

PH-20

12821



DECISION

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

FILE: B-195741

DATE: February 12, 1980

MATTER OF: Sub-Sea Systems, Inc.

DLG03894

[Protest Against Amendment as Unduly
DIGEST: Restrictive]

1. Agency may amend RFP to revise specifications after receipt of initial proposals.
2. Solicitation requirements that camera diameter be no greater than two inches is not unreasonably restrictive of competition where record shows that camera must fit inside five inch pipe leaving three inches for mountings, control and maneuverability.
3. Allegation that specifications were included in RFP amendment to exclude protester from competition is without merit where record shows that specifications validly represent agency's minimum needs and were inadvertently omitted from original RFP.

Sub-Sea Systems, Inc. protests an amendment to request for proposals (RFP) No. 6873 issued by the Thirteenth Coast Guard District Contracting Office, Seattle, for an underwater television camera. Sub-Sea essentially charges that the amendment should not have been issued after receipt of initial proposals, that it rendered the specifications unduly restrictive, and that its purpose was the exclusion of all offerors but one from this procurement. We find the protest to be without merit.

DLG035/93
Seattle, W.

The Coast Guard initially intended to procure the cameras on a sole-source basis under the authority of 10 U.S.C. § 2304(a)(10) (1976) because Edo-Western Corporation was the only known firm that could meet its requirements. When other firms expressed interest in

DLG03894 5

~~008644~~ 111542

the solicitation, the agency, pursuant to negotiation procedures, issued an RFP containing a brand name or equal purchase description. Upon receipt of the proposals, the agency discovered it had inadvertently failed to specify certain salient features of the brand name equipment. The Coast Guard then issued the protested amendment which, among other things, limited the diameter of the camera to a maximum of two inches. At this point, all offerors except Edo-Western withdrew their proposals. After negotiations, Edo-Western received the award.

Sub-Sea questions the propriety of changing the specifications after "bid opening." The protester's reference to "bid opening," words that apply to advertised procurements only, indicates that the protester has misunderstood the procedures applicable to this procurement. As indicated, negotiation rather than formal advertising procedures were utilized here. Thus, initial offers were opened in camera and were not exposed prior to revision the specifications by RFP amendment. Indeed, in an advertised procurement, generally a solicitation must be canceled if specifications must be changed after bid opening. See Federal Procurement Regulations (FPR) § 1-2.404-1(b) (1) (1964 ed. amend. 121); Keco Industries, Inc., B-191856, April 5, 1979, 79-1 CPD 234.

In a negotiated procurement, however, "when, during negotiations a substantial change occurs in the Government's requirements or a decision is reached to relax, increase, or otherwise modify the scope of work or statement of requirements, such change or modification shall be made in writing as an amendment to the request for proposals, and a copy shall be furnished to each prospective contractor." FPR § 1-3.805-2(d). Thus it is clear that an RFP may be revised after receipt of initial proposals when it becomes necessary to insure that the Government's needs will be satisfied.

In this connection, Sub-Sea believes that its equipment can perform the necessary task and that the amended specifications, limiting the diameter of the camera to a maximum of two inches, "show the unrealistic tightening of the design parameters well beyond what

should be required for the job in question." Sub-Sea states that it demonstrated its equipment to the Coast Guard prior to issuance of the initial solicitation and was advised that its equipment would meet specifications if it would change its design to incorporate camera lighting within the diameter of the camera housing, thus reducing the entire assembly well below the five inch diameter specified in the solicitation. The Coast Guard reports that this demonstration coincided with, but was not related to, the ongoing procurement and that there is no knowledge or record of any commitment to Sub-Sea concerning the acceptability of its equipment for the intended application.

As indicated, the Coast Guard became aware after reviewing initial proposals that it had not adequately stated its requirements. Specifically, the camera, complete with its own self-contained lighting, had to fit into a five inch access pipe, leaving three inches for the mounting and control as well as a degree of maneuverability for scanning the entire area inside the vessel's sea chest. (The purpose was to provide a means for observing the internal functions within the vessel's sea chest and determine the reasons for a loss of engine cooling water.) Sub-Sea's camera would fit into the five inch access pipe but would not leave three inches for the mounting and control mechanisms.

A protester who objects to the specifications in a solicitation bears a heavy burden. This is because we have recognized that Government procurement officials are generally in the best position to know the Government's actual needs and, therefore, are best able to draft appropriate specifications. Consequently, we do not question an agency's determination of what its minimum needs are unless there is a clear showing that the determination has no reasonable basis. Lanier Business Products, Inc., B-193693, April 3, 1979, 79-1 CPD 232.

Sub-Sea has offered no evidence to show that the two inch camera diameter requirement is unreasonable, and while it states that its camera can perform as

required, it does not deny that its equipment cannot meet the requirement for three inches of clearance. Thus, in light of the Coast Guard's stated need for three inches of clearance for the mountings and control as well as a degree of maneuverability for scanning the entire area inside the vessel's sea chest, and the absence of any evidence to the contrary, we find that the revised specifications were not unduly restrictive of competition, reflected the Coast Guard's minimum needs, and did not represent an attempt to exclude Sub-Sea or other offerors from the competition.

The protest is denied.

P. F. K. 11a
Deputy Comptroller General
of the United States