

20548



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: TM Systems, Inc.
File: B-236708
Date: December 21, 1989

DIGEST

1. Proposal to modify off-the-shelf electronic components to meet solicitation's salient characteristics was reasonably determined to be technically unacceptable where technical drawings accompanying the proposal contained insufficient information regarding the dimensions of the equipment offered and the configuration and operation of the electronic circuitry to be provided.
2. Adequate discussions were conducted where agency perceived deficiencies in the protester's proposal relating to a lack of technical information required by the solicitation to detail changes to be made to off-the-shelf equipment to meet specifications; this concern was communicated to the protester; and the protester submitted an amended offer which contained additional, albeit insufficient, technical data in response.
3. Agency was not required to refer the rejection of protester's offer based on grounds of technical unacceptability to the Small Business Administration for certificate of competency proceedings.

DECISION

TM Systems, Inc. protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. N00123-89-R-4030, issued by the Department of the Navy for electronic switching assemblies used in submarine communications. The protester contends that its proposal was improperly evaluated, that meaningful discussions were not conducted, and that the rejection of its offer should have been referred to the Small Business Administration (SBA) for certificate of competency (COC) proceedings.

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We deny the protest.

The RFP was issued on April 26, 1989, and contemplated an award to the responsible offeror submitting the lowest priced, technically acceptable proposal. The switching assemblies were composed of 15 integrated components which were each described on a "brand name or equal" basis listing salient characteristics. Offerors proposing to furnish "equal" products were cautioned to supply as part of their proposals all descriptive materials necessary for the agency to determine whether the products met the salient characteristics and to establish exactly what the offeror proposed to furnish and what the government was obligating itself to purchase by making award; further, offerors were advised that if they proposed to modify off-the-shelf products to comply with the RFP's requirements, they were to include a clear description of the proposed modifications and they were to clearly mark any descriptive literature to detail those proposed modifications.

Five firms, including the protester, submitted initial proposals. During the ensuing discussions, TM Systems-- which had proposed to modify off-the-shelf items manufactured by Hadax Electronics--was advised that its proposal was unacceptable because, among other things, the Navy was unable to determine from the literature provided whether the offered products would meet the requirements of the RFP. In response, the protester submitted a revised proposal which contained additional descriptive literature, including marked-up drawings of the proposed switching components.

The Navy's technical evaluator reviewed TM Systems' revised proposal and found that a persistent lack of information concerning the proposed modifications to Hadax equipment precluded a determination that the items proposed would meet the RFP's salient characteristics. In addition, the evaluator noted that it appeared that TM Systems was actually proposing a major redesign effort while the Navy was seeking a readily-available product, and expressed doubt that the protester could supply the needed assemblies within the 120-day delivery time frame set forth in the RFP.

On August 1, the contracting officer rejected TM Systems' proposal as technically unacceptable. On August 16, award was made to ADC Telecommunications--the sole remaining, technically acceptable offeror. TM Systems was informed of the award by letter dated August 17, which was accompanied by a copy of the final technical analysis of its proposal. This protest was filed August 25.

TM Systems' principal contention regarding the evaluation of its proposal is that the Navy required an unprecedented level of detail in support of the modifications the protester proposed to make to its supplier's equipment in order to meet the salient characteristics listed in the RFP. In general, the protester submits that, while it did not provide prohibitively expensive "final design drawings" of its proposed equipment, the descriptive literature that it did provide--including "red line" marked schematic drawings of the products to be modified--provided sufficient information for a reasonable technical reviewer to conclude that the salient characteristics were met. Detailing a number of examples, the Navy disagrees contending that the information supplied for its review by TM Systems was inadequate.

In brand name or equal procurements, the contracting agency is responsible for evaluating the data submitted by an offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror's products as equal. Pauli & Griffin, B-234191, May 17, 1989, 89-1 CPD ¶ 473. In making these determinations, the agency enjoys a degree of discretion which will not be disturbed unless the determinations are shown to be unreasonable, and a protester's mere disagreement with the agency's technical judgment does not make it unreasonable. Tri Tool, Inc., B-229932, Mar. 25, 1988, 88-1 CPD ¶ 310. Moreover, the offeror has the burden of affirmatively showing in its offer the equality of its product and, if it proposes modifications to an existing product to make it equal, these must be clearly described to establish that it meets all of the salient characteristics listed in the RFP. Pauli & Griffin, B-234191, supra.

Also, with regard to the acceptability of modifications proposed to off-the-shelf electronic equipment, we have specifically indicated that it is reasonable for an agency to reject an offer which does not provide sufficiently detailed information regarding design, method of manufacture, assembly and operation--including information about what changes in electronic circuitry would be required to accommodate the proposed modifications and how these changes are to be accomplished. See Western Graphtec, Inc., B-230958, Apr. 26, 1988, 88-1 CPD ¶ 410.

At the outset, we note that TM Systems' own basic description of all of the "red line" schematic drawings it submitted to depict its proposed modifications indicates that there are "missing elements." While, on the one hand, the protester suggests that these are not material to the evaluation of its offer, it also describes a rather

extensive design process which must necessarily follow from the "red line" drawings before a product could be fabricated. According to the protester, further engineering review of the drawings would be required to assure that "dimensional restrictions are accounted for and the electrical circuits are operational and properly interfaced." Once this was complete, TM Systems states that models would be built and tested and, based on the results, a design would be finalized or "the drawing(s) changed."

In our view, the protester's own description of the continuing process to be applied to the drawings it submitted with its proposal for evaluation indicates that such matters as design dimensions and the proper configuration and operation of electronic circuitry were subject to change.

More specifically, we note, for example, that the chassis component of the switch assembly was required to accommodate 18 switching modules and provide for their associated circuitry. Using dimensions from the drawings submitted by TM Systems, the Navy evaluator concluded that 18 switching modules would not fit into the chassis because the protester had not allowed for manufacturing tolerances which affected the size of the modules to be accommodated. The agency determined the module size from the protester's own drawing. The evaluator also concluded that there would be a special fit problem with the two end modules because, as the protester's literature indicated, it was not planning to change dimensions of the rack mount ears at either end of the chassis--a circumstance that would preclude a proper fit of the end modules. In response, the protester does not dispute that there would be overall fit problems using the dimensions stated in the proposal; rather, TM Systems argues in essence that it was unreasonable for the Navy evaluator to regard the stated dimensions as anything other than "nominal"--i.e., to be changed during the final design process to accommodate the fit. The protester does not address the special fit problems noted by the Navy regarding the end modules.

While a continuing dispute remains between the protester and the agency about what constitutes standard engineering practice in reading "red line" drawing dimensions, we note that the drawings submitted as part of TM Systems' proposal do not contain dimensions which are marked in any way as "nominal," or "preliminary," etc. As indicated earlier, a continuing technical disagreement provides an insufficient basis for concluding that the agency acted unreasonably in rejecting an offer. Tri Tool, Inc., B-229932, supra. What is clear from the record here is that the drawings submitted

contained dimensions that simply would not work. We are unaware of any law which requires an agency to accept a proposal based on such information.

Similar problems existed with respect to the circuitry of TM Systems' proposed chassis. The evaluator found that the protester had failed to specify how it would rewire the off-the-shelf motherboard, which was capable of accommodating 17 modules, to be compatible with 18 modules as required. In particular, the Navy asserts that the protester failed to describe whether it would attempt to add one circuit to the existing printed board--which it viewed as an unacceptable approach--or whether it would more likely redesign the layout of the board completely because the required changes were significant; in any event, the Navy notes that TM Systems' proposal did not show the connecting wiring required to accommodate an 18th circuit. In response, the protester merely maintains that its drawing--which is simply marked to indicate that "[a]n additional card circuit [is] to be added. Exact location to be determined"--was sufficient to inform an engineer that the design of the 18th circuit would follow from the design of the existing depicted circuits during the final design process. The protester does not address the agency's concern that connecting wiring was not depicted except to state that it too would be "part of the final design."

Additionally, with respect to the circuitry of two module components providing A/B switching, the offeror's descriptive literature indicates that it proposed to modify particular Hadax models to meet the salient characteristics; yet, the schematic drawing offered to depict circuitry changes involving the addition of pin connectors clearly shows that it is not a drawing of the Hadax equipment the protester is proposing. While TM Systems stated that the drawings were for "layout purposes," and now argues that the drawings do in fact depict the actual circuitry of the offered models, we fail to see how the Navy could reasonably be expected to determine what, in fact, it would be purchasing if it accepted TM Systems' offer as submitted.

Based on our review of the record, we do not believe that the Navy acted unreasonably in viewing the information submitted by TM Systems in support of its proposal concerning the above cited characteristics as insufficient. Therefore, we find that the protester's offer was reasonably determined to be technically unacceptable since it did not clearly establish what was actually being offered and whether the proposed modified products would meet all of the

listed salient characteristics. While there were a number of other deficiencies cited by the Navy and disputed by the protester, since in our view the agency had a reasonable basis for rejecting TM's proposal as technically unacceptable based on the matters discussed above, we need not consider the technical evaluation issues remaining between the parties. See Coulter Electronics, Inc., B-216800, Apr. 23, 1985, 85-1 CPD ¶ 463.

The protester also complains that discussions were inadequate, essentially arguing that the Navy never informed it that a "final design" would be required to establish the equality of its offered products. While the precise contents of the oral discussions are in dispute, it is clear from the record that the written discussions conveyed the agency's concern that additional technical data was required to determine whether TM Systems was offering an acceptable product. Moreover, the RFP itself contained a requirement for detailed data. The protester argues that, in actuality, the Navy changed the data requirement to include "final design" documentation. We disagree. It is clear from our previous discussion that the agency reasonably concluded that TM Systems proposal was inadequate under the standards contained in the RFP. Since the agency informed the protester that its initial proposal needed more data under those standards, we believe that the agency imparted sufficient information to TM Systems so as to afford it a reasonable opportunity in the context of this procurement to identify and correct the deficiencies in its proposal; nothing more was required. Pauli & Griffin, B-234191, supra.

Finally, the protester contends that since the technical evaluator expressed doubts in his report to the contracting officer as to whether the major redesign effort inherent in TM Systems' proposal could be accomplished within the required delivery schedule, the rejection of its proposal was actually a finding of nonresponsibility which should have been referred to SBA for COC proceedings. We disagree. Despite the protester's reading of the evaluator's recommendations, we find that they are principally a description of technical inadequacies found in TM Systems' proposal, and we note the record nowhere reflects that the contracting officer made a determination concerning the protester's responsibility; rather, it reflect that the proposal was

rejected as technically unacceptable. In such circumstances, referral to SBA was simply not required. Pacific Computer Corp., B-224518.2, Mar. 17, 1987, 87-1 CPD ¶ 292.

The protest is denied.

for Seymour E. Hinchman
James F. Hinchman
General Counsel