

DECISION

32051

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

FILE: B-218888.3 **DATE:** August 22, 1985
MATTER OF: Motorola, Inc.

DIGEST:

1. Where awardee's compliance with solicitation requirement is subject of technical dispute between protester and contracting agency, protester has not carried burden of proof of showing that awardee's equipment would not meet the specification.
2. Whether offered product performs in accordance with specifications as promised in the proposal concerns contract administration not encompassed by GAO bid protest function.

Motorola, Inc. (Motorola), protests the award of a contract for high frequency/single side band radios and ancillary equipment to Richter & Co. (Richter), the low offeror under request for proposals (RFP) No. DAJA37-85-C-0529, issued by the United States Army Contracting Agency, Europe (Army), Frankfurt/Main, Germany. Motorola contends that Richter's proposal does not meet the technical requirements of the RFP.

We deny the protest in part and dismiss it in part.

Motorola argues that the equipment offered by Richter does not comply with a number of the RFP specifications. Motorola's initial protest was based on the belief that Richter had offered its ICOM-M700 radio; however, Richter actually offered another model, the ICOM-S700. The Army responded to the alleged deviations in specifications in its report and concluded that Richter's proposed ICOM-S700 met the requirements of the solicitation. In its comments on the agency report, Motorola states that it first became aware of the difference in models when it received the report. Motorola contends that the ICOM-S700 is not a "known model" and is probably a "field modified" version of the ICOM-M700. Motorola contends that a modified ICOM-M700 cannot meet the RFP specifications.

The bulk of Motorola's specific contentions concern Richter's ICOM-M700, which was not the model proposed. The Army has concluded that Richter's proposal indicates compliance with the protested specifications and has rebutted each of Motorola's specific contentions. It is not the function of our Office to independently evaluate the technical adequacy of proposals. Rather, the overall determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency, which enjoys a reasonable range of discretion in the evaluation of proposals. A.B. Dick Company, B-211119.3, Sept. 22, 1983, 83-2 C.P.D. ¶ 360. Therefore, such a determination will not be disturbed by our Office absent a clear showing that the determination was arbitrary or unreasonable. A.B. Dick Company, B-211119.3, supra. Motorola, as the protester, has the burden of affirmatively proving its case. This burden is not met where the only evidence is the conflicting statements of Motorola and the Army. Rolm Southern California, B-216955, Mar. 14, 1985, 85-1 C.P.D. ¶ 327. This aspect of the protest is denied.

In response to the agency report, Motorola shifted the focus of its protest. Motorola now asserts that even if Richter's proposal indicates compliance with the specifications, the performance and the electrical integrity of a radio, which has been so drastically modified from a standard ICOM-M700, are questionable.

For example, Motorola argues in its original protest that Richter's ICOM-M700 radio is cooled by an internal fan in violation of specifications which call for cooling through normal convection without the use of blowers or fans. According to the Army, the ICOM-S700 radio operates with convection cooling and has a fan as an additional protection feature which will not come on until 20 minutes of continual transmission, which is a rare occurrence. Also, according to the Army, the fan can be deactivated and the radio will still meet specifications.

Motorola replies to the Army explanation by stating that compliance with the specification would require a major redesign of the ICOM-M700, and that an internal blower would be essential to a ICOM-S700 under actual operating conditions. Similarly, Motorola does not provide any specific rebuttal to the Army's statement that Richter's proposal shows that the ICOM-S700 complies with the other protested specifications. Rather, Motorola expresses disbelief that the ICOM-S700 will perform in accordance with the specifications regardless of what Richter promised in its proposal.

Whether the Richter radio performs in accordance with the specifications is a matter of contract administration and, as such, is the contracting agency's responsibility and not encompassed by our bid protest functions. Advanced Structures Corporation, B-216102.2; B-216102.3, Mar. 28, 1985, 85-1 C.P.D. ¶ 370. Consequently, this protest basis is dismissed.

for *Harry R. Van Cleve*
Harry R. Van Cleve
General Counsel