

Schatz



Comptroller General
of the United States

1023177

Washington, D.C. 20548

Decision

Matter of: Mod-A-Can
File: B-261064
Date: July 17, 1995

DECISION

Mod-A-Can protests the award of a contract to Texas Instruments, Inc. under request for proposals (RFP) No. SP0920-95-R-A012, an approved source solicitation issued by the Defense Logistics Agency (DLA) for special cover assemblies to be used on F-18 aircraft. Mod-A-Can argues that DLA improperly rejected its alternate offer for failing to provide a adequate technical data package.

We dismiss the protest.

On November 2, 1994, the solicitation was advertised in the Commerce Business Daily (CBD), which alerted potential offerors that the government did not "possess complete unrestricted technical data which can be included/referenced in the solicitation." The RFP's schedule identified Texas Instruments, Inc. part number (96214) 3061302-1 and Burke Products, Inc. part number (27361) 3061302-1 as approved products. The solicitation also contained DLA's products offered clause, which permits firms to submit alternate products that are either "identical to, or physically, mechanically, electrically, and functionally interchangeable with" the approved products. Offerors of alternate products were advised that DLA may not have detailed specifications or other data to evaluate the technical acceptability of their products; thus, they were required to furnish with their offers legible copies of all drawings, specifications or other data necessary to describe clearly the characteristics and features of the product being offered, as well as drawings or other data pertaining to the design and materials of the exact product, to enable the government to determine whether the offeror's product was equivalent to the approved products listed in the solicitation. See Defense Logistics Agency Regulation § 252.217-9002. The solicitation also specifically stated that no drawings, plans, and/or specifications were available.

Two firms, Mod-A-Can and Texas Instruments, submitted proposals. Mod-A-Can's offer of an alternate special cover assembly, Mod-A-Can part number 3061302-1, was low.

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However, Mod-A-Can failed to submit with its offer a technical data package. Unable to evaluate Mod-A-Can's proposed alternate, DLA rejected its offer and awarded the contract to Texas Instruments.

The protester claims that the solicitation did not require submission of a technical data package and that, prior to award, it called the contract specialist who informed Mod-A-Can that a technical data package was not required.

The obligation to demonstrate the acceptability of an alternate product is solely the offeror's; solicitations containing products offered clauses require offerors of alternate products to submit technical information to evaluate the technical acceptability of their products. Sterling Mach. Co., Inc., B-246467, Mar. 2, 1992, 92-1 CPD ¶ 253. An offeror must submit sufficient information with its alternate item to enable the contracting agency to determine whether the item meets all the requirements of the solicitation. See Aero Components Co., B-243919, Aug. 14, 1991, 91-2 CPD ¶ 148. Failure to provide this information is a proper basis for rejecting an offer. Sterling Mach. Co., Inc., supra.

DLA properly rejected Mod-A-Can's offer. The CBD alerted potential offerors that the agency did not possess a complete technical data package, and the RFP required offerors of alternate products to provide sufficient information for the agency to evaluate the equivalency of the alternate to the approved products. Since Mod-A-Can did not provide a data package, and DLA did not have any data establishing the equivalence of Mod-A-Can's alternate product, the agency could not evaluate Mod-A-Can's offer. DLA thus properly rejected it. See Fiber Materials, Inc., B-246587, Mar. 18, 1992, 92-1 CPD ¶ 288.

As for Mod-A-Can's assertion that the contract specialist informed it that a technical data package was not required, the contract specialist has provided an affidavit in which she denies making the statement. In response, Mod-A-Can reasserted its position, but acknowledged it was unclear as to the details of the conversation with the contract specialist; Mod-A-Can did not provide an affidavit countering the contract specialist's position. Under these circumstances, there is no reason to accept the protester's account of the conversation instead of the agency's. In any event, even if the record showed the contract specialist provided advice that was inconsistent with the solicitation, offerors may not rely on such an oral modification which is

inconsistent with the written terms of the RFP absent a written amendment or confirmation of the oral modification. See Occu-Health, Inc.; Analytical Sciences, Inc., B-258598.2 et al., Feb. 9, 1995, 95-1 CPD ¶ 59.

The protest is dismissed.



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