

McArthur



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Panasonic Communications & Systems Company

**File:** B-239917

**Date:** October 10, 1990

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Arthur A. DeCarlo for the protester.  
Leigh Ann Holt, Esq., General Services Administration, for  
the agency.  
C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

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### DIGEST

Agency properly rejected proposal as technically unacceptable  
and outside competitive range where protester failed to submit  
bid samples which were necessary to evaluate cost and to  
establish technical acceptability of offer.

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### DECISION

Panasonic Communications & Systems Company protests the  
rejection of its proposal submitted in response to  
solicitation for offers (SFO) No. FCGE-90-E4-0016-N, issued  
by the General Services Administration for copiers. The  
protester basically argues that its failure to submit  
required samples constituted a minor informality that the  
agency should have addressed through discussions.

We deny the protest in part and dismiss it in part.

The agency issued the solicitation on March 26, 1990, for  
award of requirements contracts for electrostatic low volume  
copiers conforming to 14 commercial item descriptions plus  
maintenance, in each of four geographical zones, 56 awards in  
all. The solicitation provided for award to those offerors  
whose proposals represented the lowest total life cost,  
defined as the sum of initial cost, energy cost, service  
maintenance cost, and the cost of consumable supplies.

The solicitation required all offerors that proposed to supply  
models not tested under previous solicitations to submit  
samples, for examination and testing, prior to the time set

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for receipt of offers. The RFP provided that the agency would test the samples for certain listed objective and subjective characteristics pertaining to resolution, production of half tones, blackness and reflectance. The agency would also test the machines offered to verify life-cycle cost data pertaining to energy cost and supply consumption. The solicitation clause relating to samples warned that the failure of samples to conform to the characteristics listed for examination would require rejection of the offer and that the failure to furnish samples by the time specified would also require rejection of the offer. The RFP sample provision permitted waiver of the sample requirement where the machines had been supplied and tested previously.

While the protester submitted the written portion of its proposal which included a list of models offered and descriptive literature on time, it neither submitted samples nor requested a waiver. On May 29, the agency advised the protester by letter that it would treat the Panasonic offer as a late proposal and would no longer consider it for award. This protest followed.

The protester asserts that its failure to submit samples, or to request a waiver of the sample requirement was a minor informality that it could have cured or clarified through discussions.

Rejection of initial offers is proper where the initial offer is so deficient that in essence no meaningful proposal was submitted, and to allow the omissions to be cured after the time set for receipt of initial proposals would be inconsistent with the clause governing late proposals. See American Video Channels Inc., B-236943, Jan. 18, 1990, 90-1 CPD ¶ 67, where a videotape that was to be the technical proposal was not submitted on time, and E-Systems, Inc., B-188084, Mar. 22, 1977, 77-1 CPD ¶ 201, where only a letter referencing a technical proposal was submitted on time.

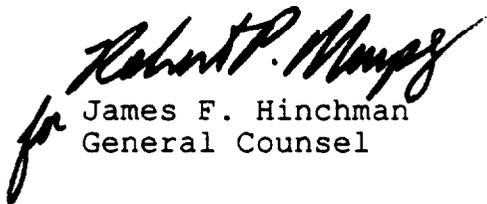
Our review of the RFP shows that for all practical purposes, the samples submitted for testing were the offerors' technical proposals. The solicitation provided for the conduct of specific tests for the purpose of establishing compliance with technical requirements. Furthermore, the solicitation provided that the agency would determine those low cost offerors who would be in line for award through testing of the samples to establish actual life cycle costs. The RFP advised offerors of the sample requirement and the need for testing samples, and made it clear to all offerors that absent a sample, there would be no way for the agency to determine the subjective characteristics of the copiers or to obtain verified life cycle cost data. The sample clearly constituted a material part of the proposal necessary for

evaluation purposes and a determination of technical acceptability. Under these circumstances, we think the protester assumed the risk that its proposal would be rejected as unacceptable for failure to furnish samples and that the agency's rejection of the proposal, which omitted the required samples, was reasonable.

The protester contends that it was entitled to have requested a waiver of the sample requirement for certain models and that the failure to deliver samples should have suggested to the contracting officer the existence of a clerical error in the offeror's failure to make such a request. Simply, the protester did not request a waiver in its offer, and there is no reason why the contracting officer should have been aware of any intent of Panasonic to request a waiver. The agency reports that it could not have granted such a waiver, since none of the copiers provided under the protester's existing contract were tested for the features required by the existing solicitation. The protester argues that testing through government use qualified some models for waiver under the solicitation waiver provisions. In view of the solicitation's detailed testing procedures, we think on this record that the agency reasonably concluded Panasonic's offer did not provide a basis for waiver and thus, samples, the offer, absent samples, did not warrant further consideration.

The protester also states that the agency's requirement for samples and the testing of the copiers were unnecessary. Protests against alleged improprieties in a solicitation, which are apparent prior to receipt of initial proposals, must be filed prior to the date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1990). This aspect of the protest, filed on June 4, nearly 6 weeks after the agency received initial proposals on April 25, is therefore clearly untimely.

The protest is denied in part and dismissed in part.

 Robert P. Hinchman  
for James F. Hinchman  
General Counsel