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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190789 DATE: May 10, 1978
MATTER OF: Ampex Corporation

DIGEST:

Solicitation requirement that item furnished be "available," "developed," "standard," "production" item with minor modifications to meet specifications was met by offeror proposing combination of hardware from two production models which evaluators found presented low technical risk desired by procurement.

Ampex Corporation (Ampex) has protested the award of a contract to Bell & Howell by the United States Air Force under request for proposals (RFP) No. F33657-77-R-0305. The RFP was for 16 recorder/reproducers and related data.

Ampex's protest is based on the contention that the Bell & Howell proposal did not comply with certain requirements of the RFP.

Paragraph 1.0 of the Statement of Work (SOW) of the RFP reads, in part, as follows:

"It is the intent of this SOW that available production recorder/reproducer hardware shall be delivered, subject only to minor modification to meet the specified requirements."

Paragraph 13(a) of section "C" of the RFP states, in part:

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"* * * The proposal must clearly explain: each effort required to adapt a standard product to the specific features required; * * *"

The technical evaluation criteria, in paragraph 1a(1) of section "D" stated:

"(1) Understanding the Requirement. This rating category will reflect the offeror's recognition of the basic requirement for a developed magnetic tape recorder/reproducer based on sound, current technology and proven production feasibility and his understanding and explanation of minimal alteration and accessory development to meet the system requirements."

Bell & Howell's proposal offered its System 80 recorder/reproducer which Ampex argues was not an "available production" recorder/reproducer or a "standard" and "developed" product as required by the above-cited sections of the RFP.

The Air Force, in its report to our Office on the protest, concedes that the System 80 recorder/reproducer is not an available production item of Bell & Howell. However, the Air Force's technical evaluators found the System 80 to be acceptable because it will result from the combination of the reproducer electronics contained in Bell & Howell's model FSH/13 and the recorder electronics from its model M-14. Both of the models are standard, available production recorder/reproducers. The evaluators also found that the amount of modification necessary to these electronics to manufacture the System 80 was consistent with paragraph 1.0 of the SOW.

Ampex states that the above reasoning subverts the plain language of the RFP that the item offered be an available production recorder/reproducer.

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We disagree. The purpose of the clauses requiring "available production," "standard" and "developed" recorder/reproducer was to assure the Air Force of not becoming involved in a high risk, research and development effort. Paragraph 1.0 of the SOW refers to hardware being delivered. Therefore, we find the judgment of the evaluators that the standard available hardware offered by Bell & Howell from its two other models meets the requirements to be reasonable. Cf. AUL Instruments, Inc., B-185319, September 1, 1976, 76-2 CPD 212.

Because of the above finding, it is unnecessary to discuss Ampex's allegation that by accepting Bell & Howell's proposal, the Air Force changed its requirements during negotiations and should have advised all offerors via an amendment of the relaxed requirements.

Finally, Ampex contends that if it knew that the specifications would be interpreted in the manner in which they were by the Air Force, Ampex would have offered its FR-3030 recorder/reproducer, which it had developed but was not yet in production, rather than the more expensive FR-3010, which it did propose. Which item Ampex chose to offer, based on its reading of the specification, was a business judgment. As noted above, the specifications were not relaxed during negotiation. Therefore, it is conjecture that its model FR-3030, not yet in production, would have been acceptable. Both of the models from which Bell & Howell was extracting hardware were standard available items which were in production.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States