



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Philips Medical Systems North America
Company

File: B-237598, B-237599

Date: February 26, 1990

Josephine L. Ursini, Esq., Hogan & Hartson, for the
protester.
Philip St. Germain, Esq., for Advanced Video Products, an
interested party.
E.L. Harper, Department of Veterans Affairs, for the agency.
Sabina K. Cooper, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Offer complies with Commercial Operations clause requesting
a list of sites where equipment of the same model, type and
class as the proposed system has operated successfully,
where the information submitted is verified by the agency,
and the equipment is found to be successfully operating at
those sites.

DECISION

Philips Medical Systems North America Company protests the
award of two contracts to Advanced Video Products (AVP)
under request for proposals (RFP) Nos. M6-Q66-89 and
M6-Q67-89, issued by the Department of Veterans Affairs (VA)
for Picture Archiving and Communications (PAC) systems.
Philips argues that AVP's system does not meet the require-
ments of the Commercial Operations clause of the RFPs with
respect to interfacing with the computed radiography system
and the hospital information system.

RFP No. M6-Q66-89 issued August 9, 1989, called for two
items, a computed radiography system and a PAC system, for
the VA Medical Center, Houston, Texas. Item 1 requested a
computed radiography system with certain salient charac-
teristics, "Philips Medical Systems PCR/GRAPHIC II or
equal," followed by a note, "System must be capable of
interfacing to proposed PAC's system." Item 2 requested a

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PAC system with certain salient characteristics, "Philips, AT&T Commview or equal," followed by 22 system components. RFP No. M6-Q67-89, issued August 4, requested offers for a PAC system only, for the VA Medical Center, Iowa City, Iowa, with certain salient characteristics, "Philips, AT&T Commview or equal," followed by 17 system components.

A computed radiography system utilizes a high speed digital image processing system for acquisition of radiographic images using conventional exposure techniques. The PAC system refers to the computer-based technology for managing radiological images. It consists of methods to input, archive, distribute, communicate, display and process digital images that replace images stored on X-ray film.

The VA received an offer from Philips for the computed radiography system under RFP No. M6-Q66-89, and offers from Philips and AVP for the PAC system under RFP Nos. M6-Q66-89 and M6-Q67-89. Both solicitations included a Commercial Operations clause which stated:

"Commercial Operation: No total system, or component thereof, shall be acceptable unless that system, or components thereof, consists of:

(1) Equipment of the same model, type and class as that offered which has operated successfully for the functions offered in two or more commercial or institutional facilities in the United States for at least six months prior to offer, AND

(2) Software (both operational and special application) which is fully developed and in use and available in the commercial market at date offer is submitted.

Equipment and/or software installed for test purposes in a manufacturer's plant or laboratory will not be considered as complying with this requirement.

Offerors are required to list a minimum of 2 sites where equipment similar to that offered is in operation."

In response to this requirement, AVP listed three sites in its offer under RFP No. M6-Q66-89 and two sites in its offer under RFP No. M6-Q67-89.

Subsequently, in its request for best and final offers (BAFO), VA, with respect to RFP No. M6-Q66-89, specified that the "PAC system must be interfaced to the computed radiography system. Successful offeror must meet this requirement or be subject to default action. List compatible companies." With respect to both RFPs, VA stated, "All systems furnished must be interfaced to the hospital information system."

In response to VA's requirement that the PAC system offered interface to the computed radiography system, AVP's BAFO, with respect to RFP No. M6-Q66-89, stated that the brand name computed radiography system requested by VA is actually manufactured by Fuji Photo Company of Japan and remarketed by three companies in the United States. AVP then asserted that "AVP interfaces with all of these systems," and listed the three companies and their model numbers, one of which was the Philips Model PCR/GRAPHIC II, the brand name computed radiography system listed in the RFP. AVP did not respond to the requirement for interface with the hospital information system on either solicitation.

Philips's BAFO, with respect to RFP No. M6-Q66-89, stated that the PAC system it was offering "will be interfaced and is fully compatible with Philips PCR/GRAPHIC II." With respect to both solicitations, Philips took exception to the requirement to interface the furnished systems with the hospital information system on the basis that this was a completely new requirement, noting that Philips would have to use a radiology information system (at extra cost) to accomplish such an interface.

VA awarded a contract under RFP No. M6-Q66-89 for the computed radiography system to Philips. Contracts for the PAC systems under both solicitations were awarded to AVP, the low offeror at \$1,267,000 for RFP No. M6-Q66-89 and \$759,300 for RFP No. M6-Q67-89. Philips, the second-low offeror at \$2,250,039 and \$1,150,150, received written notice of the awards on October 6. On October 10, Philips requested copies of AVP's technical proposals from VA. On October 12, VA telefaxed to Philips unidentified portions of two clarification letters from AVP dated September 13, listing the salient characteristics of the equipment AVP would supply under both solicitations. (Philips did not receive a copy of AVP's actual proposal until November 22, in response to an October 26 Freedom of Information Act request.) At an October 25 meeting with VA, Philips learned

what installations AVP had listed as fulfilling the Commercial Operations clause requirement for its PAC systems, and, according to Philips, it was then able to ascertain the scope of VA's evaluation of those systems. Philips protested to our Office on October 30, asserting that AVP did not comply with the Commercial Operations clause requirement of either solicitation with respect to interfacing with the computed radiography system or the hospital information system.^{1/}

As a preliminary matter, VA asserts that Philips's protests are untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1989), require that protests such as Philips's be filed not later than 10 working days after the basis of protest is or should have been known, whichever is earlier. VA argues that the protests are untimely because they were filed more than 10 days after Philips received notice of award to AVP on October 6, and AVP's clarification letters on October 12. We disagree. Philips did not receive the information concerning AVP's response to the Commercial Operations clause requirements, upon which its protest is based, until its October 25 meeting with the VA. Accordingly, we find Philips's October 30 protests to our Office timely since they were filed within 10 days of Philips's receipt of the pertinent information.

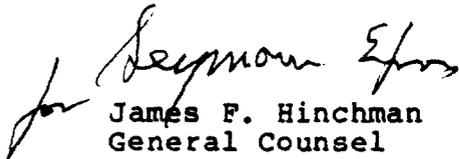
With respect to Philips's allegation concerning AVP's compliance with the Commercial Operations clause requirement, we find that AVP did comply with the solicitations in this regard. Philips incorrectly asserts that the Commercial Operations clause required the PAC system proposed by AVP to have interfaced with the computed radiography system and the hospital information system in two or more commercial or institutional settings. In fact, the clause only requires that the proposed system consist of "equipment of the same model, type and class as that offered which has operated successfully for the functions offered in two or more commercial or institutional facilities in the United States for at least six months prior to offer." AVP supplied VA with three sites at which its equipment was operating for one RFP and two sites for the other. All of these references were contacted and verified by VA, according to a notarized affidavit submitted by the contracting officer, and all responded favorably to VA's questions about AVP's proposed equipment. Accordingly, VA

^{1/} In two later protests, B-237598.2 and B-237599.2, filed on December 12, 1989, Philips further argues that AVP did not meet the salient characteristics of the solicitations. We will address this issue in a subsequent decision.

properly concluded that AVP had complied with the Commercial Operations clause since the information on the operating systems AVP submitted was verified by VA and the equipment was found to be successfully operating at those sites.

With respect to the requirement for interfacing between the computed radiography system and the proposed PAC system, AVP in its BAFO stated that its PAC system interfaces with the brand name computed radiography system. Contrary to Philips's position, AVP was not required to show actual operation of its PAC system with the brand name computed radiography system in order to demonstrate that the offered system is capable of interfacing with the radiography system as the RFP specified. With respect to the hospital information system interface requirement introduced in VA's request for BAFOs, since AVP did not respond to the new requirement and Philips took exception to it, neither offeror was prejudiced by AVP's failure to address the requirement.

The protests are denied.


James F. Hinchman
General Counsel