Burkard

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Technology for Communications International

File: B-242632.2

Date: December 13, 1991

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Eric Lile, Esq., and Dennis G. Lapointe, Esq., Department of the Navy, for the agency.
Richard P. Burkard, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award to offeror based on blanket assertion in proposal that its product would comply with a particular specification is improper where solicitation required that each offeror explain how its proposal complies with each requirement and where, in response to agency request for additional information verifying compliance, awardee provided data indicating that its product would not comply with solicitation requirements.

DECISION

Technology for Communications International (TCI) protests the award of a contract to Andrew Canada, Inc. under request for proposals (RFP) No. N00102-91-R-0020, issued by the Department of the Navy for Dual Mode HF (high frequency) Antennas. TCI alleges that the proposal submitted by Andrew contains data which shows that the antenna offered does not comply with the RFP's specifications and therefore the proposal did not provide a valid basis for the award.

We sustain the protest.[1]

[1]Subsequent to filing its protest with this Office, TCI filed an action in the United States District Court for the District of Columbia seeking declaratory and injunctive relief against the award. Technology for Communications, Int'l, Inc. v. Lawrence Garrett III, et al., Civil Action

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The RFP, which was issued on November 6, 1990, contemplated the award of a fixed-price requirements contract for a base year and 4 option years. The RFP, as amended, required that offerors submit technical proposals which "shall enable Government engineering personnel to make a thorough evaluation and arrive at a sound determination as to whether or not the proposed equipment will meet the requirements of the Government." The RFP stated that technical proposals must be "specific, detailed, and complete." The RFP also provided that "For each numbered paragraph or subparagraph of the specification(s), the offeror must . . . state 'comply' or 'exception', and explain how he complies or how he takes exception." Award was to be made to the firm submitting the low priced, technically acceptable proposal.

An attachment to the RFP set forth the specifications for the antenna. Section 3.7.11 of the specifications contained performance requirements. Subsection (d) required that the antenna operate in a frequency range of 2-30 MHz on the HF band. Subsection (e) provided as follows: "Radiation patterns: Omni-directional pattern circular within 2dB." This section of the specifications also provided that the dual-mode HF antenna, as its name suggests, must operate in the HF band in two separate modes. Mode 1 relates to transmissions that leave the antenna on a high take-off angle, while mode 2 concerns low take-off angle transmissions. For each of the two modes, section 3.7.11 set forth five sample frequencies between 2-30 MHz and five maximum angles at which the antenna must operate within the required 2dB deviation.

Three proposals were received in response to the RFP. The agency established a three member technical team to evaluate the proposals. The proposals from Andrew and TCI were considered to be acceptable from a technical standpoint while the proposal from the third offeror was rejected as unacceptable. With respect to the omni-directional requirement, Andrew's proposal stated that its antenna would comply, but did not contain an explanation describing how it would do so. TCI's proposal also stated that it was fully compliant with this requirement. TCI, however, referenced literature concerning its antenna's radiation patterns contained in an appendix to its proposal.

No. 91-2993. We are considering this case on an expedited basis in response to a request from the Court. See Bid Protest Regulations, 4 C.F.R. § 21.9 (1991). In order to allow sufficient time to issue a decision as requested by the Court, we closed the record upon our receipt of supplemental comments from the Navy which were provided, at our request, on November 25, 1991.

After reviewing TCI's and Andrew's initial proposals, the evaluation team requested that these firms provide additional data in the form of "azimuth patterns for Mode 1 (2, 8, 10, 20, 30 MHz) and Mode 2 (4, 8, 10, 20, 30 MHz) frequencies." This request sought data which would verify the omni-directional ability of the radiation patterns within 2dB for both modes for each of the ten sample frequencies set forth in section 3.7.11.

Andrew responded to the agency's request by providing data which depicted the radiation characteristics of its antenna computed using "the industry standard antenna computer modelling program, the Numerical Electromagnetic Code (NEC-3)." Andrew provided its own brief analysis of the results along with diagrams showing the computed radiation patterns.

After receipt of the requested data from each firm, the agency determined that each had provided a technically acceptable proposal and requested best and final offers from both TCI and Andrew. On August 20, 1991, the agency made award to Andrew based on its low price. This protest followed.

TCI argues that the data provided by Andrew in its supplemental proposal demonstrates that the awardee's antenna does not operate in an omni-directional pattern within the required 2dB. The protester asserts that while the RFP does not allow for any degradation of signal quality beyond the 2dB variance, the NEC-3 data provided by Andrew reveals deviations far in excess of 2dB at various points across the frequency range of 2-30 MHz. In this regard, the protester cites several of the diagrams in Andrew's data--figure Nos. 12, 16, 20, 34, 35, 39, 40, 44 and 45--which show the performance of the Andrew antenna to be outside of the 2dB limit. Further, the protester points to several narrative statements accompanying the diagrams in the awardee's data which admit that the test results show more than a 2dB variation.[2] TCI argues that, based on this

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[2]Similarly, in an affidavit provided in opposition to this protest, the Manager of HF/VHF/UHF Engineering for Andrew concurs that the data submitted, which was "confirmed by actual field measurements" on a similar radiating structure and feed network and was calculated at the frequencies set forth in the specifications, documents that the proposed antenna exhibits "substantially omni-directional patterns," at some elevation angles. He contends that the variation displayed "at elevation angles substantially different from those where maximum radiation occurs at a given frequency is of little consequence to the effectiveness and suitability of the antenna for it's intended use." In other words, the

data, the agency could not have reasonably concluded that Andrew's antenna was compliant and points out that the agency has not produced any contemporaneous documentation which explains its conclusion in the face of this inconsistent test data. Finally, the protester persuasively argues that if it knew of the Navy's willingness to accept an antenna with performance characteristics which did not meet the RFP specifications, it could have reduced its price significantly by offering different, less sophisticated equipment.

The Navy does not deny that if the data generated by Andrew's computer modelling program and submitted to the agency reflects performance of the antenna proposed, it would not be compliant with the RFP's omni-directional requirements. Instead, the agency explains that it is difficult to predict the performance characteristics of large HF antennas and states that the computer program produces "a best estimate only." According to the agency, the data supplied was only a "theoretical approximation" and "can at best be considered an indicator" of performance of the antenna when built. Therefore, the agency states, its evaluators did not rely on the requested data, which it now asserts could have "disqualified" both firms but instead relied on the assertions of both firms that the proposed antennas would meet all of the RFP requirements. The agency maintains that since the data supplied by the firms "arguably" showed that both proposed antennas were unacceptable, the firms were treated fairly as both proposals were considered acceptable.

In reviewing an agency's evaluation of technical proposals and its determination whether or not the proposals submitted are acceptable, our Office will not make an independent judgment of their merits; rather, we will examine the agency's evaluation and conclusion to ensure that they were reasonable and consistent with the stated evaluation criteria. A.G. Personnel Leasing, Inc., B-238289, Apr. 24, 1990, 90-1 CPD ¶ 416. Notwithstanding the deference we grant to an agency concerning its determination as to the acceptability of proposed equipment, especially in cases such as this involving technically complex equipment, such a

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awardee recognizes the problem the particular radiation pattern data presents for its antenna, but believes that its pattern will meet the actual needs of the agency satisfactorily. In this connection, the manager states that the information supplied allows the Navy to "determine the technical acceptability of the Andrew design with respect to the performance specifications" and that Andrew is "compliant with the specification requirements for first article testing."

determination must be reasonable and documented in sufficient detail so that we can judge its reasonableness. See S-Cubed, A Div. of Maxwell Laboratories, Inc., B-242871, June 17, 1991, 91-1 CPD ¶ 571.

Here, the RFP clearly required more than a mere statement of compliance with the specifications--it asked for a technical proposal which explained how the proposed antenna would comply with the RFP requirements. When the agency received Andrew's proposal simply stating, without more, that its antenna would comply with the required radiation patterns, the agency properly requested clarification from the firm. The agency has, however, discounted the awardee's data showing theoretical noncompliance with specifications based on the premise that the data is only a "theoretical approximation" without citing any evidence or analysis to the contrary. In fact, the contemporaneous documentation of the evaluation consists of a single sheet with conclusory statements concerning the acceptability of both firm's proposals.

Thus, we find the record contains no reasonable basis for the agency to select Andrew in the face of the evidence of nonconformance contained in data provided by the awardee. See Department of the Air Force--Recon. of Protest filed by Motorola, Inc., B-222181.2, Nov. 10, 1986, 86-2 CPD ¶ 542. We sustain the protest on this ground.

The agency seeks to justify its actions by arguing that it was fair to the protester because that firm also submitted computer-generated azimuthal patterns which exceeded the 2dB requirement. The agency has not provided us with an explanation for its conclusions concerning the TCI data, and we are unable to support the agency's views based upon our examination of the technical data. Nor does the agency tell us whether the alleged deviations contained in the TCI data are similar in magnitude to those in Andrew's data.[3]

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[3]Even if neither TCI nor Andrew submitted proposals which met the specifications and even if the agency was prepared to accept a nonconforming offer, the Navy could not properly make an award on that basis. In negotiated procurements, any proposal that fails to conform to the material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. Martin Marietta Corp., 69 Comp. Gen. 214 (1990), 90-1 CPD ¶ 132. The proper course would have been for the agency to issue an amendment to the RFP to afford the offerors an opportunity to respond to the relaxed requirements. Cylink Corp., B-242304, Apr. 18, 1991, 91-1 CPD ¶ 384. In this regard, the protester maintains that if the agency's actual performance requirements were less stringent, it could have

We recommend that the Navy review the performance requirements set forth in subsection 3.7.11(e) of the RFP specifications. If the agency does not, in fact, require an antenna that will produce a radiation pattern which is omnidirectional within 2dB across a frequency range of 2-30 MHz, it should amend the RFP accordingly, and allow TCI and Andrew to submit revised proposals. If the Navy does require this performance feature, we recommend that it terminate Andrew's contract and award to TCI.[4]

The protest is sustained.

for Milton J. Socolar
Comptroller General
of the United States

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offered a less complex antenna at a lower price.

[4]TCI raised two additional protest arguments, one concerning the failure of Andrew to propose an antenna which meets the RFP's 95 percent efficiency requirement and the other concerning the alleged nonconformity of the Andrew data as to the "take-off" angles for mode 2 transmission. The protester has provided little support for the initial allegation and the second allegation seems to be a part of its overall position concerning Andrew's test data. In view of our conclusion concerning TCI's main protest argument, we need not separately address these issues.