



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Ericsson, Inc.

File: B-274668; B-274668.2

Date: December 23, 1996

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David B. Apatoff, Esq., Arnold & Porter, for Motorola, Inc., an intervenor.
Maj. Michael J. O'Farrell, Jr., Department of the Army, 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

Protest against rejection of proposal as unacceptable is denied where agency reasonably determined that proposed digital commercial land mobile radio system did not comply with mandatory solicitation requirements for handheld radios to operate at a UHF frequency range of 403-470 MHz and for the digital interface unit to store up to eight encryption keys; protester's interpretation of specifications as permitting gaps in the required frequency range and only requiring that the interface unit be capable of future upgrade to an eight encryption key storage capacity was unreasonable.

DECISION

Ericsson, Inc. protests the Department of the Army's award of a contract to Motorola, Inc., under request for proposals (RFP) No. DAJB03-96-R-0036, for replacement of the radio network currently used by the Eighth United States Army, Eighth Military Police Brigade (8th MP). Ericsson argues that the Army improperly rejected its lower-priced proposal as technically unacceptable.

We deny the protest.

The solicitation contemplated award--to the low, technically acceptable offeror--of a fixed-price contract to provide a new digital commercial land mobile radio system (CLMRS) that would be compliant with frequency changes mandated by the Republic of Korea effective January 1, 1997. The solicitation generally provided that the 8th MP "requires a handheld radio network with repeater system capable of operating in the analog, digital unencrypted and digital encrypted modes" and

consisting of handheld radios, repeaters, dispatcher control consoles, digital interface units, and base stations. In addition, Attachment C to the solicitation included a detailed checklist of requirements for each component; the RFP (as amended) stated that technical acceptability would be determined on the basis of "Attachment C only." Offerors were required to furnish "written documentation that substantiates their equipment's ability to meet the salient characteristics identified in this solicitation."

Three proposals were received by the closing time on July 26, 1996. Since none of the proposals was considered technically acceptable as submitted, the agency entered into written discussions with each offeror, requesting additional information showing conformance of the proposed system to specified Attachment C requirements. After concluding that Ericsson's response still did not establish conformance with these requirements, the agency first generally requested the protester "to requote an alternate unit meeting all solicitation criteria" and "provide proof of meeting each listed area in which you did not receive a technical 'go,'" and then in a subsequent telephone call raised several specific areas of concern. After receiving another submission from Ericsson, the Army requested best and final offers (BAFO) from all offerors. The agency determined that Ericsson's proposal was technically unacceptable due to noncompliance with Attachment C requirements, and ultimately made award to Motorola based on its finding that only Motorola's BAFO complied with all of the Attachment C requirements.

The procuring agency has primary responsibility for evaluating the technical information supplied by an offeror and determining the technical acceptability of the offeror's item. Alpha Technical Servs., Inc., B-250878; B-250878.2, Feb. 4, 1993, 93-1 CPD ¶ 104. Our Office will not question an evaluation of proposals unless the agency deviated from the evaluation criteria or the evaluation was otherwise unreasonable. IDB Int'l, B-257086, July 15, 1994, 94-2 CPD ¶ 27. The Army reasonably rejected Ericsson's proposal as technically unacceptable. We discuss two areas of unacceptability below.

FREQUENCY RANGE

Attachment C provided that the handheld radios must operate at a "UHF frequency of 403-470 MHz." Ericsson entered the general notation "Yes" opposite the radio frequency range requirement in its Attachment C checklist response, but specifically described the equipment characteristics of its handheld radio as including three UHF subbands in its tuning range: 403-430 MHz, 440-470 MHz, and 470-500 MHz. Although requested during discussions to demonstrate conformance of its proposed radio to the frequency range requirement, Ericsson essentially repeated and referred the agency to the above sections of its initial proposal. The Army determined that the 430-440 MHz gap in the frequency range of Ericsson's radio, and its reliance on

subbands, rendered the radio noncompliant with the requirement for a 403-470 MHz UHF frequency range.

Ericsson essentially argues that the solicitation did not require the system to operate over the entire frequency range without subbands or gaps, and points to Motorola's proposal as support for this conclusion. Specifically, Ericsson notes that, while Motorola's handheld radios operate over the entire 403-470 MHz frequency range without subbands or gaps, Motorola's proposed base station is described in the firm's proposal as including three UHF subbands: 403-433 MHz, 450-482 MHz, and 482-512 MHz. Ericsson essentially concludes that its radio is as compliant with the requirement as Motorola's.

This argument is without merit. First, it is simply untenable to maintain that a 10-MHz gap in frequency range is consistent with a clear, unqualified requirement for a "UHF frequency of 403-470 MHz" for the handheld radios.¹ Further, the evaluation of Motorola's proposal was fully consistent with this clear requirement; while the specific, enumerated "GO/NO-GO" requirements in Attachment C for the handheld radios included a requirement for a "UHF frequency of 403-470 MHz," the enumerated requirements for the base station did not include a frequency range requirement.² There thus is no basis to question the agency's determination that

¹Although Ericsson also argues that the Army failed to advise it during discussions of the agency's interpretation of the frequency range requirement, we note that it was requested during discussions to furnish additional information showing conformance of its proposed system to the frequency range requirement. In view of the clear, unqualified specification requirement for a "UHF frequency of 403-470 MHz," we believe that the agency's clarification request in this regard was sufficient to place Ericsson on notice that its interpretation of the specifications was incorrect and that a handheld radio with gaps in the required frequency range would be unacceptable.

²Although Ericsson points to language in the introductory overview of the "Frequency, Bandwidth and Channel Separation Requirements" in Attachment C which generally stated that "the CLMRS must be capable of operating at a UHF frequency of 403-470 MHz (UHF)," and suggests that this established a requirement applicable to every component of the CLMRS, we note that its position fails to account for the preceding language in the paragraph making clear that "[t]his criteria outlines the minimum essential technical requirements for the 8th MP Brigade CLMR radios." (Emphasis added.)

Ericsson's proposed handheld radio did not meet the specific frequency range requirement for the handheld radios, and that Motorola's did.³

ENCRYPTION KEYS

Attachment C of the solicitation contained the following requirement for the digital interface unit: "Multi key capability. Stores up to eight encryption keys. These keys are essential to decoding/encoding inbound and outbound transmissions." Ericsson's initial proposal Attachment C checklist indicated a dash, rather than a "Yes" notation opposite this requirement, and explained that:

"(This vendor specific feature is of no use since the console specification does not provide multi-key capability.
[DELETED] If multi-key is required Ericsson will requote an alternate unit upon request."

In response to the Army's request during discussions to demonstrate conformance of its proposed digital interface unit to the encryption key requirement, Ericsson stated that [DELETED]. The record indicates that the agency subsequently generally advised Ericsson "to requote an alternate unit meeting all solicitation criteria" (as it had offered to do in its initial proposal), and then specifically questioned Ericsson--according to Ericsson's letter to the agency dated August 21, 1996--with respect to the agency's "concern for noncompliance" with respect to "the multikey operation of the console interface." However, in response, Ericsson essentially reiterated its previous position, stating that:

"[DELETED] The Ericsson unit offered meets the specification as required by Attachment 'C' . . . 'Multi key Capability.'"

Since [DELETED], the Army determined its proposal to be noncompliant with the Attachment C encryption key requirement.

Ericsson argues that it reasonably interpreted Attachment C as requiring that the digital interface unit be capable of being upgraded to store eight encryption keys, and not that the system as initially supplied at the contract price be equipped to store eight encryption keys; it maintains that this interpretation is consistent with the normal meaning accorded the term "capable" in the land mobile radio industry. In any case, according to the protester, at best the specification was ambiguous

³According to the agency, while base stations and repeaters are set for a single subband, handheld radios need to be capable of switching from one band to another.

with respect to the meaning of "capability," and thus cannot provide a basis for rejecting its proposal.

Ericsson's position is without merit because it does not take into account all language of the requirement or the content of Ericsson's negotiations with the agency on this point. First, we think the statement in Attachment C that "[t]hese keys are essential to decoding/encoding inbound and outbound transmissions," was sufficient to put offerors on notice that the agency considered multiple encryption keys an important requirement for the radios to be furnished; Ericsson's interpretation accords the requirement no particular importance, instead relegating it to a matter the agency merely may address in the future. In fact, we think Ericsson's initial response with a dash, rather than "Yes," beside the encryption key requirement, its explanation that "[t]his vendor specific feature is of no use," and its offer to "requote an alternate unit upon request" if multi-key is required, show that Ericsson understood that its system did not comply with the requirement, and that it was trying to persuade the agency that a multi-key capability was unnecessary.

Further, any uncertainty as to the agency's interpretation that the system furnished at the contract price must be equipped to store eight encryption keys was eliminated during discussions. As indicated, the agency initially requested that Ericsson demonstrate conformance of its proposed digital interface unit to the encryption key requirement, and then again raised (according to Ericsson) the agency's "concern for noncompliance" with respect to "the multikey operation of the console interface" during oral discussions. It should have been clear to Ericsson at least at this point that the agency desired that the system furnished be equipped to store eight encryption keys.

The protest is denied.

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