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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Ira Wiesenfeld & Associates

File: B-293632.3

Date: June 21, 2004

Ira Wiesenfeld for the protester.

Dennis Foley, Esq., Philip Kauffman, Esq., and Phillipa L. Anderson, Esq.,
Department of Veterans Affairs, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's rejection of proposal as technically unacceptable is denied where record shows agency's evaluation was reasonable and consistent with solicitation terms and applicable procurement rules.

DECISION

Ira Wiesenfeld & Associates protests the agency's rejection of its proposal as technically unacceptable under solicitation No. 247-0170-04, issued by the Department of Veterans Affairs (VA) for a narrow band radio paging system.

We deny the protest.

This protest follows an earlier protest filed with our Office by Wiesenfeld challenging the agency's award of a sole-source contract to meet its paging system requirements. In that protest, Wiesenfeld alleged that the agency failed to consider product information it had submitted in response to the agency's notice of the proposed sole-source award. In response to the protest, the agency agreed to furnish a copy of the solicitation for the paging system to the protester, and to evaluate the firm's proposal. Wiesenfeld subsequently withdrew the protest and submitted a proposal to the agency for evaluation.

The agency subsequently rejected the protester's proposal as technically unacceptable for failure to comply with mandatory technical requirements for one of the items being sought, combination voice/alphanumeric pagers. In particular, the agency determined that the proposed pagers failed to meet the solicitation's

requirement for National Telecommunications and Information Administration (NTIA) approval, and that the protester had not demonstrated that its proposed voice pagers also functioned in an alphanumeric mode.¹ This protest followed.

The solicitation advised that all equipment requirements were salient, minimum requirements, unless otherwise stated. Solicitation at 23. Products submitted as “equal” to specified requirements were to meet the salient physical, functional, or performance characteristics specified in the solicitation. *Id.* at 44. Offerors were instructed that award of a contract would be made to the responsible offeror whose offer complied with the solicitation and was considered most advantageous to the agency. *Id.* at 57.

The protester submitted its proposal by the scheduled closing time. With regard to the line item for combination voice/alphanumeric code pagers, the protester’s proposal noted that it was offering a voice pager; the protester described its offered product as an “equal product with superior specifications.” Wiesenfeld Proposal at 7-8. The agency rejected the proposal as technically unacceptable for offering a pager lacking both NTIA approval and the required combination of voice and alphanumeric capabilities.

An offeror must affirmatively demonstrate by the terms of its proposal that its offered product meets all of the solicitation’s material requirements. Working Alternatives, Inc., B-276911, July 2, 1997, 97-2 CPD ¶ 2 at 4. Any proposal that fails to conform to material terms of the solicitation should be considered unacceptable and may not form the basis for an award. Gordon R.A. Fishman, B-257634.3, Nov. 9, 1995, 95-2 CPD ¶ 217 at 2. In reviewing protests against allegedly improper evaluations, or, as here, the rejection of a proposal based on the agency’s evaluation, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable, and in accord with the RFP criteria and applicable procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester’s mere disagreement with the agency’s judgment does not establish that an evaluation, or rejection, was unreasonable. UNICCO Gov’t Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

Our review of the record confirms the reasonableness of the agency’s evaluation and rejection of the Wiesenfeld proposal as failing to meet the mandatory technical requirements for the combination voice/alphanumeric code pager. The protester simply has not demonstrated that the offered unit functions in the required alphanumeric mode. Rather, in its comments on the agency’s report, the protester argues that the combination voice/alphanumeric pagers required by the solicitation

¹ The voice/alphanumeric code pagers are for use in the agency’s medical facilities’ Code Blue Life Support Systems.

do not meet the needs of most hospitals and that the performance of the combination unit does not compare to its “stand-alone voice or stand-alone text pagers.” Comments, Apr. 26, 2004, at 2. To the extent the protester is now challenging the agency’s mandatory requirement for the combination pagers, however, such challenge is untimely, as apparent solicitation improprieties must be protested prior to the closing time for the receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2004).

Wiesenfeld also asserts that other contracting activities have considered using its offered voice pagers to meet allegedly similar requirements. As the agency points out, however, each procurement stands on its own. See Discount Mach. & Equip., Inc., B-248321, July 22, 1992, 92-2 CPD ¶ 44 at 3, n.1. Here, the solicitation is clear; the agency required combination voice/alphanumeric pagers. The protester’s proposed voice pagers failed to comply with this material requirement. Accordingly, we have no basis to question the agency’s rejection of the firm’s proposal as technically unacceptable.²

The protest is denied.

Anthony H. Gamboa
General Counsel

² While the protester continues to challenge the agency’s determination that its offered voice pagers are not NTIA approved, we need not consider the matter further in light of the material noncompliance issue discussed above, which provides an independent basis for the rejection of the proposal as technically unacceptable.