

Cooper



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Philips Medical Systems North America Company
File: B-237598.2; B-237599.2
Date: April 17, 1990

Josephine L. Ursini, Esq., Hogan & Hartson, for the protester.

Philip St. Germain, Esq., for Advanced Video Products, an interested party.

E. L. Harper, Office of Acquisition and Materiel Management, 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

Protest in negotiated brand name or equal procurement that agency improperly made award to firm whose proposal did not meet certain salient characteristics is denied where protester does not demonstrate that agency's technical judgment that awardee's proposal meets the salient characteristics is unreasonable.

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 certain salient characteristics of the equipment required by the RFPs.

We deny the protests.

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 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.

The RFP advised offerors that each proposal should contain the following:

"[R]equired room preparation drawing and instructions, list of model number and description of items offered, technical data of items offered and a copy of the purchase description annotated to identify location in descriptive literature which shows compliance. If descriptive literature does not demonstrate compliance, offer may be rejected."

For the Houston RFP, award was to be made to the offeror submitting the lowest price on an item by item basis, unless the two lowest priced items were found to be incompatible. For the Iowa RFP, award was to be made to the lowest priced, responsive offeror for the entire system, and the RFP noted that "offerors responding and meeting the salient characteristics will be considered." Subsequently, in its request for best and final offers (BAFO), VA, with respect to the Houston RFP, 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."

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.

VA received an offer from Philips for the computed radiography system under the Houston RFP and offers from Philips and AVP for the PAC system under both RFPs. VA awarded a contract under the Houston RFP 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 the Houston RFP, and \$759,300 for the Iowa RFP. Philips, the second-low offeror at \$2,250,039 and \$1,150,150, received written notice of the awards on October 6. After receiving VA's telefax of 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 received a copy of AVP's actual technical proposal on November 29, in response to an October 26 Freedom of

Information Act request. Philips protested to our Office on December 11, asserting that AVP did not meet the salient characteristics of the solicitations.

Philips's challenge to AVP's compliance with the salient characteristics of the RFP principally concerns AVP's proposed data management system for both procurements: the requirement for a network communication module; for information located on magnetic disks; for 1,350 megabyte to 10.8 gigabyte on-line storage; for real-time image transmission (mass storage interface); and for seven data entry terminals. Philips also asserts that AVP's system is not capable of interfacing with the Philips computed radiography system as required by the Houston RFP.

In brand name or equal procurements, the contracting agency is responsible for evaluating the data submitted by an offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror's products as equal. Pauli & Griffin, B-234191, May 17, 1989, 89-1 CPD ¶ 473. In making these determinations, the agency enjoys a degree of discretion which will not be disturbed unless the determinations are shown to be unreasonable. Tri Tool, Inc., B-229932, Mar. 25, 1988, 88-1 CPD ¶ 310. A protester's mere disagreement with an agency's technical judgment does not provide a sufficient basis for concluding that the agency acted unreasonably in accepting or rejecting an offer. Id.

We have examined the record and find no basis for challenging VA's conclusion that AVP complied with all the material requirements of the RFP. AVP described in detail how its system complied with each of the RFP's salient characteristics in two clarification letters. For example, with respect to the requirement for a network communications module with up to 11 acquisition modules, AVP offered a central network file-server system that can support 100 communication links, far exceeding the specifications. Although Philips argues that AVP's system will not be able to handle multiple transactions with the same efficiency and speed as the Philips system, AVP's offer described its system in detail, asserting that its equipment will perform up to specifications and will support at least 250 simultaneous workstations. AVP also submitted published literature to substantiate its claim.

Philips surmises that AVP's Iowa equipment (which is currently being installed) is not functioning optimally and reiterates its contention that AVP and VA do not understand how the Philips system works. According to Philips, it is impossible for any offeror other than itself to meet the

technical requirements of this procurement. However, VA has confirmed the capability of AVP's system with its technical experts and remains satisfied with AVP's explanations and assertions that its equipment will meet the RFP's specifications. In addition, AVP has submitted further explanations and published literature to substantiate the capability of its system in its comments to VA during the protest process, and has reiterated that the firm has no problems with the RFP's specifications and intends to furnish fully compliant items, as it certified in its proposal.

Accordingly, we find that VA reasonably determined AVP's offer to be technically acceptable since it established what was actually being offered and that the proposed system would meet all of the listed salient characteristics; Philips's disagreement with VA's technical judgment simply is not sufficient to support a rejection of AVP's proposal.

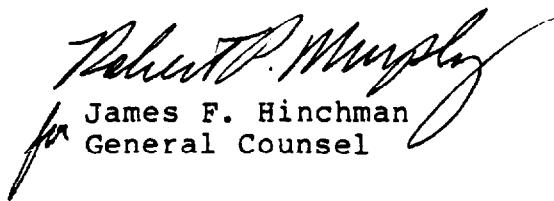
With respect to Philips's contention that AVP's system is not capable of interfacing with the Philips computed radiography system as required by the Houston RFP, AVP's BAFO stated that the brand name computed radiography system requested by VA is actually manufactured by Fuji Photo Company of Japan and remarketed by three companies in the United States. AVP then asserted that "AVP interfaces with all of these systems," and listed 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. Further, during the protest process AVP reiterated its commitment that its system would interface to the equipment manufactured by Fuji and remarketed by Philips.

Philips also maintains that the Philips Interface Processor (PIP) is necessary to accomplish the interface. However, according to VA, Philips itself requested a modification to its Houston computed radiography system award deleting the PIP as not required, and AVP has stated that the Philips PIP is not necessary for its PAC system to interface with the Philips computed radiography system.

Again, based on our review of the record, we do not believe that VA acted unreasonably in relying on the information submitted by AVP with respect to interfacing. AVP categorically asserted that its equipment was capable of interfacing with the Fuji system remarketed by Philips as Model PCR/GRAPHIC II and that the Philips PIP was not necessary to accomplish that interface. VA contacted references at three sites for one RFP and two sites for the other, to verify AVP's assertions concerning its equipment. VA also consulted several experts and directly contacted the Fuji

equipment representative. Accordingly, although Philips disagrees with the VA's technical judgment concerning the AVP PAC system, that is not a sufficient basis to conclude that VA acted unreasonably in this case; rather, VA reasonably relied on AVP's assertions, having verified them to the maximum extent possible in light of the fact that the exact system requested here is not in place at any location.

The protest is denied.


for James F. Hinchman
General Counsel