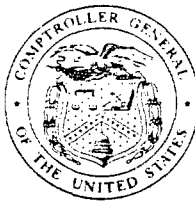


DECISION



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

9583

FILE: B-192158

DATE: March 29, 1979

MATTER OF: Techniarts

CN 6/100/49

DIGEST:

[Allegation that Evaluation Criteria were Inconsistently Applied]

1. Protest that evaluation criteria were inconsistently applied and that protester's proposal should have been accepted because it was superior to and lower in price than awardee's is denied since record indicates agency had reasonable basis for rejecting protester's technical proposal as unacceptable and outside the competitive range and therefore for not conducting discussions with protester. No obligation exists to conduct oral or written discussions with offeror whose proposal is outside of competitive range.
2. Offeror's failure to identify and discuss qualifications of proposed operating personnel properly may result in rejection of proposal without discussions when RFP identifies qualifications of assigned personnel as second most important evaluation factor.
3. Contracting officer's failure to obtain approval to award contract while protest was pending at GAO was procedural deficiency which did not cause protester substantial harm.
4. Protester is not entitled to proposal preparation costs where record shows agency did not act arbitrarily and capriciously to deny protester award to which it was otherwise entitled.

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Techniarts protests award of a contract under request for proposals (RFP) No. 3-8-101 issued by the National Park Service, Department of the Interior (Interior). The RFP called for proposals to provide and operate a sound reinforcement system at the Carter Barron Amphitheatre, Washington, D. C. during the past performance season.

Techniarts contends, in part, that the contract award was made in an arbitrary and capricious manner, that its proposal was unfairly evaluated and erroneously interpreted, and that negotiations should have been held with Techniarts because its price was the lowest. Upon reviewing the record of this procurement, we have concluded that there is a rational basis for the agency's rejection of Techniarts' technical proposal and that the agency's refusal to conduct negotiations with the firm irrespective of its low price was proper.

Five proposals were received and after initial evaluations were completed, Techniarts inquired with the contracting office concerning the status of the procurement and its relative standing. At the time of this inquiry the contracting office had obtained from the evaluation panel only initial numerical ratings of the technical proposals. More descriptive written evaluations were to be submitted at a later time. Techniarts was informed that the proposal of Recording Consultants, Inc. (RCI) had received the highest technical score from the evaluation committee. During the ensuing discussion, the procuring official came to believe that the initial proposal evaluation may have been hurried and that Techniarts' proposal may have been misread by the technical evaluation panel, there being no written comments to explain the initial evaluation scores. A reevaluation, therefore, was requested by the contracting office. Techniarts, which contends that it was told that RCI received the award, protested at that point to Interior and this Office.

Upon reevaluation, Techniarts' technical proposal attained a score of 67.5 points out of 100 possible points, compared to a rating of 94.5 points for Audio Technical Services, the eventual successful offeror,

and a rating of 87.5 points for RCI. The procuring activity then eliminated Techniarts and two lower scored offerors from the competition as technically unacceptable.

The solicitation stated that the most important evaluation factor was the offeror's understanding of the scope of work; 40 points out of 100 were assigned to this area. The successful offeror received a near perfect score of 39 points because it demonstrated "a high degree of knowledge" concerning noise pollution of the neighborhood surrounding the Amphitheatre, which the solicitation viewed as a "major problem". Techniarts received a lower score of 31.5 points under this evaluation factor. Our review of the proposals shows that Techniarts provided a more general discussion than did the successful offeror of its solution to the noise pollution problem. The successful offeror gave a more detailed description of the equipment and measures to be taken to resolve the noise pollution problem and we believe the higher score given it for this factor was reasonable.

In addition, the successful offeror identified all personnel to be assigned and was much more specific and informative in describing its capabilities and experiences than was Techniarts. In contrast, Techniarts' proposal promised technical proficiency of a unnamed system operator who would have a minimum of four years experience. The only person identified by name in Techniarts' proposal was the firm's partner who would be responsible for establishing the system requirements and for supervision of the installation. Although the second most important evaluation criterion was the qualifications of assigned personnel, Techniarts did not discuss the related experience of its proposed operating personnel but provided only a discussion of its corporate experience. Thus, Techniarts received only 10 points out of a possible 30 points for this criterion.

Techniarts argues that since the bulk of the points lost in evaluation resulted from a lack of detail about its proposed personnel it should not have been excluded from the competitive range. The protester states that a telephone request would have elicited the information.

However, an offeror must demonstrate affirmatively the merits of its proposal and it runs the risk of proposal rejection if it fails to do so clearly. Kinton Corporation, B-183105, June 16, 1975, 75-1 CPD 365; Programming Methods, GTE Information Systems, Inc., B-181845, December 12, 1974, 74-2 CPD 331. Although Techniarts may have been willing to propose and identify specific operating personnel for contract performance and to discuss their qualifications and experiences, a revision along these lines essentially would have required a major revision of its proposal. See Servite International, Ltd., B-187197, October 8, 1976, 76-2 CPD 325.

Consequently, our review of the record, including the proposals submitted by the protester and the successful offeror, indicates there is rational support for the low evaluation score given Techniarts and for the rejection of its technical proposal without discussions. In this regard, we point out that there is no obligation to hold discussions with an offeror to permit the offeror to improve its proposal when the proposal is so deficient as to be outside the competitive range. Group Operations, Incorporated, 55 Comp. Gen. 1315 (1976), 76-2 CPD 79; Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232.

Techniarts raises other matters which have no bearing on the primary issues raised by its protest. For example, Techniarts states that it was falsely advised during its pre-protest conversation with the contracting office that award had been made to RCI. The agency denies giving any such advice but states that Techniarts was told that RCI's technical proposal had been awarded the highest numerical rating. Assuming that Techniarts was erroneously advised that RCI had been awarded the contract, we see no prejudice to Techniarts because the sole basis for its initial protest was its belief that the agency misconstrued its proposal. The identity of the awardee, if there was one at the time of the conversation, is irrelevant to this issue.

The protester further argues that the agency's report falsely states that the technical director for Wolf Trap Farm Park was a member of the evaluation

panel. However, the agency report states that the Park's technical advisor, not director, was on the panel.

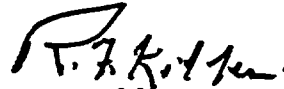
Techniarts also objects to the contracting officer's failure to obtain necessary approval for awarding the contract while the protest was pending in this Office. The agency admits to having knowledge of the protest telegram to GAO and to having failed to obtain approval for the award action at an appropriate level above that of the contracting officer in accordance with FPR § 1-2.407-8(b)(3) (1964 ed.). Notwithstanding this procedural deficiency, see New Haven Ambulance Service, Inc., 57 Comp. Gen. 361, 367 (1978), 78-1 CPD 225, the agency did reexamine protester's proposal prior to award to insure that it did not misconstrue the proposal, the concern expressed in Techniarts' initial protest document, and it is clear that the contracting officer's failure to obtain the necessary award approval did not cause the protester substantial harm. Moreover, we note that Interior has requested the Director, National Park Service, to take corrective measures to ensure this deficiency does not recur.

During the development of this protest, Interior acknowledged that other deficiencies occurred and that it has instructed the National Park Service to take corrective action to preclude such deficiencies in the future. Our review indicates that there were in fact several deficiencies in this procurement, and although none resulted in prejudice to the protester, we are by separate letter bringing them to the attention of the Secretary of the Interior.

Finally, the protester requests reimbursement for proposal preparation and related expenses. Such expenses are reimbursable when an agency, by its arbitrary and capricious actions, deprives an offeror of an award to which it reasonably otherwise would have been entitled. See, e.g., Morgan Business Associates, B-188387, May 16, 1977, 77-1 CPD 344. Since the agency

acted reasonably in rejecting the protester's proposal, it is readily apparent that the protester is not entitled to proposal preparation expenses.

Protest denied.



Deputy Comptroller General
of the United States