



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Morey Machinery, Inc.

File: B-234124

Date: May 10, 1989

DIGEST

1. Where agency's report specifically addresses initial protest argument that awardee's offered product does not meet specification requirement, and the protester neither rebuts nor expresses any disagreement with the agency's position in its comments on the agency's report, the issue is considered abandoned.
2. General Accounting Office will not disturb the contracting agency's determination that the awardee's offered machine fully complies with specification requirements, where the awardee's offer specifically stated that the offered equipment would comply with the specification in question, and commercial brochure included with awardee's offer showed that its required feature was an optional item available on the offered model.

DECISION

Morey Machinery, Inc., protests the award of a firm fixed-priced contract to Foxco, Inc., a small business, under request for proposals (RFP) No. N00140-87-R-3804, issued as an unrestricted procurement by the Naval Regional Contracting Center (NRCC), Philadelphia, Pennsylvania, for one horizontal spindle, knee type milling machine. Morey contends that the awardee's offered product does not meet the solicitation's technical requirements.

We deny the protest.

Three offerors responded by the September 10, 1987 closing date for receipt of initial proposals. The Navy's technical evaluator reviewed the proposals, but could not determine from the proposals themselves whether the offered products met the RFP's technical requirements set forth in Military Specification (Mil-Spec) No. Mil-M-80044C. Therefore, amendment No. 1, issued on November 20, requested that offerors address each specification requirement, state

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whether their offered product met the requirement, and submit descriptive literature on the product.

A technical evaluation of the proposals along with the responses and descriptive literature received in response to amendment No. 1 revealed that each of the offered products failed to comply with the Mil-Spec in four areas relating to: feed rate range inches per minute (IPM), feed motor horsepower, power rapid transverse IPM and spindle number of speeds. After consulting with the technical evaluator, the contracting officer decided to relax the specifications in all four areas. As a result, all three proposals were deemed technically acceptable and were included in the competitive range. After discussions, the contracting officer requested best and final offers (BAFOs); the BAFO request formally notified all offerors of the revisions made to the specifications.

All three offerors submitted BAFOs that were determined to be technically acceptable. Foxco submitted the lowest offer at a total price of \$71,484; Republic-Lagun Machine Tool Company, Foxco's proposed supplier, submitted the second-lowest offer at a total price of \$71,611; Morey's offer was the highest at a total price of \$122,000. After conducting a preaward survey, the Defense Contract Administration Services Management Area recommended against contract award to Foxco because Foxco's proposed supplier, Republic-Lagun Machine, had failed to timely deliver machinery under prior contracts. Consequently, the contracting officer determined that Foxco was nonresponsible and referred the matter to the Small Business Administration (SBA) for a certificate of competency (COC) review. The SBA issued a COC to Foxco, and, therefore, the contracting officer awarded the contract to Foxco on September 16, 1988.

By letter of November 15, Morey protested to the contracting officer alleging that the Lagun machine offered by Foxco was technically deficient, because it did not meet the RFP's requirements concerning front and rear feed controls and an automatic backlash eliminator. The contracting officer denied Morey's agency-level protest on December 30.

On January 12, 1989, Morey filed its protest in our Office alleging in general terms only that Foxco's offered product "did not meet the technical requirements." When read in conjunction with Morey's agency-level protest, it is clear that Morey is protesting that Foxco's offered product, the Lagun machine, is technically deficient because it does not have front and rear feed controls and an automatic backlash eliminator.

The Navy reports that the Lagun machine offered by Foxco fully complies with all specifications, including the requirements for front and rear feed controls and an automatic backlash eliminator. The Navy states that both features were listed in the product brochure included with Foxco's offer as options available with all Lagun milling machines, and that Foxco specifically indicated that these features were included in its BAFO at the BAFO price. The Navy contends that Morey's protest is nothing more than the firm's disagreement with the agency's judgment.

In its report to our Office on this protest, the Navy specifically states that Foxco's offered product includes the automatic backlash eliminator. In its February 8 comments on the Navy's report, Morey neither rebuts nor expresses any disagreement with the Navy's position concerning this feature. Accordingly, we consider that issue to have been abandoned by the protester. Front Desk Enterprises, Inc., B-230732, June 23, 1988, 88-1 CPD ¶ 603.

Regarding the requirement for front and rear feed controls, however, Morey questions whether the awardee's equipment has front and rear controls which allow for performance of all the steps involved in power and hand feeds--the two types of feed movements required to operate a milling machine. Morey contends that if Foxco's Lagun machine only has manual feed capability available as an option in rear controls, then the Navy should interpret this as meeting only one-half of the specification requirement because, Morey maintains, under the Mil-Spec the rear controls must have the capability of initiating power feeds as well as manual feeds. In other words, Morey is contending that the milling machine must have identical controls and capability in both the front and rear of the machine and is speculating that the Lagun machine does not meet this requirement.

The contracting agency is responsible for evaluating the information supplied by an offeror and ascertaining whether it is sufficient to establish the technical acceptability of its offer, since the contracting agency must bear the burden of any difficulties incurred by reason of a defective evaluation. Everpure, Inc., B-231732, Sept. 13, 1988, 88-2 CPD ¶ 235. The protester has the burden of showing that the evaluation was unreasonable or inconsistent with the evaluation scheme; mere disagreement with the agency's evaluation does not meet this burden. Tampa Shipyards, Inc., B-231802, Sept. 30, 1988, 88-2 CPD ¶ 304.

The requirement for front and rear controls is contained in paragraph 3.4.12 of the Mil-Spec which states:

"3.4.12 Controls. All operating controls and all manual adjustments shall be grouped in a location convenient to the operator except as otherwise specified herein. All front handwheels and cranks shall be safety interlocked or shall automatically and positively disengage during power rapid traverse and power table feeds. When specified (see 6.2.1), the machine shall be provided with controls for starting and stopping the spindle, and initiating any table movement from the front and rear of the machine."

Paragraph 6.2.1 specifies that front and rear controls are required for this procurement.

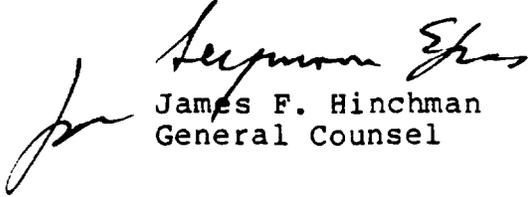
In its initial proposal, Foxco clearly promised to comply with all Mil-Spec requirements, specifically including the requirement for front and rear feed controls. A commercial brochure submitted with Foxco's proposal indicated that the offered Lagun Horizontal Milling Machine (Model FU4LA) includes rear feed control levers as optional equipment. During negotiations, in response to Navy inquiries regarding compliance with specifications, Foxco again specifically stated that its offer included the optional feature of front and rear controls at the quoted price to comply with the Mil-Spec. On that basis, the Navy determined that Foxco's machine fully complied with the Mil-Spec requirement for front and rear controls and was, therefore, technically acceptable.

Apart from an affidavit in which Morey's president speculates regarding the front and rear controls offered by Foxco, Morey has provided no evidence in support of its contention that the Lagun machine will not meet the Mil-Spec requirement for front and rear controls; nor has the protester established that its interpretation of the Mil-Spec provision on front and rear controls is the correct interpretation. In Morey Machinery, Inc., B-233793, Apr. 18, 1989, 89-1 CPD ¶ , we interpreted this same specification as requiring only that the rear controls be capable of starting and stopping the spindle and initiating movement of the mill's table. We also found that Morey's interpretation, that front and rear controls must be identical and have the same capability, reads requirements into the Mil-Spec provision that are not there.

Since Foxco's offer took no exception to any of the RFP's requirements, but rather, Foxco specifically indicated that its proposed equipment would meet the controls requirement, and the descriptive literature included with Foxco's offer showed that front and rear controls are commercially

available with the Lagun equipment offered by Foxco, we find that the Navy's determination that Foxco's offer was technically acceptable was reasonable. Accordingly, we will not disturb the agency's determination. Everpure, Inc., B-231732, supra.

The protest is denied.


James F. Hinchman
General Counsel