

Calhoun
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pulse Electronics, Inc.

File: B-243769

Date: August 2, 1991

Edward C. DeSaussure for the protester,
Jonathon H. Kosarin, Esq., and Gary Van Osten, Esq.,
Department of the Navy, for the agency.
Tania L. Calhoun and James A. Spangenberg, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

1. Agency designation of a required source for a component was not unduly restrictive of competition, even though the source would not provide the component, in circumstances where multiple quotes were submitted and all competitors, including the protester, obtained a quote from another acceptable source.

2. Specification is not defective or ambiguous where, on consideration of the solicitation as a whole, there is only one reasonable interpretation and the solicitation contains sufficient information to allow offerors to compete on an equal basis.

DECISION

Pulse Electronics, Inc. protests request for proposals (RFP) No. N00104-91-R-XA39, issued by the Department of the Navy, Navy Ships Parts Control Center, for the procurement of circuit card assemblies for the AN/UYK-7 shipboard computer. Pulse contends that the RFP contained defective specifications that unduly restricted competition and prevented Pulse from preparing an offer.

We deny the protest.

The RFP was issued on March 4, 1991, with an amended closing date of April 24. Pulse asserts that it raised the issue of defective specifications in a facsimile transmission to the agency on April 3. The agency insists that it received no such transmission. On the April 24 closing date, Pulse lodged an agency-level protest against the RFP and demanded that the

agency resolve the issues raised in its prior facsimile transmissions.^{1/} The RFP closed as scheduled and multiple offers were received. Pulse, which did not submit an offer, filed a protest with our Office on April 25.

Pulse's first contention is that the specification for certain approved-source components was defective because it unduly restricted competition. The specification in question required the awardee to procure semiconductor chips from an approved source, either Texas Instruments or Fairchild Semiconductor. Pulse informed the agency on March 21 that Fairchild Semiconductor no longer existed, and that Texas Instruments would not sell the components to Pulse without written authorization from the Unisys Corporation.^{2/} Pulse did obtain a quote from Unisys, that it asserts is the same that Unisys provided to all offerors; it contends, however, that offerors could not meet the RFP's delivery requirements because the Unisys quote had a delivery date which was "inconsistent with [the Navy's] needs." That is, the RFP required delivery of a first article test no later than 240 days after the contract date, and Pulse's quote from Unisys had a delivery time of 336 days. Pulse asserts that this was an attempt by Unisys, the incumbent contractor, to "stifle competition."

We do not believe that competition was so restricted by this source designation that Pulse could not have submitted an offer.^{3/} The RFP included a provision allowing the government to consider proposals that did not meet the required delivery schedule. This provision encouraged prospective offerors to submit proposals even if they were unable to comply with the proposed delivery schedule. Consequently, Pulse could have submitted an offer with the delayed delivery schedule that it says was dictated by Unisys. Moreover, multiple offers were

^{1/} In addition to the disputed facsimile transmission of April 3, Pulse sent the agency a facsimile transmission on March 21 related to its difficulty in obtaining the approved-source components. The agency agrees it received that transmission.

^{2/} The semiconductor chips were designed and developed by Unisys and manufactured by Texas Instruments, the original equipment manufacturers of the AN/UYK-7 computer.

^{3/} In general, the government may require an agency to procure components from a particular source. See Starr Sys., 64 Comp. Gen. 418 (1990), 90-1 CPD ¶ 412.

submitted,^{4/} and there is no indication that Unisys's position as the sole source for the components resulted from any favoritism or improper action on the part of the agency. See Starr Sys., 64 Comp. Gen. 418 (1990), 90-1 CPD ¶ 412. Under the circumstances, the fact that Pulse could not obtain the components from a designated approved source, Texas Instruments, because of that company's business arrangements with Unisys, does not mean that competition was unduly restricted, since vendors could obtain the components from Unisys.

Pulse's second contention is that the specifications contained a reference that called for various circuit connections, yet these connections were neither indicated on the drawing nor accounted for in the parts list included in the RFP. Pulse asserts that the discrepancy prevented it from properly estimating its labor costs, thereby preventing it from submitting an offer.

A solicitation must contain sufficient information to allow offerors to compete intelligently and on an equal basis. University Research Corp., 64 Comp. Gen. 273 (1985), 85-1 CPD ¶ 210. The mere allegation that a solicitation is ambiguous does not, however, make it so. See Petchem Inc., B-233006, Feb. 8, 1989, 89-1 CPD ¶ 126. A solicitation requirement is not ambiguous unless it is susceptible to two or more reasonable interpretations. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234. When a dispute exists as to the actual meaning of a solicitation requirement, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Id.

Here, the agency admits that the specifications contained an erroneous reference to the unneeded circuit connections. The agency explains that this reference on the specification sheet is for the first generation of the circuit board, while the drawing and parts list are for the desired third generation, which did not require these circuit connections.^{5/}

^{4/} We will not disclose the number of offers since this is an on-going procurement.

^{5/} According to the Navy, in the first generation circuit card assembly, it was necessary to adjust time delay circuits by connecting thin, 40 gauge wire between various designated points on the circuit board. These designated connection points were the circuit connections at issue here. In later generations, including the one required by the RFP, these connection points were no longer necessary and were removed from later drawings and parts lists.

When the solicitation as a whole is considered, we believe that the correct parts list and drawing contained sufficient information to allow the offerors to compete on an equal basis. One relevant document in the RFP, which Pulse asserts created confusion, was the document reference sheet, where the item in question was marked Revision "--." On the other hand, the specification was marked with various revision letters up to and including "C"; the parts list was marked Revision "C"; and the drawing was also marked Revision "C." There may have been initial confusion regarding this discrepancy, but when all four documents are considered, the only reasonable interpretation of the RFP is that it called for Revision "C" of this part, and Pulse's claim that the RFP must have been soliciting Revision "--" is unreasonable. Indeed, the Navy notes that none of the offerors took exception to, or expressed confusion regarding, the technical requirements of the RFP.

Pulse's third contention is that the agency prevented Pulse from submitting a proposal by failing to supply "NAVSHIPS 0967-0511-6291," a document incorporated by the RFP specification. The RFP indicated that, if required, this document should be obtained from the procuring activity or as directed by the contracting officer.

Pulse argues that this document should have been supplied to the offerors along with the solicitation. However, contracting officers do not normally furnish this type of specification with the solicitation except under certain circumstances. Federal Acquisition Regulation (FAR) § 10.008(a). Pulse asserts that under the applicable regulation the specification should have been provided in this case, namely when "[t]he product being acquired will be so complex that the specification must be furnished with the solicitation to enable prospective contractors to make a competent initial evaluation of the solicitation." FAR § 10.008(a)(1). We have, however, no evidence to indicate either that the product's complexity required provision of this document along with the solicitation, or that the document was vital in enabling offerors to make their initial evaluations.

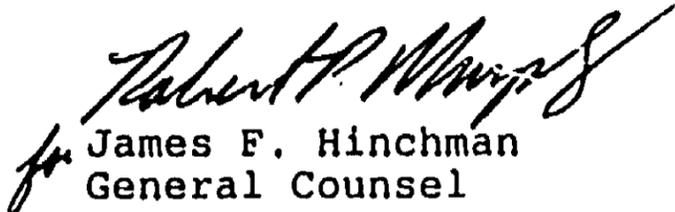
Alternatively, Pulse argues that it requested a copy of this document from the contracting office in a facsimile transmission on April 3. Pulse has submitted evidence showing that it did transmit a facsimile to the agency on that date. The agency has informed us that it does not maintain a facsimile log in which receipt of the transmission would have been recorded. The contracting officer has attested that he did not receive the facsimile, and was unaware that Pulse had requested the document. Pulse also claims it had numerous

subsequent oral communications with the competition advocate's office on this issue, but does not claim that it reiterated this request in any subsequent communications with the contracting officer.

A firm bears the risk of not receiving solicitation materials unless it is shown that the contracting agency made a deliberate effort to prevent the firm from competing, or that, even if not deliberate, the agency failed to provide the solicitation materials after the firm availed itself of every reasonable opportunity to obtain it. Price Waterhouse, B-239525, Aug. 31, 1990, 90-2 CPD ¶ 192. Pulse has not shown that the agency deliberately refused to answer its request for the document; prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference or supposition. Systems & Processes Eng'g Corp., B-23100, Nov. 15, 1988, 88-2 CPD ¶ 478. In any case, having received no response to its April 3 facsimile request, Pulse should have timely followed up its request with the contracting officer. Instead, Pulse waited until April 24, the closing date, to bring the matter to the contracting officer's attention. As a result, we think that Pulse bore the risk of not receiving the document.

Finally, Pulse requests that our Office decide this protest without considering the agency's report because Pulse received the report after the date it was due. However, we have no reason to do so since the agency filed its report with our Office on the date it was due, and Pulse had 10 days after it received the report to submit its comments as provided by our Bid Protest Regulations. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(j)); Triple Tool and Mfg. Co., Inc.--Recon., B-233269.2, Nov. 8, 1989, 89-2 CPD ¶ 446.

We deny the protest.


for James F. Hinchman
General Counsel