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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*[Protest Against Rejection of Proposal]*

FILE: B-199830

DATE: February 27, 1981

MATTER OF: M/RAD Corporation **DLG06215**

**DIGEST:**

1. Solicitation with brand name or equal purchase description which identifies model number of brand name product but does not list salient characteristics is defective for failure to provide offerors with adequate statement of agency's needs.
2. Rejection of offeror's proposal for failure to submit sufficient information to describe exactly what Government needed was improper where failure of procuring agency to list salient characteristics in RFP may have precluded offeror from submitting more accurate description.

M/RAD Corporation protests the rejection of its proposal and award of a contract by the Warner-Robins Air Logistics Center, Robins Air Force Base, Georgia, to LAB Corporation under request for proposals No. F09650-80-R-0061. We sustain the protest based on the agency's failure to list salient characteristics in its "brand name or equal" purchase description. **DLG06216**

The solicitation, issued on January 29, 1980, sought proposals for a shock test system, described as the AVCO Model SM-105 with options (Shock Pulse Instrumentation System Model IS-910A and Test Fixture TF-006), or equal. Also required were two sets of operational instructions and two parts breakdowns.

Section C-27 of the RFP, entitled "Brand Name or Equal", required that an "equal" product fully meet the salient characteristics of the brand name product.

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Section C-27 placed upon any offeror proposing to furnish other than the brand name item the burden of demonstrating the equality of its product:

"(c)(1) \* \* \* Accordingly, to insure that sufficient information is available, the offeror must furnish as part of his offer all descriptive material (such as cuts, illustrations, drawings or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirements of the request for proposal and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. \* \* \*"

However, no salient characteristics were specified in the RFP. (We also note that the RFP failed to state the basis upon which offers would be evaluated: apparently the Air Force intended to award the contract to the lowest-priced technically acceptable offeror.)

Three offerors responded by the February 13 closing date. Their prices were as follows:

LAB	\$18,800
M/RAD	19,455
AVCO International Services (AVCO)	19,852

*DLG 00217*

All three offerors were included in the competitive range and discussions commenced on February 28. (During discussions, LAB increased its price to \$19,550. As a result, M/RAD became the lowest-priced offeror: this protest concerns the agency's rejection of M/RAD's proposal because M/RAD did not establish to the agency's satisfaction the equivalency of its item to the brand name product.) M/RAD supplemented its "or equal" proposal with additional materials on April 2 but was notified on April 23 that its proposal was "unacceptable" since, contrary to section C-27, paragraph (c)(1) (ii), it had not provided sufficient information to determine whether its offered shock test machine was equivalent

to the AVCO model. The protester submitted further data on May 2 in an attempt to cure that deficiency. However, the evaluators again concluded that the description was inadequate and also found that the system proposed by M/RAD was itself deficient due to its lack of a safety shield and remote operation capability and its inadequate half-sine operation capability.

In a communication received by the Air Force on June 4, M/RAD disagreed with the agency's view that its technical description was inadequate, claiming that its proposal was "complete and detailed." M/RAD also refuted the agency's view that its system was deficient, noting that the diagrams submitted with its proposal did indeed indicate that a safety shield was provided and explaining that remote operation was not offered because it is only optional on the AVCO machine. Nonetheless, M/RAD promptly offered an amended proposal with remote operation and also forwarded new data on half-sine performance which it claimed would conform to the specifications.

On June 12, at M/RAD's request, an Air Force representative visited the M/RAD plant for a demonstration of a partially assembled version of the proposed machine. The protester urges that "the discrepancies between the machine and the drawing were cosmetic \* \* \* [such as] paint, finish, the installation of the safety shield and the shock absorbers," and had no bearing on the operation of the machine. However, the resulting engineering evaluation concluded that the M/RAD machine was not "equal" since it lacked several essential features found on the AVCO brand name machine. On June 17, M/RAD was informed that its proposal was being rejected as "non-responsive based on Section C-27, Paragraph (c)(1)(ii)."

M/RAD contends that its proposal was improperly and unfairly rejected since the information it submitted should have been sufficient to permit a thorough technical review, and the machine it offered was in fact equivalent to the brand name item requested. The Air Force stands by its conclusions as to the insufficiency of the technical description in M/RAD's proposal and urges denial of this protest on the ground that M/RAD has not shown that the Air Force's determination was "arbitrary, unreasonable or in violation of contracting statutes or regulations."

We think M/RAD's difficulty in establishing the equality of its product to the Air Force's satisfaction may have been due in large part to an underlying cause which the parties have not discussed: the failure of the Air Force to enunciate which features of the AVCO machine were essential to its needs.

In a brand name or equal procurement, an agency has an obligation to inform bidders (or in this case, offerors) of the salient characteristics of the brand name product essential to the needs of the Government. This should be done in the purchase description contained in the solicitation. See Defense Acquisition Regulation §§ 1-1206.2(b), 1-1206.5. We have held that an agency has failed to provide an adequate statement of its needs to allow firms to compete on an equal basis where the solicitation merely lists brand name items which meet the agency's requirements without listing the items' salient characteristics; offerors should not be compelled to guess which features of the brand name equipment the contracting agency considers necessary to meet its minimum needs. Dictaphone Corporation, B-196512, September 17, 1980, 80-2 CPD 201; Lanier Business Products, Inc., B-195346, October 22, 1979, 79-2 CPD 275. Essentially, that was what occurred here, since the AVCO shock test machine was described only by model number.

Since discussions were held in this case and M/RAD was permitted to revise its proposal we have reviewed the record to see if the salient characteristics were conveyed to M/RAD at those time even though they were not stated in the RFP. The record does not permit such a conclusion.

After the initial closing date for receipt of proposals, the Air Force gave all offerors the opportunity to revise their proposals in response to an extended delivery schedule. Soon thereafter, on two occasions several days apart, M/RAD submitted additional data to the Air Force. The record suggests that these submittals were in response to telephone calls from the Air Force, although the content of those conversations is not documented in the file.

Air Force engineers examined M/RAD's submissions and concluded the firm had not provided "sufficient evidence that [it] can manufacture and deliver a product which has equal characteristics to those specified." (Since the RFP did not specify any characteristics, we do not know what was meant by the last reference.) This conclusion was relayed to M/RAD, which submitted more data.

After reviewing this data, the Air Force again concluded that M/RAD had failed to establish exactly what it intended to furnish. Three specific deficiencies in M/RAD's proposal were identified:

- a. its machine lacked a safety shield;
- b. it did not offer remote operation; and
- c. the performance envelope shown for half-sine operation indicates less capacity for short duration pulses than that of the AVCO model.

Upon being told of this, M/RAD responded, claiming that the safety shield was shown on its drawing and that remote operation had not been offered because it was an optional feature on the AVCO model; that feature was added to the M/RAD proposal. M/RAD also enclosed a new half-sine performance envelope.

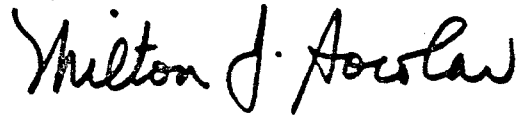
M/RAD and the Air Force then agreed that an Air Force engineer would visit M/RAD's plant to discuss the firm's proposal and examine a duplicate of the machine the firm proposed to furnish. Upon his return, the engineer wrote an evaluation critical of M/RAD's proposal in which he listed 12 deficiencies which he had perceived. This evaluation was furnished to the contracting officer, who advised M/RAD by letter that the information furnished by the company had been evaluated, that the proposal was being rejected pursuant to section C-27, paragraph (c)(1)(ii) of the RFP, and that no additional revisions to M/RAD's proposal would be considered. M/RAD's protest followed.

Referring to these events in its report to our Office, the Air Force emphasizes that "M/RAD was afforded, and took advantage of, several opportunities to submit additional data to establish the equivalence of their product." However, the record before us shows that on only one of those occasions was M/RAD told of, and permitted to respond to, any specific features of the AVCO machine which were deemed absent from M/RAD's proposal, and those features appear to be only three out of a larger number desired by the Air Force. Therefore, we must conclude that although M/RAD had several opportunities to revise its proposal it could not do so with the benefit of knowing all the features of the AVCO product the Air Force considered necessary.

We have not been furnished with a definitive list of the salient characteristics of the AVCO product. That which most resembles such a list in the record before us is the Air Force engineer's evaluation which preceded the rejection of M/RAD's proposal. It would appear from this document that in addition to specific mechanical features of the AVCO machine, the Air Force was looking for a standard product which had met with commercial acceptance through

sales to the general public; one for which an operations manual and parts list was in existence at the time proposals were submitted; and one for which the manufacturer offered a "complete line of accessories." If factors such as these are to influence the evaluation of proposals we believe they should be set forth in the solicitation.

Although we sustain this protest, we have been advised that the contract with LAB is near completion and remedial action would therefore not be practical. However, by separate letter of this date, we are advising the Secretary of the Air Force of the procurement deficiencies we have noted.



For the Comptroller General  
of the United States