



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: ACR Electronics, Inc.

File: B-266201

Date: January 24, 1996

Theodore M. Bailey, Esq., for the protester.

E. Sanderson Hoe, Esq., McKenna & Cuneo, for Alden Electronics, Inc., an interested party.

Daniel A. Laguaite, Esq., Department of the Navy, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under brand name or equal procurement, the contracting agency enjoys a degree of discretion in determining whether an offeror has provided sufficient information to show that the offeror's product is acceptable; the General Accounting Office will not disturb such a determination unless it is unreasonable.
2. Offer of "equal" product under brand name or equal solicitation was properly rejected where the technical information available to the contracting agency failed to demonstrate compliance of the "equal" product with all of the salient characteristics set forth in the solicitation, and the technical information supplied by the protester after filing its protest demonstrates that the protester's proposed product fails to meet the solicitation requirements.
3. Agency properly made award based upon initial proposals without conducting discussions where the request for proposals advised offerors that the agency intended to award the contract on the basis of initial proposals, and the agency reasonably determined that discussions were unnecessary.

DECISION

ACR Electronics, Inc. protests the award of a contract to Alden Electronics, Inc. under request for proposals (RFP) No. N00421-95-R-5044, issued by the Department of the Navy for Emergency Position Indicating Radio Beacons (EPIRBs) to replace obsolete emergency radios at the Naval Air Warfare Center, Aircraft Division, St. Inigoes, Maryland. ACR argues that the agency's evaluation of its proposal was unreasonable and that the agency improperly made award on the basis of initial proposals without conducting discussions.

We deny the protest.

The RFP provided for the award of a fixed-price contract for 820 EPIRBs. The EPIRBs are carried aboard lifeboats used by Navy personnel in emergency situations to transmit a position-identifying signal through low orbiting COSPAS-SARSAT¹ satellites which then relay the signal to Search and Rescue (SAR) units via a ground receiving station.

The requirement was originally synopsisized in the Commerce Business Daily (CBD) as a sole source procurement for Alden. When eight potential sources, including ACR, responded to the sole source announcement, the agency requested that the interested firms submit capability statements. ACR, among others, submitted its capability statement and the technical activity found it to be capable on March 29. The procurement was then synopsisized in the CBD as a competitive procurement with a brand name or equal specification.

The solicitation specified the SATFIND-406 S-1015 Category 2 Survival EPIRB transmitter as the brand name product, listed the salient characteristics that had to be satisfied by any product offered as equal to the brand name item, and required that a technical volume with descriptive literature be submitted with the offer to demonstrate compliance with those characteristics.² Specifically, the salient characteristics called for EPIRBs capable of transmitting on 406.025 MHz and 121.5 MHz and meeting a number of specific requirements concerning, among other things, stability, modulation, packaging, antenna type, operating life, operating temperature, storage temperature, battery type, weight, mounting bracket size, lanyard buoyancy, and size.

¹COSPAS-SARSAT is an international system that uses Russian and United States low altitude, near-polar orbiting satellites that assist in detecting and locating activated 121.5 MHz EPIRBs and 406 MHz satellite EPIRBs. The Russian Federation provides COSPAS--Cosmichesdaya Sistyema Poiska Avriynych Sudov (Space System for Search of Distressed Vessels). Canada, France, and the United States provide SARSAT--Search and Rescue Satellite-Aided Tracking. The COSPAS and SARSAT systems are fully interoperable.

²The RFP contained the Brand Name or Equal clause at Defense Federal Acquisition Regulation Supplement (DFARS) § 252.210-7000, which instructs offerors to include descriptive literature, such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the contracting officer. The clause provides that the contracting officer would evaluate "equal" products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the contracting officer. The clause cautions that the contracting officer is not responsible for locating and securing any information not identified in the offer and reasonably available.

The RFP provided that award would be made to the offeror submitting the lowest-priced, technically acceptable proposal. The RFP incorporated Federal Acquisition Regulation (FAR) § 52.215-16, Alternate III, which states that the government intends to award a contract without discussions and encourages offerors to submit their best offers in their initial proposals. This clause also reserves the agency's right to conduct discussions if determined to be necessary.

The agency received three proposals, including those of ARC and Alden, by the RFP's extended July 27 closing date.³ The agency's technical source selection evaluation board (TSSEB) evaluated ACR's proposal. The TSSEB found that ACR failed to submit the technical volume, as required by the solicitation, did not identify in the offer any information which was available to the agency for evaluation purposes, and failed to acknowledge amendments 0002, 0003, and 0004. Because no technical information was included with or referenced in the proposal, the TSSEB evaluated ACR's offer on the basis of the only technical information available to it: ACR's capability statement which included a one-page brochure and certifications from ACR that its transmitters met the industry standards specified by COSPAS-SARSAT, the Federal Communications Commission (FCC) and the U.S. Coast Guard. The TSSEB found that the capability statement failed to address various specifications required under the RFP. Specifically, the TSSEB found that the transmitter ACR offered, its Model No. 2758, Category 2 EPIRB, failed to meet 11 of the 18 requirements, including power, modulation, stability requirements, antenna type, operating and storage temperatures, mounting bracket requirements, lithium battery, and lanyard buoyancy. Accordingly, the agency determined that ACR's proposal was technically unacceptable and incapable of being made acceptable without substantial revision. Award was made to Alden, the next low offeror, which had offered the brand name product in its proposal.

ACR contends that its proposed transmitter does, in fact, meet the salient characteristics listed in the RFP. While the protester admits that it "did not submit any additional technical information with its proposal," ACR argues that the agency should know the contents of the international COSPAS-SARSAT standards, with which ARC claimed to be compliant, and should have evaluated its proposed transmitter in relation to those standards. The protester states that the international standards are equivalent to the salient characteristics specified in the RFP, and although "outside of its offer" are "reasonably available" and should have been considered by the Navy.

³The agency issued four amendments to the RFP. Amendments 0001, 0003, and 0004 extended the date for receipt of proposals; amendment 0002 answered a technical question.

With its comments on the agency report, the protester, for the first time, submitted copies of the September 1994 "Specifications for COSPAS-SARSAT 406 MHz Distress Beacons," recommended standards from the June 1993 Radio Technical Commission for Maritime Services (RTCMS) which is used for FCC certification for 406 MHz satellite EPIRBs, and its previously submitted brochure. Additionally, the protester identifies the documents which allegedly shows compliance with each specification. For example, the RFP required that the transmitter battery be lithium with current and thermal fuses and diode protected for maximum safety. ACR indicated that the RTCMS Page 2-25, paragraph 2.3.1.5 and its brochure indicate its compliance with this specification. According to the protester, the agency had sufficient information with its brochure, the RTCMS and the international standards to determine that its transmitter met the RFP requirements..

The agency states that it did not use the COSPAS-SARSAT standards to evaluate ACR's transmitter because the standards are not readily available to the Navy technical evaluators and, while local Navy technical evaluators are generally familiar with the internationally established standards, they do not rely upon these standards when evaluating whether an offered transmitter meets the salient characteristics specifically set forth in the RFP. Rather, as stated in the RFP, Navy evaluators look to the technical information and data supplied or referenced in the offeror's proposal. Here, as noted above, the international standards were neither referenced nor supplied with ACR's proposal. Moreover, the agency points out that simply satisfying the COSPAS-SARSAT and FCC standards does not provide adequate proof of compliance with the Navy's salient characteristics. Specifically, the Navy points out that while it required minimum storage temperatures for the EPIRBs of -40 degrees C to +70 degrees C, the RTCMS standards that ACR relies on and claims to meet require minimum storage temperatures of -30 degrees C to +70 degrees C. Similarly, as noted above, the Navy required lithium batteries with current and thermal fuses and diode protection, while RTCMS standards have no such requirement.

In a brand name or equal procurement such as this one, the contracting agency is responsible for evaluating the data submitted by the offeror and ascertaining if it provides sufficient information to determine if the offeror's product is acceptable. Infrared Technologies Corp., B-255709, Mar. 23, 1994, 94-1 CPD ¶ 212; VG Instruments, Inc., B-241484, Feb. 7, 1991, 91-1 CPD ¶ 137. In making this determination, the agency enjoys a degree of discretion which we will not disturb unless we find that the determination is unreasonable. Id.

Here, the agency's rejection of the protester's proposal was reasonable. The record shows that the protester did not provide any substantive technical response to the solicitation. Indeed, the record shows that the only descriptive literature submitted by the protester with its proposal consisted of a one-page brochure which does not address the majority of the requirements of the RFP. The protester did not submit

copies of the standards upon which it relies until it responded to the agency's report on its protest. Moreover, as noted above, these international standards are not equivalent to the salient characteristics listed in the solicitation. By ACR's own admission, its proposed transmitter meets only the RTCMS standard, which does not satisfy either the solicitation storage temperature requirements or the requirement that the battery be lithium with current and thermal fuses and diode protected. The protester does not rebut the agency's determination that the protester's proposed transmitter fails to meet at least these two requirements. Accordingly, we have no basis to disturb the agency's determination that the protester's proposed transmitter failed to meet the salient characteristics set forth in the solicitation.

ACR also contends that the agency's determination not to conduct discussions was unreasonable.

Where, as here, an RFP sets forth the provisions of FAR § 52.215-16, Alternate III, advising offerors of the agency's intent to award without conducting discussions, the agency may properly do so, even to an offeror which did not propose the lowest price (like Alden), providing that the contracting officer determines that discussions are unnecessary. FAR § 15.610(a)(4); Infotec Dev., Inc. B-258198 *et al.*, Dec. 27, 1994, 95-1 CPD ¶ 52. While the contracting officer has the discretion to decide whether or not to hold discussions, we will review the exercise of that discretion to ensure that it was reasonably based on the particular circumstances of the procurement, including consideration of the proposals received and the basis for the selection decision. *Id.* There is nothing improper in an agency's making award based upon initial proposals where only one offeror submits an offer which the agency determines acceptable. See Analytical Chemists, Inc., B-256037, Apr. 29, 1994, 94-1 CPD ¶ 283; Benton Corp., B-249091, Oct. 21, 1992, 92-2 CPD ¶ 264.

Here, there is nothing in the record that suggests the agency should have conducted discussions. Since the solicitation advised offerors that the agency intended to make award without discussions, ACR could not presume that it would have a chance to improve its proposal through discussions. Scientific-Atlanta, Inc., B-255343.2; B-255343.4, Mar. 14, 1994, 94-1 CPD ¶ 325. The burden was on ACR to submit an initial proposal that adequately demonstrated that its proposed transmitter met the salient characteristics of the solicitation, and the protester ran the risk of having its proposal rejected by failing to do so. *Id.* As noted above, ACR provided no technical information with its proposal, failed to reference relevant technical material and, in its protest submissions, did not rebut the agency's determination that its proposed transmitter did not meet at least two of the salient characteristics of the RFP. Based on our review, we think the agency reasonably found that ACR's proposal would require substantial revision and therefore was unacceptable; consequently, there was no requirement for the agency

to hold discussions with ACR, in any event, and we see no basis to object to the agency's decision. See Infotec Dev., Inc., supra.⁴

The protest is denied.

Comptroller General
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⁴In supplemental comments, the protester for the first time argued that the Navy has waived a salient characteristic for Alden relating to the antenna requirement. Under our Bid Protest Regulations, protests other than those based on apparent improprieties in a solicitation shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1995). Here, the protester was notified of the award to Alden by letter dated September 7, and if it believed that Alden's proposed transmitter did not meet the salient characteristics of the solicitation, ACR should have raised that issue within 10 working days of receipt of that letter. Because the protester did not question the technical evaluation of Alden until December 16, its protest on this issue is untimely and will not be considered. Laser Diode, Inc., B-249990, Dec. 29, 1992, 93-1 CPD ¶ 18.