



**Comptroller General  
of the United States**

Washington, D.C. 20548

**Matter of:** ALT Communications, Inc.

**File:** B-246315

**Date:** March 2, 1992

Gary McEntire for the protester.  
Miley Sutherland, Animal and Plant Health Inspection  
Service, Department of Agriculture, for the agency.  
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

**DIGEST**

1. Contracting agency improperly awarded a contract on the basis of initial proposals where low offeror failed to establish that its proposed telephone system conformed to all solicitation requirements.
2. Where agency accepts proposal that does not show compliance with specifications, and then conducts post-award discussions with awardee to permit substitution of conforming equipment for originally proposed nonconforming equipment, discussions must be held with all competitive range offerors.

**DECISION**

ALT Communications, Inc. protests award of a contract to D'Tel Communications under request for proposals (RFP) No. 144-M-APHIS-91, issued by the Department of Agriculture, Animal and Plant Health Inspection Service, for an office telephone system with voice and data communications capability. ALT contends that D'Tel's telephone system could not meet the specifications and therefore should have been rejected.

We sustain the protest.

The RFP was issued on August 27, 1991, and provided for the award of a fixed-price contract to the responsible offeror whose offer conformed to the solicitation and would be most advantageous to the government, price and other factors considered. The RFP required the telephone system to have the following capabilities:

*Copy of RFP Awarded to D'Tel Communications*

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- "(1) 24 incoming lines.
- (2) 35 telephone stations with 24 LED displays, system able to expand to 48 stations.
- (3) 2 telephone extension display expansion units.
- (4) 1 output power supply.
- (5) System software.
- (6) Wiring of 35 computer stations for modems from station to terminal blocks."

Offerors were to submit brief technical proposals which were to be evaluated based on four technical evaluation factors listed in the solicitation in descending order of importance--technical excellence (understanding of the government's requirement), qualifications and experience, past performance, and schedule compliance. The solicitation further provided that the technical evaluation factors were more important than price but that price would become more important if competing proposals were technically equal. The RFP stated that the government may award a contract on the basis of initial offers without discussions and that therefore each initial offer should contain the offeror's best terms.<sup>1</sup>

Nine offers were received by the September 27 closing date for receipt of proposals. D'Tel proposed the Walker Poet Plus 30/60 telephone system and submitted the lowest priced offer. ALT proposed an IWATTSU/OMEGA ZT-D system and was the second low offeror. D'Tel's technical proposal included a list of features which indicated compliance with all the above specification requirements except for the LED display. The proposal was silent with respect to that requirement. Nonetheless, the evaluators determined that the system met the specifications. Award was made to D'Tel, as the low offeror, without discussions, on September 30.

After award, D'Tel delivered a sample Walker Poet Plus telephone system to the agency. The sample telephone sets had only 18 lines, instead of the required 24. The agency was informed by D'Tel that the required LED display was not available with 24-button telephones. On October 10, D'Tel proposed the Vodavi Starplus 2448 system as a replacement for the nonconforming Walker Poet Plus. The agency determined that the Starplus system had the 24 lines, up to 48 stations, LED readout and all specified requirements, and accepted it as a substitute for the originally proposed Walker Poet Plus system. There was no change in the

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<sup>1</sup>Although the contract award price was \$15,947, the procurement was not conducted under small purchase procedures, see FAR part 13, and many of the offers in fact exceeded the \$25,000 threshold for small purchases.

contract price. ALT protested to our Office on October 18. Since the contract was awarded on September 30, and the protest was filed on October 18, the agency was not required to suspend performance. See 4 C.F.R. § 21.4(b) (1991). The agency advises us that the telephone system has been delivered and installed.

ALT argues that D'Tel's offer should have been rejected because it did not conform to the requirements of the RFP and that D'Tel was improperly allowed to renegotiate its technically unacceptable offer.

As previously stated, the RFP called for a technical evaluation of offers to determine the offeror's understanding of technical requirements. The RFP required the proposed telephone system to have, among other things, 24 incoming lines and 35 telephone stations with 24 LED displays, with system capable of expanding to 48 telephone stations. The agency maintains that D'Tel's original proposal met all the requirements stated in the RFP. As stated above, however, the record shows that D'Tel, in its proposal, did not specifically show compliance with the LED display requirement. Since D'Tel, which stated in its proposal that it was an authorized dealer of the proposed telephone system and represented itself in its proposal as very familiar with the products it was proposing, identified specific compliance with the other specification requirements but specifically omitted the LED display feature from its specification list, we do not understand how the agency could have concluded that D'Tel's proposed equipment met the display requirement. Furthermore, there are no records of any technical evaluation of proposals or documentation of the selection decision and the agency has confirmed that no written documentation was prepared, so that nothing in the record explains how the agency reached the conclusion that D'Tel offered a telephone system that met the display requirement.

Accordingly, on this record, we must conclude that award to D'Tel on the basis of initial proposals was improper because D'Tel's initial offer did not demonstrate compliance with the solicitation requirements. That being so, we also view the post-award discussions with D'Tel as being conducted for the purpose of giving D'Tel the opportunity to make its proposal acceptable. See Federal Data Corp., B-236265.2, Jan. 25, 1990, 90-1 CPD ¶ 104. Such discussions with one offeror, instead of with all offerors whose proposals are in a competitive range, are improper. Federal Data Corp., supra; PRC Information Sciences Co., 56 Comp. Gen. 768 (1977), 77-2 CPD ¶ 11.

While we sustain the protest, we are unable to recommend corrective action because performance has been completed. We find ALT entitled to its proposal preparation costs and the costs of pursuing the protest, including attorneys' fees. /4 C.F.R. § 21.6(d)(1)(2) (1991); see Alaska Mechanical, Inc., B-235252, Aug. 14, 1989, 89-2 CPD ¶ 137.

The protest is sustained.

*for*   
Comptroller General  
of the United States