



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Tameran, Incorporated
File: B-232126
Date: October 31, 1988

DIGEST

1. Where request for proposals (RFP) specifies one high speed microfiche copier, and protester submits proposal for a system with two copiers, the General Accounting Office has no basis to question rejection which was based on RFP requirement.
2. Protest of agency's interpretation requirement for one high speed microfiche copier is dismissed as untimely where protester was informed of agency's interpretation of solicitation as requiring one copier, and protest on this basis was not filed within 10 working days of such agency advice.
3. Protest that request for proposals was misleading because it did not detail relationship between equipment and staffing requirements is without merit where labor and equipment requirements were clearly specified.

DECISION

Tameran, Incorporated protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. 52-PAPT-7-00327 issued by the Patent and Trademark Office (PTO), Department of Commerce, for the lease with option to purchase of a microfiche-to-paper copier. The protester also contends that the solicitation was misleading because it failed to disclose the agency's staffing requirements in connection with the operation of the equipment.

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

The PTO is responsible for meeting the requests of the public for certified copies of patent applications as they are filed. The office also provides copies of certified

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patent reexamination cases for litigation and general information purposes. Since these documents are recorded on microfiche, the agency needs a microfiche-to-paper copier to transfer these records to paper. The PTO has been using two Xerox 970 copiers, which are now at the end of their expected production life for this purpose.

The RFP, issued January 29, 1988, called for a high speed and high volume microfiche-to-paper printer with certain specific features and capabilities. Before the closing date, Tameran questioned several areas of the RFP's statement of work, and the agency in response amended the solicitation to describe the equipment in terms of its performance. As amended, the RFP stated that its objective was "to lease with the option to purchase one high speed microfiche-to-paper copier capable of producing 3,200,000 paper copies per year, with a minimum of 10 production years at this rate." The statement of work provided the estimated average number of copies to be produced per hour and included performance details such as the average number of frames per fiche, the workload projections for patent applications and for reexamination cases, and the average number of copies requested for each type of file. The RFP stated that "PTO labor requirements are for one operator during an 8-hour work day, over a 250 work day year." The RFP also stated that award would be made to the responsible offeror who submitted the lowest priced technically acceptable offer which satisfies all minimum requirements.

Tameran submitted a proposal by April 11, 1988, based on furnishing a "microfiche printer system" consisting of two printers. The agency evaluated the proposal and, on July 6, advised Tameran by letter that its proposal has been found "unacceptable but capable of being made acceptable." The agency identified 10 deficiencies or areas in the proposal requiring explanation and notified the protester of the deadline for these corrections. The first deficiency identified was the use of two printers instead of one.

A number of discussions were then held between Tameran and the PTO contract specialist concerning the acceptability of the two-unit system. The record shows that prior to July 14, Tameran orally requested clarification of the agency's deficiency letter, asking whether Tameran's system, using two units, would be considered unacceptable even if the equipment otherwise met all other requirements; the contract specialist replied that an offeror proposing two

units would be unacceptable.^{1/} Tameran filed this protest on July 28, arguing that PTO was acting in an arbitrary and capricious manner in rejecting the two-unit system.

Our Bid Protest Regulations require that protests that are not based on alleged solicitation improprieties be filed not later than 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1988). Here, even if we assume that the solicitation could reasonably have been interpreted as permitting a functionally equivalent two printer system, the record indicates that Tameran knew no later than July 13 of the agency's interpretation of the solicitation as requiring one printer only. By that date, the agency had at least twice informed the protester of its interpretation of the solicitation as requiring one printer. Thus, Tameran's protest to our Office of the agency's interpretation, filed on July 28, more than 10 working days after it knew of the agency's interpretation, is untimely and will not be considered.

Further, concerning the agency's rejection of Tameran's proposal, we find that it was consistent with the plain terms of the solicitation and was reasonable under the circumstances. The RFP clearly specified one printer with one operator. In this regard, PTO points out that the machines are required for the production of copies that are certified as accurate and complete. In order to ensure the accuracy of the copies, the agency has a clerk inspect each set of documents as it is produced. The agency therefore employs an operator and a clerk/checker for each copying machine in use. While PTO's present system includes two machines staffed by four employees, the record indicates that budgetary constraints prohibit continuing to fund these four staff positions. The agency therefore specifically sought to reduce its staffing requirements by replacing the copiers with a single high-speed, high-volume copier capable of producing the same number of copies as the present system but requiring half the operating staff.

The agency also states that it contacted the six Tameran equipment users that the firm had named as references, but found none that had a unit volume comparable to PTO's estimated requirement that operated more than one machine with a single operator. In addition, we note that the protester itself asserts that "the operation of Tameran's

^{1/} On July 14, Tameran also submitted its response to the agency's deficiency letter, stating, among other things, that its two-unit system would not functionally disadvantage the government in terms of operator time.

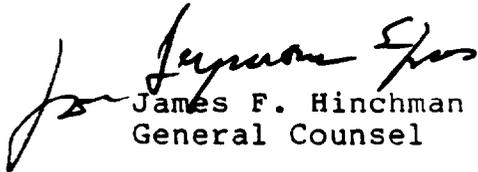
system is identical to the system currently being used by the PTO." Since the PTO has been operating its current system for years, we believe it is in a position to judge for itself whether it could use one operator for two such machines, given the particular production and certification requirements involved. In our view, the agency's need to reduce its staff reasonably supports the agency's insistence on a single printer. We therefore find no merit to Tameran's protest of the rejection of its proposals for offering two printers.

Tameran also protests that the agency was required to disclose the relationship of its staffing requirements to its need for a single printer in the solicitation (the existence of the clerk/checker did not appear in the solicitation), and that its failure to do so misled Tameran in the preparation of its proposal.

We disagree. As stated above, the amended RFP clearly specified that the labor requirements were for one operator, and clearly stated that the required equipment was "one high-speed microfiche-to-paper copier." We know of no regulation or other requirement that the agency disclose the details of its reasoning supporting the minimum needs stated in its solicitation. Generally, while specifications must be free from ambiguities and must describe the minimum needs of the procuring activity accurately, there is no requirement that the solicitation be so detailed as to completely eliminate all performance uncertainties. See T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435 at 6.

Tameran has also protested the agency's rejection of the firm's proposal on the additional basis that it allegedly did not address unscheduled maintenance and the resulting impact on production, as required by the RFP. Because we have found that the agency's initial basis for its rejection of the protester's proposal was reasonable, we need not address the validity of the additional basis for rejection.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel