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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

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Decision

Matter of: Innovative Communications Technologies, Inc.

File: B-291728; B-291728.2

Date: March 5, 2003

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Richard J. Vacura, Esq., Holly Emrick Svetz, Esq., and John F. Cox III., Esq., Morrison & Foerster, for Mackay Communications, an intervenor.
Jeffrey A. Mansfield, Esq., and Deana Jaeger, Esq., Department of the Navy, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected as technically unacceptable proposed high performance modem for use with satellite terminals on board ships, where: (1) agency reasonably interpreted proposal as requiring a version of the satellite terminal software that was not present on 95 percent of Navy ships, the solicitation stated that the government would not furnish the software, the record indicates that the protester was aware that it could not rely on the software being present, and protester did not offer to furnish the software itself, and (2) protester included in its final proposal revision an inadequately explained change in the description of its technical approach, such that it was not clear that the proposed system provided the required full functionality.

DECISION

Innovative Communications Technologies, Inc. (ICTI) protests the Department of the Navy's rejection of its proposal as technically unacceptable under request for proposals (RFP) No. N66001-02-R-5999, for interoperable high performance modems and related interface equipment. ICTI primarily challenges the technical evaluation.

We deny the protest.

BACKGROUND

The Navy leases satellite communications services for purposes of providing ship-to-ship and ship-to-shore access to local area networks, including the Navy's classified Secret Internet Protocol Router Network (SIPRNET) and its unclassified, but sensitive Non-Secure Internet Protocol Router Network (NIPRNET). SIPRNET furnishes ships access to such vital information as classified combat operations information and tactical data, while NIPRNET furnishes ships access to such unclassified data as logistics information, e-mail, and general Internet usage.

The Navy utilizes leased satellite communications services obtained through INMARSAT, which controls a network of geo-stationary satellites. The Saturn Bm satellite system aboard many Navy ships, which is manufactured by Nera Satcom, includes maritime antennas and terminal Main Control Units (MCU). The Nera terminal MCU, which includes embedded Nera software, is capable of transmitting and receiving data while directing and controlling the high performance Nera antennas to maintain antenna stabilization and continuous satellite linkage. In this regard, the Saturn Bm terminal can use either a port or starboard side antenna for its transmissions and signal reception, depending on which antenna has the clearest unobstructed view of the satellite. The Navy reports that loss of a satellite signal could be disastrous in the event that combat information could not be received or transmitted by the ship. Agency Report, Dec. 24, 2002, at 15-16.

INMARSAT requires all manufacturers of terminals using its satellites to comply with certain technical standards, including those set forth in Change Notice 17 (CN-17). Nera developed new versions of its terminal software, commercially available or embedded in new terminals, to comply with the CN-17 requirements, commencing with version 7.0 and continuing with version 7.11. Subsequently, software versions 7.12 and 8.0 were developed to support external, high performance modems. The Nera terminal software currently in use by the Navy includes the CN-17 compatible versions 7.0, 7.11, and 7.12, with 95 percent of the Nera Saturn Bm terminals equipped with either version 7.0 or 7.11, and the remainder equipped with version 7.12. Agency Report, Dec. 24, 2002, at 1-3.

The RFP provided for award of an indefinite-delivery/indefinite-quantity contract for a base year, with four 1-year options, for interoperable high performance modems and related interface equipment to augment INMARSAT, CN-17 approved, Nera Saturn Bm satellite terminals on board Navy, Military Sealift Command, Coast Guard, and other ships. Among other requirements, the Saturn Bm terminal with integrated high performance modem is required to support an increased speed of 128 kilobytes per second (kbps), as well as the legacy speed of 64 kbps; the modem must neither degrade nor inhibit the Saturn Bm's key operated transmit disable circuit, such that when the system is in EMCOM status, the system shall operate in the receive mode only; and, operating in conjunction with Saturn Bm terminals that include an antenna handover modification, the modem must neither degrade nor

inhibit automatic switching between antennas to maintain a continuous line of sight to the satellite. In addition, the offeror was required to include a declaration of conformance from INMARSAT, stating that the proposed modem did not invalidate the existing type and CN-17 approval of the Saturn Bm terminal and met all INMARSAT operational requirements for non-standard lease services.

Award was to be made to the responsible offeror whose proposal provided satisfactory technical capability, acceptable past performance and the lowest price. In this regard, technical capability was to be evaluated as either satisfactory or unsatisfactory based on a two-phase evaluation, including: (1) phase I, the evaluation of a written capability (technical) proposal, to be evaluated as satisfactory only if it indicated compliance with each specified performance requirement in the statement of work (SOW) and included "detailed information regarding the specific SOW, SPEC[IFICATION] and RFP paragraphs listed in Attachment 3," Technical Evaluation Written Proposal; and (2) phase II, a technical demonstration of its proposed approach. The RFP provided, however, that only offerors whose capability proposal was found acceptable would be accorded an opportunity for a technical demonstration. RFP §§ L-317-4.3, M-304; amend. No. 0002, Question and Answer No. 37.

Subsequent to issuance of the RFP, the agency informed offerors that it would not be furnishing Nera software as government-furnished equipment (GFE). In this regard, ICTI had advised the agency that "Nera Saturn B terminal operation with external modem requires V[ersion] 7.12 software and an associated opening code for the external modem feature"; that Nera had advised that it would only sell the opening codes required for external modem operation in conjunction with procurement of an Interface Control Unit (ICU); and that "[s]ome Non-OEM bidders may not require the ICU functionality in providing the requisite 128k[bps] solution and may only require v[ersion] 7.12 software with external modem opening code to meet the RFP requirements." ICTI requested that the agency consider providing the Nera version 7.12 software and opening codes as GFE. Amend. No. 0002, Question and Answer No. 28; amend. No. 0003, Question and Answer No. 1. The Navy denied ICTI's request to furnish version 7.12 software as GFE, noting that the government had no rights to Nera version 7.12 software beyond those of any purchaser of the Nera Saturn Bm terminal, and that the Saturn Bm terminals it was purchasing under a 2001 contract came with preinstalled firmware supporting the specified contract performance requirements and not with any specified version of the Nera software. The Navy added that "[t]he government will not be procuring any additional opening key codes necessary only for external modem operation." Amend. No. 0003, Question and Answer No. 1.

Initial proposals were received from ICTI and Mackay Communications (the United States distributor for Nera), by the closing time on July 15, 2002. ICTI included with its proposal an agency-level protest in which it objected to the requirement to furnish Nera Saturn Bm terminals and having to acquire from Nera external modem

opening codes in order to meet the requirements for the phase II demonstration. The Navy denied the protest, stating that the Saturn Bm terminals were readily available and that the government would not furnish the terminals for the demonstration. The agency reiterated that it had no rights to Nera version 7.12 software beyond those of any purchaser of the Nera Saturn Bm terminal. Navy Decision, July 17, 2002.

The Navy evaluated ICTI's initial proposal as unsatisfactory on the following bases: ICTI failed to provide the required declaration of conformance from INMARSAT that the proposed modem did not invalidate INMARSAT approval of the Saturn Bm terminal; the furnished technical manuals were deficient; and ICTI failed to address whether it would provide the required Nera software and opening key codes. The Navy reports that, due to concerns that it might purchase modems not fully interoperable with the existing Nera Saturn Bm terminals, it then amended the solicitation to require that offerors provide with their proposals a licensing agreement from Nera for providing specific software/firmware and corresponding opening key codes required to support integrated Saturn Bm terminal, antenna handover and modem operation. Agency Report, Dec. 24, 2002, at 7. When ICTI objected that the requirement for a Nera licensing agreement was restrictive of competition, the Navy further amended the solicitation to allow offerors to provide either a Nera licensing agreement or an alternative technical solution. As amended, the Saturn Bm Software Requirements/Alternatives section of the RFP's technical evaluation plan for the written proposal read as follows:

> As an alternative, and in the absence of a license agreement from Nera Norway, offerors may propose a technical solution to meeting the solicitation requirements which does not require the Nera software/firmware and corresponding opening key codes, provided such solution is fully described and presented in detail sufficient to enable a technical evaluation, technical demonstration, and complete verification of its ability to meet all the specifications contained in the solicitation. This includes INMARSAT authorization, system interoperability, and full functionality, without any loss or degradation of existing and new Saturn-B terminal features and functions including integrated antenna handover, and High performance modem and related interface equipment operation.
>
> In no event will the government be responsible for providing software/firmware and corresponding opening key codes for meeting the requirements of this solicitation.

RFP amend. No. 0009.

The Navy found ICTI's subsequently submitted final proposal revision (FPR) to be unsatisfactory with respect to two of the evaluation areas in the phase I written proposal evaluation. ICTI's FPR was found unsatisfactory under the Saturn Bm Software Requirements/Alternatives criterion of the RFP's technical evaluation plan

on the grounds that (1) although somewhat unclear, ICTI's proposed alternative to a licensing agreement from Nera for software/firmware and corresponding opening key codes appeared to indicate that Nera terminal software version 7.12, rather than the software versions 7.01 and 7.11 currently deployed on most Navy ships, would be required, and (2) ICTI's proposal did not otherwise establish that it would provide the required full functionality. In addition, the Navy determined that ICTI's FPR was unsatisfactory under the criterion for technical manuals because its manuals were not comprehensive, included information, instructions and procedures that were inaccurate or no longer applicable, and were difficult to use. Government Technical Evaluation at 2 and Addendum, ICTI; Agency Report, Dec. 24, 2002, at 9-15. Upon being advised of the agency's consequent determination that its proposal was technically unacceptable, and after being debriefed, ICTI filed this protest with our Office.

TECHNICAL EVALUATION

ICTI asserts that its proposed modem was compliant with the stated requirements and maintains that the agency therefore should have afforded it an opportunity for a phase II demonstration.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate, and an offeror fails to do so at its own risk. United Defense LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19. We conclude that the agency reasonably rejected ICTI's proposal.

Access to Nera Software Version 7.12

As noted above, the Navy determined that, although it was somewhat unclear from ICTI's proposal, its proposed alternative to a licensing agreement from Nera for software/firmware and corresponding opening key codes appeared to indicate that its approach required the presence of Nera terminal software version 7.12, rather than the software versions 7.01 and 7.11 (also CN-17 compliant) currently deployed on approximately 95 percent of the current Navy Saturn Bm platforms. ICTI asserts that the evaluation was unreasonable because its proposed approach in fact did not require Nera version 7.12 software. The protester suggests that, in any case, version 7.12 software will be available.

We are unpersuaded by ICTI's argument. Although ICTI denies any ambiguity in its proposal as to software, maintaining that its proposed modem will work with any CN-17 compliant software, we find the agency reasonably read ICTI's proposal as indicating that Nera software version 7.12 was required for full functionality. In

response to the Navy's question during discussions as to whether ICTI planned to provide the required Nera license for Saturn Bm software/firmware and corresponding opening key codes, ICTI claimed in its FPR that "ICTI does not require any special software or opening codes beyond CN17 capability . . . . Therefore no license agreement with Nera is required or appropriate . . . ." ICTI FPR, Response to Navy Questions, at 2, 8. However, as noted by the Navy, ICTI's FPR also included other statements suggesting that, in fact, Nera version 7.12 software (or later) was required. In this regard, the proposal included the statement that ICTI's proposed "INT-L Modem operates with any CN17-compatible Nera software version (i.e., v[ersion] 8, v[ersion] 7.12) and does not change the functionality provided by that software." ICTI FPR, III.A-21. Likewise, ICTI stated in its FPR response to Navy questions that the "INT-L Modem [Operation & Maintenance] Manual assumes that the Saturn-B provided by the Navy will be equipped to support legacy HSD lease services. More specifically, the Saturn-B will be loaded with software version 7.12 or later, with opening codes installed for CN17 and Antenna Handover (if used)." ICTI FPR, Response to Navy Questions, at 2. Further, ICTI's application (included in its FPR) for INMARSAT authorization (that its proposed modem does not invalidate the existing Saturn Bm terminal INMARSAT type and CN-17 approval) stated that "[f]or this lease authorization, the INT-L Modem will be configured to operate with either v[ersion] 8 or v[ersion] 7.12 software, depending upon Navy selection." ICTI Initial Proposal, Standard Form of Application for Leased Space Segment, July 13, 2002, at 12. We find that the Navy reasonably concluded that ICTI's multiple references to software version 7.12, especially when considered in the context of ICTI's prior request that the Navy furnish version 7.12 as GFE, indicated that its proposed approach would only work with software version 7.12 (or later).

ICTI claims that, to the extent the agency read its proposal correctly, software version 7.12 is a free download for authorized users; it concludes that the Navy will in fact upgrade non-version 7.12 terminals to software version 7.12 whenever an external modem is installed. ICTI Comments, Feb. 17, 2003, at 6. The Navy reports, however, that version 7.12 is available only to users who have previously purchased that software and the opening codes needed to activate it. Navy Comments, Feb. 21, 2003, at 3. In any case, again, the RFP expressly provided: "In no event will the government be responsible for providing software/firmware and corresponding opening key codes for meeting the requirements of this solicitation." RFP amend. No. 0009.

Furthermore, it appears from the record that ICTI understood that it could not rely on Nera software version 7.12 being present on the Saturn Bm terminals. ICTI notes that the RFP only referred to CN-17 compliance, and did not list the versions of Nera terminal software that were resident on the Navy's terminals. When questioned by our Office as to its knowledge in this regard, ICTI responded as follows:

> When RFP 5999 was issued, ICTI was aware that all ships operating in external modem mode must have CN-17 compliant software, and Nera

> version 8 and Nera series 7 software were the only Nera Saturn Bm software that was CN-17 compliant. ICTI was not aware of the distribution of the various software versions in the Fleet.
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> . . . .
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> In fact, RFP 5999 did not disclose that different versions of series 7 software are currently deployed in the Fleet. This fact was known with any degree of certainty only by the Navy, Mackay and Nera.

ICTI Comments, Feb. 17, 2003, at 3, 7. However, while ICTI may not have known the precise distribution of Nera software versions resident on the Navy's Saturn Bm terminals, ICTI's unsuccessful request to the Navy for assurances that version 7.12 would be made available suggests that ICTI understood that it could not rely on Nera software version 7.12 being present on the Saturn Bm terminals.

ICTI's understanding that it could not rely on software version 7.12 being available is further demonstrated by ICTI's own account of how it formulated its FPR. ICTI explains that its external modem solution can be configured in one of two ways, [DELETED]. According to the protester, while its initial proposal accommodated both configurations, it based its FPR on Configuration Two when it became clear that obtaining access to Nera software version 7.12 from the agency would be problematic. Id.[1] Thus, ICTI's proposal of two different configurations, and its ultimate reliance on the second, non-version 7.12 configuration, indicate that it was aware version 7.12 might not be available.

In summary, we find that the agency reasonably determined that ICTI's FPR approach would require the presence of Nera version 7.12 software for full functionality. Since version 7.12 was deployed on only 5 percent of the Saturn Bm platforms (earlier versions were deployed on the remaining 95 percent of the platforms); the RFP expressly provided that "[i]n no event will the government be responsible for providing software/firmware and corresponding opening key codes for meeting the requirements of this solicitation," RFP, amend. No. 0009; and ICTI was not proposing to furnish the Nera software, the Navy reasonably concluded that ICTI's proposal did not establish that its approach offered the required full functionality on all platforms, including those equipped with earlier software versions.[2]

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[1] As noted by the Navy, ICTI apparently first referred to Configurations One and Two in its later protest submissions; these terms are not found in ICTI's proposal.

[2] We note that, while ICTI timely alleged in its initial protest that the agency had failed to conduct meaningful discussions regarding the agency's determination that ICTI's operations and maintenance manual was not "useable," it did not timely protest that the agency had failed to conduct meaningful discussions with respect to

(continued...)

[DELETED]

In any case, the record supports the agency's determination that there existed an independent basis for finding that ICTI's proposed alternative (to a licensing agreement from Nera for software/firmware and corresponding opening key codes) failed to satisfy the RFP requirement that any such alternative be "fully described and presented in detail sufficient to enable a technical evaluation, technical demonstration, and complete verification of its ability to meet all the specifications contained in the solicitation." RFP amend. No. 0009.

As noted by the Navy, ICTI's initial proposal included a description of [DELETED]. The diagram in ICTI's initial proposal depicted [DELETED]. ICTI Initial Proposal, Figure 12 at III.A-31; Navy Comments, Feb. 18, 2003, at 6. The Navy viewed this initial approach, [DELETED], as logical, since [DELETED]. Government Technical Evaluation, Addendum, ICTI, at iii.

In its FPR, ICTI revised the description of its technical approach. As discussed above, ICTI has explained that its FPR abandoned its Configuration One approach, using [DELETED], and relied instead on its Configuration Two approach, using [DELETED] (and allegedly not requiring Nera terminal software version 7.12). However, while ICTI revised its proposal to state generally in its FPR narrative that its modem "uses [DELETED]," it did not specify [DELETED]. ICTI FPR at III.A-32b. Indeed, it did not change the diagram from its initial proposal showing [DELETED].

ICTI's failure to specify [DELETED] led to concern on the part of the agency that ICTI's revised approach could result in an interruption of the [DELETED] monitor and control signals. The Navy notes that, in addition to ICTI's reference [DELETED]. Agency Comments, Feb. 18, 2003, at 7.

The Navy reports that the consequences of interrupting the [DELETED] signals and antenna [DELETED] could be severe. According to the agency, if the antenna

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the agency's concern (under the Saturn Bm Software Requirements/Alternatives section of the RFP's technical evaluation plan for the written proposal) that ICTI's approach required Nera software version 7.12. See ICTI Protest, Nov. 27, 2002, at 26. As for the protester's assertion that the agency should have reopened discussions, we note that the decision whether to reopen discussions and request a new round of revised proposals is largely within the discretion of the contracting officer. Metcalf Constr. Co., Inc., B-289100, Jan. 14, 2002, 2002 CPD ¶ 31 at 5. Here, we see no evidence that the contracting officer abused her discretion in determining not to reopen discussions with ICTI.

needed to be repositioned due to the ship's current heading, the MCU's ability to perform such a command might be ineffective due to an inability to control the antenna. If [DELETED] the antenna were interrupted, the agency reports, the antenna would be temporarily inoperable and satellite signals would be lost. Further, if the antenna malfunctioned, the MCU might not detect the malfunction [DELETED]. In addition, the agency reports concern at the possibility that the MCU might have to compete with the ICTI modem for control of the HPA, since it is currently designed to exert full, uninterrupted control of the HPA. Id. Should any resulting loss of a satellite signal occur, this could be disastrous in the event that combat information could not be received or transmitted by the ship. Agency Report, Dec. 24, 2002, at 15-16.

ICTI has not rebutted the agency's position that, given the inadequately explained change in its described technical approach, ICTI's FPR did not establish that its alternative approach offered the required full functionality; ICTI essentially asserts only that the agency should have relied on its general FPR claim that its revised technique would work "without having any impact on existing Saturn-B functionality." ICTI FPR at III.A-32b. ICTI's position ignores the general obligation of all offerors to submit an adequately written, unambiguous proposal, and the specific RFP requirement here that offerors proposing an alternative to a licensing agreement from Nera for software/firmware and corresponding opening key codes "fully describe[] and present[] in detail sufficient to enable a technical evaluation, technical demonstration, and complete verification of its ability to meet all the specifications contained in the solicitation," including "system interoperability, and full functionality, without any loss or degradation of existing and new Saturn-B terminal features and functions." RFP amend. 0009. ICTI asserts that the agency nevertheless should have afforded it an opportunity to undertake a phase II demonstration. However, this assertion ignores the provisions of the RFP establishing that only offerors whose written capability proposal was found acceptable would be accorded an opportunity for a technical evaluation demonstration. RFP § 4.3; amend. No. 0002, Question and Answer No. 37.

Evaluation of Mackay Proposal

ICTI asserts that the Navy engaged in a disparate evaluation, in that Mackay's proposal was found acceptable even though, according to the protester, Mackay's proposal included less detail as to the internal workings of Mackay's proposed modem than did ICTI's and Mackay's manuals were less useable than ICTI's.

ICTI's argument as it applies to the evaluation under the Saturn Bm Software Requirements/Alternatives criteria of the RFP's technical evaluation plan is based on a fundamental misunderstanding of the RFP's evaluation approach under that criterion. Offerors were required by the RFP to provide either a Nera licensing agreement or, in the absence of such an agreement, a detailed technical solution to meeting the solicitation requirements that did not require the Nera

software/firmware and corresponding opening key codes. Mackay, Nera's authorized distributor, provided a Nera licensing agreement and proposed Nera terminal software version 7.12. In addition, Mackay's proposal included a diagram which, unlike ICTI's incorrect [DELETED] diagram, apparently reflected its actual proposed approach. Given these circumstances, even if ICTI were correct that Mackay's proposal furnished somewhat less detail than ICTI's, the agency could reasonably find Mackay's proposal to be satisfactory with respect to the Saturn Bm Software Requirements/Alternatives criterion at the same time that it evaluated ICTI's proposal as unsatisfactory in that regard. As for the relative usability of the manuals, at best, ICTI can show only that both manuals should have been found to be satisfactory. Even if that were the case, however, ICTI still would not be in line for award, since its proposal was reasonably determined to be unsatisfactory with respect to the Saturn Bm Software Requirements/Alternatives criterion.

BIAS

ICTI essentially maintains that contracting officials, having previously worked with Mackay and Nera in upgrading the Saturn Bm system, were unfairly predisposed in their favor, and against ICTI's proposed alternative approach. Government officials are presumed to act in good faith and any argument that contracting officials are motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement official on the basis of inference or suppositions. ACC Constr. Co., Inc., B-289167, Jan. 15, 2002, 2002 CPD ¶ 21 at 4. Based on our review of the record, which supports the reasonableness of the agency's determination that ICTI's FPR was technically unacceptable, we conclude that ICTI has failed to meet its heavy burden of proving bad faith. See E.F. Felt Co., Inc., B-289295, Feb. 6, 2002, 2002 CPD ¶ 37 at 3-4.

The protest is denied.

Anthony H. Gamboa
General Counsel