



**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:** Mitel, Inc.

**File:** B-270138

**Date:** January 17, 1996

William B. Barton, Esq., and William Welch, Esq., Barton, Mountain & Tolle, L.L.P., for the protester.

Barbara J. Amster, Esq., Department of the Navy, for the agency.

Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

In expedited negotiated procurement for urgently required telephone system for naval vessel, where solicitation requirement for detailed technical proposals was waived by the agency for all offerors, the agency's determination of whether proposals were technically acceptable was properly based in the first instance on whether each offeror unequivocally proposed to meet solicitation requirements; agency determination, based on information outside proposals, as to whether or not an offeror was capable of supplying the required product within the required time frame concerns a matter of responsibility which the General Accounting Office does not review except in circumstances not present here.

## DECISION

Mitel, Inc. protests the award of a contract to Ericsson, Inc. under request for proposals (RFP) No. N66001-95-R-3602, issued by the Department of the Navy for an internal telephone system for Navy ships designated as a Ship's Service Telephone System (SSTS).<sup>1</sup> In its initial protest, Mitel essentially argued that the agency, by awarding to Ericsson, waived a solicitation requirement that each offeror's system comply with and meet specification No. NAVSEA1-289-I-306 (Rev. D) as a

<sup>1</sup>The SSTS was required by the RFP to be a commercial PBX with a capacity of 50 to 180 line terminations for submarines and 200 to 2000 line terminations for surface ships. The SSTS, under the RFP's specifications, was required "to be ruggedized to withstand the environment onboard Navy ships."

precondition of award.<sup>2</sup> After receipt of the agency report, and recognizing that the RFP did not contain any prequalification requirements for ruggedized equipment or any other qualification requirements that had to be met prior to award,<sup>3</sup> the protester argues that the agency improperly determined the Ericsson proposal to be technically acceptable and as capable of meeting the ruggedized technical requirement by the time of final delivery, scheduled only months after award of the contract, without any reasonable basis for believing that Ericsson could obtain NAVSEA approval for its equipment within that relatively short time frame.

We dismiss the protest.

This SSTS requirement was urgent because the internal communication system aboard the USS Germantown, based in Sasebo, Japan, had to be urgently upgraded. The agency executed a justification and approval (J&A) and limited competition to the three firms it believed were capable of performing the requirements within the time frame available, including the protester, Ericsson, and AT&T. The agency telephonically contacted each offeror, and because of the urgent time restraints, allowed only 7 days for proposal submission. The RFP stated that award would be made to the responsible offeror whose proposal was technically acceptable and proposed the lowest cost. The RFP did not contain technical evaluation criteria but required, in Section L, that each offeror provide detailed information "to clearly and fully demonstrate that the prospective contractor has a thorough knowledge and understanding of the requirements and has valid and practical solutions for any technical problems." For each specification listed in the solicitation, the RFP permitted each offeror to state whether it intended to comply or take an exception "and explain how [it] complies or how [it] takes exception." The RFP also stated

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<sup>2</sup>According to the protester, the NAVSEA specification requires "ruggedized, reinforced equipment and has an elaborate and extensive testing protocol conducted by a laboratory to establish that the equipment proposed meets the requirements of this specification." In its initial protest, Mitel specifically argued that "[f]or the Navy to accept [Ericsson's] product under this solicitation which was less than or not fully tested and qualified to the ruggedized specification constitutes a change in the terms of the specification [and solicitation], all of which favor the Awardee to the prejudice of [Mitel and other firms]." Thus, we find that the premise of the protester's arguments in its initial protest was that compliance with the NAVSEA specification was essentially a prequalification requirement that had to be met prior to award.

<sup>3</sup>The requirement for ruggedized equipment was in the RFP's statement of work (the system specifications), and the RFP required that the product had to meet this requirement only after award at the time of final delivery and acceptance.

that the government "reserve[d] the right to judge which proposal show the required capability."

Three proposals were received. While Section L of the RFP, as stated previously, required offerors to submit detailed and complete technical proposals, none of the offerors apparently did so, presumably because of the time constraints for submission of proposals (7 days).<sup>4</sup> The agency's technical evaluator found as follows:

"[W]e have carefully reviewed the proposals submitted by AT&T, Mitel, and Ericsson. It appears that all three of the vendors [have] proposed systems that will meet the minimum requirements listed in the solicitation. Recommend that contract award go to any of the three based on lowest price."

In making his findings, the agency's technical evaluator, in the absence of substantive technical proposals, essentially based his decision on personal knowledge of and past experience with the three firms involved. The agency awarded the contract to Ericsson at a price of \$83,000; Mitel had proposed a price of [deleted] This protest followed.

Mitel argues that although the RFP only required compliance with the ruggedized specifications at time of final delivery, the agency still must have had a reasonable basis for believing that the Ericsson system could obtain NAVSEA approval by that time. Specifically, Mitel argues that the Navy provided no reasonable basis in its technical evaluation documents supporting its decision that Ericsson could obtain NAVSEA approval and also had no "reasonable evidence to conclude" that Ericsson could obtain such approval by the time for final delivery of the equipment. Mitel states that NAVSEA had previously revoked Ericsson's interim approval for this equipment in a previous procurement. Mitel also argues that the agency's technical evaluation was inadequate, and that with NAVSEA's revocation of Ericsson's interim approval, all the evidence the Navy had at the time of its technical evaluation showed that Ericsson could not meet the post-award ruggedized requirements by the time of final delivery.

It is not disputed, and the record shows, that neither Mitel nor Ericsson submitted detailed technical proposals as required by the RFP; the record further shows that the agency thus simply waived this requirement and almost exclusively based its evaluation on information either independently known by the agency or on other information outside the proposals as submitted. Given the lack of any detailed

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<sup>4</sup>The protester does not raise Ericsson's lack of a detailed technical narrative proposal as a protest ground.

technical narrative proposals which the agency could evaluate, the agency's determination of the technical acceptability of the proposals themselves had to be based, in the first instance, on whether the offeror unequivocally proposed to meet the requirements as specifically contained in the RFP; in this regard, the protester itself has failed to allege or show any exception or deviation in Ericsson's proposal from its commitment to furnish exactly what the agency solicited. See Lago Sys., Inc., B-243529, July 31, 1991, 91-2 CPD ¶ 107.

The agency then determined, from information outside the proposals, that all three firms that had submitted proposals were capable of supplying the telephone system and that award should be based solely on price. In the absence of specific technical evaluation criteria in the RFP and in the absence of detailed technical proposals (which was waived by the agency), we think that an agency determination as to whether or not an offeror, such as Ericsson, is capable of supplying a system at the time of final delivery in accordance with the specifications is purely a matter of the prospective contractor's responsibility. In awarding to Ericsson the contract, the agency necessarily determined that the firm was a capable and responsible contractor. Universal Shipping Co., Inc., B-223905.2, Apr. 20, 1987, 87-1 CPD ¶ 424. We will not review such affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of the contracting officials or that definitive responsibility criteria in the solicitation have not been met. See AJK Molded Prods., Inc., B-229619, Feb. 1, 1988, 88-1 CPD ¶ 96. Mitel has not alleged any of these exceptions, and our Office will therefore not review the agency's determination that Ericsson could successfully deliver a conforming product within the necessary time frame.

The protest is dismissed.

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