

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

9862

FILE: B-192311

DATE: April 18, 1979

MATTER OF:

Iotron Corporation

DLG 00069

DIGEST:

[Protest Alleging RFP Was Improperly Amended]

1. Protest filed after award of contract alleging agency improperly amended RFP to permit successful offeror to submit proposal and that amendments rendered performance requirements of specifications meaningless, is untimely since protest is essentially against the relaxation of performance requirements and should have been filed prior to closing date for submission of offers.
2. Agency's determination that protester's proposal did not satisfy original RFP specifications was reasonable. However even if proposal did meet those specifications, agency's decision to relax specifications which overstated its minimum needs in an effort to increase competition is not legally objectionable.

AGC 00164

Iotron Corporation (Iotron) has protested the United States Coast Guard's award of a contract to Sperry Marine Systems (Sperry) for two collision avoidance systems (CAS) pursuant to request for proposals (RFP) No. CG-811564-A. Iotron protests that the Coast Guard, in issuing various amendments to the RFP, intentionally relaxed its technical requirements to favor Sperry and other offerors who could not have otherwise participated in the procurement.

CNG-01129

The RFP, as originally issued on December 7, 1977, required the CAS to meet the requirements of a January 19, 1977, Radio Technical Commission for Marine Services (RTCM) paper entitled "Performance Specification for a Computer Aided Collision Avoidance System for Merchant Ships" and to have the capability of both automatic

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and manual target acquisition. On December 22, 1977, the Coast Guard issued amendment No. 1 which deleted the requirement for both automatic and manual target acquisition capability and made manual acquisition mandatory and automatic acquisition optional. On January 9, 1978, the Coast Guard issued amendment No. 2 which imposed certain requirements and clarified an option requirement, which was later dropped. Amendment No. 3 postponed the date for receipt of initial proposals from February 6 to February 13, 1978, but did not otherwise change RFP requirements.

Offers were submitted by Sperry, Raytheon Marine Company (Raytheon) and Iotron. Following an initial technical evaluation, the Coast Guard issued amendment No. 4 which deleted requirements that heading marker accuracy be within 0.5 degree exclusive of sensor errors, that target motion trend be within one minute of acquisition, that fully accurate target course and speed be presented within three minutes of target acquisition, and that various system failure alarms be furnished. April 27, 1978 was set as the closing date for receipt of revised offers.

On April 27, 1978, the Coast Guard issued amendment No. 5 which deleted the RTCM requirement involving the timeliness of target motion trend and extended the next closing date to May 1, 1978. All three firms submitted revised offers. Raytheon's proposal was rated highest with a score of 8.10, while Sperry's and Iotron's proposals received scores of 8.06 and 7.14, respectively. Sperry submitted the lowest offer at a price of \$61,400. Raytheon and Iotron submitted offers of \$68,612.50 and \$310,095, respectively.

Iotron maintains that the Coast Guard improperly amended the RFP so as to permit Sperry and Raytheon to submit proposals. In this regard, Iotron points out that amendment No. 1's deletion of the automatic target acquisition requirement first allowed Sperry to submit an offer. Iotron additionally asserts that through the RFP amendments the Coast Guard removed almost all of the performance requirements of the specification and abandoned its actual operational requirements to

benefit its competitors, particularly Sperry. Iotron states that the amended RFP has lower performance standards than that mandated by the State of Alaska and that contained in a proposed Coast Guard rulemaking. (CGD-77-016, Vessels of 10,000 Gross Tons or More, Proposed Additional Equipment, 42 Fed. Reg. 24871, May 16, 1977.)

As originally filed, Iotron's protest was cloaked in terms of Coast Guard favoritism toward Sperry and Raytheon which enabled those firms to submit proposals. However, after development of the record in this case, it is clear that Iotron is essentially questioning the propriety of the Coast Guard's relaxation of the RFP specifications in relation to the Coast Guard's proposed rulemaking as well as its use of allegedly inferior performance specifications. We believe that since this basis was known prior to the closing date for submission of both initial and revised offers, it is untimely under our Bid Protest Procedures which require protests against alleged improprieties in an RFP which are apparent before the closing date for submission of offers to be filed prior to that date. 4 C.F.R. § 20.2(b)(1) (1978).

Furthermore, even if we view Iotron's charges of favoritism as a separate issue, we believe Iotron's protest is untimely. Iotron's submissions to our Office clearly indicate that Iotron was familiar with the products offered by other firms. For example, Iotron asserts that amendment No. 1 contained a definition for automatic target acquisition which described the approach used by Raytheon commercially and by Sperry in a proposed option not yet sold commercially. Iotron also asserts that an option contained in amendment No. 2 described the approach used by Sperry commercially to receive "latitude and longitude for referencing anti-stranding guidelines." Since Iotron was familiar with the products offered by at least two of its competitors in CAS procurements, we believe its allegation that favoritism toward Sperry and Raytheon was the real reason the Coast Guard amended the specifications is untimely.

Iotron has also taken exception to the Coast Guard's evaluation of its proposal. Iotron maintains its proposal

met the original RFP specifications and therefore there was no need to relax those specifications.

The Coast Guard, on the other hand, maintains that Iotron failed to demonstrate that it could meet the original RFP specifications. The Coast Guard essentially states that Iotron's proposal went no further than to state that Iotron's product would comply with all the requirements in question, and that because of the brevity of the narrative the Coast Guard could not conclude that Iotron's proposal satisfied all the original requirements. The Coast Guard further asserts that Sperry's and Raytheon's proposals also failed to comply with all of the RFP requirements and that after reviewing the specifications the Coast Guard determined that it had overstated its minimum needs. Hence, it relaxed the specifications.

We have reviewed the Coast Guard's evaluation of Iotron's initial proposal and find that the Coast Guard's conclusion that Iotron could not, or had failed to demonstrate that it could, meet the RFP requirements as of the initial closing date for offers, was reasonable. Although the RFP stated that to be "responsive" a proposal was required to include a "detailed description of the proposed means of fulfilling each of the CAS requirements listed in the statement of work," Iotron's initial proposal admittedly was "terse."

Furthermore, even if Iotron's proposal satisfied the original RFP specifications, we find no basis to challenge the Coast Guard's decision to relax the original RFP specifications. The record clearly indicates that the Coast Guard believed those specifications overstated its minimum needs. In view of that fact, and in the absence of evidence indicating Coast Guard favoritism towards Sperry or Raytheon, we find no basis to object to the Coast Guard's relaxation of specifications in an effort to increase competition. See Miltope Corporation-Reconsideration, B-188342, June 9, 1977, 77-1 CPD 417, aff'd, July 1, 1977, 77-2 CPD 3.

The protest is denied.

  
Deputy Comptroller General  
of the United States