

Protest of)	Date: October 8, 1991
)	
NEC BUSINESS COMMUNICATION SYSTEMS (CENTRAL), INC.)	
)	
Solicitation Nos. 119990-91-A-0111 119990-91-A-0113)	P.S. Protest No. 91-55

DECISION

NEC Business Communications Systems (Central), Inc. (NEC) protests the award of contracts for telephone systems for the post offices in Hialeah and Hollywood, FL, to R&E Electronics (R&E).^{1/}

Solicitation Nos. 119990-91-A-0111 and -0113 were issued on January 29, 1991, and February 1, 1991, respectively. Each provided that the evaluation of the offeror's technical capabilities would comprise 60 percent of its total score and its evaluated price would comprise 40 percent of its score. Award would be made to the offeror with the highest total score.

Several proposals were received. The evaluated scores and prices were as follows:

	<u>-0111</u>		<u>-0113</u>	
	<u>Technical</u>	<u>Price</u>	<u>Technical</u>	<u>Price</u>
NEC	71	\$116,003	71	\$114,655
R&E	81.5	\$107,583	81.5	\$102,400

Award was made to R&E on August 2, 1991. This timely protest followed.

NEC asserts that it cannot understand how R&E, which lacks any local presence in Florida and will not be able to respond to maintenance requests within the required time periods, could possibly have received a higher technical score than it did. It states that NEC is the manufacturer of the telephone system R&E plans to supply. NEC notes that it is the only NEC distributor in south Florida and that it is located close to the post offices which are the subject of the solicitations. It asserts that R&E will be unable to meet NEC's service standards.

The contracting officer states that R&E has successfully installed NEC telephone equipment in several government installations, including one in south Florida. He asserts that R&E has an office in Miami which is stocked with an inventory of spare parts for repair service. He notes that, while NEC is the manufacturer of the system

^{1/} We treat the two protests together as they raise the same issues.

and a large south Florida telecommunications company, NEC's proposal was not as good as that of R&E, and, under the solicitations' evaluation and award criteria, award was properly made to R&E.

The essence of NEC's protest is that its technical proposal was incorrectly evaluated. Our review of such an issue is limited:

[T]his office will not substitute its judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. H&B Telephone Systems, supra; Amdahl Corporation, P.S. Protest No. 81-34, September 29, 1981. The determination of the relative merits of technical proposals is the responsibility of the contracting officer. This office does not resolve disputes on the scoring of technical proposals. Computer Systems & Resources, Inc, supra, citing, MidAtlantic Forestry Services Inc., Comp. Gen. Dec. B-217334, September 9, 1985, 85-2 CPD & 279.

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[T]he assignment of numerical scores or ratings to a proposal is an attempt to quantify what is essentially a subjective judgment. This is an accepted procedure. Book Fare Inc., P.S. Protest No. 80-29, July 3, 1980; Didactic Systems, Inc., Comp. Gen. Dec. B-190507, June 7, 1978, 78-1 CPD & 418. "The determination of the desirability of proposals is largely subjective, primarily the responsibility of the procuring [activity], and not subject to objection . . . unless shown to be unreasonable, arbitrary, or violative of the law." High Plains Consultants, Comp. Gen. Dec. B-215383, October 18, 1984, 84-2 CPD & 418; Credit Bureau Reports, Inc., Comp. Gen. Dec. B-209780, June 20, 1983, 83-1 CPD & 670.

Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986. We have reviewed the proposal evaluations and find no evidence

that the evaluations were either arbitrary or in violation of applicable procurement regulations. There is sufficient evidence on which to base the evaluator's conclusion that R&E's technical proposal was superior to NEC's. Accordingly, there is no basis on which to conclude that the proposals were incorrectly evaluated.

Insofar as NEC's protest alleges that R&E is unable to perform the contract successfully, it is a protest against a contracting officer's affirmative finding of responsibility, which can only be sustained if the protester proves fraud, bad faith, or a failure to meet definitive responsibility criteria. EDI Corporation, P.S. Protest No. 83-51, January 26, 1984. NEC's allegations fall far short of proof under any of these criteria, and, therefore, do not constitute a sufficient ground for protest.

The protest is denied.

[Signed]

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 5/12/95 WJJ]