

**DECISION**



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

**FILE:** B-220615.3

**DATE:** April 7, 1986

**MATTER OF:** Analytics Communications Systems,  
Inc.

**DIGEST:**

Bid for an "equal" product should be rejected as nonresponsive if it fails to comply with a particular design characteristic of the brand name product identified in a solicitation. Where a solicitation includes precise performance or design characteristics, the "equal" product must meet them exactly.

Analytics Communications Systems, Inc. protests the award of a contract to TEQCOM, Inc. under invitation for bids (IFB) No. EMV-85-B-0032, issued August 29, 1985, by the Federal Emergency Management Agency (FEMA). We initially dismissed Analytics' protest because we did not receive the protester's comments, responding to the contracting agency report, within 7 working days after we received the report. By decision of January 6, 1986, we reinstated the protest for consideration on the merits. See Dresser Industries, Inc. et al., B-218535.3 et al., Jan. 6, 1986, 86-1 CPD ¶ 10.

We now sustain the protest.

The IFB called for a telecommunications system to connect FEMA with the Defense Department's Automatic Digital Network (AUTODIN). Line items 21-30, at issue here, called for two electronic control modules identified as "Analytics Comm. [Communications] Systems Model No. TLC [telecommunications line processor]-100 E/W 6046(T) Control and Dual Processor (Tempest Tested)." The equipment was required to interface with existing FEMA equipment, including word processors, optical character readers, printers, sorters, and tape reader punchers. No salient characteristics were listed. The solicitation stated that bids would be accepted

on a brand name or equal basis, and it included the standard clauses set forth in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-21 (1984), concerning descriptive literature. These required descriptive literature to be submitted with the bids and stated that failure of the descriptive literature to show that the product offered conformed to solicitation requirements would result in rejection of the bid as nonresponsive.

FEMA received only two bids for the line items in question. TEQCOM offered its MAQS 1825-4T control module and associated items (spare parts kits, additional spare parts, and testing, engineering, and training support) for a total price of \$23,000, while Analytics offered the brand name equipment and the other items for \$63,008. On the same day as bid opening, September 30, 1985, the contracting officer awarded the contract to TEQCOM after concluding that its equipment was "equal" to that of Analytics.

Analytics protests that TEQCOM's descriptive literature does not demonstrate that TEQCOM's equipment is equal to the brand name equipment with regard to certain features, including a dual processor<sup>1/</sup>, and that FEMA improperly permitted TEQCOM to make its nonresponsive bid responsive after opening. The protester also alleges that TEQCOM's bid was nonresponsive in that it failed to price two line items separately. In addition, the protester alleges that FEMA improperly waived the mandatory IFB requirement for preaward testing of other-than-equal equipment for compatibility.

FEMA responds that its project officer reviewed TEQCOM's descriptive literature and found it satisfactory, and that questions that it asked TEQCOM after bid opening did not affect the responsiveness of the bid. FEMA further states that TEQCOM did not omit prices for the two line items, which covered additional spare parts, but rather included prices for these parts in the line item prices covering spare parts kits. Nothing in the IFB, FEMA states, prohibits pricing in this manner. Finally, FEMA states, it tested compatibility by telephoning five federal agencies listed in TEQCOM's bid, rather than by visiting the firm's offices.

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<sup>1/</sup> According to the protester, in the context of this system, a dual processor will provide redundancy and/or partial operation of the equipment in case of failure of one processor.

We agree with Analytics that FEMA should have rejected TEQCOM's bid as nonresponsive. Although the solicitation did not contain a list of "salient characteristics" explicitly designated as such, it did identify the brand name control module as having a dual processor. When a solicitation sets forth particular features of a brand name item, these are presumed to be material and essential to the government's needs. Western Graphtec, Inc., B-216948 et al., Apr. 2, 1985, 85-1 CPD ¶ 381. Further, when an agency expresses its material requirements in terms of very precise performance or design characteristics, any "equal" product must meet those characteristics exactly. See American Sterilizer Co., B-219021, Sept. 20, 1985, 64 Comp. Gen. \_\_\_\_\_, 85-2 CPD ¶ 313; Cohu, Inc., B-199551, Mar. 18, 1981, 81-1 CPD ¶ 207. A contracting agency does not have discretion to waive compliance with a precise design characteristic, because such a waiver could prejudice other bidders or prospective bidders who assumed that the requirement would be enforced. C.M. & W.O. Sheppard, B-219376, Sept. 24, 1985, 85-2 CPD ¶ 329; Scanray Corp., B-215275, Sept. 17, 1984, 84-2 CPD ¶ 299.

Moreover, in a sealed bid procurement, to be responsive to a brand name or equal solicitation, a bid offering an equal product must contain sufficient descriptive literature to permit the contracting activity to assess whether the product offered possesses each precise performance or design characteristic specified. G.A. Braun, Inc., B-216645, Feb. 21, 1985, 85-1 CPD ¶ 218. The responsiveness of an equal bid depends on the completeness of the information submitted or reasonably available. Id.; Frontier Mfg. Co., B-215288, Nov. 14, 1984, 84-2 CPD ¶ 529.

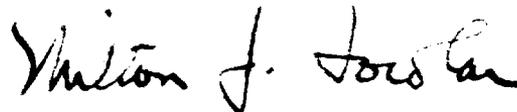
Here, FEMA's purchase description refers to a dual processor. This feature appears therefore to be material. Moreover, while Analytics' descriptive literature indicates that it manufactures the control module in both a single and dual processor version, it offered the latter here. TEQCOM offered a purportedly equal control module identified as a MAQS-4T, Model 1825-4T. The descriptive literature TEQCOM submitted with its bid states that the module is "built around the popular 8085 microprocessor." We have reviewed the literature, and nowhere in it is there a reference to a dual processor. FEMA neither rebuts the protester's allegation that TEQCOM did not offer the dual processor feature nor offers any explanation as to how it might have determined that TEQCOM was offering it. On this record, we must conclude that TEQCOM's bid and accompanying descriptive literature fall short of establishing the equality of its product with that of Analytics.

We therefore sustain Analytics' protest with regard to the dual processor. In view of this conclusion, we need not consider Analytics' other bases of protest. Where one reason for rejecting a bid is proper, it is not necessary for us to address any other basis on which a bid may be nonresponsive. Frontier Mfg. Co., supra.

FEMA suspended performance of the contract by TEQCOM during the pendency of this protest, as required by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. § 3553(d) (West Supp. 1985). In view of the agency's assertions that the TEQCOM equipment is fully satisfactory, by letter of today to the Director of FEMA we are recommending that FEMA reassess its minimum needs in light of CICA's requirement for agencies to use specifications that represent the least restrictive alternative that meets their needs. 41 U.S.C.A. § 253a(a)(2)(B) (West Supp. 1985). If FEMA determines that an electronic control module with a single processor could satisfy its minimum needs, FEMA should terminate TEQCOM's contract for the convenience of the government and resolicit, keeping in mind the FAR provision that directs agencies not to write purchase descriptions so as to specify a particular product, or a feature of a product peculiar to one manufacturer, unless it is essential. FAR, 48 C.F.R. § 10.004(b)(2). If a brand name module is deemed essential, FEMA should list the salient characteristics of the item that are material and essential to its needs.

If, however, FEMA determines that it in fact requires an electronic control module that includes a dual processor, then FEMA should terminate TEQCOM's contract and make award to the lowest responsive bidder under the original solicitation, i.e., Analytics, assuming that the firm is responsible and its price reasonable.

We sustain the protest.



Acting Comptroller General  
of the United States