



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Motorola, Inc.
File: B-235599
Date: September 20, 1989

DIGEST

Best and final offer which, by its own terms, does not meet specification requirements is not technically acceptable, and the deficiencies contained therein cannot be corrected through a request for clarification.

DECISION

Motorola, Inc., protests the award of a contract to Avtec, Inc., under request for proposals (RFP) No. R5-16-89-16, issued by the Forest Service, United States Department of Agriculture, for a radio communications control console for the Stanislaus National Forest. The protester alleges that the evaluation of proposals and the selection decision were improper. In this regard, the protester argues that it offered the lowest priced acceptable proposal.

We deny the protest.

The RFP contemplated the award of a fixed-price contract to that "offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the most advantageous to the Government." Price was described as being secondary to technical considerations in the final award analysis. Technical proposals were to be evaluated on a 150-point scale using three evaluation factors: organization (25 points), personnel (25 points), and technical details (100 points). Price proposals were required to contain a single fixed price, inclusive of installation, in the Schedule of Items, as well as detailed supporting price breakdowns.

Proposals were received from three offerors: Avtec, Modular Communications Systems, and Motorola. The results of the

initial technical evaluation, together with the fixed prices offered^{1/}, were as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Basic Price</u>
Avtec	137	\$137,913.00
Modular	131	\$114,915.00
Motorola	120	\$105,172.18

During written discussions, Motorola was advised that there were areas of its proposal that did not appear to meet specifications and was informed that the agency was not able to determine which equipment items were included in the proposal and which were offered as options. Specific areas in need of clarification relevant to this protest were described as follows: (1) it was unclear to the evaluator whether Motorola's time clock circuitry had elapsed time referencing as required by the specifications; and (2) the evaluators could not determine whether the firm's primary power supply backup met specifications.

In its best and final offer (BAFO), Motorola referred the agency to the pricing summary included in its original proposal to resolve the problems concerning what equipment was basic to its proposal and what was optional, and further submitted a revised description of the optional offerings. As to its proposed time clock circuitry, Motorola noted that it did not have a time elapsed reference function.

Regarding a backup power supply, Motorola explained that an uninterrupted power supply (UPS) was not included in the original proposal because it was led to believe during a preproposal site visit that none was needed; the BAFO continued:

"However, to meet your request, Motorola proposes a minute duration UPS which will keep the Motorola electronics alive and operational during a short AC interruption."

The Motorola BAFO thus included two additional equipment items: a UPS priced at \$8,399.70, and a bypass switch priced at \$292.40. In its BAFO Motorola also "highly recommended" that the agency consider purchasing a "hot standby power supply" to back up the central electronics

^{1/} Avtec and Motorola also offered separately priced optional equipment not reflected in the listed prices; the listed prices are those which were offered in the Schedule of Items for a basic system meeting the RFP specifications.

bank of its proposed system; Motorola referred to its initial proposal, where the item had been priced as an option at \$1,734.20. Motorola did not provide an installation price for any of the equipment added by its BAFO.

All three BAFOs were then evaluated with the following results:

<u>Offeror</u>	<u>Technical Score</u>
Avtec	143
Modular	133
Motorola	125

The deficiencies remaining in Motorola's BAFO were described by the evaluators as follows: a failure to provide elapsed time circuitry; offering "a minute" UPS backup where 5 minutes were required; a lack of clarity concerning the functioning of the hot standby power supply, and whether it was necessary to use this standby to overcome the 1-minute UPS backup in order to meet specification requirements; and a failure to price the installation of options necessary to meet specification requirements.

The Forest Service also compared the final prices submitted by the three offerors as modified by their BAFOs in the following manner:

	<u>Avtec</u>	<u>Modular</u>	<u>Motorola</u>
Installation	Included	\$ 3,000.00	\$ 13,104.00
Basic Unit	\$137,913.00	111,915.00	105,172.18
CRT Option	N/A	4,500.00	N/A
Hot Standby	N/A	N/A	1,734.20
UPS	N/A	N/A	8,399.70
Bypass Switch	N/A	N/A	292.40
Additional Install.	N/A	N/A	est. 1,300.00
<u>Totals</u>	<u>\$137,913.00</u>	<u>\$119,415.00</u>	<u>\$130,002.48</u>

Following this analysis, the agency adjusted the prices by subtracting the value of spare parts included in each proposal since they varied considerably among the offerors. In addition, the agency added \$4,500 to the offers of Modular and Motorola for comparison purposes. The \$4,500 represents an estimate of the cost of obtaining PBX interface under separate contract--something the agency reports it would have done if it had not accepted Avtec's proposal, which contained the feature. The exact role of these adjustments remains unexplained by the agency; however, they do not appear to have been reflected in the totals used in the price comparison decisions made by the

contracting officer; rather, she appears to have used the totals reflected in the table above, as recorded in the final abstract of offers.

At this juncture, the agency decided that, with another round of discussions, Motorola might improve its technical rating to be "at or near" Modular's. However, a decision was made to forego a further round of discussions. On May 11, 1989, award was made to Avtec, the highest-priced offeror, on the basis of a price/technical tradeoff based on the agency's conclusion that its proposal was technically superior to Modular's in terms of diagnostic capability, accessibility for servicing and repair and utilization of space, and was, thus, in the agency's view, worth the approximately \$18,500 price premium. By letter dated May 15, which was later supplemented, Motorola was provided with a written debriefing. This protest was filed on May 19; performance was not stayed pursuant to 31 U.S.C. § 3553(d) (Supp. IV 1986).2/

Motorola's principal contention is that it submitted a technically acceptable proposal at a final price of \$115,598.48 and, thus, should have received the award; according to the protester, this price represents its original offer of \$105,172.18 for the basic unit inclusive of installation, together with the UPS, the bypass switch, and the hot standby power supply covered by its BAFO.

Despite the contention that its final proposal was acceptable, Motorola admits that its BAFO created some doubt as to whether its backup power supply would meet the specifications which called for a 5-minute coverage, but submits that the typographical error which allegedly created the doubt could have, and should have, been the subject of a simple request for clarification. Finally, Motorola questions the

2/ Motorola contends that, since it filed its protest and provided the agency with a copy within 10 calendar days of the May 11 award--late on Friday afternoon, May 19--contract performance should have been stayed. This Office provided the agency with telephonic notice of the protest within 1 working day on Monday, May 22, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(a) (1989). Since the agency was notified on the 11th calendar day following award, it was not required to suspend contract performance. See 4 C.F.R. § 21.4(b); BDM Management Servs. Co., B-228287, Feb. 1, 1988, 88-1 CPD ¶ 93. The fact that the 10th calendar day after award fell on Sunday, May 21, does not alter this result. Econ, Inc., B-223923, Oct. 29, 1986, 86-2 CPD ¶ 489.

price adjustments made for spare parts and PBX interface as contained in the agency's protest report.^{3/}

In response, the Forest Service states that, contrary to Motorola's conclusions, its BAFO was found to be technically unacceptable because it did not provide a 5-minute backup power supply and it did not provide for elapsed time referencing in its clock circuitry. Moreover, the agency notes that Motorola's BAFO did not include a price for the installation of the equipment proposed to meet the backup power supply requirement. In the agency's view, correction of these deficiencies would have required another round of discussions. In view of this, and stating its conclusion that Motorola was not price competitive, the Forest Service points out that it was not under an obligation to reopen negotiations.

We do not agree with Motorola's position that the Forest Service was obligated to seek "clarification" concerning the deficiencies contained in its BAFO. It is undisputed that the specifications required a backup of 5 minutes and that Motorola's BAFO, as written, was not in compliance with this requirement--a deficiency which the agency technical evaluators regarded as "major." Moreover, it is undisputed that Motorola's BAFO took direct exception to the specification requiring elapsed time referencing circuitry. Both topics were the subject of specific requests during discussions.

It was Motorola's responsibility to submit a BAFO which was not dependent on further explanation to insure that it met specification requirements. See Addsco Indus. Inc., B-233693, Mar. 28, 1989, 89-1 CPD ¶ 317. Since it did not, the agency could properly reject it as technically unacceptable. Federal Elec. Corp., B-232704, Jan. 9, 1989, 89-1 CPD ¶ 18. While an agency may sometimes seek to clarify minor uncertainties in a particular proposal, Emerson Elec. Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233, where the information sought is essential to determining its acceptability, the agency request for information

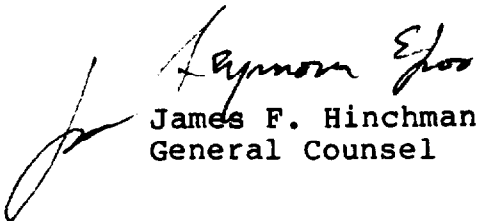
^{3/} Motorola also asserts that the debriefing materials contained errors with regard to its price. While the debriefing did, in fact, contain mistakes, as a general matter such errors do not affect the validity of a selection decision; the function of a debriefing is not to justify or defend a selection decision but to assist offerors in preparing future proposals. Sechan Elec., Inc., B-233943, Mar. 31, 1989, 89-1 CPD ¶ 337.

constitutes the reopening of negotiations, RCA Serv. Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563, and an agency has no legal duty to reopen the competition to permit a single offeror to submit a revised proposal. Federal Elec. Corp., B-232704, supra.

While the agency's decision not to reopen negotiations was partially explained by reference to its price analysis, which concluded that Motorola's price was not competitive, we need not consider the protester's objections to that analysis since Motorola's BAFO was not technically acceptable and the agency was, therefore, not obligated to consider it further. See Violet Dock Port, Inc., B-231857.2, Mar. 22, 1989, 89-1 CPD ¶ 292.

As to Motorola's objections to the agency's consideration of spare parts and PBX interface in the final award analysis, we note that the record reflects an adequate basis in support of the Forest Service's price/technical tradeoff decision in awarding to Avtec over Modular independent of these considerations.

The protest is denied.


James F. Hinchman
General Counsel