



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Omatech Service Ltd.

File: B-240426, B-240426.4

Date: November 20, 1990

Richard O. Duvall, Esq. and Richard L. Moorhouse, Esq.,
Dunnells, Duvall & Porter, for the protester.
Gregory H. Petkoff, Esq., Department of the Air Force, for the
agency.
Richard P. Burkard, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Where solicitation specification requires that offered product be one of a manufacturer's current models, proposal to provide a product which will require major modifications to meet domestic content provisions of solicitation should have been rejected as technically unacceptable.

DECISION

Omatech Service Ltd. protests the award of contract to Discount Machinery and Equipment Co. under request for proposals (RFP) No. F09603-88-R-74981, issued by the Department of the Air Force, for 25 engine and toolroom lathes. In its original protest, Omatech argued that Discount's offer did not comply with a solicitation provision which required that the lathes be manufactured in the United States or Canada and that the cost of components manufactured in the United States or Canada exceed 50 percent of the total cost of all components. Based on the Air Force's response to that allegation, Omatech filed a second protest alleging that Discount did not submit descriptive literature demonstrating that its product was technically acceptable and that Discount's product did not comply with various technical requirements. The two protests have been consolidated for purposes of this decision.

We sustain the protest.

The RFP was issued on October 27, 1988 and seven offers were received by the original closing date. In March 1989, the Air Force began negotiations during which Discount and another

offeror were required to submit detailed information to prove compliance with Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 252.225-7023 (DAC 88-4), which was incorporated into the RFP and required that the machine tools be manufactured in the United States or Canada and that the cost of the components manufactured in the United States or Canada must exceed 50 percent of the cost of all its components. Discount apparently satisfied the agency that its product complied with DFARS 252.225-7023. The Air Force received best and final offers by March 9, 1990, and on July 5 made award to Discount. Omatech filed its original protest with our Office on July 13. On July 18, the agency issued a stop-work order against the contract.

The RFP provided that the end product was to be manufactured in accordance with MIL-L-23249D. This specification requires that the lathe offered "shall be new and one of the manufacturer's current models capable of conforming to the accuracy requirements for an engine lathe, or toolroom lathe as specified herein." The RFP required that offerors submit descriptive literature with its offer. The RFP stated that the descriptive literature must be current, accurate, and of sufficient detail to support an engineering evaluation of the offer against the government's minimum specifications. It cautioned further that offerors shall insure that the literature submitted addresses all of the equipment characteristics stated in the specifications.

In responding to the protester's initial allegation that Discount did not offer to supply a domestic product, the Air Force explained to our Office how the awardee's proposal would comply with DFARS 252.225-7023, including its subcontractor's production plan. Discount's subcontractor, HDS, will purchase from Mysore Kirioskar, a manufacturer in India, the foreign product absent numerous required technical components. After receipt of the foreign product, the subcontractor will add necessary components. The Air Force report shows that major domestic manufactured components, including the motor, are to be added to the machine which is foreign supplied. The Air Force explains that HDS, an American corporation, is the manufacturer of the end product, and the cost of the domestic components which HDS will add to the machine constitutes more than 50-percent of the total cost of the end product.

The only descriptive literature contained in Discount's proposal was a brochure for the "Enterprise 1675" lathe which showed the specifications of the machine it offered. Although the record shows that the machine depicted in the brochure did not comply with all the specifications, during negotiations and in revised proposals, Discount stated to the Air Force that its product would be modified to comply with all the specifications. The Air Force evaluation documents show that

Discount proposed to change dimensions for five machine characteristics depicted in the original brochure. One of the documents concludes that since Discount proposes to modify the product shown in the descriptive literature, that the machine "is not currently in production or a different machine is being offered, for which a new brochure would be required." Another evaluation document, however, states without explanation, that Discount's lathe meets the specifications.

The protester argues that the Enterprise line of lathes is a foreign product. Omatech submitted for the record a publication listing model numbers and operating specifications showing that the Enterprise 1675 is manufactured by Mysore Kirloskar Ltd. of India. Omatech argues that the Air Force did not conduct a meaningful technical evaluation since the only descriptive literature showed the Enterprise 1675, which itself is noncompliant with the specifications. Finally, it argues that, in order to meet both the domestic content and specification requirements of the RFP, Discount intends to substitute various components of the Enterprise 1675--an end item in itself--with domestic components. Therefore, the protester concludes, the end product is a "customized" item which cannot meet the requirement that the product be the "manufacturer's current model."

In negotiated procurements, any proposal that fails to conform to material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. Instruments S.A., Inc.; VG Instruments Inc., B-238452; B-238452.2, May 16, 1990, 90-1 CPD ¶ 476.

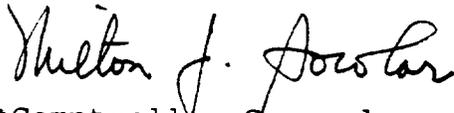
We find that Discount's product did not comply with MIL-L-23249D, which requires that the lathe offered be one of a manufacturer's current models. The record clearly shows that the Enterprise 1675 is the only machine for which Discount submitted descriptive literature. While the Enterprise 1675, manufactured by Mysore Kirloskar of India, appears to be a current model, that is not the end product being offered by Discount. The evaluators concluded that HDS will have to modify the Enterprise 1675 lathe by adding domestic components including major items (such as the motor) which make a significant contribution to the product.

In response to the protester's assertion that Discount's product is a customized current product not in current production, the contracting officer merely states that "a commercial manufacturer must modify its machine to some degree in order to meet the government's technical requirements." We agree. The requirement that the lathe be one of the manufacturer's current models does not preclude minor modifications. See Clousing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533. Here, however, the record shows that

the modifications to be made to the Indian component are significant and extensive. Domestic components to be added to the Indian machine include, in addition to the motor, bearings, jaw chucks, collets, and the cooling system. The resulting product, therefore, in our view, is a hybrid machine not in current production.

We find that the Air Force should have rejected Discount's offer as technically unacceptable. In view of the above, we recommend that the Air Force terminate the award to Discount and award to Omatech if its offer is determined to be the next low, technically acceptable offer. Further, we find that Omatech is entitled to the costs of pursuing this protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1990).

The protest is sustained.



Acting Comptroller General
of the United States