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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stewart-Warner Electronics Corporation

File: B-247308.2

Date: July 15, 1992

James R. Worsley, Jr., Esq. and Paul Daniel, Esq., Ober, Kaler, Grimes & Shriver, for the protester; Paul Shnitzer, Esq., and Bruce S. Binder, Esq., Crowell and Moring, for Harris Corporation, an interested party. Captain L.D. Harder and Sumari Stamps-Henderson, Esq., Department of the Navy, Space and Naval Warfare Systems Command, for the agency. M. Penny Ahearn, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency waived certain technical requirements in accepting the awardee's proposal, including those concerning software programming development language and interchangeability with government furnished equipment, is denied, where record shows that awardee's proposal complied with all solicitation requirements, and that protester's arguments are largely based on unwarranted interpretations of solicitation requirements.

2. Low offer was not materially unbalanced merely because prices for the option quantities were lower than price for base quantity, where there is no showing that the offer contained nominal prices for some items and enhanced prices for other items and, in any case, agency intends to order sufficient option quantities so that no reasonable doubt exists that the offer will result in the lowest ultimate cost to the government.

DECISION

Stewart-Warner Electronics Corporation protests the Department of the Navy's award of a contract to Harris Corporation, under request for proposals (RFP) No. N00039-91-R-0030(Q), for high frequency remote controllable radio transmitter systems. Stewart-Warner argues that Harris' technical proposal failed to comply with certain RFP requirements and that Harris' prices were unbalanced.

We deny the protest.

BACKGROUND

The RFP contemplated award of a fixed-price, multi-year contract, with a firm base-year quantity and 4 succeeding option year quantities, for a total of 1,000 units. The statement of work (SOW) required offerors to design, fabricate, test, and support the transmitters in accordance with military specification MIL-T-28706G(EC) (for the entire AN/VRT-23 radio transmitter system) and military specification MIL-T-23645J(EC) for the T-827/VRT transmitter (exciter) portion of the overall system. In addition, it generally required that offered equipment be interchangeable with existing government furnished equipment (GFE).

The RFP stated that award would be made to the offeror whose proposal was considered most advantageous to the government, price and other factors considered. The solicitation provided for evaluation of proposals based upon price (including option prices), technical, and management factors; price would be of greater importance than technical or management and technical would be substantially more important than management. Under the technical factor, the solicitation listed, in descending order of importance, the following criteria: (1) compliance with specifications; (2) degree of technical risk; (3) understanding of the SOW; (4) understanding and compliance with interchangeability requirements; and (5) understanding of technical data requirements.

The agency received four initial proposals, including those from Stewart-Warner and Harris. After establishing a competitive range consisting of Stewart-Warner and Harris, the agency issued written discussion questions to both and requested their best and final offers (BAFO). Based upon its evaluation of the BAFOs, the technical evaluation board (TEB) ranked the proposals as follows:

	<u>Price</u>	<u>Manage-</u> <u>ment</u>	<u>Tech-</u> <u>nical</u>	<u>Total</u>	<u>Eval-</u> <u>uated</u> <u>Price</u>
Available Points	52	12	36	100	
Harris	52	9.27	30.07	91.31	\$24,353,159
Stewart-Warner	42.44	9.04	29.75	79.23	\$29,768,054

After reviewing the evaluation, the Contract Award Review Panel (CARP) and the Source Selection Authority concurred that award to Harris would be in the best interest of the government. Upon learning of the ensuing award to Harris, Stewart-Warner filed this protest with our Office.

Stewart-Warner contends that the agency waived for Harris compliance with specification provisions concerning the required software program development language, the use of nondevelopmental items and military-standard parts, interchangeability with existing GFE and amplifier performance. In reviewing an agency's technical evaluation, we consider whether it was reasonable and in accord with the evaluation criteria listed in the solicitation, Information Sys. & Network Corp., B-237687, Feb. 22, 1990, 90-1 CPD ¶ 203. Based on our review of the record, we find the agency's evaluation here reasonable; there is no indication that the agency improperly waived any solicitation requirement.

SOFTWARE PROGRAMMING DEVELOPMENT LANGUAGE

The SOW generally provided that the software programming development language to be used "shall be Ada," the DOD standard software programming development language. Likewise, the radio transmitter military specification (MIL-T-28706G(EC)) provided that "[t]he contractor shall use an Ada-based [programming development language] for software design." The SOW added, however, that "if the contractor's proposed language is other than Ada, the contractor shall develop detailed justification to support a request for waiver."

For its programming development language, Harris proposed PL/M, a higher level software language, as an alternative to Ada. Harris explained in its proposal that "while Ada could be used . . . the pressure to minimize development risk and time directs the choice to . . . PL/M"; the proposal stated that "the delivery requirements can best be met . . . if the selection of the . . . language PL/M is approved." Harris further stated in its proposal that it would "follow the direction of the SOW in obtaining a waiver." In the evaluation of Harris' initial proposal, under the criterion for compliance with the specifications, the TEB noted Harris' proposed use of PL/M as an alternative to Ada, the firm's reasons for selecting PL/M, and the firm's representation that it would request a waiver for use of Ada, in accordance with the RFP. The TEB concluded that, "after research, we determined that [Harris'] use of PL/M [versus] Ada was valid under the conditions proposed and that their waiver request would almost certainly be granted under the current DOD/Navy guidelines."

In order to clarify Harris' position in the event a waiver from the Ada requirement was not granted, the agency then asked Harris during discussions: ". . . if a waiver is not granted and you are required to use Ada what will be the effect on delivery schedule; what problems would you anticipate?" Harris responded in its BAFO that it would

"comply with the required delivery schedule if Ada is not waived" and that it "did not anticipate any problems in supplying Ada," due to its "significant experience" with that language. In addition, Harris reiterated its belief that the use of PL/M, with the waiver of Ada, would "result in cost reduction to the Navy without sacrificing utility," since "[t]he PL/M code necessary . . . is largely available from existing PL/M code in nomenclatured Navy equipment" and "little new development would be necessary. . . ." The agency evaluators determined that Harris' response was satisfactory.

Stewart-Warner argues that because Harris proposed to use an alternative programming development language in lieu of Ada, the Navy improperly waived the Ada requirement. According to the protester, its adherence to the Ada requirement increased the cost of its hardware relative to Harris' by \$2 million, thereby resulting in competitive prejudice.

We find that the Navy did not improperly waive the software programming development language requirement. The SOW clearly provided for consideration of proposals to waive the Ada requirement after award. All offerors, including Stewart-Warner, were afforded an equal opportunity to base their offers on a request for such a waiver. In accordance with the waiver provisions, Harris proposed an alternate software programming development language, based on its planned request for waiver of the Ada requirement after award; furthermore, Harris specifically agreed in its BAFO that if the waiver request was not granted, it would use Ada. Stewart-Warner opted to base its proposal on Ada, rather than request a waiver (with an agreement to use Ada if the waiver request were denied) as Harris did. Stewart-Warner was in no way compelled to choose this approach by the terms of the specifications. Any cost disadvantage Stewart-Warner suffered relative to Harris was the result of Stewart-Warner's particular approach to the procurement. We conclude that the Navy's evaluation of proposals in this regard, including Harris' requested waiver, was in accordance with the RFP.

MILITARY STANDARD PARTS/NON-DEVELOPMENTAL ITEMS

The military specifications incorporated into the SOW required that "the equipment furnished . . . employ standard parts or approved nonstandard parts." See MIL-T-23645J ¶ 3.1.2.2. and MIL-T-28706G(EC) ¶ 3.1.2. Stewart-Warner contends that the Navy accepted Harris' proposal based on the use of commercial or modified commercial, off-the-shelf, nondevelopmental items (NDI) which do not comply with the requirement for the use of military standard parts. This argument is without merit.

As noted by the Navy, both military specifications incorporated by reference military standard MIL-STD-965, "Parts Control Program," which provides procedures whereby a nonstandard part becomes approved for use. Further, the solicitation encouraged offerors to use NDI, including "commercial and commercial type products" and commercial products which could be "modified or integrated to meet the requirements of this solicitation." The solicitation stated that "use of NDI is the preferred method of satisfying operational requirements of the Navy where such use does not significantly degrade the operational or performance requirement." Harris specifically stated in its proposal that it would use standard parts or "nonstandard parts which have been approved," and that it would comply with the MIL-STD-965 procedures by which a nonstandard part becomes approved for use. The agency determined that, while Harris' offered equipment included modified commercial parts, this was consistent with the specification requirement for use of either standard parts or nonstandard parts which have been approved.

The evaluation was reasonable. Contrary to Stewart-Warner's position, there was no requirement under the specifications for use of only military standard parts; rather, as indicated above, the specifications provided for the use of either standard parts or approved nonstandard parts. An offeror therefore could propose, as Harris did, to use nonstandard parts as long as the parts otherwise complied with the requirements of the specification, and the offeror was willing to submit the parts to the procedures for approval outlined in MIL-STD-965. We note that this approval was not required prior to contract award. Consequently, the fact that Harris offered NDI or commercial parts does not demonstrate noncompliance with the specification requirements. As the protester has not raised any timely claim that the parts were otherwise noncompliant, we have no basis to question the evaluation in this regard.¹

¹In supplemental comments, Stewart-Warner contended that the modified commercial equipment proposed by Harris is noncompliant with required military standard MIL-STD-454 (incorporated by reference in MIL-STD-965), concerning the selection and application of microelectronic and semiconductor devices. This allegation, based upon Stewart-Warner's examination of Harris' proposal, was filed more than 10 working days after its receipt of the proposal. Consequently, it is untimely and will not be considered. See 4 C.F.R. § 21.2(a)(2) (1992). In any case, Harris stated in its proposal its intention to comply with MIL-STD-454.

INTERCHANGEABILITY

With respect to the T-827 transmitter (exciter) portion of the overall system, the RFP provided that nine listed "major assemblies," as well as "all items such as subassemblies, printed circuit boards, parts, etc." within the major assemblies, "shall be physically, mechanically and electrically interchangeable, in all respects, with the corresponding assemblies of the government furnished equipment (GFE) to the maximum extent possible while ensuring that the primary requirement, i.e., compliance with the performance specifications (MIL-T-28706G, and MIL-T-23645J), is met." (Emphasis added). The agency determined generally that Harris' proposal was fully compliant with the performance and interchangeability requirements of the RFP, and the TEB specifically concluded "that Harris [had] a very good understanding of, and has done an excellent analysis of the interchangeability requirements."

Stewart-Warner contends that the Navy improperly waived the interchangeability requirement for Harris with respect to one of the nine transmitter assemblies (the frequency standard assembly) listed under the interchangeability requirement, since Harris' was derived from an NDI off-the-shelf item. According to Stewart-Warner, use of such NDI material "necessarily defeats interchangeability" with the GFE. Further, the protester asserts that, given Harris' use of NDI, even if Harris' entire frequency standard assembly was interchangeable with the corresponding GFE at the assembly level, it necessarily could not achieve interchangeability with the GFE unit at the subassembly and parts level.

We find no basis to question the Navy's determination of Harris' compliance with the interchangeability requirements. As noted by the agency, Harris specifically stated in its proposal that it "complie[d] fully with the physical, mechanical, and electrical interchangeability requirements for the . . . major assemblies identified in the solicitation"; it affirmatively indicated that the frequency standard assembly is interchangeable with GFE. Indeed, Harris stated it had created mechanical and electrical models of the proposed transmitter design and its "proposed design changes have [been] thoroughly reviewed to ensure interchangeability is maintained." We find the agency reasonably determined that this was an acceptable response to the interchangeability requirement.

Moreover, Stewart-Warner's argument is based on a reading of the specification as imposing an absolute interchangeability requirement. There is no reasonable basis for such an interpretation. The plain language of the provision (quoted above) stated only that interchangeability was required "to

the maximum extent possible," while ensuring that the primary requirement for compliance with the performance specifications was met. The agency evaluated Harris' proposal as meeting the performance specifications, including those for the frequency standard assembly, and there is nothing in the record that would lead us to question this conclusion.

AMPLIFIER ASSEMBLY

Stewart-Warner questions the compliance of Harris' proposed system with performance requirements related to "out-of-band broad noise" (MIL-T-2345J ¶ 3.16.9.3) for the amplifier assembly of the transmitter. Harris included in its proposal an affirmative statement of compliance, a brief discussion of its approach, and a data chart showing the performance of the proposed amplifier. Stewart-Warner complains that Harris' performance chart did not provide "detailed information as to how the data was obtained." Stewart-Warner adds that it does "not believe [that the Harris chart] accurately depicts the actual performance that can be achieved." According to the protester, a similar design was rejected by the Navy in 1981.

The TEB, by determining that Harris' proposal showed compliance with the performance requirements, evaluated that proposal as acceptable in this area. We find no basis to question that evaluation. Contrary to Stewart-Warner's argument, there was no solicitation requirement to submit detailed data, such as specific test results, confirming proposed performance; confirmation of specific, promised performance characteristics was not required under the solicitation until first article approval, after contract award. Indeed, as noted by the agency, since technical proposals were subject to stringent page limitations, it was not possible for offerors to submit detailed technical data establishing compliance with every performance requirement. In fact, we note that Stewart-Warner itself did not offer any data or test results to demonstrate compliance with the amplifier performance requirement; it merely submitted a two-sentence statement parroting the general specification requirement.

As for Stewart-Warner's claim that a design similar to that proposed by Harris was rejected by the Navy 10 years ago, the protester itself acknowledges that the applicable specifications have since been revised. Given its failure to explain why Harris' design would not meet the current specifications, we cannot conclude that the agency acted unreasonably in accepting Harris' statement of compliance with the current specifications, supported by some data and explanation of its approach.

UNBALANCED PRICES

Stewart-Warner argues that Harris' offered prices were unbalanced, and that its proposal therefore should have been rejected, due to a difference in prices between the firm base year quantities and the option year quantities. In this regard, the RFP provided for the evaluation of offers by adding the total price for all option years to the total price for the base year requirement; warned that offers could be rejected if found to be materially unbalanced as to prices for the base requirement and option year quantities; and defined an unbalanced offer as one based on prices significantly less than cost for some work and prices significantly overstated for other work.

As indicated below, both Harris and Stewart-Warner offered higher unit prices for the firm, base year quantity (198 units) than for the option year quantities. (802 units):

	<u>Harris</u>	<u>Stewart-Warner</u>
Base Year Unit Price	\$49,298	\$41,825
First Option Year	24,770	34,477
Second Option Year	27,224	34,477
Third Option Year	27,224	30,010
Fourth Option Year	27,224	29,705

Although Harris' total price (\$10,107,594) for the firm quantity exceeded Stewart-Warner's (\$9,016,191), Harris' price became low during the first option year as a result of its significantly lower unit prices for the option quantities combined.

The record indicates that during the evaluation the Navy considered the effect of Harris' pricing structure. The agency concluded that Harris' pricing reflected the fact that Harris, unlike Stewart-Warner, had not previously produced the radio transmitter systems to these specifications, and therefore had significant start-up and other nonrecurring costs which it had apparently amortized over the firm quantities. The CARP went on to determine that "sufficient option quantity transmitters will be procured from Harris at a lower unit cost to more than offset the price difference in the firm requirements."

Consequently, the agency found that Harris' pricing was not materially unbalanced.

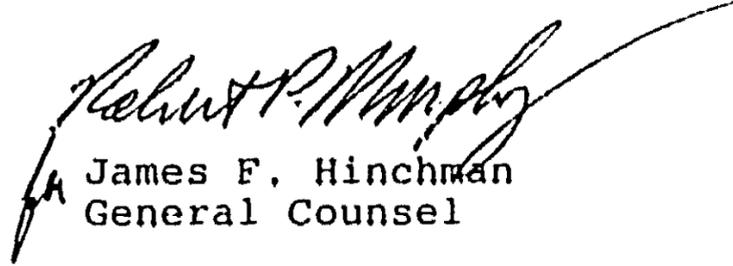
The concept of material unbalancing may apply in negotiated procurements where, as here, cost or price constitutes a primary basis for source selection. An offer is materially unbalanced where it is both mathematically unbalanced, that is, nominal prices are offered for some of the items and enhanced prices for others, and there exists a reasonable doubt whether award based on a mathematically unbalanced offer will result in the lowest cost to the government. Surface Technologies Corp., 68 Comp. Gen. 287 (1989), 89-1 CPD ¶ 233.

The record in this case does not demonstrate that Harris' offer was mathematically unbalanced. Items such as start-up costs, cited by the agency as an explanation for the pricing differences, properly may be factored into a base period price so long as the base period price does not carry a disproportionate share of the total contract price. For example, where a contractor would have no use for equipment following contract performance, it may allocate the equipment cost to the base period or quantity since, if options are not exercised, the contractor would not recover its cost of performance. Westbrook Indus., Inc., B-245019.2, Jan. 7, 1991, 92-1 CPD ¶ 30. Although there is a disparity here between the proposed base quantity and option quantity unit pricing, there is no indication, nor does Stewart-Warner allege, that the basic quantity pricing proposed by Harris carries a disproportionate share of the total contract price; that is, there is no basis for concluding that certain of Harris' prices are overstated. An offer is not unbalanced absent evidence that certain prices are overstated. See Virginia Mfg. Co., Inc., B-241404, Feb. 4, 1991, 91-1 CPD ¶ 113.

In any case, Stewart-Warner has not shown that there is a reasonable doubt that award to Harris will result in the lowest overall cost to the government. Award to Harris will result in the lowest total cost if the first option is exercised, and the Navy specifically determined that sufficient option quantity transmitters would be procured to offset Harris' higher firm requirement prices. Stewart-Warner has not challenged this determination. We thus have no basis to question the agency's consequent determination

that the award to Harris will result in the lowest ultimate cost to the government. See DGS Contract Servs., Inc., B-245400, Dec. 30, 1991, 92-1 CPD ¶ 16.

The protest is denied.


for James F. Hinchman
General Counsel