



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Simulaser Corp.
File: B-233850
Date: March 3, 1989

DIGEST

1. Alleged change or relaxation of a solicitation requirement in acceptance of awardee's nonconforming proposal is unobjectionable where there is no indication that, had the protester been given the opportunity to respond to the altered requirement, it would have altered its proposal sufficiently to offset the awardee's substantially lower price.
2. Agency, reasonably determined that awardee's design for component of system met the specifications without requiring testing where the solicitation did not require testing.

DECISION

Simulaser Corp. protests the Department of the Navy's award of a contract to Schwartz Electro-Optics, Inc., under invitation for bids (IFB) No. N61339-88-B-2027, step two of a two-step sealed bid acquisition, for mobile independent target systems (MITSS). Simulaser alleges that Schwartz's technical proposal in response to the step-one solicitation, request for technical proposals (RFTP) No. N61339-88-R-0027, failed to comply with mandatory specification requirements.^{1/}

We deny the protest.

^{1/} Two-step sealed bidding is a hybrid method of procurement that combines elements of sealed bidding and negotiations. Step one is similar to a negotiated procurement in that the agency requests technical proposals, without prices, and may conduct discussions. Step two consists of a price competition among those firms which submitted acceptable proposals under step one. A.R.E. Manufacturing Co., Inc., B-224086, Oct. 6, 1986, 86-2 CPD ¶ 395.

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MITS is a target system designed to simulate and record the results of weapons fire on vehicles and certain ground installations during combat training exercises. The step-one RFTP required offerors to propose a detailed design for a system conforming to the MITS specification, which generally called for: (1) vehicle or installation-mounted detector arrays for receiving incoming laser signals (simulated weapons fire); (2) electronic controller circuitry for decoding the laser signals, determining the results of the engagement (near miss, hit and/or destruction), and recording information; (3) a strobe light, for mounting on top of the target to visually indicate the outcome of the engagement; and (4) a bracket for mounting the strobe/detector assembly on vehicles that lack a metal surface suitable for the magnetic base of the assembly.

The Navy received technical proposals from six offerors in response to the RFTP; five proposals were found to be susceptible of being made acceptable. Based upon written and oral discussions with the offerors, four proposals, including those submitted by Schwartz and Simulaser, were determined to be acceptable. In response to the step-two IFB, Schwartz submitted the low bid of \$821.80 per system, for a total bid of \$5,897,961 (including training, parts, documentation and testing), and Simulaser submitted the second low bid of \$1,104.04 per unit, for a total of \$8,779,708.

Upon learning of the subsequent award to Schwartz, Simulaser protested to the agency, and then filed this protest with our Office, contending that Schwartz's technical proposal should have been rejected as unacceptable under the step-one RFTP for failure to comply with certain mandatory specification requirements. Specifically, Simulaser contends that the Schwartz system lacks a protective cage for the strobe light, and that Schwartz's mounting bracket will not withstand the environmental forces to which it will be subjected.

Protective Cage

The MITS specification provided that "the strobe light shall be covered by a protective cage capable of protecting the strobe from mechanical damage due to dropping the assembly from a height of three feet onto a concrete surface." Schwartz proposed a strobe/detector assembly with a rugged plastic, dome-shaped lens covering the light source, that also functions as a protective cage. The Navy was already familiar with the performance of the plastic in a variety of

applications subject to high abuse. Based upon its familiarity with the strength of the lens material, descriptive literature submitted by Schwartz detailing the physical properties of the plastic, and in-house testing conducted by Schwartz, the Navy determined that the plastic lens would adequately protect the strobe light even under the harsh abuse experienced during typical training exercises. Further, the agency found that using the protective lens as a cage, instead of the separate steel cage used in previous designs, represented an innovative approach that offered certain cost savings and reduced the weight of the strobe assembly, thereby facilitating mounting.

Simulaser argues that because the solicitation distinguishes the strobe lens from the protective cage, describing their required characteristics separately, only a proposed design in which the protective cage is a separate part would conform to the specification, and that Schwartz's proposal of a protective lens thus was unacceptable. Simulaser agrees with the Navy that Schwartz's approach reduced the cost of the Schwartz system by eliminating the need for a separate protective cage, and by reducing the weight of the strobe light assembly, making a lighter, less costly mounting bracket feasible, and concludes that acceptance of Schwartz's proposal was prejudicial to the other offerors who reasonably interpreted the solicitation as requiring a more expensive approach.

We do not agree with Simulaser that Schwartz necessarily was precluded from offering a system with the protective cage essentially incorporated in the lens. The RFTP language did not set forth any detailed design requirements for the protective cage, providing simply that the strobe light was to be covered by a cage "capable of protecting the strobe." While the term "cage" likely was used in the RFTP based on the use of cage-like structures to protect the strobe assembly on current systems, we read the RFTP language as reflecting a concern, not with the design of the protective device, but with its ability to protect the strobe; we do not think offerors were limited to a cage-like design merely because that was the conventional design.

In any case, even if we agreed that Schwartz's design was unacceptable under a strict reading of the RFTP, and that acceptance of Schwartz's offer thus represented a relaxation of the specifications, our Office will not sustain a protest on this basis absent evidence of resulting prejudice to the protester, i.e., that the protester would have altered its proposal to its competitive advantage had it been given the

opportunity to respond to an altered requirement. See Astro-Med, Inc.--Request for Reconsideration, B-232131.2, Dec. 1, 1988, 88-2 CPD ¶ 545; Data Vault Corp., B-223937 et al., Nov. 20, 1986, 86-2 CPD ¶ 594. While Simulaser speculates generally that Schwartz's approach may be less costly, it does not state that it would have offered a different design, lowered its price, or otherwise altered its proposal in any way in response to the alleged relaxation of the protective cage requirement. Moreover, there is no evidence that a change to Schwartz's approach would result in any significant reduction in the cost of the system; there certainly is no indication that the cost impact would be great enough to eliminate Schwartz's \$282.24 (or approximately 25 percent) cost advantage over Simulaser. Accordingly, this aspect of the protest is denied.

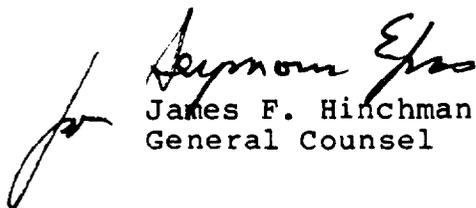
Mounting Bracket

The MITS specification provided that the mounting bracket to be used when magnetic mounting is not feasible "shall be of sufficient strength to support the weight of the strobe/detector assembly and handle all loads and shocks encountered in a vehicle tactical environment." Schwartz proposed to place its 4-pound strobe assembly atop a telescoping tube and, in turn, to attach the tube to the vehicle by means of one of two types of brackets. For a few vehicles, the tube would be attached by means of a circular bracket that replaces the vehicle's antenna mount. For most vehicles requiring the use of a bracket, however, Schwartz proposed to attach the telescoping tube by means of a bracket that clamps onto the metal of the vehicle. Schwartz stated in its proposal that the design of the bracket coupled with the light weight of its detector assembly ensured that the system "will survive the field environment that it will be subjected to," and, as further support, Schwartz furnished a photograph of an employee hanging off the side of a vehicle by holding onto the telescoping tube.

Simulaser alleges that the Navy lacked any basis for concluding that the Schwartz mounting bracket met the specification. The protester contends that a photograph of the bracket withstanding a static force--that is, a man hanging from the telescoping tube on a stationary vehicle--does not demonstrate that the bracket will withstand the shocks or dynamic forces encountered during movement of the vehicle; it believes the agency was required to verify the Schwartz design by testing.

We disagree. The specification described the environment the system would be expected to withstand, required that it be designed so as not to be damaged or have its performance degraded by vibration or shock, and provided for a means to verify the required capabilities during first article testing. The RFTP did not, however, require offerors to submit test data verifying the efficacy of their design, or provide that the agency would test an offeror's proposed design in the evaluation; on the contrary, the RFTP specifically cautioned that the government might make a final determination of acceptability solely on the basis of the proposal as submitted. Schwartz described its proposed design, stated it would withstand the expected environment, and submitted graphic evidence of the strength of the design. In these circumstances, we conclude that the Navy reasonably determined that the Schwartz design met the specification requirements concerning the mounting bracket. See generally Everpure, Inc., B-231732, Sept. 13, 1988, 88-2 CPD ¶ 235 (agency need not require testing prior to determination of technical acceptability where solicitation does not include a testing requirement).

The protest is denied.


James F. Hinchman
General Counsel