



Comptroller General
of the United States

61476

Washington, D.C. 20548

Decision

Matter of: Automated Power Systems, Inc.

File: B-256242

Date: May 31, 1994

Mark Moorman for the protester.

Elaine A. Eder, Esq., Department of Transportation, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A protest that specifications are defective because the language used allegedly fails to adequately identify the agency's requirements is denied where the specifications plainly state the agency's requirements and the protest rests on nothing more than unreasonable and dubious allegations to the contrary.

DECISION

Automated Power Systems, Inc. protests the terms of invitation for bids (IFB) No. DTCG36-94-B-B5B004, issued by the United States Coast Guard, Department of Transportation, for maritime lampchangers.

We deny the protest.

The IFB, issued on November 16, 1993, was limited to products listed, prior to award, on Qualified Product List (QPL) No. 195G(4). Purchase Description No. E/GICP-166G(4), which states the specifications by which a product is evaluated for listing on the QPL, was incorporated into the IFB.

By letter of December 8 to the agency, Automated Power questioned numerous terms of the IFB. By letter of January 14, 1994, the Coast Guard responded to Automated Power's questions point-by-point. The Coast Guard concluded this letter by stating that the IFB, as issued and amended,

¹This purchase description is also labeled as "HQ Specification No. G-ECV-195G(4)."

stated the agency's requirements definitively and that the IFB would not be further amended. The bid opening date was January 18.

Automated Power filed this protest in our Office on January 18, prior to bid opening. The crux of Automated Power's protest is apparently that the specifications are defective because the actual requirements are imprecisely stated, leaving their meaning too uncertain to permit offerors to compete on an equal basis.

The Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b) (1988), provides for a contracting agency to specify its needs and develop specifications and purchase descriptions in a manner designed to promote full and open competition with due regard for the goods or services to be acquired. See also Federal Acquisition Regulation § 10.002(a). A solicitation must contain sufficient information to allow offerors to compete intelligently on an equal basis. A&C Bldg. and Indus. Maintenance Corp., B-230270, May 12, 1988, 88-1 CPD ¶ 451. However, there is no requirement that specifications be drafted in such detail as to eliminate completely any risk or remove every uncertainty from the mind of every prospective offeror. RMS Indus., B-248678, Aug. 14, 1992, 92-2 CPD ¶ 109; A&C Bldg. and Indus. Maintenance Corp., *supra*.

From our review, the IFB states the specifications in plain and easily understandable language providing sufficient information to define the agency's minimum requirements to enable prospective bidders to compete intelligently and on an equal basis.

For example, paragraph 3.7.6 of the specification, as amended, states that "[t]he turret shaft shall be stainless steel." Automated Power alleges that the agency's minimum

²Automated Power seems to allege that there have been disparate interpretations of the QPL specifications that allowed a competitor's product to be placed on the QPL while Automated Power's product was not. We understand that Automated Power has previously declined the agency's offers that its product be qualified for placement on the QPL, apparently because of a pending claim before the Department of Transportation Board of Contract Appeals.

³The agency notes that these QPL specifications have been in effect since April 1992 and, as explained in its detailed response to Automated Power's agency-level protest, the specifications are sufficiently precise and no material deviations to the specifications have been permitted for other products listed on the QPL.

requirement for a "shaft" has been previously interpreted by the agency to include a "pivot," which the protester claims would be a different requirement than bidders could reasonably infer from the word "shaft."⁴ The agency responded to Automated Power's allegation by stating that "pivot" and "shaft" are interchangeable words that describe the same thing and that the stated requirement for a "shaft" is accurate and sufficiently specific.

We agree with the Coast Guard. The definition of a shaft includes: ". . . a bar that is commonly cylindrical . . . and is used to support rotating pieces . . . or to transmit power or motion by rotation . . ." Webster's Third New International Dictionary 2084 (Unabridged 1966). The definition of a pivot includes: ". . . a usu[ally] short shaft or pin whose pointed end forms the fulcrum on which something turns about, oscillates, or balances. . . ." Id. at 1726. Moreover, this definition for pivot includes the following examples of a pivot: ". . . an axle about which a wheel turns . . . [and] the shaft on which the hands of a timepiece turn . . ." Id. Since a pivot is defined as being a type of shaft, it is reasonable for the agency to consider a pivot to be a shaft. Automated Power's opinion that this term is imprecise or inadequate does not make it so. See RMS Indus., supra.

A further example is the protester's objection to the agency's use of the term "similar" in responding to the protester's request for clarification. Specification 4.4.2 stated the required parameters for testing for isolation of a terminal from the lampchanger frame. Automated Power asked the agency to "define if similar tests are acceptable for QPL purposes." The agency provided the following response:

"Paragraph 4.4.2 is clear regarding the testing requirements intended. Any test that complies with that paragraph is acceptable. 'Similar' tests would only be acceptable if it provided the same information concerning the isolation of the lampchanger frame and did not afford an advantage to any current or potential contractor. To ensure your test plan is acceptable, it is recommended that you contact [the agency]."

Although the protester first introduced the the term "similiar" into its request for clarification of the specifications, the protester objects to the agency's use of

⁴The protester does not appear to allege that the requirement for a "shaft" is unduly restrictive of competition.

the term in its response; we fail to see how the agency could have responded to the protester's question without referring to the term "similar." In any event, the protester's allegation that permitting "similar" tests is vague and permits the agency to arbitrarily accept any test used by a preferred vendor is unsupported by the record. The agency's response stated that, for a test to be acceptable, it must comply with the parameters stated in the specification. Automated Power has not shown any ambiguity in the agency's test requirement or the agency's response to the protester's request for clarification; we therefore find the agency's use of the term "similar" unobjectionable. See generally 45 Comp. Gen. 462, 466 (1966) (determination of an acceptable similar product); see also Scott-Griffin, ASBCA No. 28590 (1983), 84-1 BCA (CCH) ¶ 17,110.

Thus, as illustrated above, the protester has not otherwise shown the specification to be unclear. Our Office will reject allegations of solicitation defects where, as here, such allegations are unreasonable or dubious characterizations of apparently clearly stated

⁵Automated Power makes numerous other complaints and observations, which do not provide a cognizable basis for protest, e.g., complaints that the agency counsel was biased, and demands for documentation (which was provided to the extent that it was timely requested, and much of which we understand has been provided to the protester in connection with its action pending at the Department of Transportation Board of Contract Appeals). Automated Power also protested the award of contract No. DTCG36-93-C-B5B060; the terms of solicitation No. DTCG23-93-B-ECV016; and the rejection of its bid under solicitation No. DTCG36-93-B-B5B005. We dismissed the protest allegations regarding these procurements as untimely on February 28, 1994. Although the issues raised regarding those procurements relate to the contentions raised in the protest here--e.g., Automated Power's assertion that different interpretations of the specifications have been permitted for its competitor, specifically in allowing the competitor to use a pivot in its qualified product--these contentions are nevertheless untimely as they were raised either more than 10 days after prior protests of the procurements were dismissed or denied by our Office, or more than 10 days after Automated Power had been apprised of the bases for its protest. Although Automated Power questioned the dismissal, it has pointed to no errors of law or fact which would cause us to question the dismissal. 4 C.F.R. § 21.12(a) (1994).

specifications. A&C Bldg. and Indus. Maintenance Corp.,
supra.

The protest is denied.

/s/ John M. Melody
for Robert P. Murphy
Acting General Counsel