

DECISION



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

27064

FILE: B-211914

DATE: December 20, 1983

MATTER OF: Magnaflux Corporation

DIGEST:

1. Under a brand name or equal purchase description, an offeror need not furnish an exact duplicate of the brand name product but need only comply with the salient characteristics of the brand name product listed in the solicitation.
2. The waiver of a minor deviation from a size listed as a salient characteristic in a brand name or equal purchase description was not improper where there was no evidence to suggest that the "equal" product thereby was functionally inferior to the brand name product, and the brand name manufacturer failed to show that it was prejudiced.
3. A protester which fails to substantiate an allegation does not meet its burden of affirmatively proving the basis for that portion of its protest.
4. Discussions under a negotiated brand name or equal procurement for the sole purpose of determining from the nonbrand offeror whether the "equal" product conforms to the salient characteristics are not improper.

Magnaflux Corporation protests the award of a contract to Transmares Corporation under solicitation No. DAAD05-83-R-0100 issued by the Department of the Army. The solicitation sought proposals for a magnetic particle inspection unit and training services. Magnaflux generally contends that the unit Transmares offered did not meet certain of the salient characteristics listed in the brand name or equal purchase description.

We deny the protest.

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The solicitation cited the Magnaflux type X-3809 and model CRQ 3498 as the brand name unit and set forth 20 salient characteristics that an equal product would have to meet to be considered. Award under this negotiated procurement was to be based on the lowest price. Magnaflux and Transmares submitted offers, Transmares proposing to supply the Tiede "Ferroflux" 8000 model. At the submission of best and final offers, Magnaflux's price was \$155,862 while Transmares's price was \$124,077. The contracting officer thereafter determined that the Tiede unit was technically acceptable and awarded the contract to Transmares.

Section C.3 of the solicitation identified "low voltage high amperage, full wave DC" and "wired for 380V, 50 cycle, three phase power" as two of the salient characteristics of the Magnaflux unit. From diagrams that Magnaflux submitted with its protest, it appears that Magnaflux believes these characteristics can be met only by a design that utilizes a certain circuit known as 3-phase full-wave bridge rectifier circuit. According to Magnaflux, the Tiede unit is not designed to use 3-phase power¹ nor utilize this kind of circuit.

While the Magnaflux unit may have such circuitry, it is well established that when a brand name or equal purchase description is used, bidders or offerors need not furnish an exact duplicate of the brand name product in design or performance. 38 Comp. Gen. 291 (1958); Cohu, Inc., B-199551, March 18, 1981, 81-1 CPD 207. Rather, the "equal" product offered must meet the salient characteristics of the brand name product that are specified in the solicitation.

¹ Three-phase power, commonly used in alternating current power distribution systems, uses three separate wires to transmit voltages that are out of step by 1/3 cycle.

Here, it is immaterial that the Magnaflux model uses a 3-phase full-wave rectifier while the Tiede model does not.² The purchase description called for a unit wired for 380 volt, 50 cycle, 3-phase power using a full-wave rectifier. The Army explains that this language refers to the type of power supply to which the unit would be connected and not to the type of unit sought. A model like Tiede's, the Army continues, may connect to a 3-phase power source without incorporating a rectifier of the design Magnaflux uses. This is possible, consistent with the full-wave rectifier requirement, if, for example, the 3-phase current is converted to single-phase current and then rectified to DC using one single-phase full-wave rectifier. The record is clear that Transmares intends to furnish a unit that can convert to a 3-phase power source and that uses a full-wave rectifier. The Army was satisfied with the data Transmares presented in this regard. We conclude therefore that this portion of Magnaflux's protest is without merit.

Magnaflux also contends that the Tiede unit's bath tank does not meet the minimum size specified in the salient characteristics. Specifically, Magnaflux notes that the minimum size specified for width was 30 inches but that the Tiede unit's bath tank is only 29-1/2 inches wide. The Army admits that the Tiede unit's bath tank is only 29-1/2 inches wide but argues that waiver of the deviation was proper since the deviation was minor and the Tiede unit met all the other salient characteristics.

We think the Army's action was proper. The deviation was at most a minor fraction of the total size of the bath

² Rectifiers are devices that convert alternating current (AC) into direct current (DC) by acting as a one-way electronic gate. A single-phase half-wave rectifier circuit consists of one rectifier that allows AC current to pass during one half of each cycle. A single-phase full-wave rectifier circuit essentially consists of two sets of rectifiers (two opposed half-wave rectifier circuits) each acting on different halves of a cycle. The result is a more nearly continuous flow of current at the rectifier output than is achieved using a half-wave rectifier.

tank. As the solicitation indicated, the unit being procured had to be capable of inspecting for defects, and therefore accommodating 105 mm and M68 gun tubes. In context, the 30-inch size stated for the tank width appears to have been merely a nominal figure. Moreover, Magnaflux has failed to demonstrate here that it was prejudiced, that is, that it could have offered a unit with a bath tank the width of Tiede's at a price that would have rendered Magnaflux the lowest-priced offeror. In light of these circumstances, then, we believe that waiver of the deviation was reasonable. See Champion Road Machinery International Corporation, B-200678, July 13, 1981, 81-2 CPD 27.

Magnaflux suggests that the Tiede unit will not be able to supply 10,000 amps, as required by the salient characteristics, but rather will only be able to deliver 6,300 amps. According to Magnaflux, the claimed 10,000 amperage of the Tiede unit, a West German product, is based on the unit's peak output, while the intent of the specification, Magnaflux believes, is that it be based on average output.

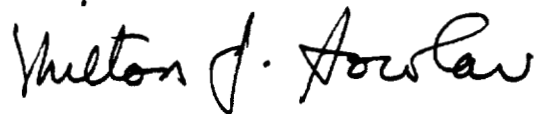
Magnaflux supports its assertion, however, by merely referring to a military standard (MIL-M6867C) that was not incorporated into the solicitation, and to descriptive data for Tiede models other than that offered. In addition, an examination of the military standard does not support Magnaflux's position because the standard does not treat equipment of the capacity required in this instance. The equipment being acquired here was not a standard product. Although we have examined the materials Magnaflux has submitted, we find no basis to disagree with the Army's conclusion. We conclude therefore that there is no legal merit to this allegation. See Contact International, Inc., B-207602, May 31, 1983, 83-1 CPD 573.

Finally, Magnaflux complains that the Army improperly negotiated with Transmares, allowing the firm the opportunity to propose material deviations from the specifications without giving Magnaflux an opportunity to amend its offer to "reflect changes we might consider appropriate." There is no merit to this contention.

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First, there is no evidence that Transmares's proposal materially deviated from the solicitation. With respect to the discussions that were held, the record shows that commercial literature was unavailable on the Tiede unit and that the Army had some communication with Transmares to better determine whether the Tiede unit conformed to the salient characteristics of the Magnaflux unit. The Army had no questions about Magnaflux's proposal to furnish the brand name product and thus did not conduct any type of discussions with Magnaflux before requesting best and final offers from both firms. We have recognized that an agency may conduct discussions with only those offerors about whose proposals the agency has questions concerning perceived deficiencies, so long as all offers in the competitive range are afforded an opportunity to submit a best and final offer. See, e.g., Tracor Jitco Inc., B-208476, January 31, 1983, 83-1 CPD 98. Thus, we see nothing improper with the Army's actions here.

The protest is denied.

for 
Comptroller General
of the United States