



The Comptroller General  
of the United States

Washington, D.C. 20548

Westfall-Pl

## Decision

Matter of: Viereck Company  
File: B-226728.2  
Date: July 28, 1987

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### DIGEST

1. Where request for proposals (RFP) does not require that offerors demonstrate compliance with specifications through the submission of technical data, offeror's statement that it will comply with the specifications is sufficient to obligate it to provide equipment conforming to the RFP requirements unless the contracting officer specifically requests technical information during discussions. Once the contracting officer has requested technical data during discussions, however, offeror that fails to furnish such information may be rejected as technically unacceptable based on informational inadequacy.
2. Contracting agency's acceptance of protester's equipment in prior procurement with substantially similar specifications does not justify accepting same equipment in subsequent procurement where agency concludes that protester has not shown that equipment meets specifications.
3. Fact that awardee's equipment was manufactured abroad does not provide basis for protest where no statute or regulation prohibited the procurement of foreign-manufactured machine tools.

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### DECISION

Viereck Company protests the Navy's award to Morey Machinery, Inc. of a contract for a horizontal boring mill under request for proposals (RFP) No. N00600-86-R-1718. Viereck argues that its lower-priced offer should not have been rejected as technically unacceptable. We deny the protest.

The RFP requested offers on a base item (the boring mill) and two optional items (spare parts and tooling for the equipment), and provided for award to the lowest priced,

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technically acceptable offeror. The solicitation contained a detailed description of the equipment sought, but did not require the submission of technical information for evaluation purposes. It did, however, require the submission of descriptive literature to demonstrate that the offered equipment was a current production model.

The RFP specified that the boring mill have a computerized numerical control system, referred to as the "control," consisting of a microcomputer that receives instructions and controls the functions of the mill. The RFP required that the control have both conversational programming and interactive graphics capability. Ten specific conversational programming and graphics requirements were detailed, including, for example, "operator selection of drawing scale, two or three dimensional representation of various planes, viewing with tool compensation and block by block representation."

Four offerors responded to the RFP. Since all four proposals were found to contain deficiencies, the contracting officer decided to hold discussions. By letter dated August 15, 1986, she pointed out 18 deficiencies in Viereck's proposal, one of which was that it was uncertain whether the equipment offered would meet the conversational programming and graphics requirements. The contracting officer's concern was prompted by review of material Viereck submitted with its proposal describing the features of the equipment it offered, which stated generally that the conversational programming and graphics capability were available as options on the equipment.

Viereck responded by letter dated August 26, clarifying and revising its proposal in a number of areas. With regard to the conversational programming and graphics requirements, Viereck noted only that it had stated in its offer that it would comply with the requirements and reiterated that it would do so.

Upon receipt of the revised proposals from Viereck and the other three offerors, the contracting officer determined that all the proposals still contained deficiencies and initiated another round of discussions. Viereck was informed by letter dated October 27 that further information regarding its compliance with the conversational programming and graphics requirements was required. Specifically, the contracting officer noted that "although General Electric (the builder of the control) markets these features, it is uncertain if the control is fully capable." The contracting officer also expressed concern about the availability of the offered control. Viereck responded to

the contracting officer's request for additional information by letter dated November 19, stating that its previous letter, in which it had specified that it met all requirements, should be considered its reply.

The contracting officer determined that since Viereck had not offered any additional information regarding the capability and availability of its control, it had failed to cure the deficiencies in its proposal. She therefore rejected its offer, which was lowest in price, as technically unacceptable. A contract was awarded to Morey Machinery, which had submitted the lowest priced, technically acceptable offer.

Viereck contends that it adequately addressed the contracting officer's concerns regarding the capabilities of its control by indicating generally that it would comply with the RFP's requirements. Viereck also points out that the description of its control included with its initial proposal indicated that a graphics control station and interactive programming were optional features of its control. The agency argues in response that Viereck's mere assertion of compliance was insufficient and that it was unclear from the material that Viereck did submit that the conversational programming and graphics requirements would be met.

The RFP did not require that offerors demonstrate compliance with the specifications through the submission of descriptive literature or other technical data; it required the submission of descriptive literature only to demonstrate that the equipment offered was a current production model. After reviewing Viereck's initial proposal, however, the contracting officer concluded that additional information regarding the conversational programming and graphics capabilities was required. Since the material in Viereck's proposal stated only that the two features were available as options on the equipment Viereck offered, it was reasonable in our view for the contracting officer to question whether the features would be provided. The contracting officer's requests for additional information from Viereck also indicated her concern regarding whether the conversational programming and graphics capabilities listed as options for Viereck's equipment included the 10 specific functions called for by the RFP. This concern also was reasonable, since the descriptive material Viereck furnished referred to the conversational programming and graphics capabilities in general terms only, with no discussion of the specific functions comprising each feature.

Once the contracting officer had raised questions regarding the control's conversational programming and graphics

capabilities, a mere statement by the protester that it would comply was not sufficient. The contracting officer clearly indicated that she required additional information regarding the specific attributes of the control's conversational programming and graphics capability. Once the contracting officer had informed Viereck that she required the submission of technical information for evaluation purposes, Viereck was obligated to respond in a meaningful way or run the risk of having its proposal rejected for informational inadequacy. See, e.g., Johnston Communications, B-221346, Feb. 28, 1986, 86-1 CPD ¶ 211.

Viereck further argues that the Navy should have known that its control had the required features since Viereck had supplied the same control on another procurement with substantially similar specifications. The Navy's acceptance of this control in another procurement did not relieve Viereck of the duty to demonstrate the technical acceptability of the control for purposes of this procurement, however; each procurement stands alone in this regard. Discount Machinery and Equipment, Inc., B-223547, Aug. 29, 1986, 86-2 CPD ¶ 242. Moreover, the fact that the government may have accepted nonconforming equipment under a prior contract does not justify accepting nonconforming equipment here. See Wright Tool Co., B-212343, Oct. 12, 1983, 83-2 CPD ¶ 457.

Since we find the contracting officer's determination of technical unacceptability based on Viereck's failure to respond to her concerns regarding its control's conversational programming and graphics capabilities was justified, we need not address the question of whether Viereck's failure to respond to her concerns regarding the continuing availability of the control provided a separate basis for rejection of the offer as technically unacceptable.

Finally, Viereck points out that the equipment offered by Morey Machinery is of Spanish origin while the equipment that it offers is manufactured in the United States, and objects generally to the Navy's acceptance of foreign-manufactured equipment. Viereck has not alleged that the Navy violated any law or regulation in making an award for equipment manufactured outside the United States, and we are not aware of any legal impediment to such a purchase. Although section 9118 of the Department of Defense Appropriations Act, 1987, Pub. L. 99-500, Oct. 18, 1986, prohibits the use of funds made available by that act to procure various classes of machine tools not manufactured in the United States or Canada, the Navy has informally advised us that fiscal year 1985 funds were used for this

procurement, and we have ascertained that the Department of Defense Appropriations Act, 1985, Pub. L. 98-473, Oct. 12, 1984, did not contain such a prohibition.

The protest is denied.

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