal, it was not until Radix responded to the administrative report that it adequately explained its interpretation of the specification and why, in its view, the awardee did not comply with these specifications. The agency's failure to address this matter may not be viewed as an admission because the record of the debriefing reflects uncertainty of the protester's interpretation of the relevant specification. In our opinion Radix could and should have argued the substance of all of its objections in this regard when it furnished us the details of its protest. This is the scheme envisioned by our procedures. See 4 C.F.R. §§ 20.2(b)(2) and (d) (1976). It would not be appropriate to allow the protest process to proceed in such a piecemeal fashion and we, therefore, dismiss the arguments raised in response to the agency report and have not required the procuring agency to furnish a written response to Radix's objections in this regard.

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Finally, Radix contends that C3, Inc.'s cost proposal indicates that the awardee had inside information which enabled it to structure its pricing to take advantage of the possibility that the Government could purchase less than the total items for which prices were requested. In its letter dated August 10, 1976, Radix stated:

"The radically unbalanced pricing reflected in the C3 offer confirms the fact that the company had had detailed information on the acquisition probabilities of systems beyond the guaranteed quantity of 3. Specifically, the C3 pricing profile reveals that for Systems Number 4 Through Number 6, HDL was offered a net 54% discount and on all systems beyond Number 6, the discount increases to 56%. There is nothing within the RFP text which would lead prospective bidders to the conclusion that systems beyond the third are only probable in the range between 54 to 64 percent."

We have held that mathematically unbalanced pricing is not objectionable where the solicitation reflects, with reasonable accuracy, the quantities to be purchased. See Edward B. Friel, Inc., B-183381, 55 Comp. Gen. 231 (1976), 75-2 CPD 164. Under the instant solicitation, offers were evaluated and award was made on the basis of nine systems. Thus, C3, Inc., overall, was not in any better competitive position. We find no evidence to support the protester's allegation that C3, Inc. was provided information regarding an alleged improbability regarding the Government's issuance of purchase orders for more than 3 systems. Under the circumstances, award based on the lowest total evaluated price was both reasonable and proper.

The protest, therefore, is denied.

Deputy

[Signature]
Comptroller General
of the United States