



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: TennMark Telecommunications, Inc.

File: B-252234

Date: June 7, 1993

Judith Ward Mattox, Esq., Mattox & Associates, P.C., for the protester.
Ray Zitloff, for Telcom System Services, Inc., an interested party.
William E. Thomas, Esq., Department of Veterans Affairs, for the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In procurement for telephone communication system and fiber optic data network, agency properly found proposal technically unacceptable for failure to meet a mandatory specification where, even after agency advised protester of the deficiency in its initial proposal, protester failed to show in its proposal that its proposed item met the specification.

DECISION

TennMark Telecommunications, Inc. protests a contract award to Telcom System Services, Inc. under request for proposals (RFP) No. 583(042)-65-92, issued by the Department of Veterans Affairs (VA) for a telephone communication system and fiber optic data network for the VA Medical Center in Indianapolis. TennMark asserts that the VA improperly found its proposal technically unacceptable.

We deny the protest.

The RFP, issued in July 1992, provided that award would be made to the lowest-priced, technically acceptable offeror. To be technically acceptable, the offeror had to meet all of the specifications in RFP section C, Description, Specifications, and Work Statement. In demonstrating compliance with those specifications, the RFP required that proposals provide a complete description of each item to be furnished, including the manufacturer and model number, software version, descriptive literature, specification sheets, and technical manuals. The solicitation further provided that

technical literature "shall clearly identify the specifications of the proposed equipment that meet the requirements of this document." The solicitation cautioned that it was "the responsibility of each offeror to submit literature and supporting documents necessary for the VA to determine that they meet the required specifications." Finally, the RFP advised that, since "the government may award a contract on the basis of initial offers received, without discussions," offerors should provide their "best terms from a cost or price and technical standpoint" in their initial proposals.

In January 1993, seven offerors, including TennMark, submitted initial proposals. After evaluating TennMark's proposal, on January 18, VA telefaxed a letter which identified 20 technical and 9 pricing deficiencies. The letter also requested that best and final offers (BAFO) be submitted by January 20, and stated that upon review of such BAFOs "award will be made to the lowest offeror whose technical proposal meets our specifications." The BAFO that TennMark submitted in response to the request letter was found technically unacceptable. On January 21, VA awarded the contract to Telcom, which had been found to be the lowest-priced, technically acceptable offeror. On the same date, VA notified TennMark of the award to Telcom and advised the firm that its BAFO had been found technically unacceptable because of its failure to meet three specifications; although deficiencies in these areas in TennMark's initial proposal had been pointed out in the January 18 letter, the agency noted, they had not been eliminated in the BAFO. On February 5, TennMark protested the agency's determination to our Office.

Where an offeror fails to set forth clearly in its proposal technical information that convinces the procuring agency that the proposed product meets the agency's minimum needs, the agency reasonably may find the proposal technically unacceptable. Compressed Air Equip., B-246208, Feb. 24, 1992, 92-1 CPD ¶ 220; Worldwide Sec. Servs., Inc., B-244693; B-244693.2, Oct. 21, 1991, 91-2 CPD ¶ 351. When a solicitation requires the submission of detailed technical information to establish that what is proposed will meet the agency's stated needs, a blanket offer of compliance is not a substitute for, and does not cure, a failure to supply adequate descriptive literature. Maschoff, Barr & Assocs., B-228490, Jan. 26, 1988, 88-1 CPD ¶ 77; Tel-Med Info. Sys., 66 Comp. Gen. 504 (1987), 87-1 CPD ¶ 561.

In this case, VA reasonably concluded that TennMark's proposal did not meet at least one mandatory specification, and on that basis alone reasonably rejected the proposal as technically unacceptable.

Concerning telephones, the solicitation stated that "station speed calling shall be provided to support ten numbers per instrument." That is, each telephone had to be capable of storing 10 telephone numbers in a list of frequently called numbers, each programmed into the list with its own two-digit code, so that whenever the user activated the two-digit code representing a particular telephone number, the telephone would automatically "speed dial" that number. TennMark's initial proposal, in addressing this specification, stated that "TennMark understands and will comply" with the requirement and referenced page 2-17 in technical literature included in the proposal. VA's evaluation of the initial proposal, however, disclosed no information regarding the specification on the referenced page. Accordingly, in its deficiency letter, VA asked, "Where are speed dialing numbers provided?" TennMark's response, again, was that it "understands and will comply," this time accompanied by a reference to page 105 in the technical literature. However, that page, VA determined, simply indicated that the proposed telephone had a capacity for "five numbers per list." Based on that information--5 numbers per list rather than the 10 per telephone required by the RFP--VA determined that TennMark was technically unacceptable.

TennMark argues that VA improperly determined that the technical literature submitted as part of its proposal did not adequately explain how it would meet this and other mandatory specifications of the RFP. According to TennMark, the fact that its "descriptive literature did not list all features of the solicited equipment should not be treated as a limitation of what would be supplied," since TennMark "did not indicate, in any manner, via its descriptive literature, that it intended to offer something other than what the government wanted to obtain under its specifications." Concerning the speed dialing specification, TennMark adds that "while the manufacturer's literature does not specifically state 'station speed calling of ten numbers per instrument,'" it nonetheless demonstrates compliance with the specifications. Specifically, TennMark argues, its technical literature showed that up to 20 lists can be assigned to 1 telephone, for a total capacity of up to 100 speed dial numbers (20 lists with 5 numbers per list). TennMark explains that this conclusion is based on the statement in page 2-17 of the technical literature that 2-digit numbers can be assigned for speed dial numbers. According to TennMark, if all 2-digit numbers from 00 to 99 were assigned, the result would be 100 numbers available for speed dialing.

TennMark's position is untenable. Neither of the pages referenced by TennMark indicates a capacity of 20 speed dial lists per instrument; in fact, as the agency concluded, the literature is silent as to the number of lists each

instrument may support. The only pertinent information in these pages is the information on which VA based its unacceptability determination: each telephone has a capacity for only 5 numbers per list, whereas the RFP requires 10 per telephone. TennMark has not, even at this late date, pointed to any part of its technical literature that explicitly states that its telephone can support 20 lists of 5 numbers each (or any other combination) and therefore satisfies the requirement for 10 numbers per telephone. Moreover, the mere fact that a certain number of 2-digit combinations may be mathematically possible did not satisfy TennMark's burden of demonstrating that it met the speed dialing requirement; the 2-digit numbers are used only as codes for the full telephone numbers, and thus had no bearing on the capacity of a telephone to store 10 complete, multi-digit telephone numbers. We conclude that VA reasonably determined that TennMark's proposal did not establish a capacity for 10 speed calling numbers per telephone, and therefore was technically unacceptable.¹

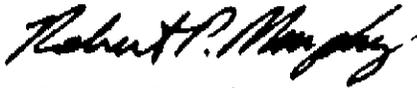
Other Protest Grounds

TennMark contends that the solicitation's evaluation scheme was ambiguous and was amended too late in the procurement for TennMark to prepare an adequate proposal. In support of its position, TennMark cites the following statement in our decision, Mobile/Modular Express, B-246183, Nov. 13, 1991, 91-2 CPD ¶ 459: "To be timely under our regulations, a protest concerning alleged improprieties in the conduct of a negotiated procurement must be filed with this office or with the contracting agency before the next closing date for receipt of proposals following the alleged impropriety." TennMark's objection is untimely. The solicitation was last amended on January 18. As the case cited by TennMark makes clear, any ambiguity in the criteria, as well as the lateness of the changes to them, had to be protested by the next closing date for the receipt of proposals "following

¹There is no need to examine the other two areas in which TennMark was found unacceptable since the failure to satisfy the speed dialing specification itself provided a proper basis for finding the proposal technically unacceptable.

the alleged impropriety"--that is, by January 20, when BAFOs were due. Accordingly, TennMark's post-award allegation is untimely and will not be considered.

The protest is denied.


for James F. Hinchman
General Counsel