



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: OPS, Inc.

File: B-271835

Date: July 31, 1996

Phil Seberger, Jr., for the protester.

Susan Spiegelman-Boyd, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency did not permit sufficient time for offerors to submit product samples is denied where the agency permitted more than the statutorily required 30 days, adequate competition was expected, there is no indication that the agency deliberately attempted to exclude the protester from the procurement and, as the result of a pre-solicitation notice published in the Commerce Business Daily, the protester was made aware of the general requirement more than 4 months before the sample was due.
2. The General Accounting Office generally will not consider a protest that an agency should use more restrictive specifications to meet its minimum needs.
3. Protest that sound reduction requirement for suppressor improperly penalizes offerors with state-of-the-art design is denied where the requirement reasonably specifies the agency's minimum needs and the protester's objection is based on an inaccurate technical premise.

DECISION

OPS, Inc. protests the terms of request for proposals (RFP) No. N00164-96-R-0023, issued by the Naval Surface Warfare Center, Crane Division (Crane) for suppressors for the M4A1 Carbine.¹

¹The M4A1 Carbine is a weapon used by the United States Special Operations Command (USSOCOM). In an effort to upgrade the Carbine, the agency has issued a series of procurements of commercial items to improve the Carbine's performance. The procurements are for components which will be integrated into an accessory kit for the M4A1 and will allow the Carbine to be tailored to various mission scenarios.

We deny the protest.

In December 1995, Crane synopsisized in the Commerce Business Daily its intent to procure, using full and open competition, a minimum of 50 and a maximum of 10,000 suppressors for the M4A1 Carbine under an indefinite delivery/indefinite quantity contract. The synopsis stated that the suppressor shall minimize sound and flash signature of the M4A1 Carbine firing M855 ammunition and shall have a minimum life of 3,000 rounds including frequent full automatic firing. The synopsis also stated that 10 product samples would be required to be submitted with each proposal. In response to the synopsis, the protester made six recommendations to the agency concerning the suppressor requirements. Four of the suggestions were adopted by the agency and were incorporated into the solicitation specifications. The other two, concerning the warranty and quick attach/detach function, were not incorporated because the agency determined that they conflicted with the user's requirements.

The RFP was issued on March 26, 1996, with a May 10 closing date for submission of proposals and 10 product samples. The specifications set forth an acceptable range for each of the technical parameters of the suppressor, with the "goal" being the top of the range, for which additional technical credit would be given. With respect to reliability and rate of fire, the RFP required that the number of stoppages in the 3,000 round endurance test not be greater than the number of stoppages for the unsuppressed carbine, and provided that the enhanced goal for undergraded performance was 5,000 rounds. The RFP also provided that the sound reduction goals were 30 decibels or greater sound pressure level reduction in all frequencies (20 Hz - 20,000 Hz). The product samples were not required to meet all of the RFP specifications, but were required to meet the lowest parameter in the technical areas of interface, weight, size, and sound pressure level.

OPS protests that 6 weeks is not enough time for it to design, and develop product samples and respond to the RFP. OPS also objects that the agency "downgraded" the specifications in order to make it possible for a particular vendor to be able to meet the specifications. In this regard, OPS maintains that the endurance firing standard of 3,000 rounds is less than one third that required under the terms of an earlier contract awarded by a Department of the Army activity. OPS also argues that the sound pressure level requirement penalizes a design that raises the relatively low frequency gun shot sound to a very high frequency.

With respect to the procurement time frame, the agency maintains that offerors were given sufficient time to develop samples. The agency points out that the December 1995 synopsis stated that product samples would be required, thus OPS had from December to begin designing a quick attach suppressor for the M4A1

Carbine. The agency also points out that while OPS had communications with the agency in January and April, the protester never indicated that a lengthy period was required for designing and producing product samples.

With certain exceptions not relevant here, a contracting agency is required by statute to allow a minimum 30-day response period for procurements. See 15 U.S.C. § 637(e)(3)(B) (1994); Federal Acquisition Regulation (FAR) § 5.203(c); Trilectron Indus., Inc., B-248475, Aug. 27, 1992, 92-2 CPD ¶ 130. Here, the agency placed offerors on notice that product samples would be required 3 months before the solicitation was issued and permitted offerors 45 days in which to respond to the solicitation, hence its actions were not per se improper. Under these circumstances, we review the agency's refusal to extend the due date for offers to determine whether it is inconsistent with the full and open competition standard and whether there was a deliberate attempt to exclude the potential offeror from the competition. Control Data Corp., B-235737, Oct. 4, 1989, 89-2 CPD ¶ 304.

We see no basis for concluding that the agency is violating the full and open competition standard or that it is deliberately excluding the protester from the competition. First, as a result of informal surveys, the agency learned that at least five manufacturers possessed a quick attach suppressor which, with minor modification, would meet the agency's needs. Further, as noted above, offerors were placed on notice in December 1995 that product samples were required and, although OPS was in contact with the agency after issuance of the synopsis and the solicitation, OPS first raised its allegation that more time was needed in its protest filed with our Office on April 23. Thus, the agency had no reason to believe that it needed to make greater efforts to assure competitive sources of supply or that OPS or others could not meet requirements as advertised. The fact that OPS belatedly determined that it needs more time does not mean that the agency is obligated to provide that time. While a contracting agency must solicit offers in a manner designed to achieve full and open competition, an agency does not have to delay satisfying its own needs in order to allow a particular vendor time to develop the ability to meet the government's requirement. Trimble Navigation, Ltd., B-247913, July 13, 1992, 92-2 CPD ¶ 17. In short, there is no merit to this protest issue.

OPS, in arguing that the agency should require what its claims to be an industry standard of 10,000 rounds for firing endurance, as opposed to the solicitation goal of 5,000 rounds, with a test requirement of 3,000 rounds, is requesting the use of more restrictive specifications. Because the purpose of our bid protest function, consistent with the Competition in Contracting Act of 1984, 10 U.S.C. § 2304 (1994), is to ensure that full and open competition is obtained, we generally will not consider a protest that the procuring agency should use more restrictive specifications to meet its minimum needs. See Container Prods. Corp., B-232953, Feb. 6, 1989, 89-1 CPD ¶ 117. Moreover, nothing in the record contradicts the agency's position that the standard used will satisfy its minimum needs.

OPS suggests that the agency's decision to relax the endurance firing standard was made simply to accommodate an OPS competitor. On the contrary, the record shows that the endurance firing standard contained in the solicitation was based on the requirements of the user activity and on planned depot maintenance of all the M4A1 accessories at 5,000 round intervals. Based on this plan for maintenance at regular intervals for the entire M4A1 accessory kit, an endurance performance in excess of 5,000 rounds for one item within the accessory kit obviously would exceed the agency's requirements for this item. In this regard, the protester's assertion that an Army activity imposed a different standard based on its needs is of no relevance here. Further, we have recognized that it is appropriate for an agency to relax specifications that exceed agency minimum needs in order to enhance competition. Transtar Aerospace, Inc., B-239467, Aug. 16, 1990, 90-2 CPD ¶ 134.

OPS also argues that the 30-decibels sound reduction goal for the suppressor improperly penalizes an offeror with a state-of-the-art design that modifies the sound to a high frequency. OPS asserts that the high frequency component of the sound is imperceptible to the human ear, is not as likely to damage the hearing system, and is attenuated very rapidly by the air and the natural environment. Therefore, OPS asserts, the sound reduction goal for the higher frequencies exceeds the agency's needs.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, and include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1) (1994). Contracting agencies have broad discretion in determining their minimum needs and the best method of accommodating those needs, and we will not question such a determination unless the record clearly shows it lacks a reasonable basis. H.L. Bouton Co., Inc., B-256014.4, Oct. 24, 1994, 94-2 CPD ¶ 149; Woodland Container Corp., B-255000, Feb. 3, 1994, 94-1 CPD ¶ 70.

The agency states that the purpose of the suppressor is to decrease the audible sound associated with firing the carbine, hence, the reduction of sound within the range which humans can hear is appropriate. The agency also states that testing for this specification will measure whether the average peak sound pressure level reduction is 25 decibels or more in the carbine with the suppressor compared to the carbine without the suppressor. The agency maintains that how an offeror achieves the proper sound pressure level reduction does not matter, and that rather than penalizing a state-of-the-art design, the specification allows an offeror to meet this requirement by any means that it chooses.

OPS does not directly dispute the agency's position with respect to the sound reduction requirement. Rather, it challenges the agency's position that 20 Hertz (Hz) to 20,000 Hz is the range within which humans hear sound and, therefore, the

range through which suppression is necessary and required. The protester contends that sound above 10,000 Hz is essentially inaudible so attenuation of sound to high frequencies (above 10,000 Hz) should also be an acceptable form of silencing. The agency's position, however, is borne out by the literature in the field (humans "normally hear sound waves whose frequencies lie between about 20 and 20,000 Hz." Peter B. Denes & Elliot Pinson, The Speech Chain: The Physics & Biology of Spoken Language (2d ed., New York W.H. Freeman 1995)). Accordingly, we see no basis to object to the RFP's suppression requirement.

The protest is denied.

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