



**Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Discount Machinery & Equipment Inc.

**File:** B-241444

**Date:** December 10, 1990

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Michael Ray for the protester.  
Jeffrey I. Kessler, Esq., S.S. Goldberg, Esq., and  
Major John K. Northrup, Esq., Department of the Army, for the  
agency.  
Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and  
Michael R. Golden, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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### DIGEST

Protest of agency's rejection of proposal as technically unacceptable is denied where record shows that protester did not offer to provide product which met solicitation's specifications.

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### DECISION

Discount Machinery & Equipment Inc. protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. DAAD05-90-R-0433, issued by the Department of the Army for a power saw and accessories.

We deny the protest.

The RFP was issued on July 27, 1990, on a brand name or equal basis. Four offers, including Discount's, were received by the August 27 closing date. The agency evaluated the offers and determined that Discount's proposal was technically unacceptable but capable of being made acceptable. On September 7, the agency informed Discount by telefax of the technical deficiencies in its proposal. The telefaxed letter advised Discount that certain areas of its proposal needed to be addressed, including its product's maximum band length and its speed range modification. The letter stated that Discount's failure to comply explicitly with the above specifications would render its proposal unacceptable and that revisions to its proposal were due not later than September 10. Discount failed to submit a revised proposal.

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The protester asserts that after Discount received the September 7 telefax, a representative of Discount called the contract specialist to ask some technical questions. The protester alleges that the representative was told to fax the technical questions to the contract specialist and that the contract specialist would give them to technical staff for answers. Discount states that on September 7 it faxed its questions to the agency. The protester has provided our Office with a copy of the letter which it alleges it faxed to the agency. The letter asks the contract specialist if Discount may supply a product with a band length and speed range which does not comply with the RFP's specifications.

By letter dated September 17, 1990, the Army advised Discount that its proposal had been rejected as technically unacceptable. The letter stated that its offer did not meet certain government minimum requirements, including band length and speed range. The letter noted that the agency had previously requested that these deficiencies be addressed.

On October 2, Discount filed this protest, alleging that it was not given a fair chance to submit a best and final offer. The protester argues that it was precluded from submitting a revised proposal because it had questions which were never answered by the agency.

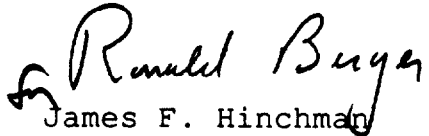
In negotiated procurements, any proposal that fails to conform to material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. Instruments S.A., Inc.; VG Instruments Inc., B-238452; B-238452.2, May 16, 1990, 90-1 CPD ¶ 476.

The protester does not allege that it could have provided a saw which meets the agency's minimum requirements as set forth in the RFP's specifications. Indeed, the protester concedes that its product cannot meet the blade length requirement of the specifications. The record shows that the questions which were allegedly submitted by Discount support the agency's determination that Discount's machine did not conform to the RFP's specifications. The questions essentially ask that its nonconforming offer be accepted by waiving mandatory requirements. We find that the Army properly rejected Discount's proposal as technically unacceptable since Discount's offer clearly did not conform to the stated specifications.

To the extent that the protester now objects to the solicitation's specifications, we find its argument to be untimely. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the closing date for receipt

of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1990).  
Here, Discount did not protest before the closing date of  
August 27.

The protest is denied.

  
James F. Hinchman  
General Counsel