



Comptroller General
of the United States

Washington, D.C. 20548

144662

Decision

Matter of: Research Technology International

File: B-243844

Date: August 19, 1991

Thomas W. Boyle for the protester,
R. F. Menary, for Paulmar Industries, an interested party,
Jeffrey I. Kessler, Esq., and Elizabeth A. Buchanan, Esq.,
Department of the Army, for the agency,
John Formica, Esq., and John Brosnan, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

1. Where a protester initially files a timely agency-level protest, and subsequently files a protest with the General Accounting Office (GAO) which included additional grounds of protest, the additional grounds of protest must independently satisfy the GAO's timeliness requirements.
2. Protest that the agency improperly made award to a firm whose proposal did not satisfy several of the salient characteristics listed in the solicitation is denied where the agency's technical judgment that the equipment offered by the awardee met the salient characteristics is reasonable.

DECISION

Research Technology International (RTI) protests the award of a contract to Paulmar Industries under request for proposals (RFP) No. DAAC09-91-R-0003, issued by the Army Materiel Command for 10 VHS video cassette evaluator/cleaners and related equipment.

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

The solicitation was issued on a sole-source basis to RTI on November 20, 1990. It identified the item as Research Technology International Model No. VT-2100 and listed the salient characteristics. In addition to RTI, the solicitation was sent to four firms on a mailing list maintained by the agency.

Proposals were received from Paulmar, RTI, and Professional Video. Paulmar, the low offeror at a total price of \$48,300, offered its own evaluator/cleaner, while RTI offered its Model No. VT-2100 at a total price of \$89,850. Professional Video's proposal was found on initial review to be deficient in a number of areas and was not considered further.

The proposals of RTI and Paulmar were evaluated and both offerors were found technically acceptable. On January 24, 1991, the agency awarded the contract to Paulmar. RTI filed an agency-level protest on January 25, contending that the award to Paulmar was improper because that firm's equipment did not meet the solicitation specifications, and Paulmar had no history of selling the equipment to the government. On February 6, RTI supplemented its general allegation that Paulmar's product did not meet the solicitation specifications with a statement detailing the precise salient characteristics which RTI believed Paulmar's equipment did not satisfy. In response to Paulmar's agency-level protest, the agency performed a second technical evaluation of Paulmar's proposal, and again concluded that it met or exceeded all of the salient characteristics. The agency also performed a survey of Paulmar's facility and technical capabilities, and found Paulmar capable of furnishing the equipment it offered. As a result of these conclusions as well as its view that the RFP contained no requirement that the awardee have previously sold equipment to the government, the agency denied RTI's agency-level protest on April 18. RTI subsequently filed its protest with our Office.

In its protest to our Office, in addition to arguing that the Paulmar equipment is not technically acceptable, RTI contends for the first time that the agency acted improperly by awarding a contract to Paulmar for its product because the solicitation was issued on a sole-source basis to RTI for RTI equipment. The agency argues that the allegation concerning the sole-source nature of the solicitation is untimely since it was not raised in RTI's agency-level protest. We agree.

Our Bid Protest Regulations provide that if a protest has been filed initially with the contracting agency, we will consider a subsequent protest if the initial protest to the agency was timely filed no later than 10 working days after the basis of protest was known or should have been known. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a) (2) and (3)); Watkins Motor Lines, Inc., B-242392, Jan. 18, 1991, 91-1 CPD ¶ 61. Our Regulations do not, however, contemplate the unwarranted piecemeal presentation of protest issues. Armstrong Motorcycles Ltd., B-238436; B-238436.2, June 5, 1990, 90-1 CPD ¶ 531. Thus, where a protester initially files a timely agency-level protest, and subsequently files a protest with our Office which includes additional grounds, the

additional grounds must independently satisfy our timeliness requirements. Id.

Here, RTI, after being informed on January 24 that award had been made to Paulmar, filed an agency-level protest on January 25, which it supplemented on February 6, challenging the award on the bases that Paulmar's product did not meet the salient characteristics listed in the solicitation and had not previously been sold to the government. At that time RTI knew or should have known of its protest argument that the agency acted improperly in awarding a contract to Paulmar under a solicitation issued on a sole-source basis to RTI. RTI, however, did not raise this issue until April 30 when it filed its protest with our Office. As it is clear that RTI could and should have raised this issue in its protest to the agency, but did not, we conclude that this issue is untimely raised and we will not consider it.

RTI also argues that Paulmar's proposal should have been rejected as technically unacceptable because the equipment offered by that firm does not satisfy "several of the salient characteristics of the solicitation." While RTI refers to several salient characteristics, it specifically identifies only one, a stop-on-defect function that Paulmar's product allegedly fails to satisfy. With regard to this specific characteristic, RTI has provided literature produced by Paulmar, but not submitted by Paulmar with its proposal, which describes Paulmar's item. This literature does not indicate that the item is equipped with a stop-on-defect feature.

A contracting agency enjoys a reasonable degree of discretion in determining whether a particular item meets the solicitation's technical requirements set forth as salient characteristics, and we will not disturb the agency's technical determination unless we find it to be unreasonable. Tri Tool Inc., B-229932, Mar. 25, 1988, 88-1 CPD ¶ 310.

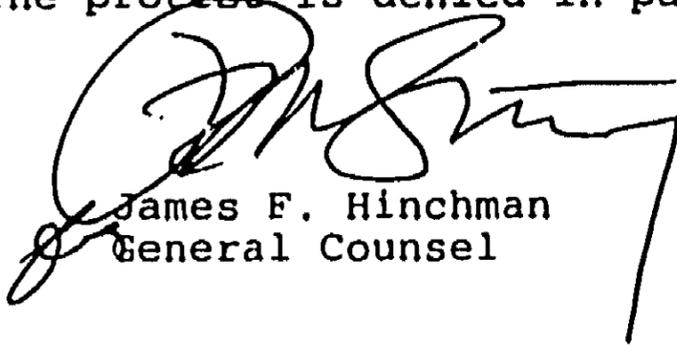
We have examined the record and find the agency's acceptance of the Paulmar proposal to be reasonable. Paulmar's proposal consisted largely of technical literature which compared each salient characteristic specified in the solicitation with the relevant features of Paulmar's offered equipment. The Paulmar commercial brochure to which RTI refers was not included in that firm's proposal. Since the technical information submitted by Paulmar in its proposal shows that the equipment it offered either satisfies or exceeds all of the salient characteristics listed in the solicitation, including the stop-on-defect feature, and since there is no RFP requirement that the item offered be a commercial model we think that the agency's evaluation was proper. See Tri Tool Inc., B-229932, supra. Moreover, where as here, a technical proposal is clearly compliant whether the awardee does in fact

deliver equipment meeting the solicitation's salient characteristics, as it offered and is obligated to provide, is a matter of contract administration which is the responsibility of the contracting agency and is not for our consideration. Alfa-Laval, Inc., B-221620, May 15, 1986, 86-1 CPD ¶ 464.

RTI finally contends that Paulmar's proposal should have been rejected as technically unacceptable because the equipment offered by Paulmar does not provide "[n]umerous performance characteristics" of RTI's Model No. VT-2100 which RTI asserts are "included by reference" in the solicitation.

A product proposed as an alternative to the item named in the solicitation need not meet unstated features of the named item, but only the salient characteristics expressed in the solicitation. See Automated Marketing Sys., Inc., B-230014, Mar. 18, 1988, 88-1 CPD ¶ 289. The fact that the product offered by Paulmar may not provide performance characteristics of RTI's Model No. VT-2100, which were not identified in the solicitation as salient characteristics, is not a basis on which to find Paulmar's proposal unacceptable.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel