



Comptroller General
of the United States

1144168

Washington, D.C. 20548

Decision

Matter of: AGEMA Infrared Systems
File: B-257168
Date: August 10, 1994

Paul F. Khoury, Esq., and Scott A. Coffina, Esq., Wiley, Rein & Fielding, for the protester.
Thomas J. Scanlon for Inframetrics, Inc., an interested party.

Jonathan H. Kosarin, Esq., and Chris E. Hagberg, Esq., Department of the Navy, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that agency improperly concluded that the awardee's proposed equipment met the applicable specifications is denied where the agency amended the specifications after receipt of initial proposals to address areas where the awardee indicated its proposed equipment did not meet the agency's requirements and the agency's assessment of the equipment's compliance with the revised specifications was reasonable.

DECISION

AGEMA Infrared Systems protests the award of a contract to Inframetrics, Inc. under request for proposals (RFP) No. N65540-93-R-0066, issued by the Department of the Navy for one type "B" portable Infrared Thermal Imaging System (IRTIS) and associated technical data. AGEMA argues that the Navy's selection of Inframetrics was improper because its unit does not conform to certain requirements set forth in the specifications.

We deny the protest.

The type "B" IRTIS sought here is a portable imaging system used to perform infrared inspections and surveys of electrical equipment on Navy ships. This device, which can be used to troubleshoot electrical equipment, measures internal temperatures and provides a record of the thermal image emitted by such equipment.

The RFP anticipated award to the contractor offering the lowest-priced, technically acceptable IRTIS, and set forth 11 "essential" requirements for the device. In addition, the RFP included two option items: a flame/heat protection package and a video mixer accessory package. Section M of the RFP advised that the prices for the option items would be added to the price for the IRTIS in order to determine each offeror's total price.

Three offers were received by the initial closing date of September 15--one from AGEMA, one from Inframetrics, and one from a third company--and all three were forwarded to the appropriate technical personnel for evaluation. AGEMA offered its Thermovision 487 IRTIS, while Inframetrics offered its Model 740 System.

In its offer, Inframetrics explained that there were two areas where its proposed IRTIS deviated from the specifications--that is, the thermoelectric cooling and floppy disk recorder requirements. Upon review of the submitted materials, the agency decided to amend the specifications in five areas.

On January 25, 1994, the Navy issued amendment 0001 revising the specifications and requested submission of revised offers by February 2. Again, all three offerors responded. AGEMA and the third company offered the same systems as before, while Inframetrics proposed a modified version of its Model 740, the Model 740S. The total proposed prices were as follows:

Inframetrics	\$49,513.75
AGEMA	61,545.00
Company A	96,745.00

After completing a technical evaluation of the modified Inframetrics IRTIS, the agency concluded that the device was technically acceptable. As a result, on April 20, the Navy awarded the contract to Inframetrics as the lowest-priced, technically acceptable offeror. This protest followed on April 28.

AGEMA argues that the Inframetrics Model 740S fails to meet four of the essential requirements set forth in the RFP--i.e., the requirements relating to addition of cryogenic liquids or pressurized gases, recalling stored images, inputting certain measurement parameters, and the video mixer accessory package. In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable

and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Based on our review of the record, we see no basis for concluding that the evaluation here was unreasonable or otherwise improper. To illustrate our conclusion, we will discuss in detail two of the areas where AGEMA claims the awardee's device fails to meet the specifications.

COOLING REQUIREMENT

The initial version of the RFP stated at section C, paragraph 1.1 that:

"[t]he IRTIS must be thermoelectrically cooled and shall not require the use of cryogenic liquids or pressurized gases for operation."

After reviewing the submission by Inframetrics challenging this requirement and discussing the acceptability of its own product, the Navy issued amendment 0001 changing this provision, among others. The revised version of the requirement provides that:

"[t]he IRTIS must be electrically or thermoelectrically cooled and shall not require the addition of or a supply of cryogenic liquids or pressurized gases for operation."

After receiving and reviewing revised offers, the Navy concluded that the Inframetrics 740S model complied with this revised requirement.

AGEMA argues that the Inframetrics IRTIS does not comply with the specification because it uses an electrically powered micro-sterling cooler which uses pressurized helium gas for its operation. According to AGEMA, the Inframetrics device, although powered by electricity, cools mechanically, uses pressurized gases, and requires the addition of such gases--all in violation of the specification.

AGEMA's argument does not take into account the impact of the revisions to the specification included in amendment 0001. With respect to whether the Inframetrics device is mechanical or electrical, Inframetrics advised the agency in its initial proposal that its device was not thermoelectrically cooled, but instead was electrically powered. After considering the Inframetrics submission, the Navy decided to relax its requirement by allowing an offeror's IRTIS to be either electrically or thermoelectrically cooled. The Navy then concluded that Inframetrics' electrically powered cooler complied with the revised specification.

While AGEMA argues that the agency acted unreasonably in accepting this device, even AGEMA's protest letter describes the Inframetrics device as electrically powered. Since the Navy clearly understood the nature of the Inframetrics device modified the requirement in response to Inframetrics' submission, and is in the best position to ascertain whether the Inframetrics device meets its need for this equipment, we see nothing improper about the Navy's conclusion that the device met the specification in this regard. See AGEMA Infrared Sys., B-248389, Aug. 10, 1992, 92-2 CPD ¶ 92.

With respect to AGEMA's challenge to the use of helium gas for cooling, although the initial version of the specification provided that an offeror's IRTIS could not rely upon pressurized gas for operation, this restriction was also removed when the specification was revised. The revised version stated only that a device could not rely upon the addition of, or a supply of, cryogenic liquids or pressurized gases.

AGEMA contends that the Navy should have concluded that the Inframetrics device violates the specification because it requires the addition of helium on certain occasions. AGEMA points out that the operating manual for the Inframetrics 700 series IRTIS states that:

"[a]fter 250 operating hours, cooler maintenance should be scheduled. This involves purging and recharging with helium, and replacement of seals and lubricants every other service."

According to AGEMA, this maintenance need is inconsistent with the Navy's statement in its pleadings that the awardee's IRTIS "does not require 'the addition of or a supply of' cryogenic liquids or pressurized gases at any time during its expected useful life." (Emphasis in original.)

While AGEMA is correct in its contention that the Navy may be required to recharge the IRTIS with helium every 250 hours--or based upon the Navy's estimated usage of the device, approximately once every 8 months¹--we do not think that this infrequent maintenance requirement is inconsistent with the specification that precludes the addition of such fluids for operation. In its agency report, the Navy explains that the wording of the original text of the specification was designed to avoid the need to add liquid

¹The Navy estimated it would use the IRTIS approximately 380 hours yearly. If the usage occurs on a regular basis, the device will need to be recharged approximately every 8 months.

nitrogen to the IRTIS before each use, and to avoid having to obtain, ship and store cylinders of compressed cryogenics. According to the Navy, the decision to relax the specification was based on an analysis of the useful life of the device, the government's annual usage, and the meantime between failures. Consistent with the Navy's stated concerns, there is no need to refill the awardee's device before each operation, and no requirement for carrying and storing pressurized gas to add to the device on a regular basis. Rather, according to the Inframetrics operating manual, the Navy will need to ensure that helium is added to the device when performing regular maintenance. Under these circumstances, we do not think that it was improper for the Navy to conclude that the Inframetrics device complied with the specification.²

TEMPERATURE MEASUREMENT PARAMETERS

AGEMA contends that the Inframetrics device does not have the ability to input certain temperature measurement parameters, such as the distance between the IRTIS and the object being measured, as required by the RFP.

Again, AGEMA's protest, in part, fails to apprehend the difference between the initial specifications, and the specifications as amended. After issuance of amendment 0001, this provision required that:

"[t]he IRTIS must have, as a minimum, capability for inputting, and correcting for, the following temperature measurement parameters: object emissivity, distance from IRTIS to object, and ambient/atmospheric temperature."

According to the Navy, while the specification above does not require the direct input of distance as a specific number, the Inframetrics device permits inputting a correction factor which takes into account distance as one of several variables, and generates corrected data well within the specified accuracy requirements. As explained by Inframetrics, the factor can be varied to account for the combined impact of both distance and relative humidity.

²AGEMA does not argue that it would have changed its price or the unit it offered had it known that the agency would accept the model proposed by the awardee. Accordingly, even assuming that the agency effectively relaxed the limitation in the specification regarding the use of pressurized gases by accepting the awardee's product, there is no evidence that AGEMA was prejudiced as a result. See Logitek, Inc.-- Recon., B-238773.2; B-238773.3, Nov. 19, 1990, 90-2 CPD ¶ 401.

Our review of the record provides no basis to conclude that the Navy acted improperly in deciding to accept the Inframetrics correction factor--which takes into account distance as one of several variables, but is not specifically a distance value. As the Navy points out, the purpose of such factors is to ensure that the device operates within the specific margin of error set forth in the specifications. Since the device does use a factor that corrects for distance and relative humidity; the Navy concludes that the device does operate within the margin of error; and the Navy's interpretation of the specification that was amended in response to Inframetrics's request is not unreasonable, we see no basis to overturn the agency's decision to accept the Inframetrics device.

AGEMA claims, however, that it has obtained and tested an Inframetrics device, and has concluded that the device does not operate within the margin of error for temperature accuracy set forth in the specifications. These contentions do not demonstrate that the agency's selection decision was improper. First, the record shows that Inframetrics modified its Model 740 IRTIS for this procurement. Thus, we have no basis for concluding that the device obtained by AGEMA is identical to the equipment at issue here. Second, Inframetrics states that the device may not have been properly calibrated before AGEMA performed its test. In short, based on the limited information in the record, AGEMA's tests on its competitor's device do not provide a sufficient basis to challenge the agency's decision.

As indicated above, the foregoing two examples are merely illustrative. Our review of the remainder of AGEMA's challenges to the acceptability of Inframetrics's indicates that they similarly have no merit.

The protest is denied.

/s/ James A. Spangenberg
for Robert P. Murphy
Acting General Counsel