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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: General Projection Systems, Inc.
File: B-241418.3
Date: December 27, 1991

Douglas R. Duberstein, Esq., Hogan & Hartson, for the protester.
Joel R. Feidelman, Esq., and Richard D. Lieberman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Science Applications International Corporation, an interested party.
William T. Mohn, Esq., Department of the Navy, for the agency.
Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that one of brand name or equal solicitation's salient characteristics is immaterial, and thus should not be a basis for rejecting proposal, is untimely where allegation is not raised until after time for submission of proposals.
2. Protester properly found to have submitted technically unacceptable offer is not an interested party eligible to challenge another firm's technical acceptability under different specification provision.

DECISION

General Projection Systems, Inc. (GPS) protests the award of a contract to Science Applications International Corporation (SAIC) under request for proposals (RFP) No. N00600-90-R-3391, issued by the Department of the Navy on a brand name or equal basis to acquire a video projection system for the Brigade Center at the Naval Academy in Annapolis, Maryland. GPS argues that the Navy improperly rejected its proposal for failing to strictly comply with immaterial aspects of the stated salient characteristics. GPS also argues that the Navy improperly waived a material requirement of the specifications in making award to SAIC.

We dismiss the protest.

The solicitation called for firm, fixed-price offers to supply a large number of video and audio equipment components. For purposes of this protest only one of these

components, the high-intensity, multisync, light-valve video projector, is of concern. The RFP specified that offerors were to provide an Eidophor model 5171 video projector, or equal, and articulated 18 salient characteristics with which offered equal items had to comply. Some of the salient characteristics were design specifications and some were performance specifications; three of the latter requirements are at issue here. Section 2.6.19.4 of the specifications required the offered system to be capable of completing a screen changeover (switching the system from "forward" to "reverse" projection modes) within no more than 20 minutes. Section 2.6.19.5 of the specification required the device to be capable of projecting images at particular levels of brightness at specified frequencies: 7,000 lumens (plus or minus 10 percent) at 15.75 kHz, and 3,500 lumens (plus or minus 10 percent) at 31.5 kHz. Finally, section 2.6.19.13 of the specification required the projector to be capable of projecting an accurate image at a downward angle of 15 degrees.

In addition to demonstrating compliance with the various elements of the specifications in their proposals, the RFP required offerors to perform an Operational Capability Demonstration (OCD). The purpose of the OCD was to provide the agency technical evaluators an opportunity to verify that the offered projectors in fact met the specifications, and to subjectively evaluate the overall visual quality of the projected image. The narrative describing the OCD provided detailed information regarding testing requirements and methods, repeating that projector performance would be acceptable if it was within 10 percent of the specified brightnesses (i.e., 7,000 or 3,500 lumens)¹ but stating that a 10-degree downward tilt, rather than the more stringent 15-degree requirement of the specifications, would be acceptable.

The agency received three proposals, two of which offered to furnish the brand name Eidophor 5171 and one of which--the protester's--offered a purportedly equal General Electric projector. After evaluating the proposals, the agency determined that all three were acceptable and scheduled an OCD for each. At the conclusion of the OCDs, the agency evaluators found that none of the vendors met the 10-degree downward tilt requirement but that all nonetheless were acceptable because the tilt angles demonstrated would meet the agency's intended uses. The Navy also found that GPS'

¹The OCD narrative also apparently permitted up to an additional 10 percent diminution in light output based upon the age of the projector's lamp; a 1 percent diminution in brightness was permitted for every 20 hours of lamp usage, provided the projector was equipped with a lamp usage clock.

projector failed to meet a number of the other salient characteristics: (1) the GPS projector produced only 4,752 lumens at a frequency of 15.75 kHz rather than the 6,300 to 7,700 lumens required by the specification, and (2) GPS failed to make the "forward to reverse" screen changeover in 20 minutes and required at least 32 minutes.² The GPS projector also received an unfavorable subjective evaluation because it was found to produce a visually inferior image, with "blurring" occurring around the edges of the projected image.

On the basis of these technical deficiencies, the Navy determined that GPS' projector was not equal to the brand name and eliminated the firm's proposal from further consideration. Award was then made on the basis of initial offers to SAIC as the firm submitting the lowest priced technically acceptable offer.

GPS alleges that the deficiencies the Navy found in its system are not material to the agency's actual minimum needs and that the Navy thus erred in failing to make award to it as the lowest priced offeror. Specifically, while GPS acknowledges that its projector only emits 4,752 lumens at the 15.75 kHz frequency, it nonetheless argues that this shortfall is immaterial because, according to the agency's schematics, the projector will only be used at the 31.5 kHz frequency. GPS also maintains that its failure to perform the screen changeover within 20 minutes was attributable solely to technical difficulties arising out of an on-site accident caused by one of its employees that resulted in a total shut-down of the projector, and did not indicate that GPS could not meet the requirement. Regarding the determination of poor visual quality, the protester argues that the solicitation precluded the elimination of a proposal for subjective reasons identified during the OCD. Finally, GPS argues that its projector met the tilt-down requirement and that the agency erred in making award to SAIC because that firm's projector did not meet this requirement.

GPS' argument that the light output requirement at the 15.75 kHz frequency is immaterial, amounts to an untimely protest against the solicitation's terms. Protesters are required to file protests against solicitation improprieties apparent on the face of the solicitation no later than the

²The parties disagree on whether GPS ultimately made the changeover. The agency evaluators stated that GPS had failed to accomplish the task within 32 minutes and abandoned their efforts at that time. GPS contends that the task was accomplished in 32 minutes.

date set for receipt of bids or proposals. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Here, GPS is alleging that the solicitation, which clearly required the proposed projector to have light output of between 6,300 and 7,700 lumens at the 15.75 kHz frequency, overstates the agency's minimum requirements because the agency will not use the device at that frequency. To be timely, this allegation had to be filed no later than June 17, 1991, the date on which proposals were due. Because this argument was not raised until after GPS' proposal had been rejected, it is untimely and we will not consider it.

In the alternative, GPS argues that because its projector met the RFP's requirements at the 31.5 kHz frequency, it "substantially complied" with the agency's needs because the projector will only be used at that frequency. We disagree. We have previously found that an agency should waive minor deviations from a brand name or equal solicitation's salient characteristics where the deviation does not affect the ability of the nonconforming product to meet the agency's actual functional needs, and no other firm is prejudiced by the waiver. Astrophysics Research Corp., 66 Comp. Gen. 211 (1987), 87-1 CPD ¶ 65. Here, however, the GPS projector deviated materially from the agency's actual needs because it did not meet the performance requirements of the RFP at the 15.75 kHz frequency. Given that GPS cannot now challenge the materiality of the solicitation's light output requirement at the 15.75 kHz frequency, we must necessarily conclude that the requirement represents the agency's actual functional needs. Consequently, GPS' deviation from that requirement is material and cannot be waived.

GPS also alleges that the solicitation did not require strict adherence to the salient characteristics because the agency informed offerors in an amendment that equal products which "met the needs of the government in essentially the same manner as those referenced" would be considered acceptable. GPS argues its interpretation is consistent with the 10 percent deviation the RFP allowed in acceptable light output.

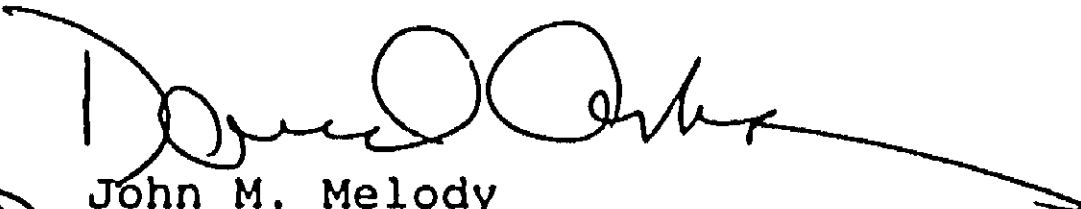
This argument is also untimely. The same amendment cited by GPS also provided that the "needs of the Government are expressed via the salient characteristics and the operational capabilities demonstration," and that salient characteristics are "the minimum needs of the government based on the various configurations this system was designed for and the U.S. Naval Academy intends to operate the system under." This language clearly indicated that the salient characteristics represented the government's needs and is inconsistent with GPS' interpretation that something less than strict conformity would be acceptable. This being the

case, even if GPS' reading of its selected portion of the amendment is correct, the other quoted language rendered the amendment ambiguous on this point. Ambiguities on the face of an RFP must be protested prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Again, because GPS did not file its protest until well after the closing date, we will not consider this allegation.

We conclude that the protester has presented no timely basis for challenging the agency's determination that its offered projector properly was found unacceptable for failing to meet the light output requirement. We thus need not consider the other deficiencies found by the agency.

Finally, GPS is not an interested party to contest the awardee's alleged failure to meet the "tilt-down" requirement. In this regard, an offeror which is properly rejected based upon the technical deficiency of its offer is not an interested party to protest the acceptance of another firm's offer since, even if the protest were sustained, the protester would be ineligible for award. InterAmerica Research Assocs., Inc., B-237306.2, Feb. 20, 1990, 90-1 CPD ¶ 293.

The protest is dismissed.


for John M. Melody
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