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DECISION

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

FILE: B-212640 **DATE:** February 7, 1984

MATTER OF: Worldwide Marine, Inc.

DIGEST:

1. Where protester orally conveys to the contracting officer its concern that the specifications do not adequately set forth the agency's requirements and its belief that the solicitation should be clarified, communication between the protester and the contracting officer suffices as an agency protest. Consequently, since protest to agency was timely filed and subsequent protest to GAO was filed within 10 working days of agency's confirmation of its requirements, matter is timely presented to GAO under Bid Protest Procedures.

2. Fact that specifications given to prospective offerors were inadequate for responses from all but one firm that had direct knowledge of the agency's requirements, so that the result was a de facto sole-source procurement from that firm, does not invalidate the award where the awardee in fact was the only company that could meet the agency's need in the required timeframe.

Worldwide Marine, Inc. protests the award of a contract by the Naval Supply Center, Jacksonville, Florida, to B&M Marine Repairs, Inc. under an oral solicitation (No. N68836-83-Q-C081) for various parts to repair ballistic doors, hatches and scuttles aboard a Navy aircraft carrier. Worldwide principally contends that the procurement was improperly conducted because the parts were not adequately described to permit intelligent competition on an equal basis. We deny the protest.

BACKGROUND

This procurement was negotiated under the "public exigency" exception to formal advertising. See 10 U.S.C. § 2304(a)(2) (1982). The regulations implementing this

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exception permit negotiations to procure equipment where immediate repair to a ship is necessary to permit the ship to comply with its military orders. See Defense Acquisition Regulation (DAR) § 3-202.2(ii) (1976 ed.).

On July 25, 1983, the contracting officer received 12 requisitions from the supply officer aboard the USS Saratoga for various quantities of 12 parts for repair of the ship's ballistic doors, hatches and scuttles. The USS Saratoga is one of the Navy's older aircraft carriers and had recently undergone complete overhaul and repair. As a result, military personnel aboard the carrier did not have available drawings referencing or describing the replacement parts needed for the repairs. Therefore, actual measurements were made on the carrier's ballistic doors to determine the types and dimensions of the parts needed.

The requisitions furnished the contracting officer identified the parts by reference to part numbers of B&M, which was stated to be the only known source of supply, identified B&M as the manufacturer, and stated a name and size for each item requested. The requisitions also established a required delivery date of August 1, to permit completion of the repairs by the ship's scheduled departure date of September 15. The Navy's contract review board, on July 27, authorized the contracting officer to conduct an oral procurement for the parts on a sole-source basis with B&M. On that same day, the Navy's buyer contacted B&M to solicit quotes on the required parts. The buyer also was informed on that date, for the first time, that B&M was merely a distributor and not the manufacturer of the parts. She therefore determined that proceeding on a sole-source basis was no longer justified, and that other firms should be contacted to maximize competition within the short time available.

On August 3, the buyer contacted Worldwide and told the president of the firm that this solicitation was an urgent request for proposals, that the required delivery date had already passed, and that the parts were needed as soon as possible to avoid adverse impact on the carrier's mission. The buyer then listed the parts required by item number, quantity, brief description and size of each item, and a reference to a B&M part number.

According to Worldwide, it discovered numerous discrepancies in the agency's descriptions of the parts; the part numbers, descriptions and dimensions listed were

not referenced in any drawing or print, and did not correspond to B&M's own catalogue of available parts. The president then called the buyer and informed her that the parts requested did not conform to the carrier's specifications and could not be proper parts to complete the repairs. The buyer told her she would bring the matter to the attention of appropriate personnel and advise of their response. On August 4, the buyer contacted Worldwide's president and confirmed that the part numbers requested did meet the carrier's actual requirements and that the specifications were correct as stated. Worldwide then telephoned the ship's personnel directly and received the same confirmation. On August 5, Worldwide submitted an oral quote. However, the contract was awarded to B&M, the low quoter, later that same day. A total of four firms had been solicited. The parts were subsequently delivered and the ballistic doors were properly repaired.

PROTESTER'S CONTENTIONS

Worldwide alleges that the B&M part numbers and corresponding dimensions referenced by the buyer do not conform with the carrier's specifications, misrepresent the government's actual requirements, and do not conform to B&M's own catalogue of available parts. Worldwide therefore contends that the parts were insufficiently described to permit Worldwide to submit an intelligent quote on an equal basis. For example, item No. 1 was described as a "Hinge-Bolt Washer 4 [inch B&M] 162-4." Worldwide states that B&M's catalogue lists this item as "Hinge Bolt and Nut" without reference to a washer or to any particular dimension, and that the carrier's drawings to which Worldwide has access identify the part as a "Hinge Bolt 3 [inch]." According to the protester, there are similar discrepancies, and there is no standard reference--either a drawing or B&M's catalogue--for 5 of the 12 items solicited. The Navy has not specifically denied these discrepancies, but does attribute a portion of the problem to the recent overhaul of the ship and the absence of any current valid drawings.

TIMELINESS

The agency first questions the timeliness of this protest since it was not received by our Office until August 9, after award had been made to B&M. In this respect, section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1983), requires that a protest that solicitation specifications are deficient be filed before

offers are due so that corrective action, if necessary, can be taken before the field of competition is drawn. Minority Enterprises, B-206321, March 1, 1982, 82-1 CPD 181.

In response, Worldwide alleges that in a telephone conversation on August 5, shortly before submitting its quote, it orally protested the defective specifications and told the buyer that Worldwide would submit its written quote, but also would file a formal protest letter by August 8. The agency denies that Worldwide filed any pre-award protest and specifically denies the existence of an oral protest during the August 5 telephone conversation between the buyer and the president of Worldwide.

We need not resolve this factual dispute. It is undisputed that on August 3, Worldwide telephoned the buyer, and told the buyer that it considered the specifications to be defective in that the descriptions of the parts did not conform to the carrier's specifications and were generally inadequate for their stated purpose. The buyer then informed Worldwide that the agency would look into the matter. In this regard, an intent to protest may be conveyed by an expression of dissatisfaction and a request for corrective action. Applied Devices Corporation, B-203241, September 9, 1981, 81-2 CPD 207. In our view, regardless of the content of the August 5 telephone conversation, the president of Worldwide adequately conveyed, on August 3, her dissatisfaction with the specifications and her belief that the solicitation should be clarified with respect to the parts being procured. Therefore, we conclude that Worldwide filed a timely protest with the Navy under section 21.2(b)(1) of our Procedures. In turn, the subsequent protest to our Office, filed within 10 working days of the agency's confirmation of its requirements on August 4, is a timely appeal, under section 21.2(a) of our Procedures, of the contracting agency's adverse action on the protest at that level.

GAO ANALYSIS

As a general rule, a procuring agency must give offerors sufficient detail in a request for proposals to enable them to compete intelligently and on a relatively equal basis. Telephonics Corporation, B-194110, January 9, 1980, 80-1 CPD 25. Specifications must be free from ambiguity, M.J. Rudolph Corporation, B-196159, January 31, 1980, 80-1 CPD 84, and must describe the minimum needs of the procuring activity accurately. Gibson & Cushman Dredging Corporation, B-194902, February 12, 1980, 80-1 CPD 122.

We agree with Worldwide that the parts requested under the oral solicitation were not described sufficiently to allow intelligent competition. The part numbers, descriptions and dimensions listed were not referenced in any drawing, print, or even B&M's own catalogue so as to permit sources to ascertain the exact parts required. B&M, however, was not adversely affected by the inadequate description of the parts. The record shows that a B&M representative was on board the carrier, assisted the carrier's supply officer in initially identifying the replacement parts needed and recognized that other than standard replacement parts would be necessary to effect the repairs. Thus, of all the offerors, only B&M actually knew exactly what was required.

We do not fault the agency for the parts descriptions used. The descriptions were not any clearer because they were generated on board the carrier by manual measurement and estimate. There is nothing in the record which would indicate that the supply officer aboard the ship and the other personnel involved in formulating the Navy's needs by taking actual measurements of the parts required did not do the best they could under the circumstances. The descriptions subsequently were furnished to the purchasing office on the assumption that the requirements would be procured on a sole-source basis, and evidently were adequate for that purpose.

The buyer, upon learning that B&M was not the manufacturer, and acting on the premise that the requisitions described standard parts, simply made a good faith attempt to secure competition which really was impracticable. Even if the buyer had recognized that the information in the requisitions did not permit true competition, she would not have had time to go back to the requisitioners for more precise descriptions, if in fact more precise descriptions could have been specified.

Thus, the available purchase descriptions for the parts in fact permitted only a sole-source award to one firm, B&M, within the time available. In this regard, while government procurement must be conducted on a competitive basis to the maximum extent practicable, DAR § 3-210, a sole-source acquisition may be authorized where time is of the essence and only one known source can meet the agency's needs within the required timeframe. International Business Machines Corporation, B-198094.3, September 29, 1981, 81-2 CPD 258. Moreover, to the extent that the Navy's need for a sole-source procurement arose because

the carrier personnel belatedly furnished the buyer a deficient description of the requirements, the fact is at that point, late July, the Navy was faced with an urgent need for the purchase, to insure that the carrier could depart on its scheduled date. The fact that an agency's own actions contribute to a situation that ultimately requires a sole-source award does not make the sole-source award improper when necessary to relieve the critical situation. R&E Cablevision, B-199592, February 19, 1981, 81-1 CPD 110.

This procurement, then, amounted to a de facto sole-source procurement, which was justified because of the urgency of the Navy's need. While it is unfortunate that Worldwide was asked to quote against requirements that, as a practical matter, did not permit an intelligent response, we are unable to conclude that the agency's action was other than a good faith, albeit mistaken, attempt to secure competition where the circumstances simply did not permit competition. Accordingly, this portion of the protest is denied. Further, since there has been no showing of arbitrary or capricious action, the protester's request for bid preparation costs is also denied. Id.

MISCELLANEOUS ISSUES

The protester, citing DAR § 2-201, states that the agency should have allowed 30 days bid preparation time. The referenced regulation, however, pertains to formally advertised procurements, whereas this procurement was negotiated under the public exigency exception, which does not require that an agency grant 30 days proposal preparation time. Worldwide also contends that the award to B&M should be voided because of the faulty specifications. Since we have already concluded that the award was proper, we see no reason to consider this matter further. Moreover, as stated above, B&M in fact was able to respond to those specifications, and has furnished items that meet the Navy's needs.

The protest is denied.

Milton J. Socolar
for Comptroller General
of the United States