



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED DECISION

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Matter of: Sciaky, Inc.

File: B-261787.2

Date: November 8, 1995

J. William Eshelman, Esq., and Michael C. Poliner, Esq., Feith & Zell, P.C., for the protester.

Jerold I. Schneider, Esq., and Edward W. Gray, Jr., Esq., Spencer, Frank & Schneider, for Liburdi Engineering, Ltd., an interested party.

Gregory H. Petkoff, Esq., and Milton D. Watkins, Esq., Department of the Air Force, for the agency.

Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision for the protester.

DIGEST

Solicitation terms are ambiguous and result in unequal competition where the two offers reasonably understood requirements and submitted proposals on different assumptions which potentially skewed the agency's determination as to which offeror was the low, technically acceptable offeror eligible for award.

DECISION

Sciaky, Inc. protests the award of a contract to Liburdi Engineering Ltd. under request for proposals (RFP) No. F34650-95-R-0072, issued by the Department of the Air Force, Tinker Air Force Base, for the repair and refurbishment of six Sciaky welding machines. As relevant here, Sciaky contends that Liburdi's proposal should have been rejected as technically unacceptable because Liburdi proposed to modify only one of the six welding machines to accommodate the welding of F110 mixing

ducts,¹ while the RFP clearly required all six refurbished welders to be capable of welding the F110 mixing ducts.²

We sustain the protest.

The RFP, issued on January 17, 1995, and as subsequently amended, stated that award would be made, on the basis of all or none, to the "responsive, responsible offeror, whose offer represents the low aggregate on all" items of the schedule.³ The RFP also established a site visit for offerors on February 6. Amendment 0002 to the RFP included Revision F of the SOW which included an "Exhibit A" that listed four parts that the refurbished Sciaky welding machines had to be able to weld, including the F110 mixing duct,⁴ the F101 LPT Nozzle, the F110 LPT Nozzle Support, and the TF33 Air Seal. The RFP also contained Contract Data Requirements List (CDRL) Nos. A002 and A003. CDRL No. A002 stated that the contractor would have to prepare a test plan, including "[t]est item configuration identification for each system, subsystem, component . . . to include quantities."

¹The F110 mixing duct is a military aircraft engine component.

²In this decision, we limit our discussion to this issue which we consider dispositive. The protester has raised and withdrawn two other protest bases and has also raised several other contentions. We have examined these other arguments of the protester which concern alleged bias against Sciaky, alleged software inadequacies in Liburdi's proposal, and alleged agency misappropriation of Sciaky's proprietary data, and we find no merit to any of these arguments.

³While the offerors submitted technical information in their initial and best and final offers (BAFO) responsive to the RFP's statement of work (SOW), as amended, the agency states that award was "based on price and price-related factors." Thus, the evaluation methodology here employed was award to the low, technically acceptable offeror.

⁴Exhibit A was a technical memorandum by the agency's mechanical engineer. The original typewritten memorandum listed the F110 mixing duct as the "F110 combustor." Before the amendment was issued, this reference to the F110 was crossed out by hand by the engineer and corrected to read as the F110 "mixing duct." Additionally, for all four parts listed, Exhibit A provided the diameter, height and weight as well as the fixture number for each part to be welded. Each offeror had to provide modifications of the welding machines consisting of brackets or other accessories to permit welding of the different size and weight aircraft parts.

CDRL No. A003 stated, in relevant part, as follows:

"TESTING PLANS . . . The contractor shall develop and provide an acceptance plan, including validation and verification tests to meet requirements. . . . Validation shall be held at Contractor's facility. Verification shall be held at Tinker AFB. Contractor shall plan for testing each machine to original . . . specifications and perform a weld test using an actual component, one component per machine. . . . Components will include an F110 combustor, LPT nozzle, LPT nozzle support, and a TF33 air seal."⁵

After the RFP was issued, representatives from three companies, including Sciaky and Liburdi, attended the site visit. After the site visit, the agency issued amendment No. 0002 in response to questions at the site visit and revised the SOW. Two proposals were received by the March 23 due date for initial proposals—one from Sciaky and one from Liburdi. Sciaky's total price in its initial proposal for refurbishing the welders was [deleted]; Liburdi's price was [deleted]. Liburdi also offered various pricing options. As pertinent here, Liburdi's option 3 offered to "provide modifications to allow welding of F110 mixing duct" for [deleted] additional.⁶ After technical evaluation, the contracting officer sent a letter to Liburdi on March 31 in which she specifically stated that "[o]ption 3 will be required."⁷ On April 6, the agency requested best and final offers (BAFO). In the BAFOs, Liburdi proposed a price of [deleted], while Sciaky offered a price of [deleted], a difference of approximately [deleted]. In its BAFO, Liburdi stated as follows concerning the agency's previous written direction that the firm's option 3 was required:

"Acknowledged. The option is included in our best & final pricing, and will be applied to one of the six (6) machines (to be selected by [the agency]). The pricing for this option is [deleted]. . . ."

⁵Emphasis added. There were six welding machines that had to undergo acceptance testing.

⁶In technical submissions in its initial proposal, Liburdi stated that it would "comply [with the RFP requirements] with the following clarification. [Liburdi] will provide as an option, the modifications that allow the capability to weld the [F110] mixing duct. The existing work envelope . . . will not allow positioning of the part without a special weld head assembly. The assembly will be provided [with] ease of mounting and removing, as to introduce the minimum amount of set-up for this weld."

⁷This direction from the contracting officer was based on the findings of the technical evaluators that this welding capability was required.

In contrast, Sciaky did not propose the mixing duct welding capability as an option in its initial proposal but included it in its total price. In her subsequent discussion letter to Sciaky, the contracting officer asked whether Sciaky's "proposed work envelope [would accept] our largest component, the mixing duct, and be able to successfully complete weld repairs?" She further asked whether "any additional set-ups, equipment, tooling [would be required] for this process?" In its BAFO, Sciaky proposed to provide a "bracket [for] all 6 machines to permit offset of the weld package. This is required to accommodate large assemblies, in particular the Mixing Duct."⁸ The agency determined that both proposals were technically acceptable and awarded the contract to Liburdi as the low, technically acceptable offeror. This protest followed.

As relevant here, Sciaky argues that Liburdi's BAFO contained a material deviation from the requirements of the RFP by offering to modify only one of six machines to accommodate the F110 mixing duct. According to Sciaky, the RFP required in several places that all six welding machines be modified.⁹ Further, Sciaky contends that since Liburdi offered to modify one machine for [deleted], it can reasonably be assumed that Liburdi would have offered to do the remaining five machines for approximately [deleted]--which would have made Sciaky the low offeror by [deleted].

For the reasons that follow, we think that, at a minimum, this RFP was not sufficiently definite and free from ambiguity to permit competition on an equal and common basis. As we stated in Wheeler Bros., Inc.; Defense Logistics Agency--Recon., B-214081.3, Apr. 4, 1985, 85-1 CPD ¶ 388, an ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Moreover, a party's particular interpretation need not be the most reasonable to have a finding of ambiguity; rather, a party need only show that its reading of the solicitation provisions is reasonable and susceptible of the understanding that it reached. When a dispute exists as to the actual meaning of a solicitation requirement, we will resolve the dispute by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234.

⁸We here simply note that the record clearly shows that Liburdi, in its BAFO, proposed to provide one weld head assembly accessory which could be transferred from welder to welder to be used one machine at a time to perform F110 mixing duct welds. In contrast, Sciaky clearly proposed F110 welding capability for all six machines (one accessory per machine meaning a total of six accessories for six machines).

⁹Sciaky refers to Exhibit A and CDRL No. A003.

We find the protester's interpretation and understanding of the terms of the RFP to be reasonable. First, as a technical provision, the RFP's Exhibit A listed four aircraft engine parts that the refurbished welding machines had to be able to weld. We find nothing in the RFP that suggested that any of the four parts would be treated differently from any other part listed in Exhibit A.¹⁰ The Air Force does not dispute that it required all six machines to be capable of welding the F101 LPT Nozzle, the F110 LPT Nozzle Support, and the TF33 Air Seal. Nevertheless, the Air Force argues that Sciaky ignores a "critical fact" (outside the RFP) concerning the mixing duct: that the "Air Force presently has only one fixture¹¹ to hold the F110 Mixing Duct in place during welding." In an affidavit from an agency engineer, the following is stated concerning the site visit:

"Sciaky's and Liburdi's representatives then asked to view the F110 Mixing Duct. I directed them to the rotor shop stacker [where I] pointed out the F110 Mixing Duct mounted on the one currently available holding fixture. . . . No one asked whether there were additional F110 Mixing Duct fixtures. I stated that welding the F110 Mixing Duct was a new, prototype workload requirement, currently not programmed on any of the welders, but the Air Force needed the capability to weld this part."

To the extent that the Air Force is arguing that Sciaky should have known solely from the site visit that the agency only needed one welding machine at a time to perform F110 mixing duct welding, we agree with Sciaky that the Air Force's position is unreasonable. As Sciaky states, the Air Force is apparently arguing that because "no one asked" about the quantity of F110 mixing duct fixtures, Sciaky was supposed to interpret the RFP as a "one machine at a time" implementation of the F110 mixing duct requirement. Even if Sciaky knew (which it says it did not) that the Air Force currently had only one F110 mixing fixture, there would be no basis for any offeror to assume that the Air Force would not buy more fixtures, or at least want the flexibility to buy more. In short, there is nothing in the RFP or in the site visit that shows that Sciaky actually knew or should have known that the Air Force was permanently limited to one F110 mixing duct fixture.

¹⁰Indeed, the agency's April 10 request for BAFOs required the offerors to provide 1000 pound positioners for all six machines. According to Exhibit A, the F110 mixing duct weighed 900 pounds and was the only part that would need to employ such large positioners. The other aircraft parts listed in Exhibit A weighed less than 300 pounds and did not require such large positioners.

¹¹The fixture is a government-owned holding fixture that is not a part of or a delivery item under this RFP.

Second, the Air Force argues that the requirement for the refurbished welding machines to be able to weld the F110 mixing duct did not appear as a requirement in several provisions of the RFP as the protester argues. The Air Force states that CDRL No. A003 referred to an "F110 combustor" which is not the same part as the mixing duct listed in Exhibit A.¹² We also reject this argument.

The record shows, and we find, that the only reason CDRL No. A003 did not reference the mixing duct is that the agency failed to correct this provision when it corrected Exhibit A. Prior to its inclusion in the SOW, the agency realized that, although Exhibit A had correctly specified the diameter, height, and weight of the largest and heaviest part the Air Force wanted to weld (the F110 mixing duct), Exhibit A incorrectly described the part as the much smaller and lighter "combustor" instead of the "mixing duct." The agency's engineer then crossed out the word "combustor" and inserted the words "mixing duct." However, a corresponding correction was not made to CDRL No. A003.

Sciaky states that it assumed that it was simply an oversight by the Air Force not to make the corresponding correction to CDRL No. A003. Sciaky states that the oversight seemed too obvious to inquire about since it would have been totally irrational for the Air Force to require the capability to weld the mixing duct and then base acceptance tests on the successful welding of the smaller and lighter combustor. Further, Sciaky points to paragraph 5.0 of the SOW which, under Sciaky's understanding, confirmed that Exhibit A and CDRL No. A003 were supposed to match. This paragraph provided as follows:

". . .Verification testing, including component weld testing shall be in accordance with the Final Test Plan per A003. Thereafter, the Government's representative shall accept the refurbishment of the equipment. Refer to Exhibit A."

We therefore conclude that Sciaky's interpretation of the RFP was reasonable as requiring the modification of six machines to accommodate the welding of the F110 mixing duct.¹³ Consequently, since the offerors here responded to the solicitation based upon different reasonable assumptions as to what the requirements were, the

¹²The Air Force does not dispute that the requirement for F110 mixing duct welding capability appeared in Exhibit A of the RFP.

¹³The agency also argues that the language of CDRL No. A003 "states that the weld test shall be done using an actual component, one component per machine." (Emphasis supplied by the agency.) We merely note that the terminology of one component per machine can easily and reasonably be read as one component for each machine.

competition was conducted on an unequal basis such that the award to Liburdi was improper.¹⁴ Accordingly, we sustain the protest.

We recommend that the agency reopen discussions, amend the RFP to state its accurate minimum needs concerning the F110 welding, and request a new round of BAFOs. If, after receipt of BAFOs, Sciaky is the low, technically acceptable offeror, we recommend that Liburdi's contract be terminated for the convenience of the government. Sciaky is also entitled to the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d) (1995). In accordance with 4 C.F.R. § 21.6(f), Sciaky should submit its certified claim for such costs, detailing the time expended and costs incurred, directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

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¹⁴Liburdi states that "if Liburdi had bid all six F110 assemblies, this would only have raised [its] offer by approximately forty thousand dollars." We note again that the difference in price here was approximately [deleted]; thus, despite Liburdi's speculation as to what the prices would have been under equal competition, we think the possibility of prejudice here is evident. See generally Ashland Sales & Serv., Inc., B-255159, Feb. 14, 1994, 94-1 CPD ¶ 108.