



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Vikonics, Inc.

File: B-234365

Date: May 11, 1989

DIGEST

1. Protest that agency improperly eliminated protester from the competitive range is denied where equipment offered by the protester failed to meet a number of specifications in the solicitation and the contracting agency therefore reasonably concluded that the protester did not have a reasonable chance of receiving the award.

2. Protester's argument that, although its equipment does not offer various features required by the specifications, it meets the agency's functional requirements, does not establish that the equipment is technically acceptable since the particular features set out in a solicitation are presumed to be material requirements which an offeror must provide in order to be technically acceptable.

3. Protester's representations in protest that it intended to provide various other required features likewise is not sufficient to demonstrate that its proposed equipment was technically acceptable where the protester's proposal itself did not indicate that those features would be provided.

4. Protest that specifications unduly restrict competition involves an alleged impropriety apparent from the face of the solicitation and thus is untimely where not filed until after the due date for initial proposals.

DECISION

Vikonics, Inc., protests the exclusion from the competitive range of the proposal it submitted in response to request for proposals (RFP) No. DAKF-57-88-R-0250, issued by the Department of the Army for installation and maintenance of a surveillance management system.

We deny the protest.

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The RFP was issued on June 25, 1988, and required offerors to propose a system in compliance with specification No. 1548-88, which was set out in the RFP and contained detailed specifications concerning the operational and design requirements for the system. The evaluation factors listed in the RFP were descriptive material; experience; delivery and installation schedule; maintenance plan; warranty of equipment; and training plan with descriptive material being twice as important as experience, and the other factors listed in order of importance. Price was to be evaluated, but not scored, based on total price and the reasonableness and balance of the price. The RFP provided that the award would be made based on the best value to the government with appropriate consideration given to the stated evaluation factors.

On December 12, 1988, the closing date for receipt of proposals, the Army received four offers and submitted them to a technical evaluation team. The evaluation team found many deficiencies in Vikonics' proposal and based on those deficiencies the contracting officer concluded that Vikonics' proposal was not in the competitive range. By letter of January 19, 1989, the Army notified Vikonics that its proposal was not in the competitive range and would no longer be considered. By letter of January 24, the contracting officer advised Vikonics of six major deficiencies in its proposal.

On February 1, Vikonics protested its exclusion from the competitive range to the Army, followed by its protest to our Office on the same grounds on February 3. In its protest, Vikonics asserts that its proposal was improperly eliminated from the competitive range because its offered system either met the precise specifications in the RFP or satisfied the intent of the specifications. Vikonics also argues that the specifications were unduly restrictive of competition.

The competitive range is comprised of those proposals that have a reasonable chance of being selected for award. Federal Acquisition Regulation § 15.609. The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting agency since it is responsible for defining its needs and deciding on the best method of accommodating them. Telemechanics Inc., B-229748, Mar. 24, 1988, 88-1 CPD ¶ 304. Thus, in reviewing protests concerning competitive range determinations our function is not to reevaluate the proposal and make our own determination of its merits; rather, we review the agency's evaluation to ensure that it had a reasonable basis. Id.

In evaluating Vikonics' proposal the evaluation team found that the system proposed by Vikonics failed to comply with a number of the specifications set out in the RFP. Vikonics has disputed the Army's findings concerning each deficiency, arguing that the system it offered either meets the precise specification as stated in the RFP, or satisfies the functional requirement of the specification. We have reviewed the RFP specifications, the proposal submitted by Vikonics and the positions of the Army and the protester. Although we need not discuss each specification, our review shows that the Army reasonably determined that Vikonics' proposal failed to conform to a number of the specifications and thus properly excluded the proposal from the competitive range.

The specifications in part required that the Controlled Access System (CAS) have no less than 640K random access memory (RAM); that communication between the Central Processing Unit (CPU) and the CAS be at a minimum of 9600 baud rate; and that the CAS be capable of supporting a minimum of 65,000 individual non-duplicated facility codes for single or multiple access points. The specifications also required that the CPU use 32 bit processing and have 22 general registers. The Army found that Vikonics' system was unacceptable because the CAS offered by Vikonics had only 64K RAM; operated at only 1200 baud; and stored data for only 20,000 codes. In addition, Vikonics proposed a CPU with only 16 bit processing and 8 general registers. Vikonics argues that while its system does not meet the exact specifications for memory and baud rate as specified, its system is so efficient that it meets the functional requirements of these specifications, as well as the requirement for 32 bit processing and 22 general registers. Vikonics also asserts that while it offered a system with a standard configuration of 20,000 codes, the system can be expanded to support 65,000 codes.

Vikonics' proposal also failed to comply with the requirement that an editor be provided that is capable of supporting source program development in languages such as FORTRAN, COBOL and BASIC. Vikonics argues that its system meets this requirement because while it does not provide an editor, its system has database editing capabilities on an interactive user basis which are embedded in each command, and no other editing capabilities are needed.

The specifications also required that the offerors propose software that permitted specified logs and reports to be generated. The evaluation team found that Vikonics' proposed system did not include the capability to generate

certain logs, specifically, the calculation point logs, trend logs for trending from 1-30 points and in intervals of 1 minute to 1 year, and a fault log. Vikonics argues that a review of its proposal would show that all events on its system are logged and can be selectively sorted and displayed, and can create the required logs. Vikonics states that in some cases it may use different definitions and methods to obtain the results, but that the required information is available.

In addition, the Army found that Vikonics' system did not meet the requirements for remotes or provide the functions required by the remotes. Specifically, the Army found that the remotes did not have indicating devices or mounted switches that permit maintenance personnel to perform certain functions listed in the specifications. The Army also found that Vikonics' system did not provide two required distributed processors at the Madigan Army Medical Center. In response Vikonics argues that its system, which uses a cathode ray tube rather than indicating devices and switches, is superior and meets the functional requirements of the specifications. Vikonics further responds that it intended to provide the distributed processors for Madigan Center but did not show them in its proposed system configuration because they will be installed by the Army and not by Vikonics.

Finally, the Army found that the Vikonics proposal did not meet the specifications concerning environmental conditions or provide nickel cadmium batteries. Vikonics replies that only two of its proposed printers did not meet the environmental requirements and that it proposed ferro-resonant batteries, which are superior to nickel cadmium batteries and meet the functional requirements of the specifications.

Based on our review, we conclude that the Army reasonably determined that Vikonics' proposal was deficient in the areas discussed above. First, in many areas Vikonics admits that it offered equipment that did not comply with the specifications as stated in the RFP but argues that its proposal was acceptable because it met the functional requirements of the specifications. The Army does not agree that Vikonics' equipment meets the functional requirements. Further, where the technical requirements of a solicitation set forth particular features of the product to be purchased, these features are presumed to be material and essential to the needs of the government. Oxford Medical, Inc.--Request for Reconsideration, B-224256.2, Feb. 24, 1987, 87-1 CPD ¶ 200. Consequently, in a negotiated procurement a proposal that does not offer to meet the specific RFP requirements is unacceptable and may not

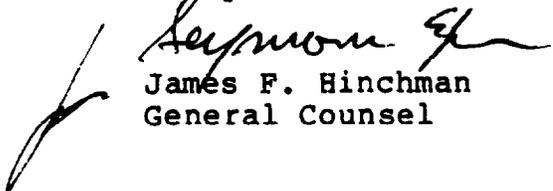
properly form the basis for award. Essex Electro Engineers, Inc., B-229491, Feb. 29, 1988, 88-1 CPD ¶ 215. Accordingly, the Army properly found Vikonics proposal unacceptable in those areas where Vikonics concedes that its proposal did not conform to the specifications and instead argues only that it met the agency's functional requirements.

Further, in those areas where Vikonics argues that it meets the specifications as stated--specifically, Vikonics argues that its CAS is expandable to 65,000 codes, that it intended to supply the required processors at Madigan Army Medical Center and that while it might use different terminology its system will produce the required logs--these representations of compliance with the specifications are not evident from Vikonics' proposal. Since an offeror must establish in its proposal that what it proposes will meet the government's needs, it is not sufficient that Vikonics intended to or could comply with these requirements. W&J Construction Corp., B-224990, Jan. 6, 1987, 87-1 CPD ¶ 13. Accordingly, we find that the Army reasonably determined that Vikonics' proposal was deficient in these areas.

A contracting agency may eliminate an offeror from the competitive range where its proposal is reasonably considered so deficient that it would require major revisions to become acceptable. Telemechanics, B-229748, *supra*. In view of our conclusion that the Army reasonably determined that Vikonics' proposal was deficient in a number of significant areas, we see no basis to disturb the Army's decision to exclude Vikonics from the competitive range.

Vikonics also has asserted that to the extent the RFP requires strict compliance with the specifications, it is unduly restrictive of competition. Our Bid Protest Regulations require that protests based on alleged improprieties apparent from the face of the solicitation be filed with our Office or the procuring agency before the closing time for the receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1988). Here, the closing date for the receipt of proposals was December 12. Since Vikonics filed its protest with the Army on February 1 and with our Office on February 3, this protest basis is untimely and will not be considered on the merits. Idaho Norland Corp., B-230598, June 6, 1988, 88-1 CPD ¶ 529.

The protest is denied.



James F. Hinchman
General Counsel