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DECISION



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

FILE: B-188816

DATE: November 23, 1977

**MATTER OF: Paragon Mechanical Co. and Arnold M.
Diamond, Inc.**

DIGEST:

Technical proposals submitted under first step of two-step formally advertised procurement may be rejected without negotiations if they are unacceptable as submitted and are not capable of being made acceptable without major revision.

Paragon Mechanical (Paragon) and Arnold M. Diamond, Inc. (Diamond) protest the rejection of their proposals submitted in response to National Aeronautics and Space Administration (NASA) Request for Technical Proposals (RFTP) 1-51-6260, during the first step of Two-Step procurement for the construction of a refuse fired steam generating facility. The facility, to be located in the Hampton, Virginia area, is a joint project of NASA, Langley Air Force Base, and the City of Hampton. NASA is responsible for the design, construction and testing of the facility, which is to be leased and operated by the City to serve its needs as well as those of NASA and the Air Force.

A total of 10 firms submitted 12 proposals. The Paragon and Diamond proposals were among the five proposals which were found to be technically unacceptable and incapable of being made acceptable, and which were rejected without discussions.

It appears that the protesters' proposals were rejected for the following reasons:

1. The offerors did not adequately discuss problems associated with design and operation of the type of facility to be built, and did not describe the design approach which would be followed.
2. They did not identify sufficiently intended suppliers of major equipment and equipment (by type and model number).

B-108816

Consequently, the proposals lacked sufficient information to fully define the character of the equipment which would be furnished.

3. The plant configurations proposed conflicted with the specifications and did not satisfy project needs.

Moreover, Paragon's proposal was viewed as deficient in two additional respects. In NASA's view, the proposal did not contain sufficient information regarding project planning and scheduling, and it omitted required management approach and capability data.

In a report to our Office, NASA indicates that it desires to construct a state-of-the-art facility utilizing refuse to produce steam, principally for heating purposes. NASA states that the technology involved in a refuse-fired steam generating facility is more complex and sophisticated than that necessary for a mere trash incinerator or an oil fired steam generating facility.

The solicitation required that the level of detail furnished in a technical proposal be sufficient to permit NASA to evaluate the adequacy of the proposed approach. The offeror was required to provide a discussion of design approach; project plan and scheduling approach; management approach and capability; and design data which was to be "as complete and detailed as possible" containing "detailed information such as a listing of major equipment, manufacturer, type, model number, etc. as appropriate to allow for Government evaluation of the quality of the equipment to be provided." In addition, the offeror's technical proposal was to include a description of the overall facility configuration proposed depicting the relative arrangement and geometry of all major components and subsystems. Operational characteristics and ratings were to be provided for all major components as well as preliminary single line electrical diagrams indicating the offeror's approach to the design of the power system.

Paragon asserts that its proposal was intended to be a refinement of NASA's design as expressed in the solicitation package. Paragon claims that it relied upon NASA's insistence at the pre-proposal conference and through the RFTP that the solicitation was meant to be a design specification, and expresses its belief that NASA should have known of the design problems to be encountered as they would relate to its design. Moreover, Paragon cannot

B-188816

see how a firm with its extensive experience in boiler plant construction work could be rejected. Consequently, it believes NASA must have "selected what was thought to be the most attractive appearing proposals and rejected the remainder without regard to their factual response."

Diamond's complaints are similar. In addition, it cites numerous projects with which it has been or is involved, to demonstrate its expertise regarding the handling and mass burning of refuse and steam generation, as well as its experience with the type of designs proposed. It insists that its basic technical proposal met all performance requirements stated in the RFTF and that its designs were entirely workable.

Further, Diamond charges that its proposals were not given adequate consideration, and that at best, NASA should have sought clarification in certain respects rather than reject the proposals without discussions. Specifically, Diamond believes that NASA misconstrued its proposals, did not give credit to portions of Diamond's proposals which included commentary prepared by its intended boiler subcontractor, and attached undue significance to its use of brand-name or equal descriptions which NASA viewed as insufficient to identify the equipment being offered.

While we have reviewed all of the arguments presented by the protesters, in our view it is dispositive of these protests that in both instances the offerors failed to adequately describe their technical proposals and to conform those proposals to the solicitation requirements relating to design of the boiler train. In this connection the solicitation provided, as follows:

"Include a discussion of your proposed water tube boiler train integrated design for the complete refuse-firing system. Your discussion should cover the following subjects with particular emphasis on the reliability and maintenance aspects of the equipment necessary to meet the percent utilization factor of the specification.

1. Charging hoppers
2. Charging chutes

B-188816

3. Water-cooled feed hoppers
4. Stoker-furnace-boiler assemblies with siftings removal system
5. Water wall and tubing arrangement
6. Forced overfire and induced-draft fans
7. Ductwork
8. Breaching
9. Electrostatic precipitators
10. Automation-instrumentation"

In response to a question posed at the preproposal conference, which was incorporated in an amendment to the solicitation dated January 17, 1977, NASA stated that "integrated boiler train" was intended to mean that, "The boiler manufacturer shall be responsible for the boiler train design criteria and performance requirements of the equipment specified in paragraph 13C.1."

NASA states that its personnel conducted extensive studies and evaluation in preparation for this project, extending over more than three years. During that time they visited most existing similar facilities in the United States and Canada and held numerous discussions with architects, engineers, and other consultants, as well as with the owners and operators of such facilities. NASA states that it has been especially concerned with plant configuration and equipment design as these subjects relate to low maintenance, high reliability, and general operations requirements, and expresses its view that planned performance has not yet been achieved in any resource recovery facility of the type envisaged here. While the NASA specifications are quite detailed in numerous respects, a careful reading of them indicates that significant areas of design responsibility remained, particularly with reference to the design of the boiler train.

Both protesters included a potential subcontractor proposal prepared by the E. Keeler Company and were identical, in that regard. In each instance, the protester relied on the Keeler documentation to satisfy the boiler train requirements of the solicitation. Concerning the integrated design of the boiler-train, the Keeler proposal stated that:

"* * * To help fulfill the responsibilities of integration, we are offering a package consisting of the charging hoppers, cut-off gates, charging chutes, water-cooled feed hoppers, stokers, boilers, combustion air fans, ducts and economizers. Since

B-188816

these items are so interdependent performance-wise and mechanically, we believe they must be supplied and coordinated by a single responsible party such as the boiler manufacturer."

Keeler recognized the importance of design coordination with regard to combustion controls, breeching, electrostatic precipitators, induced draft fans, and the ash removal systems and stacks, but it expressly excluded those items from its proposal, evidently because it did not view them as mechanically integral to the design of the boilers.

Both Paragon and Diamond included information concerning some but not all of the equipment omitted from the Keeler proposal. The Keeler proposal discussed reliability and maintenance aspects of the equipment in only general qualitative terms. The proposals did not identify the operational characteristics and ratings for all major components.

Although both offerors evidently meant to offer integrated designs, that is not enough where, as here, descriptive data was solicited to demonstrate the offerors' understanding of the solicitation requirements. Sulzer Bros., Inc., and Allis-Chalmers Corp., B-188148, August 11, 1977, 77-2 CPD 112. Neither protester sufficiently elaborated on its intentions to demonstrate to NASA that it shared NASA's understanding of what was meant by the concept. Although Keeler recommended that the boiler manufacturer be consulted, regarding the selection of all components, Keeler further stated that "individual vendors for this equipment must assume final responsibility to meet the specifications and guarantees * * *." We agree with NASA that, without more, the proposals failed to indicate how the offerors would provide an integrated design for the boiler train as envisaged by NASA. Furthermore, the proposals reasonably suggested that Keeler had not participated in the choice of peripheral equipment, did not draft specifications for it, and disavowed any responsibility for its operation.

Moreover, the deficiency discussed goes to the heart of each of the protesters' technical proposals. The deficiencies could be cured only through a complete redesign or technical review, preferably by the boiler manufacturer, of the design proposed and by then furnishing such additional detail as would be necessary to

B-188816

satisfy the integrated design requirement. In these circumstances, we believe that NASA did not act arbitrarily in determining that the proposals were not susceptible to being made acceptable without major revision or within the time available. Cf. Struthers Electronics Corporation, B-186002, September 10, 1976, 76-2 CPD 231; Page Airways, Inc., B-185166, July 29, 1976, 76-2 CPD 95; 40 Comp. Gen. 40 (1960).

We appreciate the protesters' concern that their proposals were rejected notwithstanding their alleged extensive experience in the construction of refuse burning and steam generating facilities. Diamond has bid on a number of two-step procurements and has never had a proposal determined to be unacceptable. Both protesters feel it is incongruous that a competing firm having been in existence for only 7 months would be found to have submitted an acceptable proposal, while they were not.

The solicitation recognizes that experience plays a part in establishing management approach and capability, but does not preclude establishing these facts by other means. Experience may also provide a means of demonstrating an offeror's understanding of the problems to be encountered in performing this kind of work. Although subsequent to rejection of its proposal Diamond attempted to furnish more detailed information, again relying primarily on evidence of its experience, this in itself is not a substitute for design detail where an acceptable design approach is required as a prerequisite to a proposal's acceptability.

Accordingly, the protests are denied.


Deputy Comptroller General
of the United States