



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

REDACTED VERSION'

**Matter of:** Marconi Communications, Inc.

**File:** B-248021

**Date:** July 22, 1992

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### DIGEST

Where solicitation contained mandatory requirement for offerors to perform system demonstration, with only limited upgrades/modifications allowed after award, agency decision to eliminate the protester's proposal from the competitive range was reasonable where protester proposed technological enhancements to system available for demonstration beyond the limited upgrade/modification allowed by the solicitation.

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'The decision was issued on July 22, 1992, and contained proprietary and source-selection sensitive information. It was subject to a General Accounting Office protective order. This version of the decision has been prepared after consideration of the parties' comments identifying those portions of the decision that contained proprietary information.

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## DECISION

Marconi Communications, Inc. protests the rejection of its proposal submitted in response to request for proposals (RFP) No. N00039-92-R-0020 (0), issued by the Department of the Navy for high frequency (HF) broadband and narrowband communication systems. Marconi contends that the decision to reject its proposal was inconsistent with the solicitation's evaluation factors.

We deny the protest.

## BACKGROUND

On October 23, 1991, the agency issued the solicitation for a firm, fixed-price contract for the design and production of a base-year quantity and option-year quantities of high frequency broadband communications systems (HFBCS) and high frequency narrowband communications systems (HFNCSS), for installation aboard surface ships. The HFBCS and HFNCSS interface with other shipboard equipment to support interrupted continuous wave, voice and digital communications services as well as tactical and long-haul ship-to-ship, ship-to-submarine, ship-to-aircraft, and ship-to-shore communication; the systems are to fit within spaces vacated by replaced equipment.

The solicitation encouraged offerors to propose nondevelopmental items (NDI) and provided for award to the offeror whose offer was most advantageous to the government, considering price, management, and technical factors, in that order of importance. The solicitation identified four technical factors, as follows: compliance with specifications, degree of risk, compliance with statement of work, and compliance with technical data requirements. Although the solicitation allowed offerors to propose newly developed products or software, the solicitation warned that the agency would evaluate risk as to the probability that such products or software could be fabricated, tested and delivered to meet all requirements of the RFP.

In selecting the most advantageous proposal, the solicitation advised offerors that the agency would evaluate proposals to identify capabilities or enhancements that either were in excess of or less than RFP requirements. Factors considered advantageous included reductions in recurring and nonrecurring cost, the physical characteristics of locating/installing systems on ship platforms, advanced system performance, and approaches serving to minimize schedule risk by providing deliveries sooner than required.

Paragraph M.2 of the solicitation, Mandatory Requirements, addressing the method of award, stated as follows:

"All offerors must meet the following mandatory minimum requirements before their proposals will be evaluated:

a. A remotely controlled 4 kilowatt (kw), 4 channel (transmit and receive) HFBCS system, with one (1) narrowband transmit and receive channel, with limited modifications/upgrades allowed after contract award, must be available for demonstration purposes no earlier than 10 days after proposals are submitted.

b. A remotely controlled, 1 kilowatt single channel (transmit and receive) HFNCSS system, that incorporates all major equipment types in the HFNCSS architecture with limited modifications/upgrades allowed after contract award, must be available for demonstration purposes no earlier than 10 days after proposals are submitted."

(Emphasis added.)

The solicitation provided that the agency would conduct a preliminary review of technical proposals and would contact each offeror whose proposal "demonstrate[d] compliance with mandatory requirements . . . and other RFP requirements as set forth in the Proposal Guidelines" to schedule demonstrations. The solicitation advised offerors that the selection of a contractor would be based upon the review of written proposals, the price proposal, and the system demonstration, considering the benefit of any alternatives or enhancements beyond solicitation requirements. The solicitation therefore indicated that the system demonstration would be, in addition to written proposals, part of the evaluation.

In requiring offerors to demonstrate performance capabilities of their proposed systems, the solicitation provided that the system demonstration was to clearly validate compliance with solicitation requirements and that the system configurations would as a minimum comply with the mandatory requirements of paragraph M.2.

The Navy received proposals on January 17, 1992. The protester proposed a system architecture similar to that of a previously developed system, but with certain components employing more modern technology than those in the developed system.<sup>1</sup> Pending fabrication of working models of the

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<sup>1</sup>The protester also proposed software revisions to accommodate computers used on the host platforms, which are generally smaller than those on which the original system was deployed.

proposed equipment, the protester proposed to use its previously developed system for the system demonstration, and advised the agency that the extent to which it would demonstrate the equipment still in development would depend upon the state of development reached at the time of the system demonstration. The protester also proposed to operate completed modules of certain other newly developed equipment within the older system architecture, although not enough modules had been produced to demonstrate a stand-alone, 4-kw system.

The agency found that the protester's proposal lacked information on procedures and configurations related to the system demonstration; it found the proposal ambiguous with regard to whether the protester intended to include the components using more modern technology in its system demonstration. The agency was unable to conclude that the proposal did not meet the mandatory requirements and decided to schedule a system demonstration, as a better basis for assessment than the written proposal.

On March 2, agency personnel flew to witness the protester's system demonstration, scheduled to begin on the next day. At the scheduled demonstration, the protester advised the agency that while the proposed components were in an advanced stage of development, they were not available for demonstration; the protester could provide only a limited demonstration of performance capabilities. Further, not enough modules of the other new equipment had been fabricated to run tests as a 4-kw system; the protester planned to demonstrate the modules only for the scheduled tests that the protester considered to be of key interest to the agency--less than a tenth of the total scheduled.

The protester instead proposed a system demonstration of the previously developed system, for collection of test data. After an initial briefing from Marconi personnel outlining the planned procedures, the agency expressed concern that the protester was not meeting the mandatory requirements of the solicitation because it was not offering to demonstrate the system that it was proposing to deliver. On March 4, the agency suspended the demonstration; the agency concluded that the new components were not "limited modifications upgrades" of the components in the system proposed for demonstration and that there was in essence no working system to demonstrate. Further, even though some modules of other equipment had been fabricated, not enough were available for the protester to demonstrate a 4-kw HFBCS using the proposed equipment. On March 5, the agency notified Marconi by letter that it considered the system proposed for demonstration to be substantially and significantly different from the system proposed for delivery,

that the proposed components would require substantial rather than limited modifications, and that the agency would no longer consider the proposal. This protest followed.

#### THE SYSTEM DEMONSTRATION

##### Protester's Contentions

The protester contends that it complied with solicitation requirements for system demonstration. Marconi argues that its proposed system architecture was the same as in the system proposed for demonstration; the two systems allegedly share much of the same equipment, and the proposed components are a form, fit, and function upgrade of components in the system proposed for demonstration. Marconi argues that the agency should have permitted the firm to meet requirements by continuing its demonstration, with a technical presentation on the capabilities and progress in development of the more modern components, but without attempting to integrate those upgraded components into the demonstration system. The protester argues that it was unreasonable to interpret the solicitation to require an offeror to demonstrate its entire proposed system, including enhancements, prior to contract award, nor did the agency require other offerors to do so.

##### Analysis

In reviewing protests against an agency's technical evaluation and decision to eliminate a proposal from consideration for award, we review the record to determine whether the agency's judgments were reasonable and supported by the record and in accordance with the listed evaluation criteria and whether there were any violations of procurement statutes or regulations. CTA, Inc., B-244475.2, Oct. 23, 1991, 91-2 CPD ¶ 360. In circumstances where the contracting agency employs a system demonstration during technical evaluation, the agency may properly insist on the demonstration of actual hardware proposed by an offeror notwithstanding a protester's claim that other equipment is functionally equivalent and that it should be acceptable to demonstrate that other equipment. Star Techns., Inc., B-233489 et al., Mar. 16, 1989, 89-1 CPD ¶ 279.

We believe that the agency's decision to eliminate Marconi from the competitive range was reasonable. The RFP required demonstration of a system which would require only "limited modifications/upgrades" after award. The record shows that the equipment proposed by Marconi went far beyond the limited upgrade or modification allowed. Simply stated, while the solicitation allowed offerors to propose

modifications or upgrades to meet specific solicitation requirements, it did not permit the substitution of equipment with a whole new set of performance capabilities.

The record shows, by the protester's own admission, that the equipment to be upgraded includes some of the most complex and important elements of the system, representing a significant share of system size and cost. The record shows the equipment in question performs some of the system's most essential and basic functions and is a key to broadband system performance. Despite Marconi's contentions, the fact remains that these essential components, in the form proposed by Marconi, did not exist. The protester itself has referred to the new technology as a "quantum leap" and a "revolutionary" design, and prior to the protest, Marconi patented a key module of the proposed components; the proposed equipment shares few if any components with the equipment to be used in the demonstration. The newer technology offers improved reliability and maintainability, and reduced power consumption, takes up less space and allows far more system flexibility than do the components to be replaced. Thus, the replacement of the one set of components with components using more modern technology was, in our view, a substantial change beyond the limited upgrade allowed under the terms of the solicitation.<sup>2</sup>

Similarly, the module that was fabricated but not available in sufficient quantity for the system demonstration promised advantages over the analogous components of the system that the protester proposed to demonstrate. That module again offers advantages in size and noise characteristics, offers better radio frequency performance, and substitutes air cooling for water cooling. The protester proposed neither to run all scheduled tests with the module nor to share the results of its limited testing with the agency and was unable to demonstrate its form, fit, and function compatibility with analogous equipment from the older system.

In sum, we find reasonable the agency's determination that the proposed replacement of equipment by components using more modern technology in this case exceeded the "limited modifications/upgrades" that the solicitation allowed. We

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<sup>2</sup>While the protester contends that there was little risk with the modifications, since the cost of development is being assumed under another contract, and the new technology involves no radical redesign of the system architecture, the protester acknowledges a risk of schedule slippage in moving the new equipment from development to production; this was a concern to the agency even before it scheduled the system demonstration.

also find reasonable the agency's determination to reject the protester's proposal because the protester was unable to demonstrate the actual hardware it proposed to deliver.<sup>3</sup>

#### PASS/FAIL TEST

Marconi contends that by canceling the demonstration, the agency improperly converted the demonstration into a pass/fail test.<sup>4</sup> Our office has generally found such tests are an undue burden on competition because they may lead to automatic exclusion of potentially acceptable proposals if a protester fails in only one element of the test. See OAQ Corp. et al., B-232216 et al., Dec. 1, 1988, 88-2 CPD ¶ 546. The test here, however, was not a pass/fail test but was designed to measure performance against a number of performance criteria. The solicitation did not require that offerors meet every element of the RFP requirements but required the test only to measure the extent to which candidate systems exceeded or failed to meet requirements.

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<sup>3</sup>The record shows that other offerors demonstrated the essential equipment proposed, although some of that equipment did not satisfy requirements and would have to be replaced. The protester argues that it was unreasonable to reject a potentially compliant system for failure to offer a demonstration while continuing consideration of a system that the demonstration showed to have serious deficiencies, as the agency appeared to have done. However, this is what the solicitation contemplated and is consistent with our finding that the system demonstration was part of the evaluation and would result in the identification of weaknesses and deficiencies that an offeror would have the opportunity to resolve during discussions.

<sup>4</sup>Marconi also argues that the solicitation stated that system demonstrations would be scheduled for offerors whose proposals "demonstrate[d] compliance with mandatory requirements." The protester argues that by scheduling the system demonstration, the agency effectively made a determination that the proposal was technically acceptable. We cannot find it unreasonable for the agency, when uncertain whether an offeror meets requirements, to extend that offeror the opportunity to demonstrate compliance. Certainly the record is clear that the agency at no time made a determination that the protester met the mandatory requirements for a system demonstration. Once those uncertainties were resolved and the agency determined that the proposal did not meet requirements, the agency was not obligated to conduct discussions or to offer Marconi the opportunity to submit a revised proposal before eliminating the protester's proposal from the competitive range. See Operations Research, Inc.--Recon., 53 Comp. Gen. 860 (1974), 74-1 CPD ¶ 252.



Moreover, the protester's proposal was not rejected because it failed a performance demonstration test but because it was unable to demonstrate the hardware that it proposed to supply. The protester's system was clearly unacceptable under the terms of the solicitation.

#### OTHER ISSUES

The protester contends that the agency failed to conduct meaningful discussions, that regardless of the acceptability of the candidate system, the record shows that the agency believed that a proposal based on the system present at the demonstration might have met requirements, and that the agency should have advised Marconi of its opinion and allowed the protester to submit a revised proposal based on this system.

It is clear from the record that while Marconi realized its previously developed system could meet requirements, the protester made a business judgment that an offer based on the upgraded system would be more competitive. There is no obligation to include an offeror in the competitive range where major revisions, tantamount to the submission of a new offer, would be necessary to make the proposal acceptable. Metric Sys. Corp., B-218275, June 13, 1985, 85-1 CPD ¶ 682. We believe, based upon the record before us, that a proposal based upon the system and equipment using less modern technology would have required the submission of what was essentially a new proposal.

The protest is denied.

James F. Hinchman  
General Counsel