



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Chadwick-Helmuth Company, Inc.

File: B-279621.2

Date: August 17, 1998

Donald E. Sovie, Esq., and Paul Shnitzer, Esq., Crowell & Moring, for the protester.
Daniel J. Donohue, Esq., Wickwire Gavin, for Dynamic Instruments, Inc., an
intervenor.

Rose Trafton, Esq., Department of the Navy, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation requirement that commercial off-the-shelf computer indicator power supply (CIPS) operate all the agency's existing test program specific software is unduly restrictive, where the requirement does not accurately reflect the agency's actual needs that the CIPS need only operate software that has the same capabilities as the existing software.

DECISION

Chadwick-Helmuth Company, Inc. protests as unduly restrictive the terms of request for proposals (RFP) No. N68335-98-Q-0058, issued by the Department of the Navy, Naval Air Warfare Center Aircraft Division, Lakehurst, New Jersey, for a computer indicator power supply (CIPS) to replace the current CIPS model.

We sustain the protest.

The CIPS is a computer that is a key component of the Navy's vibration analysis test set (VATS). The VATS is an aircraft maintenance system used on Navy and Marine Corps rotary wing and fixed wing aircraft to perform vibration analysis on certain moving mechanical components on the aircraft in order to track and balance those components. Along with the CIPS, the VATS includes, among other things, an accelerometer, an optical tachometer, an optical sensing unit, and a remote control unit. In order to perform the vibration analyses, the CIPS collects and processes signals from other VATS components by operating the individual test program specific (TPS) software for the various makes of aircraft. The TPS software incorporates and implements the procedures and instructions to be followed by Navy and Marine Corps maintenance personnel in collecting and analyzing data for individual aircraft, and the necessary corrective action to repair the aircraft. The

VATS, including the current CIPS and TPS software, were designed and developed by Dynamic Instruments, Inc.

The RFP, issued on January 29, 1998, was to procure a commercial off-the-shelf (COTS) single self-contained automated test instrument to replace the current CIPS. RFP, Attachment 1, Performance Specification for Vibration Analysis Test Set-Computer Indicator Power Supply, § 1.0. The RFP contemplated the award of an indefinite-quantity, indefinite-delivery contract for a minimum of 27 units and a maximum of 267 units over a 5-year period. RFP Schedule and amend. 0001, at 2. The award was to be made to the lowest priced, technically acceptable offer on a pass/fail basis, considering the technical requirements identified in the performance specification incorporated in the RFP. See RFP § 52.212-2 Evaluation-Commercial Items (Tailored).

Section 1.0 of the Performance Specification states that the "COTS automated test instrument shall use all of the existing VATS ancillaries, with possible exception of the Printer/Disk Drive Unit . . . and add a minimum of new ancillary equipment to the existing VATS ancillaries," and that the "COTS automated test instrument shall also use all the existing VATS procedures that are defined within this document (aircraft specific software) and resolve any system performance conflicts from the existing VATS CIPS . . . to the replacement CIPS." Section 1.1 states that the "scope of this technical performance specification is the requirement for a COTS Automated Test Instrument to replace the VATS CIPS that would use all the existing VATS ancillaries: Accelerometers[,], Cables[,], Kits of aircraft specific adapters[,], Optical Tachometer and Magnetic Interrupter[,], Optical Sensing Unit[,], Printer/Disk Drive Unit[,], Remote Control[,], and] Software." Section 3.9 identifies the TPS aircraft specific software that will execute on the CIPS as 15 items of TPS software (identified by specific aircraft, VATS software part number, VATS software version and date) and a specific calibration disk.

The RFP also states, in pertinent part, that the government "shall use one of the aircraft specific software of choice in paragraph 3.9 of the Performance Specification" for the preproduction testing. RFP, Addendum to FAR 52.212-4, Preproduction Testing Requirement, ¶ (c). Further, the Preproduction Tests provision of the RFP states, in pertinent part, that the "preproduction tests shall demonstrate compliance to the Performance Specification in the areas of Sensors (accelerometer, tachometer, optical sensing unit), Cables identified in the Performance Specification . . . and Capability to use the software identified in the Performance Specification, Paragraph 3.9."

On February 24, 1 day before the RFP's closing date for receipt of proposals, Chadwick filed an agency-level protest, contending that the specifications were unduly restrictive and that only Dynamic's DI-307 CIPS could meet the RFP's stated requirements. Specifically, Chadwick protested paragraph 1.1 of the performance specification that required the new CIPS to use "all" of the existing VATS ancillaries,

including the TPS software, asserting that many of the interface requirements are known only to the Navy and Dynamic. Chadwick argued that only Dynamic, who wrote the TPS software, is capable of rewriting the software to run on the specified CIPS processor, and that Chadwick has its own proven software for its product lines that could meet the Navy's requirements but was unable to submit a proposal in view of the requirement for the CIPS to run the existing TPS software. Following a March 13 conversation with the agency, the protester filed additional information in support of its agency-level protest on March 19. Among other things, the protester requested certain interface and function information related to the ancillary equipment, the TPS software (source code and documentation), and listed a "schedule of deficiencies" allegedly contained in the RFP that needed to be addressed in order for offerors to compete intelligently.

Meanwhile, on February 25, the Navy received one offer in response to the RFP from Dynamic proposing to furnish its DI-307A CIPS. On March 16, the Navy denied Chadwick's agency-level protest. The Navy awarded the contract to Dynamic on March 17. This protest followed. Performance of the contract has been withheld, pending the disposition of the protest.

In its protest to our Office, Chadwick reiterates that the performance specification is unduly restrictive, particularly the requirement that the COTS replacement CIPS run all of the existing VATS ancillaries, including the TPS software, and alleges that the specifications are written to favor Dynamic's product.

In preparing a solicitation for supplies and services, a contracting agency is required to specify its needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 10 U.S.C. § 2305(a)(1)(A)(i), (B)(i) (1994). A solicitation may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1)(B)(ii). Where a solicitation provision is challenged as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. ViON Corp., B-256363, June 15, 1994, 94-1 CPD ¶ 373 at 4-5. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. Navajo Nation Oil & Gas Co., B-261329, Sept. 14, 1995, 95-2 CPD ¶ 133 at 5.

At a hearing conducted during the course of this protest, Navy officials testified that sections 1.0 and 1.1 of the performance specification did not and were not intended to require the CIPS to run all the existing TPS software listed in section 3.9, but required only a duplication of the procedures and algorithms reflected in the section 3.9 software; in other words, according to the agency, these sections required that the offeror's CIPS be able to run software with the same capabilities as the section 3.9 software only, and an offeror could satisfy the agency's requirements under the performance specification with its own software, instead of the software listed in

section 3.9, so long as the functions, procedures, process, or algorithms did not change from those currently used on the VATS. Hearing Transcript (Tr.) at 24-25, 56-57, 72, 74, 79-80, 115, 133-135, 140-141, 148, 170-171. Specifically with regard to the calibration disc, which was one of the software items listed in section 3.9, Navy officials admitted that it was not contemplated that the existing disc would be operated by the CIPS because it is outdated, given the upgrades to the CIPS, and that the Navy's requirements in this regard were merely for "equivalent capability." Tr. at 133-135.

Consistent with the foregoing testimony, the Navy argues that the protester misinterpreted the specification and the agency's requirements. The Navy asserts that section 1.0 merely states that the replacement CIPS must use all the existing VATS procedures, not the existing TPS software, and that these procedures are contained in the U.S. Navy Helicopter Vibration Analysis, Technical Manual, which was an applicable document referenced in the performance specification. Tr. at 25. Further, the Navy points to the presolicitation notice in the Commerce Business Daily (CBD) announcing the RFP, which notified offerors that the agency sought a replacement CIPS that used "software that provides the same capability as the existing software and be compatible with all the existing VATS procedures and aircraft specific requirements" as justification for this interpretation of the specification.

We do not agree with the Navy's interpretation of this requirement. As noted, section 1.0 of the performance specification specifically states that the CIPS "shall" use "all of the existing VATS ancillaries," specifically including software, and "all the existing VATS procedures that are defined within this document (aircraft specific software)." The CIPS was thus to use "all" ancillaries, including software, and "all" existing VATS procedures as defined in "this document." The only reasonable interpretation of the reference in this section to "this document" is that it refers to the performance specification. It is clear from the context of the term "VATS procedures" that it is defined to be the "aircraft specific software" that is designated in the performance specification. The current versions of the aircraft specific TPS software are those listed in section 3.9 of the performance specification and the agency states that the TPS software "are [the] procedures and instruction for the Navy/Marine Corps maintenance personnel." Agency Report at 4. Given the mandatory language in section 1.0 that "all" existing ancillaries and VATS procedures be used by the proposed CIPS, we find a most reasonable reading of the RFP requires the replacement CIPS to use the existing TPS software. This meaning is confirmed by the RFP's preproduction testing requirements, which require the CIPS be tested using the current TPS software. Although the CBD notice reflects that the replacement CIPS need only operate software with the same capability as the TPS software, a same or similar statement does not appear in the RFP. Consequently, we do not believe that the performance specification, as written, reasonably can be interpreted to encompass the interpretation that the Navy advances here.

Since the Navy now states that an offeror proposing a COTS CIPS that operates software with the same capabilities as the listed TPS software will meet its requirements, we find that the specification requiring that the CIPS use all existing ancillaries and VATS procedures, including the software listed in section 3.9 of the performance specification, to be unduly restrictive because it exceeds the Navy's actual requirements.¹

Chadwick's representative testified that its CIPS has embedded software that can satisfy the agency's actual requirements (if it is provided the source code and documentation of the existing software), although its CIPS cannot operate the TPS software listed in section 3.9 of the performance specification, and that its COTS CIPS could interface with the ancillary items with minimal modification. Tr. at 118; Affidavits of William G. Sullivan. The Navy admits that Chadwick's CIPS employing embedded software could meet the agency's actual requirements, so long as the capabilities, functions, procedures, process, or algorithms of the software did not change from those currently used on the VATS. Tr. at 24, 117; Affidavit of Roger Ding at 2.

We note that the Navy could have resolved this matter during the agency-level protest procedure. Even accepting the Navy's position that the protester was overreading the specifications and should have known that it could have competed despite this specification requirement, this issue was squarely raised in the agency-level protest, at which time the Navy had the opportunity to so inform the protester.

In sum, the RFP specifications, as written, unduly restrict competition, and this inhibited Chadwick from submitting a proposal in response to the RFP.²

Accordingly, we recommend that the Navy amend the solicitation to more accurately express its needs as discussed herein, and resolicit the requirement

¹We recognize that the RFP, as written, primarily contemplated the purchase of a CIPS, a piece of hardware with certain capabilities, not the purchase or conversion of software; however, the agency recognizes that the existing TPS software has to be converted or remodified (although it is not clear that this work is included within the RFP), Tr. at 76, 180, and that it is not an actual government requirement that existing TPS software be operated with the CIPS as required by the specification. Tr. 24-25.

²While Chadwick also argues that the specifications are unduly restrictive for specifying design features unique to the Dynamic COTS CIPS, our review reveals that the specifications were based upon the Navy's actual needs and does not support this contention. See Tr. at 40-41. Moreover, since we are recommending resoliciting the requirements, we need not address the contention that Dynamic's proposal was inconsistent with the RFP requirements.

consistent with this decision.³ If Dynamic is not the successful offeror under the resolicitation, the Navy should terminate its contract. We also recommend that the protester be reimbursed the reasonable cost of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (1998). The protester should submit its certified claim for such costs, detailing the time expended and the cost incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States

³As to the list of deficiencies and information sought by Chadwick, the Navy disputes that all of the information sought by the protester was needed to adequately respond to the RFP, given the level of detail contained in the specifications and applicable documents regarding the VATS. Although we are not convinced that all requested material was necessary to intelligently prepare a proposal, we think that some of the requested information, such as the TPS software, source code, and documentation, needed to be provided in order for offerors to intelligently respond to the RFP. Tr. at 51-52, 57, 80-83. Nevertheless, we need not resolve this matter since the Navy has indicated a willingness to provide additional information and because we otherwise sustain the protest.