



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: IRT Corporation

File: B-246991

Date: April 22, 1992

Allen Samelson, Esq., Rogers, Joseph, O'Donnell & Quinn, for the protester;

Phillip K. Ausburn for Philips Electronic Instruments Company, an interested party.

Michele S. Pavlak, Esq., Defense Logistics Agency, 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

Agency improperly accepted for award a proposal for an x-ray system that failed to meet a variety of stated solicitation requirements, without issuing a written amendment to the solicitation; a protester who submitted a totally compliant system was prejudiced by this relaxation since it could reasonably have redesigned its offered product to less stringent standards, which could result, as alleged, in a significant price reduction in systems that it could offer.

DECISION

IRT Corporation protests the award of a fixed-priced contract to Philips Electronic Instruments Company under request for proposals (RFP) No. DLA002-91-R-50209, issued by the Defense Industrial Plant Equipment Center, Defense Logistics Agency (DLA), Memphis, Tennessee, for a dual-energy real time x-ray imaging system to be used at Tinker Air Force Base, Oklahoma. IRT asserts that Philips's system does not meet the RFP requirements.

We sustain the protest.

The RFP required an x-ray system that was capable of mechanically manipulating and x-raying aerospace components within a radiation-sealed enclosure to permit nondestructive inspection of the components. The operator controls the x-ray system via controls located outside of the enclosure. The x-ray system must be capable of taking "real time" x-rays of components constructed from a variety of materials so that they can be viewed live on a video monitor, or stored for

review at a later time. The x-ray system is intended for use as a primary method of inspecting components for airworthiness; thus, as stated in the RFP, the agency considered it critical that the "system be safe, accurate, sensitive, flexible, fully capable, repeatable, reliable, and maintainable." The RFP provided 33 pages of detailed specifications regarding the system, which were said to be the "minimum requirements." The RFP provided for award to the lowest-priced offeror offering an acceptable proposal that met the minimum requirements of the specifications.

Proposals were submitted by IRT, Philips, and a third offeror¹ by the closing date for receipt of proposals on July 5. DLA determined that all of the initial proposals were unacceptable. In this regard Philips stated in its initial proposal:

"In quoting this standard product you will find that we took considerable exception to the specification, but in doing so we feel that [our] system offers Tinker Air Force Base considerable benefit without sacrificing the performance capabilities outlined in your specification.

"Philips takes exception to all specifications contained in [the RFP] not covered under Philips specification or in conflict with Philips."

Consistent with these statements, DLA's evaluation showed numerous specifications with which Philips did not comply.

After the initial evaluation, DLA conducted several rounds of discussions, pointing out instances of noncompliance and areas of uncertainty about the proposals. After discussions, DLA determined that both IRT and Philips had made their proposals acceptable and, on September 25, DLA requested that they submit best and final offers (BAFO). Philips's BAFO price was \$1,521,203, and IRT's BAFO price was \$1,885,816. DLA awarded the contract to Philips on November 1, as the low-priced, technically acceptable offeror.

IRT received notice of the award on November 8 and promptly requested additional information about the award pursuant to the Freedom of Information Act. IRT received this information on December 2. Upon examining the information, IRT believed that Philips's BAFO did not comply with several of

¹The third offeror was eliminated from consideration, after discussions, as technically unacceptable.

the requirements in the RFP. IRT protested to our Office on December 13.

IRT asserts that Philips's system failed to comply with numerous specifications, and that DLA, by awarding the contract to Philips, relaxed these specifications for Philips and not for IRT. Among the specifications with which IRT asserts Philips's system does not comply are: specifications 3.2.1.7.7 (electron beam steering for the micro focus tubehead), 3.2.2.1 (voltage and amperage ranges for the macro focus tubehead), 3.2.10.1 (rates of travel repeatability and accuracy requirement for the motion of the parts positioning system), and 3.2.5.12 through 3.2.5.25 (relating to the digital image processing system). IRT, in effect, alleges that, although DLA constructed an RFP with rigid specifications, DLA was willing to entertain other design alternatives, but, by its actions, DLA only extended this dynamic design environment to Philips. IRT claims that it was prejudiced by DLA's actions in relaxing the specifications for Philips because if IRT had been informed that it need not fully comply with the specifications, it would have made considerable changes in designing its proposal, which would have resulted in it submitting a considerably lower price.

It is a fundamental rule of competitive procurements that all offerors be provided a common basis for submission of proposals. AT&T Coms., 65 Comp. Gen. 412 (1986), 86-1 CPD ¶ 247. When an agency relaxes its requirements, either before or after receipt of proposals, it must issue a written amendment to notify all offerors of the changed requirements. Federal Acquisition Regulation (FAR) § 15.606. Accordingly, our Office will sustain a protest where an agency, without issuing a written amendment, relaxes an RFP specification that may prejudice the protester, e.g., where the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the altered requirements. Federal Computer Corp., B-239432, Aug. 29, 1990, 90-2 CPD ¶ 175; AT&T Coms., supra.

DLA and Philips concede that Philips's final proposal did not satisfy some of the specifications. DLA contends that the specifications were not really relaxed since the RFP permits more than one means of satisfying the specifications. Accordingly, DLA argues, it acted properly in accepting Philips's proposal because Philips's system meets the agency's actual minimum needs. From our review, as discussed below, Philips's proposal did not meet the specifications in numerous respects, even though the offerors were required to comply with the specifications in order for their products to be considered acceptable.

First, our review of the record confirms that numerous instances of deviations from the specifications exist in Philips's BAFO, including those referenced by the protester. For example, paragraph 3.2.1.7.7 of the specifications requires electron beam steering on the micro focus tubehead. This feature permits the operator to move the focal point location of the x-ray system's micro focus tubehead. That tubehead directs an electron beam on a very small focal point on the target material. Since the small focal point in the micro focus tubehead cannot easily dissipate the heat generated by the electron beam, burning and pitting of the target material can occur, thereby decreasing the resolution of the x-rays generated. To remove pitting, the target material must be sanded--which entails dismantling the tubehead. Electron beam steering, by allowing movement of the focal point location on the target material, is intended to extend the time before maintenance of the target material is required. Both DLA and Philips admit that Philips's BAFO did not offer electron beam steering. DLA asserts that Philips's system, promising greater precision in the electron beam in the micro focus tubehead, should inhibit pitting, and therefore its system was functionally equivalent to the electron beam steering requirement, in that both systems addressed the potential pitting problem. However, the specification paragraph set forth the specific parameters of the micro focus tubehead, including electron beam steering. While the agency asserts the electron beam steering requirement does not significantly affect the agency's maintenance requirements, the RFP does require this feature and DLA admits that it is useful so as to minimize pitting.

A second requirement, paragraph 3.2.2.1, requires an x-ray source with specified voltage and amperage ranges for the macro focus x-ray tubehead, as follows:

"The tubehead shall be designed, constructed, and certified for 2 to at least 50 [Kilovolts] kV and 5 to at least 100 [milliamperes] mA. . . . The intent is an x-ray source capable of low kV's and high mA's for inspecting composite materials."

Here too, DLA and Philips concede that Philips's BAFO falls short of the 100 mA requirement by 20 percent. However, DLA asserts that the intent of the specification concerning kV and mA capability on the macro focus tubehead was to obtain an x-ray source capable of low kVs and high mAs for inspecting composite materials. Philips's proposed x-ray source had a capability of 100 kV and 80 mA, which exceeded the kV requirement by two times but fell 20 percent short of the mA requirement. DLA determined that, although the proposal did not meet the mA requirement, it was acceptable for inspecting composite components and satisfied the

agency's minimum needs in this area. However, this specification paragraph specified the minimum characteristics of the macro focus tubehead, which Philips's product did not meet.

Next, at paragraph 3.2.10.1.3, the RFP listed required rates, in inches per minute, and required intervals, in fractions of inches or degrees, for the accuracy and repeatability of the movement of the parts positioning apparatus. DLA noted in its evaluation that the rates of speed were acceptable,² but the ranges of accuracy and repeatability were unacceptable. Although all these matters were twice brought to Philips's attention during discussions, Philips commented only on rate of speed, and Philips's proposal did not address accuracy and repeatability during discussions. Given Philips's initial express exceptions to the accuracy requirements and its failure to address the repeatability requirements, DLA had no basis, at the time of award, to find that Philips's BAFO met the RFP requirements for these characteristics. Nevertheless, DLA argues that it had the discretion to determine whether Philips's BAFO met its functional requirements and that Philips has since verbally stated that it would meet the RFP requirements. Here too, Philips's system, as described in its proposal, apparently did not meet specified minimum requirements.

A final example relates to 13 paragraphs of requirements for the digital image processing system, paragraphs 3.2.5.12 through 3.2.5.25 (excluding 3.2.5.14). Philips did not address these requirements in its initial proposal, but did respond during discussions to an agency inquiry on these requirements as follows:

"The image processing system offered by Philips can basically perform all of the functions described in the noted paragraphs, but it should be noted that since the image processing system described in your specification is not the same as that offered by Philips, variations on the specified functions may occur."

Philips's proposal effectively states that its system would likely vary from these requirements. Although DLA argues that it was within its discretion to determine that

²IRT asserts that when Philips's rates of speed, listed in the proposal as feet per minute, are converted into the RFP specified inches per minute, they fail to meet the RFP required speeds. Assuming no errors in calculation, this would be another example of noncompliance with specifications.

Philips's BAFO satisfied its minimum needs, these specification paragraphs also set forth a variety of stated minimum requirements.

While during discussions the agency evaluators apparently considered the specifications to be minimum requirements, in the selection of Philips's proposal, the specifications were treated as guidelines that could be varied where the agency believed its needs would be satisfied.³ As noted above, the specifications were clearly stated to be the "minimum requirements" of the system.

Since Philips's proposal failed to meet stated minimum RFP requirements, its proposal was unacceptable.⁴ See W.D.C. Realty Corp., 66 Comp. Gen. 302 (1987), 87-1 CPD ¶ 248; Cylink Corp., B-242304, Apr. 18, 1991, 91-1 CPD ¶ 384. If DLA's minimum needs did not require the specified features or contemplated more flexibility in the offerors' responses, then the proper action would have been to amend the RFP to permit all offerors to submit a proposal under the same relaxed requirements or flexibility. Id.; FAR § 15.606(c) (where an award to a selected offeror involves a departure from the RFP-stated requirements, the agency is required to issue an amendment to all offerors to provide them with an opportunity to propose on the basis of the revised requirements). The agency's current position that Philips's system is functionally equivalent to the one specified, which apparently refers to a determination that it will satisfy the agency's actual requirements, does not permit DLA to accept this system, absent an amendment, because it does not satisfy the advertised requirements.

DLA asserts that IRT was not prejudiced because even if it would alter its proposal in light of the relaxed specifications, IRT could not lower its price enough to displace Philips's low-priced BAFO. Where, as here, material specifications are relaxed for one offeror but not another, we will sustain a protest if there is a reasonable possibility of prejudice. Modular Coms. Sys., Inc., B-241858, Mar. 8, 1991, 91-1 CPD ¶ 263. We will resolve any doubt concerning existence of prejudice in favor of the protester. Logitek, Inc.--Recon., B-238773.2; B-238773.3, Nov. 19, 1990, 90-2 CPD ¶ 401.

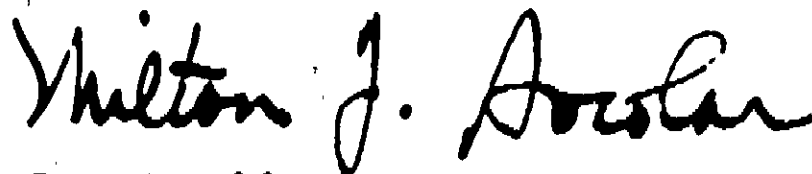
³There is no contention that IRT's system does not satisfy all stated specification requirements.

⁴The requirement in the RFP that offerors identify deviations from the specifications does not solicit such deviations, nor imply they can be accepted without an amendment to the RFP.

Here, the agency's willingness to relax specifications is so broad that a proposal prepared under these conditions could conceivably vary from the RFP requirements on any number of specifications. Therefore, it is reasonably possible that IRT could redesign many of the features of its proposal to less stringent standards, such that its cumulative savings could result, as alleged, in a substantial price reduction. Although the record should normally provide us with more than the general allegation of prejudice with which IRT presents us here, see, e.g., Labrador Airways Ltd., B-241608, Feb. 13, 1991, 91-1 CPD ¶ 167, the lack of some concrete indication of the agency's actual minimum needs leaves this protester with little guidance to determine the extent to which it could acceptably revise its proposal or any basis upon which it might reasonably quantify its alleged price reduction. Accordingly, we resolve any doubt in favor of IRT and find that it was prejudiced by the agency's improper actions.

We recommend that DLA terminate the contract issued to Philips and either award it to IRT as the lowest-priced, acceptable offeror, or amend the RFP to reflect any relaxed requirements and reopen discussions. We recognize that because performance of the challenged contract was not required to be suspended, and has thus continued, it may not be feasible to terminate at this time. If the agency concludes that this is so, IRT is entitled to its costs of preparing its proposal. 4 C.F.R. § 21.6(d)(2) (1991). In any case, IRT is entitled to its costs of filing and pursuing the protest including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1). IRT should submit its certified claim for its protest costs directly to the agency within 60 working days of receipt of this decision. 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(f)(1)).

The protest is sustained.



Acting Comptroller General
of the United States