



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: GM Industries, Inc.

File: B-231998

Date: October 25, 1988

DIGEST

Protester failed to show that the agency acted unreasonably in finding its proposal to be unacceptable and the awardee's proposal to be acceptable under a solicitation provision requiring offerors to substantiate that the equipment offered was "field proven" where protester's proposal stated that it could not supply performance history on its machines as required by the solicitation and where protester's assertions with respect to the awardee's proposal are either unsubstantiated or contradicted by the record.

DECISION

GM Industries, Inc. (GMI), protests the award of a contract to the Shipley Machinery Company under request for proposals (RFP) No. N00600-87-R-4651, issued by the Naval Regional Contracting Center, for engine lathes, parts and accessories. The protester alleges that proposals were improperly evaluated.

We deny the protest.

The RFP was issued on October 1, 1987, and provided that award would be made to the lowest-priced technically acceptable offeror. Offerors were required to provide specific descriptive literature substantiating that their offered equipment consisted of "field proven production models," which meant, among other things, that the offered models had to have accumulated 40,000 operating hours each in order to be considered technically acceptable. In addition to submitting manufacturer's published brochures, engineering drawings, parts lists and technical manuals,

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offerors were required to provide a list of customers to whom representative field proven production models had been sold; the lists were required to include such information as serial numbers, hours of utilization and maintenance, and a point of contact at the using activity having knowledge of the equipment. Offerors were specifically advised that failure to provide the requested information would result in rejection of the offer.

Following the submission of initial and revised proposals, the Navy requested best and final offers (BAFO) by letter dated June 1, 1988, the request addressed to GMI stated that its offer had been found to be technically unacceptable. The letter identified several areas in need of clarification or revision in order to make the proposal technically acceptable. The Navy was concerned that GMI had failed to substantiate that the equipment it was offering was "field proven." The agency specifically advised GMI that the list of equipment it had provided consisted of machinery produced since 1983 which was unlikely to have accumulated 40,000 operating hours as required in the RFP. Additionally, the Navy advised GMI that its customer list did not identify the location of the equipment sold, the serial numbers, or the hours of utilization.

GMI responded to the BAFO request on June 8 by submitting a revised list containing an additional 32 customers covering 44 machines which the protester stated it shipped between 1960 and 1969. While the list contained locations and serial numbers, it did not provide the number of operating hours accumulated by each machine nor did it identify a point of contact who could verify those hours. In a cover letter, GMI agreed with the Navy's conclusion that machinery shipped since 1983 would not likely meet the 40,000 hour requirement; with respect to the additions to its revised customer list containing the equipment shipped before 1970, GMI stated that "it is impossible for us to know the hours of utilization or maintenance."

On July 7, GMI's BAFO was determined to be technically unacceptable because, in the opinion of the agency evaluators, it still failed to substantiate that equipment manufactured by the protester was field proven as defined by the RFP. In addition to reiterating the problem with the number of accumulated operating hours, the evaluators found that the models offered for compliance by GMI which were made prior to 1969 were manufactured by another firm-- Springfield Machine Tool Company--whose literature had been submitted in support of the protester's proposal. While GMI had purchased the Springfield model line in 1974, the evaluators noted that the predecessor firm had been out of

business for a number of years before the sale. The evaluators concluded that there had been a significant break in manufacture, not only in terms of time and manufacturing facilities, but in terms of the work force and techniques employed to produce the Springfield line--factors which the agency considered important to determining the reliability of the lathes being offered.

Accordingly, on July 12 award was made to Shipley, a higher-priced but technically acceptable offeror. GMI was notified of the award on July 12 and filed an agency protest the next day; the same protest was filed with our Office on July 15 indicating that it would be supplemented when the Navy provided GMI with details of its award decision. A supplement to the original protest was filed on August 4.

At the outset, the Navy contends that the protest should be dismissed for failure to timely serve the agency with a copy of the protest and the supplement as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1988). The substance of the original protest was virtually identical to the protest filed 2 days earlier with the agency; the supplement merely recited the substance of a telephone conversation between GMI and Navy officials conducted on August 1 at the request of this Office. In each case, the protester promptly transmitted its objections to the award process to this Office to the extent that the details of that process had been revealed to it by the agency. Accordingly, and in view of the fact that the agency was given additional time to respond to the protest as supplemented, we do not believe that the Navy was prejudiced as alleged by a failure to receive timely service of the protest documents. See Arlington Public Schools, B-228518, Jan. 11, 1988, 88-1 CPD ¶ 16. Further, the agency contends that we should dismiss the protest because it did not clearly set forth GMI's protest grounds in accordance with our Regulations. 4 C.F.R. § 21.2(e). We disagree. It is clear from the record that GMI's problems in articulating its protest grounds were for the most part caused by the Navy's inexplicable reluctance to tell GMI exactly why its proposal was rejected.

In its protest, GMI basically disputes the Navy's technical determination that its lathes were not field proven as required, and questions whether Shipley's lathes met the same standard. Regarding the evaluation of its own equipment, the protester states that the Navy has purchased 13 of its Hawk Model "S" lathes from GMI over the last 5 years, that these items were acceptable to the government as evidenced by the firm's recent quality assurance history under Navy contracts, and that its continuing production of

spare parts for older Springfield line lathes attests to the serviceability of those machines and GMI's ability to maintain them. In contrast, the protester alleges that Shipley has not produced the required lathes in 20 years and suggests that, by virtue of a 1987 sale of the company to a third party, the awardee has encountered the same type of a break in manufacture for which GMI was found technically unacceptable.

In response, the Navy argues that, based on an examination of all the information provided by GMI in its proposal as revised, the protester simply failed to substantiate that it had manufactured and provided quality assurance on machines that had stood the requisite test of time. The agency also argues that GMI's recent contracts to supply the agency with lathes contained much less stringent specifications relating to reliability than those contained in this RFP; therefore, it concludes that the protester's performance history under those contracts is irrelevant to the question of whether the agency's technical determinations in this procurement were reasonable. Further, the agency has provided a copy of the information submitted by Shipley with its proposal to substantiate that its lathes were field proven as required.

In reviewing an agency's assessment of technical acceptability, we will not substitute our evaluation for the agency's but will only examine the agency's assessment to insure that it had a reasonable basis. In this regard, the protester must show that the agency's determination was unreasonable, and mere disagreement with the agency's assessment on this issue does not satisfy that burden. Herman Miller, Inc., B-230627, June 9, 1988, 88-1 CPD ¶ 549. For the reasons set forth below, we do not believe that GMI has shown that the agency acted unreasonably.

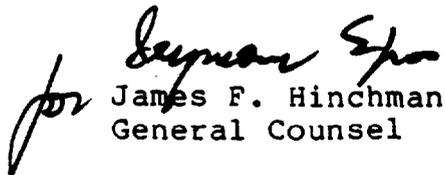
The RFP specifically required offerors to substantiate that their equipment had accumulated 40,000 hours of operating time in order to be considered technically acceptable. GMI's BAFO indicated neither the number of accumulated operating hours for its equipment nor did it supply the agency with a point of contact to verify the reliability of the equipment. Instead, the protester's BAFO explicitly stated that it was impossible to know the required performance information. Since GMI admits deviating from the RFP requirements in this regard, we have no basis to question the agency's conclusion that the protester's proposal was technically unacceptable. Herman Miller, Inc., B-230627, supra. Likewise, we are presented with no basis to question the agency's assessment that a significant break in manufacture had occurred between the 1960s, when Springfield manufactured the lathes listed by GMI to show compliance

with the 40,000 hour requirement, and the 1980s, when the protester supplied lathes to the Navy under less stringent requirements than those contained in the RFP. As far as the break in manufacture is concerned, the record shows that GMI purchased an interest in Springfield several years after the firm had ceased manufacturing lathes and that it simply moved the records, patterns and whatever else was needed and set up its own operation at its manufacturing facility. Also, the fact that GMI's lathes may have been found acceptable in recent procurements does not excuse a failure to satisfy the requirements of this RFP since each procurement stands alone in this regard. Discount Machinery & Equipment, Inc., B-230567, May 2, 1988, 88-1 CPD ¶ 422, aff'd on reconsideration, B-230567.2, June 17, 1988, 88-1 CPD ¶ 580.

With respect to GMI's questions concerning the agency's determination that Shipley's equipment was field proven, we note that the protester has provided no substantiation for its assertion that the awardee has not produced the required lathes in 20 years. Information contained in Shipley's proposal indicates otherwise. Unlike GMI, the awardee did indicate that the accumulated number of operating hours on its equipment could be ascertained; while its customer list did not list the number of accumulated operating hours, it did provide a point of contact for each machine for verification purposes. Thus, in our view, the awardee's proposal provided the Navy's evaluators with a sufficient basis to reasonably conclude that the RFP requirements had been met. See Ultra Technology Corp., B-230309.2, Aug. 2, 1988, 88-2 CPD ¶ 107. Finally, although the protester did submit evidence that the awardee's firm had been acquired by a third party in 1987, that evidence does not establish that a significant break in the manufacture of lathes occurred as a result of the transaction. In this regard, there is nothing to indicate that the manufacturing facility has been moved as in the case of GMI's purchase of Springfield.

In view of the above, we conclude that GMI has failed to show that the Navy's technical evaluations of its proposal and the awardee's proposal were unreasonable.

The protest is denied.


James F. Hinchman
General Counsel