



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Green Shop, Inc.

File: B-278125

Date: December 1, 1997

Philip Kircher for the protester.

Capt. William R. Hinchman, Department of the Army, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected the protester's proposal as technically unacceptable where the protester took exception in its proposal to material specification requirements as contained in the solicitation.

DECISION

Green Shop, Inc. protests the award of a contract to Arctic Industrial & Automotive Supply under request for proposals (RFP) No. DAHC76-97-R-0007, issued by the Department of the Army for a quantity of biodegradable parts washers. The protester challenges the rejection of its proposal as technically unacceptable.

We deny the protest.

The RFP, as amended, provided that the award would be made to the offeror submitting the low-priced, technically acceptable proposal. The RFP stated that in determining the technical acceptability of a proposal, the agency would evaluate an offeror's compliance with the specifications and the required delivery schedule. Among other things, the specifications for line item Nos. 0001 and 0002 required that the cabinets of the parts washers be constructed of a minimum of 11-gauge steel and that the water tanks be constructed of stainless steel. For line item No. 0001, the specifications also required a production capacity of 200 gallons per minute and for line item No. 0002, the specifications required a production capacity of 80 gallons per minute.

The agency rejected the protester's lower-priced proposal as technically unacceptable for failing to comply with the specifications. In its amended proposal, for line item Nos. 0001 and 0002, the protester proposed to furnish parts washers constructed of thinner 12-gauge steel, instead of thicker 11-gauge steel as required by the specifications. The protester also proposed steel water tanks instead of the required stainless steel water tanks. In addition, for line item No. 0001, the

protester proposed a pump with a capacity of 150 gallons per minute, despite the protester's recognition that "[t]he requirements call[ed] for a unit producing 200 [gallons per minute]," and for line item No. 0002, the protester proposed a pump with a capacity of 52 gallons per minute which it claims "could come close to the requested 80 [gallons per minute]."

In a negotiated procurement, a proposal that fails to conform to material solicitation requirements is technically unacceptable and cannot form the basis for award. See International Sales Ltd., B-253646, Sept. 7, 1993, 93-2 CPD ¶ 146 at 2. Here, the protester clearly took exception to material solicitation requirements, thus rendering its proposal technically unacceptable.

The protester concedes that it did not satisfy all of the specification requirements, stating that "we met or exceeded almost every specification and requirement. Those specifications that we did not meet to the letter, we met on industry standards and are of little consequence." (Emphasis added.) The protester has failed to provide any "industry standards" for the specification requirements it did not satisfy and it offered no explanation for why its failure to satisfy these requirements "are of little consequence." We agree with the agency that the protester took exception in its amended proposal to material specification requirements, thereby rendering its proposal technically unacceptable and making the firm ineligible for award.

The protester also complains that the awardee's proposal should have been rejected as technically unacceptable because the awardee proposed a pump that allegedly did not meet the specifications. The protester's sole support for this contention is the fact that, while for line item No. 0002 the RFP required a 208-volt pump, the awardee proposed a 220-volt pump.

However, the protester is not an interested party eligible to challenge the contract award on the basis that the awardee failed to submit a technically acceptable proposal. Under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1997), only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party where it would not be in line for award were its protest to be sustained. See Marine Pollution Control Corp., B-270172, Feb. 13, 1996, 96-1 CPD ¶ 73 at 3-4. In this case, out of 22 proposals received, the agency determined that three proposals, but not the protester's, were technically acceptable. Because there were two other technically acceptable proposals besides the awardee's proposal eligible for award, the protester, whose proposal was properly rejected as technically unacceptable, is not an interested party to challenge the award. Id.

In any event, the agency explains that it is common industry practice for the stated voltage of commercial/industrial motors to be acceptable within a 10-percent range (to support its position, the agency submitted a product catalog showing that pump voltage is listed as a range). The agency points out that the protester obviously shares this view, since, for line item No. 0001, for which the RFP required a 220-volt pump, the protester proposed a 230-volt pump (which the agency determined was technically acceptable as it was within the 10-percent range). The protester does not rebut the agency's position. On this record, we conclude that the agency treated the protester and the awardee equally with respect to the technical acceptability of their proposed pumps in terms of voltage requirements. Accordingly, we have no basis to object to the agency's conclusion that the awardee's 220-volt pump for line item No. 0002 was technically acceptable as it was within the 10-percent range.¹

The protest is denied.²

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¹We do not believe that the protester's price list, which shows that its 208-volt pump is more expensive than its 230-volt pump, is relevant to the agency's determination that an offeror's proposed pump was technically acceptable as to the voltage requirement if its voltage was within 10 percent of the RFP specification.

²There is no support in the record for the protester's allegation that a named agency employee was in contact with the awardee for several years about this project and that "this camaraderie may have given Arctic an unfair advantage in this competition." The record shows that the individual named by the protester was a utilities engineer who did not have any involvement in equipment procurements, including this procurement for parts washers.