



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Advanced Designs Corporation

File: B-275928; B-275928.2; B-275928.3

Date: April 21, 1997

Kevin C. Golden, Esq., Bayh & Connaughton, for the protester.

Ronald S. Perlman, Esq., Porter, Wright, Morris & Arthur, for Enterprise Electronics Corporation, an intervenor.

Robert Peterson, Esq., Department of the Navy, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly rejected protester's proposal where the proposal was not submitted in the format called for by the solicitation, failed to satisfy material technical solicitation requirements, and did not provide an unequivocal offer to perform at a firm, fixed price as required by the solicitation.
2. Protester whose proposal was properly rejected as technically unacceptable is not an interested party to challenge acceptability of awardee's proposal where there was another proposal besides the awardee's which was also determined to be eligible for award.

DECISION

Advanced Designs Corporation protests the rejection of its offer and the award of a contract to Enterprise Electronics Corporation (EEC) under request for proposals (RFP) No. N65236-96-R-0015, issued by the Department of the Navy for a supplemental weather radar (SWR) system in both fixed-site and transportable configurations. Advanced Designs contends that the Navy failed to properly evaluate its proposal. The protester also alleges that EEC's proposal failed to satisfy the requirements of the solicitation and that the agency improperly held discussions with EEC.

We deny the protest.

The RFP, issued on June 26, 1996, solicited offers for a firm, fixed-price contract for a base year (lot I) and four 1-year options (lots II through IX) to produce, install and provide support for an SWR system, including fixed-site Doppler weather radar

systems and transportable Doppler weather radar systems. Each lot included contract line items and, in some instances, subline items for which the offeror was required to provide a unit price and an extended price.

Offerors were required to submit proposals organized in three separate volumes, including a business and price volume, an "other factors" technical volume, and a volume containing the "Level of Confidence Assessment Rating " (LOCAR), concerning the offeror's qualifications and experience. The RFP, at paragraph L-630, "Instructions for Submitting Proposals," provided that:

"[t]he contractor shall submit a single proposal which shall include an offer for a single radar system configuration for the [f]ixed-[s]ite application and a single radar system configuration for the [t]ransportable application. **Separate** [p]roposals may be submitted for **additional** [f]ixed-[s]ite/[t]ransportable radar configuration [offers.]"

Section M of the RFP stated that technical proposals would be evaluated as "outstanding," "very good," "acceptable" or "not acceptable" on six evaluation listed factors. Each factor listed 1 to 4 subfactors. Section M required that proposals be submitted in the form prescribed by the solicitation.

The solicitation provided that award would be made to the responsible offeror whose proposal conforms to the solicitation and represents the best overall expected value to the government, based on the technical evaluation, the LOCAR ratings and price. The RFP stated that in making the best value determination, the agency was more concerned with obtaining superior technical features than with making an award at the lowest overall cost and that the agency may elect to pay a price premium to select a technically superior offeror. The RFP also stated that the contract would be awarded on the basis of initial proposals, without discussions (although it reserved the agency's right to conduct discussions if necessary).

Three offerors, including Advanced Designs, EEC and [deleted], submitted proposals by the August 9 closing date. A seven-person technical evaluation board (TEB) evaluated and scored the technical proposals. Each TEB member individually scored the proposals and these scores were reported to a contract award review panel (CARP), which reviewed the proposals and the scoring and had access to pricing information. While the TEB reviewed Advanced Designs' proposal, the members concluded that they could not score the proposal, that the proposal was unacceptable as submitted, and that it would require major revision to make the proposal acceptable. In particular, the evaluators found that Advanced Designs did not offer the required single radar system configuration for the fixed-site and for the transportable system. Rather, Advanced Designs offered possible systems for each configuration which included three antenna options,

resulting in the proposal of at least six possible system configurations.¹ In addition, Advanced Designs took numerous exceptions to solicitation requirements in its technical proposal and failed to provide firm, fixed prices in its business proposal. Based on these shortcomings, the agency determined that the Advanced Designs proposal was unacceptable and not for further consideration.

The agency awarded EEC's proposal a "very good" rating with a point score of 88.7 (out of a possible 100) and awarded [deleted] proposal an "acceptable" rating with a point score of 54.2. EEC's total evaluated price was \$32,528,240; [deleted] total evaluated price was [deleted]. Award was made to EEC on the basis of initial proposals on December 30, 1996, and this protest followed.

Advanced Designs complains that there was nothing improper with its proposal format. The protester argues that it proposed a single radar system for the fixed and transportable sites and three alternative antenna systems "as options from which the government could choose." The protester argues that the RFP encouraged "alternate" proposals, citing clause C-520, which states, in relevant part, that offerors are encouraged to "identify and propose alternatives to specifications and standards cited in this contract," and Clause L-411, "Criteria for Alternate Proposals," which states, in relevant part, that "[p]roposals submitted in response to this solicitation are not limited to the suggested approaches of the acquisition data furnished" and that offerors are "encouraged to submit alternate proposals containing new ideas, unique approaches or other significant beneficial program improvements." The protester contends that its proposed system with the [deleted] antenna option met all of the solicitation requirements and argues that the Navy should have conducted discussions to allow it "the opportunity to cure what can only be characterized as minor concerns of the government." Advanced Designs contends that its offer was improperly rejected merely because it consolidated permitted alternatives into a single document. As to its pricing, the protester argues that it "substantially complied with the RFP's requirements by providing adequate pricing information from which the government could determine the total price per [l]ot for all of the options presented. . . ."

The evaluation of technical proposals and the resulting determination as to whether an offeror is technically acceptable are matters within the discretion of the procuring agency; our review of an allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated evaluation criteria. Amstar Communications, B-255179, B-255179.2, Feb. 7, 1994, 94-1 CPD ¶ 77 at 4; Quarles Janitorial Servs., Inc., B-251095, B-251095.2, Mar. 3, 1993, 93-1 CPD ¶ 197 at 3. Mere disagreement with the agency's evaluation does

¹According to the agency, the protester also offered options concerning the mean radial velocity requirement, resulting in up to [deleted] possible configurations.

not render the evaluation unreasonable. Amstar Communications, supra at 5; Quarles Janitorial Servs., Inc., supra at 3. Where a proposal is technically unacceptable as submitted and would require major revisions to become technically acceptable, the agency has no obligation to conduct discussions. Sun Enters., B-221438.2, Apr. 18, 1986, 86-1 CPD ¶ 384 at 2.

From our review of the record, we find nothing improper with the agency's determination not to point score Advanced Designs' proposal or its conclusion that the proposal was technically unacceptable. As noted above, the RFP clearly instructed offerors to submit an offer for a single radar system configuration for the fixed-site and transportable applications. Advanced Designs simply disregarded this instruction and offered instead an array of options from which the agency was asked to configure a selection. Simply stated, Advanced Designs' proposal was not in conformity with the clear requirements of the RFP. Clauses C-520 and L-411 upon which the protester relies call for the proposal of new and unique approaches to meeting the specification, not for the listing of an array of options from which the agency is expected to construct a proposal for the offeror.

In addition, the protester took numerous exceptions to the RFP requirements. For example, in its cover letter to its proposal, Advanced Designs advised that its "response complies to the above solicitation ONLY TO THE EXTENT SPECIFIED IN [ADVANCED DESIGNS'] RESPONSE AND IS BASED ON [ADVANCED DESIGNS'] BEST COMMERCIAL PRACTICES ONLY." The letter states that the solicitation is "riddled with [military-standard/specification] MIL-STD/SPEC requirements" and that "[i]f [Advanced Designs] had to meet all the MIL-STD/SPEC, [Data Item Description] DID, [Contract Data Requirements List] CDRL, [Engineering Data for Provisioning] EDFP, [Provisioning Technical Documentation] PTD . . . requirements, it could [deleted] the cost of its proposed response with no added benefit. . . ." Regarding several requirements, the letter advised that the protester's proposal "may or may not comply." For example, Advanced Designs stated that it would provide its standard off-the-shelf commercial drawings and documentation per its best commercial practices and that this "[m]ay or may not comply with [section] Sec. 3.7, Sec. 3.9.4, EDFP as requested in Sec. 3.6.3 and Contracts Data Requirements List Form 1423, and Data Item Description (DD) 1664." As to Provisioning Technical Documentation (PTD), Advanced Designs stated, again, that it would provide its standard off-the-shelf commercial spare parts list per its best commercial practices and that this "may or may not comply with PTD as requested in Sec. 3.6.2, EDFP as requested in Sec. 3.6.3, MIL-STD-1388-1A, MIL-STD-1388-2B, Task 401.2.8, Task 401.2.11, Appendix A, paragraph 40.4.2.7b . . . , Contract Data Requirements List Form 1423, Attachment 2 and 3, and Data Item Description, DD Form 1664."

Advanced Designs also failed to propose firm, fixed prices as required. Rather than completing the price form provided with the solicitation, for each price requested Advanced Designs asked that the agency see an attached "note" which provided a

description of the item or service to be provided or options the protester could provide and prices. In these "notes," the protester advised that it may bill the agency for certain costs which were not included in Advanced Designs' quoted prices. For example, as to fiber optics interface, the protester provided a price for the fiber optics "receiver/transmitter control and data bus and on/off to be used with [deleted]." The protester stated that it could run the fiber up to 1 mile but that its price "[d]oes not include installation of the fiber." As to required site surveys and installation, Advanced Designs specified that its prices are based on its representative being on site for 3 working days, and included travel time, airfare, hotel and per diem. Advanced Designs stated that:

"[a]ny pre or post preparation time (other than the 3 working days on-site) is additional and will be billed at the rate of [deleted] hour. Any additional travel time (other than as noted below) will also be billed at the rate of [deleted]."

As to installation, Advanced Designs stated that:

"[t]he price quoted includes an installation crew consisting of [deleted] men on-site for [deleted] days (8 hours/day), travel time, plus airfare, lodging, per diem and transportation. If installation is not completed by the end of the [deleted] period (or if there are delays), an additional amount of [deleted] crew day will be charged plus lodging, per diem and transportation expenses for the crew."

As a final example, Advanced Designs reserved the right to adjust "prices quoted in case of abnormal inflationary condition occurring during the first through fourth option years (years 2, 3, 4, and 5) of the contract."

In a negotiated procurement, a proposal which fails to conform to one or more of an RFP's material terms or conditions is technically unacceptable and cannot form the basis for an award. Marine Pollution Control Corp., B-270172, Feb. 13, 1996, 96-1 CPD ¶ 73 at 2. The requirement for fixed prices is a material term of an RFP requiring such pricing, and a proposal that does not offer fixed prices cannot be accepted for award. *Id.* at 2. By imposing the price conditions noted above, as well as others not recited here, Advanced Designs did not commit itself to providing all services at proposed firm, fixed prices--a fact which Advanced Designs has not disputed during the course of this protest.²

²Advanced Designs argues that its failure to submit separate proposals was the "sole basis" on which the agency eliminated its proposal from award consideration and, therefore, the "litany of substantive criticism" the agency levels against its proposal in the agency report are ad hoc rationalizations that the agency used to divert our
(continued...)

Advanced Designs also challenges the evaluation of EEC's proposal, arguing that the awardee failed to satisfy a [deleted] for the transportable radar system, did not include acceptable [deleted] in its proposal, and failed to provide prices for two contract line items. The protester also alleges that the agency engaged in improper discussions with the awardee regarding its subcontracting plan.

Since Advanced Designs's proposal was properly rejected as technically unacceptable and there is another proposal besides the awardee's that the agency determined to be technically acceptable, Advanced Designs is not an interested party to challenge the award. A Travel Passport, Inc.; Global Express Travel Servs., Inc., B-255383.2 et al., Mar. 3, 1994, 94-1 CPD ¶ 171 at 7; Quarles Janitorial Servs., Inc., supra, at 6. This is so because, if we were to sustain the protest with respect to EEC and that firm were eliminated from the competition, the agency would award the contract to [deleted], the other technically acceptable offeror. Where the protester would not be in line for an award, even if we were to resolve the protested issues in its favor, the firm generally lacks standing as an interested party. A Travel Passport, Inc.; Global Express Travel Servs., Inc., supra, at 7; Quarles Janitorial Servs., Inc. supra, at 5. Therefore, these protest grounds are not for consideration on the merits.

The protest is denied.

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²(...continued)

attention from the issue of whether the Navy improperly excluded its proposal based on form alone. The protester argues that these criticisms "are not properly before the GAO." In fact, the protester's failure to comply with the technical and pricing requirements are part of the procurement record and were referenced in the December 30 award notification sent to the protester. Contrary to the protester's assertions, these shortcomings were well documented by the agency before award and were considered by the agency in making its determination to eliminate the protester's proposal from award consideration.