



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: P.G. Electronics, Ltd.

File: B-261883

Date: November 1, 1995

Gerry Graham for the protester.

Maureen Cummings-Spickler, Esq., Federal Aviation Administration, for the agency. Robert Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency should have used price evaluation formulas other than those set forth in the solicitation is without merit; evaluation must be based on scheme in solicitation.
2. Agency's decision to permit a second operational capability demonstration on awardee's proposed equipment is unobjectionable where it was not prohibited by the solicitation and resulted in increased competition.
3. Protest that awardee's proposed equipment should have been rejected because it was not "commercial-off-the-shelf" (COTS) equipment is denied where both the protester and the awardee offered tailored COTS equipment and the non-mandatory COTS requirement was not strictly applied to either offer.

DECISION

P.G. Electronics, Ltd. protests the award of a contract to Mu-Del Electronics, Inc. under request for proposals (RFP) No. DTFA01-92-R-06593A, issued by the Federal Aviation Administration (FAA) for multicoupler devices which receive and distribute radio signals from a single antenna to no fewer than four receivers without a significant loss of either signal level or signal intelligence. P.G. objects to the evaluation of proposals.

We deny the protest.

BACKGROUND

The RFP, issued on September 1, 1994, contemplated the award of a 5-year fixed-price requirements contract for "base requirements" set forth in section B.1 of the schedule of items including multicoupler hardware and related support services, and "optional requirements" set forth in section B.2 of the schedule including routine

and emergency repair services (contract line items (CLIN) Nos. 2201 and 2202, respectively) and various other optional CLINs. No warranty beyond the standard commercial warranty provided by the multicoupler manufacturer was required. Award was to be made to the offeror whose proposal provided the lowest overall price for a technically compliant offer.

Section M.4 of the RFP provided that overall price would be calculated by using the maximum estimated quantities set forth in the schedule of items. Technical compliance with non-mandatory requirements and mandatory requirements listed in the product description was to be evaluated on a "pass/fail" basis. Failure to meet at least 75 percent of the non-mandatory requirements could result in a determination of technical unacceptability; however, the agency reserved the right to waive non-mandatory requirements if determined to be in the government's best interest.

Ten mandatory requirements were listed in the product description. The solicitation provided that the agency could, at its option, require an operational capabilities demonstration (OCD) to verify proposed equipment against the listed mandatory requirements.

On November 22, P.G. and Mu-Del submitted initial proposals. P.G. submitted an alternate proposal that provided extended warranty coverage for all defects for a period of 10 years at a cost of 3 percent of the purchase price per year.

Written discussions were then held and the FAA elected to require an OCD for Mu-Del.¹ As a result of the OCD which was witnessed and certified by an FAA engineer, Mu-Del's equipment was found to have met 9 of the 10 mandatory requirements. Subsequently, a second OCD was conducted and Mu-Del's equipment was found to be compliant with all 10 of the mandatory requirements.

P.G. and Mu-Del submitted best and final offers on May 10, 1995. Both offers were found to have satisfied the technical requirements of the RFP and overall prices were calculated as follows:

¹An OCD was waived for P.G. because it had successfully demonstrated the capability of its multicouplers in 1994.

	Mu-Del	P.G.	P.G. Alternate
Hardware	\$ 5,522,169	\$ 7,060,980	\$ 7,060,980
Tech. Support	\$ 476,376	\$ 488,507	\$ 488,507
Repairs	\$ 2,257,500	\$ 1,453,830	N/A
Other Optional Items	\$ 1,439,380	\$ 1,410,864	\$1,410,864
Extended Warranty	N/A	N/A	\$ 1,059,147 ²
Total	\$ 9,695,525	\$10,414,181	\$10,019,498

Accordingly, award was made to Mu-Del on the basis of its low evaluated price. This protest followed.

PROTEST OVERVIEW

P.G. raises four contentions with respect to the evaluation of proposals:

(1) a proper evaluation of its alternate proposal would have resulted in a determination that it provided the lowest overall price to the government;

(2) the agency should have evaluated its proposal as affording the lowest overall implementation price to the government;

(3) Mu-Del's offer was noncompliant with certain mandatory technical requirements; and

(4) Mu-Del submitted a noncompliant offer because it did not propose COTS equipment.

ISSUE-BY-ISSUE ANALYSIS

Evaluation of P.G.'s Alternate Proposal

P.G. asserts that the agency miscalculated its extended warranty price. In the protester's view, the price of the warranty should have been \$459,058. Using this figure, P.G. submits that the overall price of its alternate proposal should have been calculated as:

²This evaluation of P.G.'s extended warranty price was accomplished by multiplying the protester's hardware price of \$7,060,980 by 3 percent over the duration of the contract. The evaluation assumed that the extended warranty would completely replace any need to consider the prices offered for CLINs 2201-02.

Hardware	\$7,060,980
Technical Support	470,507 ³
Repairs <u>i.e.</u> , the warranty	459,058 (i.e. the warranty)
Other Options	1,410,864
Total	\$9,401,409

When calculating the price of the extended warranty offered by P.G. in its alternate proposal, the FAA initially assumed that the warranty would replace CLINs 2201 and 2202, which covered routine and emergency repairs. Upon reevaluation of the proposal following the protest, the FAA determined that the language of the alternate proposal was inconsistent with the agency's initial assumption. The warranty terms in the alternate proposal provided:

". . . warrant coverage of all defects for a period of 10 years at a cost of 3% per year of the unit price . . . the quoted Routine Repair price (CLIN 2201) would apply for all items returned without defects."⁴

In its agency report, the FAA states that because the plain language of the extended warranty covered only repairs necessitated by defects, there was no reasonable way to calculate how many repairs, if any, would be covered by CLINs 2201 and 2202 and how many by the proposed warranty. Accordingly, in its reevaluation, the agency concluded that it could not consider P.G.'s alternate proposal because the RFP required a price evaluation using the estimated quantities set forth in the schedule of items for the repair CLINs. This reevaluation left only a comparison between Mu-Del's offer (\$9,695,525) and P.G.'s basic offer (\$10,414,181) and, in the agency's view, confirmed the propriety of the award.

While recognizing that there is a distinction between overall repair work and the repair of defective items, P.G. seems to argue that the FAA's reevaluation was illogical because "[w]e see no justification for the FAA ever to return units for 'repair' unless they are 'defective.'" This argument is plainly without merit as it conflicts with the plain terms of the protester's own proposed extended warranty.

³While this figure differs from the agency's calculation of \$488,507 for these items, the difference is insignificant to the resolution of the protest.

⁴The schedule of items listed an estimate of 3,000 repairs on a routine basis (CLIN 2201) and 10 repairs on an emergency basis (CLIN 2202). P.G. priced each CLIN at \$483 per repair for a total of \$1,453,830; the protester does not dispute the accuracy of this calculation.

The warranty expressly limited its coverage to "defects" and recognized the existence of repairs for items "returned without defects," for which the agency also required service under the RFP. Thus, the FAA correctly determined that P.G.'s alternate proposal could not be evaluated in accordance with the RFP's scheme based on the estimated quantities. See Labat-Anderson Inc., 71 Comp. Gen. 252 (1992), 92-1 CPD ¶ 193 (Competition in Contracting Act of 1984 requires that solicitations include a statement of evaluation factors, including price, and that agencies evaluate proposals solely on those factors). Thus, the FAA properly evaluated the proposals by evaluating CLINs 2201 and 2202 using the stated estimated maximum quantities set forth for each CLIN. Since the protester in essence is arguing that the agency should have used an evaluation formula not stated in the RFP, this aspect of the protest is denied.

Lowest Overall Implementation Price

P.G. sets forth a number of arguments based on its assertion that the equipment it offered featured enhancements which would have reduced the agency's overall implementation price when operating the multicoupler devices to be ordered under the contract. For example, P.G. notes that it is offering 8-port devices whereas Mu-Del's multicouplers only have 4 ports. P.G. argues that, by necessity, the FAA would have to order fewer of its devices, thereby reducing the overall cost to the government.

The simple answer is that the RFP did not provide that award would be made on the basis of the lowest overall implementation price; rather, it specified that low price was to be determined based on extending the CLIN unit prices offered by the estimated quantities set forth in the RFP. The second issue is therefore denied for the same reason as the first, that is, the agency properly evaluated P.G.'s proposal based on the scheme set forth in the RFP. Id.

Noncompliance With Mandatory Requirements

As noted above, at the first OCD the awardee's equipment failed to meet one of the mandatory requirements--involving a specific tolerance for intermodulation. P.G. asserts that this rendered the proposal technically unacceptable, and that it was improper to conduct a second OCD.

The application of strict pass/fail standards in the evaluation of OCDs that lead to the automatic exclusion of potentially acceptable proposals is to be avoided, especially in circumstances where, as here, eliminating a proposal would leave only one firm in the competition. Data Sys. Mktg., Corp., B-228888, Dec. 18, 1987, 87-2 CPD ¶ 609. Accordingly, as multiple OCDs were not prohibited by the RFP, the agency's decision to conduct a second OCD--made in the interest of enhancing competition--is legally unobjectionable.

Failure To Propose COTS Equipment

The specification contained in the RFP stated that:

"The receiver multicoupler equipment shall be commercial equipment constructed and fabricated to ensure compliance with all requirements contained herein."

P.G. alleges that, because the MDP-model multicouplers offered by Mu-Del required tailoring to meet the RFP's technical requirements they were not acceptable because they did not constitute COTS equipment.

First, whether this RFP language—which does not use the term COTS—prohibited any degree of tailoring to meet the agency's needs is a matter committed to the broad discretion of the contracting officer. American Seating Co., B-229915, Apr. 26, 1988, 88-1 CPD ¶ 408. There is no basis on this record for concluding that the agency intended to define commerciality in a manner that precluded modified commercial equipment. Further, while Mu-Del did in fact propose to tailor its commercial equipment to meet the agency's requirements, the agency points out—and P.G. does not dispute—that P.G. also proposed to modify its equipment to meet the solicitation's requirement for multicouplers which operated on both direct and alternating current; notwithstanding P.G.'s need to tailor its equipment, the FAA found that the firm also had met the commerciality requirement.

The RFP specifically provided that non-mandatory requirements could be waived in the discretion of the agency. The commerciality requirement was not listed as a mandatory requirement and, even if the protester's reading of the requirement were correct, the FAA effectively "waived" the requirement for both offerors. Where, as here, a specification standard is waived for all offerors, there is no prejudice and, therefore, no basis to sustain a protest. Automated Power Sys., Inc., B-251019, Mar. 2, 1993, 93-1 CPD ¶ 193.

The protest is denied.

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