Comptroller General
of the United States

Washington, D.C. 20548

Decision

REDACTED DECISION

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Datacomm Management Sciences, Inc.

File: B-261089

Date: August 8, 1995

Rex L. Fuller III, Esq., for the protester.
David H. Turner, Esq., Department of the Navy, for the agency.
Behn Miller, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly made award to firm whose automated matrix switching control system was not equal to the brand name system specified in the solicitation is denied where agency reasonably determined that awardee's product was functionally equivalent to the specified system.

DECISION

Datacomm Management Sciences, Inc. protests the award of a contract to Telenex Corporation under request for proposals (RFP) No. N00140-94-R-BA60, issued by the Department of the Navy for a "brand name or equal" automated matrix switching control system for the Technical Control Facility at the Naval Computer and Telecommunications Station in Cutler, Maine. Datacomm contends that Telenex's offered system is not equal to the protester's brand name system.

We deny the protest.

On August 11, the Navy issued the RFP, which contemplated the award of a fixed-price contract to the lowest-priced, technically acceptable offeror. As initially issued, the RFP requested a switching control system "comprised of items brand name or equal [emphasis in original] to the following Data[c]omm Management Sciences, Inc. items [emphasis added]." Under this description, the RFP's pricing schedule listed 14 sub-contract line item numbers (sub-CLINs), identified by 14 corresponding Datacomm component part numbers, each of which required a separate unit price. The RFP provided that all system components would be purchased from one offeror, since different equipment items from different manufacturers use unique and proprietary interfacing language--or software--to operate as a system.

By the September 19 closing date, four proposals--including the protester's--were received; only Datacomm proposed the specified 14-item brand name system. In performing the technical evaluation, the agency discovered that although the other three offerors proposed alternate switching control systems comprised of different component architectures and configurations, these systems could, in fact, meet the Navy's functional requirements as set forth in section C of the RFP. As a result, while the evaluators were required to rate the three alternate system offers as technically unacceptable since these systems' individual components were not equal on an item-by-item basis to the specified Datacomm components, the evaluators nevertheless recommended that the three alternate offers be kept in the competitive range--along with Datacomm's--and that the solicitation be reviewed to remove unnecessary technical requirements.

On December 7, the agency issued amendment No. 0002 which eliminated some of the component interfacing requirements, and afterwards conducted written discussions with each offeror. On February 3, 1995, as a result of these discussions, the agency issued amendment No. 0003 to the RFP which provided that:

> "All systems proposed must comply with all salient characteristics identified in Section C. Offerors are permitted to propose a system with a configuration different from the configuration identified above so long as the proposed configuration complies with all salient characteristics. Offerors proposing other than the brand name system shall identify, for each component, the manufacturer part number." [Emphasis added.]

In addition, the Navy modified the RFP's brand name or equal clause to require a switching control system "brand name or equal [emphasis in original], to the Datacomm Management Sciences, Inc. system [emphasis added]"; in this regard, while the RFP's pricing schedule still listed the 14-component items of the Datacomm system, the corresponding 14 sub-CLINs, pricing blanks, and component quantities were eliminated. Instead, offerors were required to propose one price for the entire switching system.

By March 9, each of the four initial offerors submitted best and final offers (BAFO) which were evaluated as technically acceptable by the agency. Consequently, the agency ranked proposals according to price: Telenex submitted the lowest price, $158,968; Datacomm submitted the next lowest price, $166,384.

On March 29, the Navy awarded a contract to Telenex as the lowest-priced, technically acceptable offeror. On April 17, Datacomm filed this protest with our Office.

PROTESTER'S CONTENTION

Datacomm contends that Telenex's proposed switching control system does not meet the salient characteristics of the RFP, and therefore should have been rejected by the agency as technically unacceptable. Datacomm maintains that because the Telenex system relies on system architecture different from the architecture used in the Datacomm system, the protester "believes" that three of the Telenex system components--the matrix switch module, the matrix switch assembly, and the satellite shelf assembly--lack the required satellite port capacity to connect the various equipment and computer terminals to a pre-existing satellite communications network. Datacomm also contends that the data base entry software proposed by Telenex fails to provide all the required utilities needed to run a control switching system. Finally, Datacomm asserts that Telenex failed to propose a spare satellite control module component, as required by the RFP. As explained below, we find no basis to question the Telenex award.

DISCUSSION

In a brand name or equal procurement, an equal product need only meet the item's salient characteristics listed in the solicitation, not unstated features of the brand name item. See American Bristol Indus., Inc., B-249108.2, Oct. 22, 1992, 92-2 CPD ¶ 268. When a salient characteristic is stated in general terms, the equal product need not meet the characteristics exactly as the brand name does; it need only be functionally equivalent to the brand name. See Ross Cook, Inc., B-231686, Sept. 7, 1988, 88-2 CPD ¶ 216; Cohu, Inc., B-199551, Mar. 18, 1981, 81-1 CPD ¶ 207. Thus, the listing of a manufacturer's stock number or part number does not transform all of the equipment's design features into salient characteristics that an alternative source must address in order to meet the agency's minimum needs. See Solid Waste Integrated Sys. Corp., B-258544, Jan. 17, 1995, 95-1 CPD ¶ 23; Lanier Business Prods., Inc., B-240990, Jan. 14, 1991, 91-1 CPD ¶ 30. In this regard, the procuring agency enjoys a reasonable degree of discretion in determining whether a particular product meets the solicitation's technical requirements as set forth in the salient characteristics, which we will not disturb unless it is shown to be unreasonable. See Solid Waste Integrated Sys. Corp., supra.

Port Capacity

With regard to system satellite port capacity, section C of the RFP stated that any proposed system must be capable of processing a "minimum capacity of 1000 ports." Section C also required that:

> "Port Cards shall interface with the [matrix] switch [assembly component] in the following quantities: 248 digital ports (124 can be DCE and 124 can be DTE) and 248 VF ports."

In response to Datacomm's allegation that the Telenex matrix switch module cannot process the requisite 1000 ports, the cognizant Navy technical evaluator explains in a detailed affidavit that, in fact, the Telenex matrix system is equipped with 16 standard switching board components which allow the system to process up to 1024 ports--thus exceeding the required minimum 1000 port capacity. In the same affidavit, the Navy technical evaluator also explains that the Telenex matrix switch assembly component fully supports both the 248 digital and 248 VF port connections, as required by the RFP.

In its comments on the agency report, Datacomm generally challenges the technical evaluator's affidavit, but provides no substantive response to the Navy's technical conclusions.[1] Instead, Datacomm asserts that the affidavit is conclusory and by itself does not establish that the Telenex equipment meets this requirement.

We disagree with the protester's assessment. In our view, the affidavit provided by the Navy is cogent and clearly describes the basis for why the Navy concluded that the offered Telenex equipment meets the port capacity specifications. Without a substantive rebuttal to the Navy's explanations, and without a rationale for a conclusion that the Navy's acceptance of this equipment was unreasonable, Datacomm's challenge of these technical conclusions is unsupported, and provides no basis to reject the Navy's selection decision. Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338.

Satellite Shelf Assembly Component

In addition to the listed salient characteristics, section C of the RFP also set forth a brief definition of 11 of the Datacomm sub-CLIN components listed in the pricing schedule[2]; according to the Navy, these definitions were not intended as salient characteristics, but were provided in order to enhance offerors' understanding of the composition of the specified brand name system.

---

[1]Rather than provide a substantive response, Datacomm argues that our Office should convene a hearing to explore the credibility of the technical evaluator. However, absent evidence that a protest record is questionable or incomplete, this Office will not hold a bid protest hearing merely to permit the protester to orally reiterate its protest allegations or otherwise embark on a fishing expedition for additional grounds of protest. See Border Maintenance Serv., Inc.--Recon., 72 Comp. Gen. 265 (1993), 93-1 CPD ¶ 473.

[2]The only Datacomm system components not defined in section C were a switching component and two cable components. These items were apparently deemed self-explanatory by the agency.

With regard to sub-CLIN 0001AF--the satellite shelf assembly--section C defined this part as a component which "provide[s] 64 ports for connection to terminal equipment." Datacomm contends that the Telenex system should have been determined technically unacceptable because the Telenex system relies on a differently configured satellite shelf assembly.

The Navy admits that the proposed Telenex satellite shelf assembly component holds only 16 ports, but claims that this characteristic was deleted by amendment No. 0003--which expressly permitted alternate configurations. Consequently, the Navy argues that Telenex was not required to propose a satellite shelf-assembly component with 64 ports.

In its comments on the agency report, Datacomm maintains that because the agency did not remove the list of Datacomm components from the RFP's pricing schedule--or remove the satellite shelf assembly component sub-CLIN definition from section C--amendment No. 0003 did not have any impact on these criteria. Thus, Datacomm argues that Telenex was required to propose a satellite shelf assembly component with the same 64-port configuration as the specified Datacomm component. We disagree.

To be reasonable, an interpretation of solicitation language must be consistent with the solicitation when read as a whole. See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. In this case, as noted above, amendment No. 0003 expressly provided that offerors were "permitted to propose a system with a configuration different from the configuration identified in Section B, the [Pricing] Schedule." Thus, we think it is clear that alternate port configurations--for any system component-- were expressly allowed. While the definition of the satellite shelf assembly component set forth in section C is described in part by referring to a component equipped with "64 ports for connection to terminal equipment," we think the revisions made by amendment No. 0003 clearly allowed the agency's consideration of a differently configured shelf assembly component, such as Telenex's 32-ported satellite shelf assembly part. Any interpretation to the contrary would render meaningless the revisions made by amendment No. 0003. See Tutor-Saliba Corp., et al., B-255756, Mar. 29, 1994, 94-1 ¶ 223.

In any event, we note that because of the assembly configuration of Telenex's satellite shelf assembly component, there appears to be little functional difference between it and the Datacomm system. The Datacomm system, specified in the RFP, contains 8 satellite shelf assemblies, each of which is equipped with 64 ports. Thus, as a system, the Datacomm System provides 512 satellite shelf assembly ports. The record shows that Telenex has offered a system comprised of 32 satellite shelf assembly components, each of which is equipped with 16 ports. Consequently, like the Datacomm system, the Telenex system also provides

512 satellite shelf assembly ports. We therefore find no merit to this aspect of Datacomm's protest.

Remaining Contentions

Datacomm next contends that the software proposed by Telenex fails to perform several of the utility functions necessary to run a control switching system. However, the Navy reports that contrary to Datacomm's contention, the Telenex System software fully meets the Navy's functional requirements, including: successful access and control of one or more system switches and data bases; monitoring of system status; expert code communication; creating and printing customized switch management reports; general system support diagnostics; and other features. The Navy also points out that unlike the port capacity features, salient characteristics pertaining to software were not enunciated in the RFP; nevertheless, because of the above-referenced functions, the Navy considers the Telenex system software to be functionally equivalent to the Datacomm system software.

To the extent Datacomm argues that Telenex's proposal should have been rejected as technically unacceptable for failing to offer a spare satellite control module component, as noted above, the amended RFP permitted offerors to propose a functionally equivalent switching control system comprised of different configurations and components. The Navy responds that Telenex did not propose a spare satellite control module because its system is based on architecture which is different from the architecture used in the Datacomm system and is not configured to run on "time division multiplexing"; as such, the function provided by the satellite control module in the Datacomm system is not required in the Telenex system. However, notwithstanding different architectures, the Navy reports that Telenex has nonetheless proposed an equivalent spare component--the Chassis Control Board--which provides communications control for the Telenex system, as does the satellite control module for the Datacomm system.

As noted above, in determining whether a particular item meets the solicitation's technical requirements set forth as salient characteristics, a contracting agency enjoys a reasonable degree of discretion which we will not disturb if the technical determination is reasonable. American Bristol Indus., Inc., supra. In this case, given the RFP's clear license to propose alternative control switching systems based on different architectures and configurations, as well as the Navy's reasoned

explanation of the Telenex system's functional equivalence to the specified Datacomm brand name system, we conclude that the Navy reasonably determined that Telenex's offered system satisfied the RFP's salient characteristics.

The protest is denied.

Comptroller General
of the United States