



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Potomac Electric Corp.

File: B-409710

Date: July 17, 2014

Leny Chertov, for the protester.

Lauren Didiuk, Esq., and John L. Guinan Jr., Esq., Department of Commerce, for the agency.

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DIGEST

Protest that agency misevaluated proposal as unacceptable is denied where agency evaluation was reasonable and consistent with evaluation criteria and, to the extent specifications were ambiguous, protester failed to protest patent ambiguities before due date for receipt of proposals, making its objections untimely.

DECISION

Potomac Electric Corp., of Boston, Massachusetts, a small business, protests the rejection of its proposal by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), under request for proposals (RFP) No. RA-133W-14-RP-0018 for direct current servo-amplifiers. Potomac argues that NOAA improperly rejected the firm's proposal.¹

We deny the protest.

BACKGROUND

NOAA issued the RFP on January 21, 2014, seeking proposals for servo-amplifiers (SA) to replace the legacy SA. The RFP invited vendors to submit commercial item

¹ Potomac also alleges that NOAA intends to award a contract to Hitachi Ltd. The record reflects neither the selection of a contractor nor the award of a contract. As a result, this decision only addresses the evaluation of Potomac Electric's proposal.

proposals for an SA that would be a “form, fit, and function” replacement for the existing “legacy” SA.² RFP attach. 1, Performance Specification, at 2. The RFP required an initial quantity of 317 SAs, as a low-rate initial production, followed by an initial production run, as well as options for 124 additional units. RFP at 3.

The RFP also included a set of performance specifications with accompanying photographs and diagrams, which depicted two jacks on the exterior of the SA, which were identified as J1 and J2. RFP attach. 1 at 12-13. The RFP provided that J1 was to be used for power connections, while J2 was a type of standard 25-pin connector jack (known as a DB-25P), which was to be used for control signals. Id. at 4-5.

The specifications also included a requirement for “some external indication” to differentiate between two types of faults. Id. at 4. As relevant to this protest, the first of those specifications was as follows:

Servo-amp Output short to ground fault

The servo-amp shall shut itself down to prevent damage in the event that the drive output (+/-) to the motor [is] shorted to ground.

Simultaneously, pin 9 on J2 shall be set low for fault reporting. To differentiate this alarm from Servo-amp Overcurrent fault, some external indication shall be provided to the maintainer.

Id. (emphasis added).

The second relevant specification, for overcurrent fault, provided in relevant part as follows:

Servo-amp Overcurrent fault

The current limit for the servo-amp is 45 amps max

Exceeding this limit shall result in a fault and the amp shall shutdown. Simultaneously, pin 9 on J2 shall be set low for fault reporting.

Id.

The RFP directed offerors to submit both a written proposal and two SAs as product samples for testing. Award was to be made to the firm that submitted the lowest-priced technically acceptable proposal. RFP at 21. Acceptability was to be assessed by reviewing the offeror’s test data to determine compliance with

² An SA is essentially a type of electrical controller used in the National Weather Service’s Next Generation Radar (known as the NEXRAD WSR-88D) antenna positioning system.

performance specifications, then the two test units would be subjected to bench testing to verify compliance with the same specifications. After these steps, past performance would be reviewed, and the lowest-priced acceptable offeror would be selected for award. RFP at 21-22.

NOAA received proposals from three offerors, including Potomac Electric, by the February 20 due date. Contracting Officer's Statement at 1. The evaluators concluded that two proposals were acceptable, but that the protester's proposal was unacceptable. Id. at 2. Specifically, the evaluators concluded that the firm's proposed SA did not comply with the specification for an externally accessible test point for current monitoring or a serial data port, and also did not comply with the specification that the SA provide an external indication to differentiate between an output-short-to-ground fault and an overcurrent fault. Id. at 3.

On April 4, the contracting officer mailed a letter to Potomac Electric, stating that the firm's proposal had been rejected as unacceptable. Id. at 3. This protest followed.

ANALYSIS

Potomac Electric argues that its SA complied with both specifications, and therefore should have been found acceptable. We address each requirement and, as explained below, we conclude that NOAA's evaluation was reasonable.

Externally Accessible Test Point for Current Monitoring

Potomac Electric maintains that its proposal identified the externally accessible test point for current monitoring at pin 11 on J2, and that the SA does provide current monitoring at that location. Protest at 6. Thus, Potomac Electric argues, it fully met the RFP requirement, and proposed an SA that had the form, fit, and function of the legacy system, as NOAA specified in the RFP. Potomac Electric further argues that its proposal also identified the ability to use a serial data port, labeled as J3 on its SA, to perform current monitoring by connecting a computer to that port, which its samples also had. Id.; see also Agency Report (AR), Tab 5, Potomac Electric Proposal, app. C, at Quick Start-Up Guide pp. 2-3 and Operation Manual pp. 13-14.

NOAA argues that Potomac Electric's proposed SA was evaluated as unacceptable because providing the current monitoring function at a pin on J2 is not "externally accessible." AR at 5; Supplemental AR at 2. NOAA explains that although J2 is a jack on the outside of the SA, when NOAA installs the SA, it attaches the corresponding plug (known as P2) to that jack, and therefore pin 11 can no longer be accessed for current monitoring. Supplemental AR at 2. Thus, NOAA argues,

the evaluators reasonably found pin 11 on J2 was not an externally accessible test point.³

Further, with respect to the alternative to provide current monitoring through the serial data port, NOAA argues that Potomac Electric's proposal explained the operation of the data port and the corresponding computer software, but also stated that "the use of [Potomac Electric's serial data port software] is not needed unless NOAA will decide on future modifications." AR, Tab 5, Potomac Electric Technical Proposal, at 5. Based on that statement, NOAA concluded that the serial data port current monitoring function was unavailable. AR at 6.

An agency's method for evaluating the relative merits of competing proposals is a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method for accommodating them. Where an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Science Applications Int'l Corp., B-290971 et al., Oct. 16, 2002, 2002 CPD ¶ 184 at 4.

As to Potomac Electric's first approach, which provided current monitoring on pin 11 of J2, the protester argues that the RFP failed to state that pins on J2 would not be considered externally accessible due to the attachment of the corresponding plug. In our view, NOAA reasonably found pin 11 on J2 did not meet the RFP requirement that the SA have an externally accessible test point for current monitoring.⁴ To the extent that Potomac Electric argues that NOAA's intent in using the term "externally accessible" was not explained in the RFP, we think the term was patently ambiguous; that is, it could imply two opposite reasonable conclusions whether J2 was externally accessible. This fact, which was presumably known or should have been known to Potomac Electric when it submitted its proposal, results in the ambiguity in the solicitation being patent. See SNAP, Inc., B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 10 (protest of agency's interpretation of undefined solicitation term was untimely when raised after award where protester presumably knew of the ambiguity). As a result, the protester was obligated to file its protest before the date set for receipt of proposals and did not do so; any such challenge now is untimely. 4 C.F.R. § 21.2(a)(1) (2014) (to be timely, protest alleging improprieties in solicitation that are apparent before time for receipt of initial proposals must be filed before proposal submission deadline).

³ In response to questions from our Office, NOAA explains that it does not use the current monitoring on the legacy SA at pin 11 of J2 for the same reason; to do so would require removing plug P2 from its connection at jack J2. Memorandum from NOAA Technical Evaluator to GAO, June 17, 2014, at 1.

⁴ Potomac Electric does not appear to dispute that operation of the SA necessarily required attaching the corresponding plugs to jacks J1 and J2.

Additionally, although Potomac Electric argues that its serial port complied with the second option for current monitoring, the firm's proposal did not clearly demonstrate this capability. It is a well-established principle that offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. SNAP, Inc., supra, at 8. Potomac Electric's reference to use of the serial data port being unnecessary, followed by a vague reference to future modifications, reasonably led NOAA to conclude that its serial port did not provide the current monitoring function described elsewhere in the proposal. As such, we have no basis to question NOAA's conclusion that Potomac Electric's proposal was unacceptable under the current monitoring specification.

External Indication to Differentiate Faults

Potomac Electric also argues that NOAA unreasonably concluded that its proposed SA did not comply with the requirement to provide an external indication that would differentiate between two faults. In particular, as quoted above, the RFP required the SA to provide an "external indication" to differentiate an overcurrent fault from an output-short-to-ground fault (both of which, as the quoted provisions from the RFP show, result in shutting down the SA and setting pin 9 of J2 to low⁵ as an alarm). The protester's proposal stated that fault monitoring was provided through the serial data port, J3, by connecting a computer that would display a fault log. Protest at 7.

NOAA argues that an indication on a computer screen of which fault has occurred did not meet the requirement for an external indication, because an external indication had to be obvious upon opening the enclosure where the SA was installed.⁶ AR at 7. The evaluators thus concluded that differentiating the type of fault alarm through software was "not obvious or external." Id.

We agree with NOAA's conclusion that Potomac Electric's proposal failed to provide an external indication that would differentiate the two faults. Although Potomac Electric argues that it could have provided a different indication, such as a light, if it had been aware of the agency's preference, this confirms that Potomac Electric recognized a patent ambiguity in the RFP, but failed to protest this solicitation defect in a timely manner. SNAP, Inc., supra, at 10.

⁵ The term "setting . . . to low" is a reference to a logic state in electronics, in contrast with the logic state of "high." See generally, George Collins, A Beginner's Look at Digital Electronics, QST 32 (May 1983).

⁶ In response to questions from our Office, NOAA acknowledged that the RFP referred to an "alarm" being the setting of pin 9 on J2 to low, and thus the RFP could not be interpreted as requiring the "external indication" also to be an alarm. Memorandum from Technical Evaluator to GAO, June 17, 2014, at 2.

In sum, NOAA reasonably evaluated Potomac Electric's proposal as unacceptable based on its failure to satisfy two requirements. Although both requirements were ambiguous, Potomac Electric failed to protest those ambiguities before the due date for receipt of proposals, making its objections to the ambiguities untimely.

The protest is denied.

Susan A. Poling
General Counsel