



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Communications International, Inc.

**File:** B-238810; B-238810.2

**Date:** July 3, 1990

Mary Beth Bosco, Esq., Patton, Boggs & Blow, for the protester.  
Sherry Kinland Kaswell, Esq., Office of the Solicitor, Department of the Interior, for the agency.  
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## DIGEST

1. Where solicitation provided for evaluation on comparative basis, elimination of protester's proposal from the competitive range and acceptance of another proposal for award, even though proposals may share a similar deficiency, is proper, so long as proposal selected for award properly was highest rated under solicitation's evaluation scheme.
2. Agency reliance during evaluation on preexisting descriptive literature (not submitted with offer), describing upgrade to software that permits offered model to meet solicitation requirement, is unobjectionable where literature was not inconsistent with literature submitted with offer and it showed conformance with requirement.

## DECISION

Communications International, Inc. (CII) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. MWR-9-0035, issued by the National Park Service (NPS), Department of the Interior, for equipment in support of the radio communications system at the Ozark National Scenic Riverways. At issue is compliance with the frequency range specification for a required portable radio, known as a VHF handheld transceiver. The protester argues that it was excluded from the competition for noncompliance with this requirement, while the same requirement was waived for the awardee, Motorola, Inc.

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We deny the protest.

The RFP solicited offers to provide all labor, materials, and equipment for the construction and furnishing of a radio communications system and listed numerous technical specifications for system performance. The RFP further provided for award to the responsible offeror whose offer conformed to the solicitation and was the most advantageous to the government, price, performance, and other factors considered. It listed as the evaluation factors technical excellence, conformance of equipment to specifications, offeror's qualifications, and price. The evaluation factor for conformance to specifications was described as including manufacturer literature, product lists, essential physical and functional characteristics of the proposed equipment, and principles of operation. The solicitation indicated that the design and specifications submitted by the successful offeror would become a binding element of the contract.

The agency received five proposals which the technical evaluation panel scored in accordance with the three technical evaluation criteria. Each criterion was allocated 5 possible points, for a total of 15 possible points. CII received a total of 7 points and Motorola received a total of 12 points. The consensus of the panel was that Motorola's proposal substantially fulfilled the RFP's requirements and that while CII's proposal was rated far below Motorola's, it was susceptible to improvement to the point where it would have a reasonable chance for award. (The remaining three proposals were determined so technically inferior that without major revision they were unacceptable for award.) After review of the initial technical proposals, the contracting officer undertook an abbreviated price and cost review; no information was found which would upset the findings of the technical panel. As a result, the contracting officer established the initial competitive range to include Motorola and CII.

The agency held discussions, advising both Motorola and CII of the deficiencies in their proposals, and then requested best and final offers (BAFO). Based on the evaluation of the responses, the panel determined that CII's proposal did not address many of the numerous deficiencies cited during discussions. As a result, the panel considered CII's proposal technically deficient to the point where it did not meet the needs of NPS and the contracting officer excluded the proposal from the revised competitive range. The agency then selected Motorola for award, which was made on February 8, 1990.

CII contends that the evaluation was not conducted on an equal basis. Among the deficiencies found to remain in CII's proposal after BAFOs was noncompliance with the portable radio frequency range requirement of 148 to 174 megahertz (MHz); according to descriptive literature submitted with the proposal, CII's offered radio had a frequency range of only 157 to 174 MHz. (CII further indicated in a clarification during discussions that its offered radios actually were capable of operation down to 153 MHz.) Citing product literature for the MT-1000 radio offered by Motorola, CII complains that Motorola's proposal was accepted even though it did not meet this same frequency range requirement. CII contends it was unfair to waive the requirement for Motorola but not for CII.

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the evaluation was fair, reasonable, and consistent with the evaluation criteria. Paper Corp. of United States, B-229785, Apr. 20, 1988, 88-1 CPD ¶ 388. The evaluation here meets that standard.

CII's argument is based on a misconception of the evaluation process. Although CII may have been led to believe from its debriefing with NPS that its proposal was rejected as technically unacceptable for failure to meet the frequency requirement, the record indicates that in fact NPS conducted a comparative evaluation, as provided for in the RFP. Based on a comparison of offers in relation to the RFP requirements, CII was eliminated from the competitive range because its proposal was rated substantially lower than Motorola's-- as reflected by its score of only 7 out of 15 available points, compared to Motorola's 12 points--and CII had not addressed in its BAFO many of the cited deficiencies, including the frequency range requirement. In the final analysis, the evaluators essentially determined that Motorola's equipment was state-of-the-art, while CII's was not. While Motorola's proposal also did not satisfy every RFP requirement, the evaluators determined that it substantially fulfilled the solicitation's requirement, as reflected by its relatively high score. This was a proper approach under the RFP's comparative evaluation scheme.

Because Motorola's proposal was found superior to CII's in several respects, it does not appear that the frequency range requirement was determinative in the evaluation. In any case, we find the two proposals were not improperly treated disparately under this requirement. It is undisputed that CII's proposed radio did not provide the

specified frequency range. NPS acknowledges that the product literature Motorola submitted with its proposal showed frequency ranges of either 146 to 162 MHz or 157 to 174 MHz, and not the required frequency range of at least 148 to 174 MHz. However, NPS concluded that the literature simply failed to reflect current performance characteristics of the MT-1000 radio, of which the agency had knowledge prior to the evaluation.

This conclusion was based on a May 1989 Motorola product literature update in which upgraded software for the model MT-1000 was described as incorporating various programmable frequency ranges including 146 to 174 MHz, which exceeds the requirement here. The agency explains that such "change sheets" are issued frequently and that there is usually some lag time before the information is incorporated into the standard product literature.<sup>1/</sup> Further, NPS already owned a number of compliant MT-1000 radios; the evaluation panel was able to confirm from agency experience that the MT-1000 met the requirement.<sup>2/</sup>

Where, as here, an offer specifies a particular model number, the contracting agency may consider information in existence before the closing date which is not inconsistent with the information submitted in the offer and that describes the model and demonstrates its compliance with the requirement. See HEDCO Hughes Elec. Devices Corp., B-221332, Apr. 7, 1986, 86-1 CPD ¶ 339. Here, the current MT-1000 literature relied on by the agency was in existence at the closing date and the agency knew that this literature was an update of the literature submitted with Motorola's

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<sup>1/</sup> As background, the record indicates that the frequency limitations of the radio are regulated by the software utilized to program the specific unit. This programming, according to the agency can be accomplished by either the manufacturer or the customer. Here, agency technical evaluators also had in their possession since May 1989 a copy of the revised MT-1000 software program, which it apparently had used to reprogram MT-1000 radios it had previously procured.

<sup>2/</sup> Other product literature, as submitted by Motorola to the agency after the filing of the protest, also apparently existed at the time of evaluation. In this literature, the expanded frequency range capability is described as standard and for which there would be no additional charge. However, it is not clear from the record that the agency had this additional literature in its possession at the time of evaluation.

offer of the MT-1000 in this procurement. Even if there was some doubt as to whether Motorola was bound by its proposal to furnish the updated software, Motorola's compliance with the requirement was established at least with some degree of certainty; this being the case, dealing in comparative terms, Motorola would reasonably be entitled to more favorable consideration under the frequency range requirement than CII, whose proposal did not purport to meet the requirement.

The protester further contends that in evaluating the Motorola radio the agency waived the RFP's requirement for spurious image rejection--the ability to eliminate unwanted signals or interference. NPS explains, however, that Motorola's deviation from this requirement was a minor performance deficiency and immaterial to the overall performance of the radio in the intended remote area of operation, where there is a low density of radio transmitters. Further, as indicated above, CII's proposal contained numerous other evaluated deficiencies and thus would still be rated lower than Motorola's proposal notwithstanding Motorola's compliance with this requirement. This additional argument therefore does not provide a basis for sustaining the protest; we will not disturb an award where no prejudice from an alleged evaluation deficiency is shown or is otherwise evident. Empire State Medical Scientific and Educ. Found., Inc., B-238012, Mar. 29, 1990, 90-1 CPD ¶ 339.

The protest is denied.

  
for James F. Hinchman  
General Counsel