

**DECISION**

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

*Melody*  
*27762*

**FILE:** B-213945 **DATE:** March 23, 1984

**MATTER OF:** Eastern Marine, Inc.

**DIGEST:**

1. Where a solicitation for furnishing patrol boats based on an "off-the-shelf" parent craft design contains a provision expressly requiring that the patrol boat have a "propulsion configuration" identical to that of the parent craft, it is not reasonable to interpret another provision permitting "propulsion plant" substitutions as permitting "propulsion configuration" changes, where it is clear from the solicitation that the terms were not being used interchangeably.
2. An offeror relies on a contracting agency's oral advice, which conflicts with the clear language of the specifications, at its own risk where the solicitation specifically states that oral advice as to the interpretation of solicitation provisions will not be binding.
3. There exists no basis under the doctrine of estoppel for requiring a contracting agency to consider for award a proposal which does not meet the government's minimum needs.
4. A procuring agency may revise its initial competitive range determination to eliminate a proposal formerly considered within the range, where discussions reveal that the proposal no longer has a reasonable chance of being accepted for award. The offeror submitting the excluded proposal need not be given an opportunity to submit a best and final offer.
5. A solicitation requirement that the propulsion configuration and other material design

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features of the required patrol boat be identical to the parent craft is not unduly restrictive where the agency's legitimate minimum needs include a requirement that the patrol boat be proven, in all material respects, in actual performance; a change in the propulsion configuration, supported by a technical opinion that the patrol boat's performance would not be adversely affected, does not satisfy the agency's need for proven performance.

6. An agency need not relax or revise solicitation requirements which reflect its legitimate minimum needs, and GAO will not question an agency's decision to relax certain specifications while refusing to relax others absent evidence of favoritism, fraud or intentional misconduct by government officials.
7. Where an agency conducts a procurement under its own internal procedures, its failure to establish an evaluation scheme precisely in accordance with those procedures, which serve only as guidance, is not improper.

Eastern Marine, Inc. protests the rejection of its proposal under request for proposals (RFP) No. DTCG23-83-R-30024, issued by the U.S. Coast Guard. The solicitation, issued May 9, 1983 as a total small business set-aside, contemplated the award of a firm-fixed-price contract for the construction and outfitting of seven (plus option quantities) patrol boats. Eastern challenges the Coast Guard's determination that its proposal did not satisfy certain mandatory requirements of the RFP and that it therefore fell outside the final competitive range. We disagree with Eastern and deny its protest.

On March 1, 1984, while we were developing the protest record, Eastern filed suit against the Coast Guard in the United States Claims Court, Eastern Marine, Inc. v. The United States of America, Civil Action No. 105-84C, requesting injunctive and declaratory relief on substantially the same grounds raised in its protest. The court has expressed interest in our decision.

This procurement is based on what the Coast Guard terms a "parent craft" concept. Under this approach,

offered boats were to be constructed from "off-the-shelf" designs which have been proven in actual patrol boat service. The Coast Guard states that it normally develops its own patrol boat designs, but that this is a time-consuming process not appropriate where, as here, the requirement is urgent. It determined that the parent craft approach would expedite the acquisition while assuring that the boats supplied would be proven reliable. The Coast Guard states it realized that offerors would have to make some modifications to the parent craft design and that it probably would have to make some changes in the RFP specifications, but that it intended to permit changes only in areas which would not reduce the proven nature of the parent craft.

Eastern's protest centers around the Coast Guard's determination that the protester's proposed patrol boat contained unacceptable deviations from the parent craft because it has two engines while the parent craft, the SAR-33, has three. The basic requirements for the parent craft on which the proposed patrol boats were to be based are set forth in section 042b of the RFP's Circular of Requirements (COR). Eastern's protest involves the following paragraph under section 042b:

"The Parent Craft shall possess the same hull form and dimensions (defined as underwater body and hull up to sheer line), principle hull structure, underwater appendages, and propulsion configuration as the [offered patrol boat]."

The evaluation scheme is outlined in section M of the RFP. One of the engineering factors to be evaluated is "Parent Craft Technical Verification" which, the Coast Guard explains, encompasses compliance with section 042b and other parent craft requirements. The RFP advised offerors that this factor was a "Pass/Fail Item," that is, an absolute requirement:

"Pass/Fail Items . . . will be evaluated on a pass/fail basis with respect to the COR. No additional credit will be assigned to exceeding COR requirements. Failure to meet COR requirements will be disqualifying. . . ."

Eastern submitted its proposal on the July 11 closing date for submission of initial proposals. Following the evaluation procedure laid out in section M-2 of the RFP,

the Coast Guard, based on a preliminary review, rejected a number of proposals determined so grossly deficient as to be unacceptable on their face. Proceeding to the next evaluation step, the Coast Guard sought clarifications of ambiguities in the remaining proposals found during the preliminary review. Eastern was requested to make certain clarifications in a July 28 letter. That letter stated that the agency would point out proposal deficiencies and weaknesses at a later date. The Source Evaluation Board then conducted a technical evaluation of the clarified proposals to identify weaknesses and deficiencies. Based on this review, the Board concluded that all proposals should be included in the preliminary competitive range provided for in section M-2.

The Coast Guard informed Eastern of the deficiencies in its proposal by letter dated August 31. One of the noted deficiencies was:

"10. Parent Craft Drawing No. 63702510000 shows three propulsion shafts and the WPB [patrol boat] Drawing No. 6683-2510.00 shows two shafts. The proposal did not discuss the effects on performance and propulsive coefficient that result from this change."

The Coast Guard states that it contacted Eastern after sending this letter to make it clear that paragraph 10 included two separate deficiencies: the patrol boat had two shafts while the parent craft had three; and the failure to explain the effects of the change. By letter of September 2, the Coast Guard informed Eastern of additional deficiencies.

Eastern responded to the Coast Guard in a September 19 submission. The Board evaluated this additional material and, in a November 4 memorandum, the Source Selection Official determined that all proposals, including Eastern's, should remain in the competitive range for purposes of further negotiations.<sup>1</sup> In a November 8 letter, the Coast

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<sup>1</sup> Eastern maintains in its Memorandum of Points and Authorities in Support of Motions for Temporary Restraining Order and for Preliminary Injunction filed in the Claims Court, that the Coast Guard has refused to supply our Office the Source Evaluation Board's report of October 16 which formed the basis of the competitive range determination. The Coast Guard has in fact provided us the portion of the report pertaining to Eastern and we have considered it.

Guard advised Eastern that it was in the competitive range, and pointed out that deficiencies remained in its proposal. In describing these deficiencies, the Coast Guard stated that removal of the centerline engine and the centerline shaft were "significant departures" from, respectively, "the parent craft concept" and "the parent craft underwater appendages."

Eastern responded to the Coast Guard in a November 14 letter, urging approval of its use of the SAR-33, and stating its view that the finding of propulsion configuration and underwater appendages deficiencies is inconsistent with Eastern's inclusion in the competitive range if those two requirements are considered absolute. Eastern met with the Coast Guard on November 17 to discuss the matter, and on November 22 submitted its final response to the Coast Guard's November 8 letter. The Board evaluated Eastern's submission and determined that it should be excluded from the final competitive range for failing to meet the propulsion configuration and underwater appendages requirements. Eastern was notified of its exclusion by letter dated December 6.

Eastern does not dispute the finding that its patrol boat and the SAR-33 do not have identical propulsion configurations. It principally argues, rather, that the RFP was ambiguous as to whether an identical configuration was required, and that since its proposal was based on one reasonable interpretation which was reinforced by telephone conversations with a Coast Guard official, it should be retained in the competitive range and considered for award. Eastern further argues that it was improper for the Coast Guard to reject its proposal after initially including it in the competitive range, and that the requirement for an identical propulsion configuration was unduly restrictive. We address each argument in detail below.

#### I. Ambiguous Requirement

Eastern contends that section 200a of the COR permits changes in propulsion configuration and that, in view of the requirement for an identical configuration in section 042b of the COR (quoted above), the RFP is at best ambiguous on the point. Section 200a states as follows:

**"General** - The propulsion plant and supporting components shall be identical to the Parent Craft specified in section 042.

". . . Main propulsion engines, reduction gears, shafting, bearings and propellers shall be identical to the parent craft. If equipment substitutions are necessary the provisions of section 042 [outlining the conditions under which substitutions will be accepted] shall apply. Propulsion plant substitutions meeting the criteria in section 042 will be approved subject to performance verification in full scale trials."

Eastern maintains it is reasonable to construe the term "propulsion plant" in section 200a as synonymous with the term "propulsion configuration" in section 042b. This interpretation is based on Eastern's view that section 200a deals with "equipment substitutions" generally, but then in the last sentence refers to "propulsion plant substitutions" as a separate matter. It concludes that this last sentence must have been intended to address propulsion plant substitutions involving other than equipment, namely, substitutions of (changes to) the propulsion configuration. As further evidence of the reasonableness of this interpretation, Eastern points out that the term "propulsion plant" is used in at least one U.S. Navy engineering manual to describe "the entirety of the propulsion machinery," which Eastern considers to be the same as the propulsion configuration.

The Coast Guard responds that "propulsion configuration" is not the same thing as "propulsion plant" and that the section 042b requirement for an identical propulsion configuration is unrelated to the section 200a propulsion plant substitution language. It states that this latter provision was intended to permit changes only in propulsion plant components, and not the propulsion configuration.

A solicitation requirement is ambiguous, in a legal sense, only when it is subject to two or more reasonable interpretations. See Skytop Plastics, Inc., B-207022, October 15, 1982, 82-2 CPD 340. We have carefully examined the RFP language in question, and find that only the Coast Guard's interpretation is reasonable.

The RFP clearly states in section 042b that the propulsion configuration in the offered patrol boats is to be identical to that in the parent craft; this requirement could not have been stated more clearly. We find it just as clear that section 200a did not contradict this requirement. The initial RFP reference to section 200a is found in section 042b in a paragraph immediately following the paragraph requiring an identical propulsion configuration. It reads as follows:

"The Parent Craft shall meet the requirements of COR 100b (Structure), 200a (Propulsion Plant), and 200b (Propulsion Plant Rating)."

The use of two different terms--propulsion configuration and propulsion plant--to refer to propulsion system requirements in two juxtaposed paragraphs, by itself is strong evidence that the terms were not meant to be used interchangeably.

We also find nothing in section 200a which would suggest that the term "propulsion plant" was being used as a synonym for "propulsion configuration," or that the provision in some other way was intended to permit configuration changes despite the prohibition in section 042b. Eastern's purportedly reasonable interpretation is based on the existence of an untenable distinction between the terms "equipment substitutions" and "propulsion plant substitutions" as used in section 200a. The provision falls under the heading "PROPULSION PLANT," and we think it is obvious that the two terms thus are interchangeable; that is, "equipment substitutions" and "propulsion plant substitutions" both refer to propulsion plant equipment substitutions. Read in this way, the provision sets forth the conditions under which propulsion plant equipment different from that used in the parent craft will be accepted. It establishes a two-step process: the propulsion equipment substitutions must satisfy the criteria in section 042, and substitute equipment which meets these criteria then must be verified in full scale performance trials. We think this is the only reasonable interpretation of section 200a.

We conclude that the RFP was not ambiguous as alleged and that the parent craft was required to have the same propulsion configuration as the offered patrol boats.

Eastern appears to be under the impression that if it were correct that the RFP is ambiguous, its proposal based on one of the possible reasonable interpretations then would be acceptable and within the final competitive range. This is not the case. Even if Eastern's ambiguity allegation were correct, the only appropriate action would be for the Coast Guard to issue a written amendment clarifying the provision and to permit offerors to amend their proposals to conform to the intended meaning. Thus, Eastern's proposal ultimately would have to conform to the Coast Guard's clarified meaning--which, based on its position here, presumably would include the identical propulsion configuration requirement--before being considered technically acceptable.

## II. Estoppel

Eastern argues that the Coast Guard is estopped from excluding its proposal from the competitive range. This argument is based primarily on a series of telephone conversations, during which the chairman of the Source Evaluation Board allegedly told Eastern that its 2-engine version of the SAR-33 would be acceptable, and that it "should not be afraid of the section 042 specification." Eastern states that it submitted its proposal in reliance on these representations and the fact that section 200a allowed propulsion plant substitutions, and submits that the Coast Guard should not now be permitted to reject its proposal on the ground that this change is unacceptable. We reject this argument.

We already have found that the RFP clearly required an identical propulsion configuration and that it was unreasonable for Eastern to interpret section 200a as permitting changes. As to the oral advice, even assuming Eastern's account of the telephone conversations is accurate (the Board chairman does not clearly recall, but does not believe he ever advised Eastern that the SAR-33 would be an acceptable parent craft), its reliance on this telephone advice does not support an estoppel argument here. Our Office has held on numerous prior occasions that offerors rely on oral explanations of solicitation requirements at their own risk, at least where the solicitation sets forth specific procedures for obtaining such explanations. See, e.g., Jensen Corporation, 60 Comp. Gen. 543 (1981), 81-1 CPD 524; Trident Industrial Products, Inc., 59 Comp. Gen. 742 (1980), 80-2 CPD 222. Here, page 103 of the RFP contained the provisions of Standard Form 33A, paragraph 3, which states as follows:

"EXPLANATION TO OFFERORS. Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding . . ."  
(Underlining added.)<sup>2</sup>

Eastern ignored this clear language and it thus was Eastern, not the Coast Guard, which assumed the risk of relying on any oral advice which was inconsistent with the RFP.

In any event, we find there exists no basis under the legal doctrine of estoppel for requiring the government to consider for award a proposal which does not meet the government's minimum needs (as it appears Eastern would have the Coast Guard do here). Eastern cites several decisions in which the courts have applied the doctrine to estop the government from denying the existence of a contract (or, in most of the cited cases, a contract change order). The plaintiff in each of these contract cases, however, was a contractor seeking enforcement of an alleged contractual agreement, not an offeror attempting to have its proposal considered for award despite the agency's determination that it was unacceptable. See, e.g., Max Drill, Inc. v. United States, 427 F.2d 1233, 1243 (Ct. Cl. 1970); United States v. Georgia-Pacific Corporation, 421 F.2d 92, 96 (9th Cir. 1970). We have specifically refused to require the government to include an unacceptable proposal in the competitive range under an estoppel theory. See Pettibone Texas Corporation--Reconsideration, B-209910.2, August 23, 1983, 83-2 CPD 231. We will not require the Coast Guard to accept Eastern's proposal on that theory.

### III. Competitive Range

Eastern next argues that since the Coast Guard initially included its proposal in the competitive range instead of rejecting it as grossly deficient, the Coast Guard should not now be permitted to reverse its implicit determination that the proposal was acceptable. Eastern

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<sup>2</sup>The solicitation also stated on page 1 that calls for information should be directed to an individual other than the Source Board chairman.

maintains, in other words, that once a proposal is included in the competitive range, it cannot later be excluded. Eastern believes its initial inclusion in the competitive range and later exclusion from the final competitive range suggests that the Coast Guard originally interpreted the RFP to allow propulsion configuration changes, and only later adopted its current restrictive interpretation. It also argues, on a more practical basis, that if the Coast Guard considered a 2-engine SAR-33 unacceptable, it should have so advised Eastern from the outset instead of misleading Eastern into incurring substantial expenditures in attempting to make its proposal acceptable. We reject these arguments.

In view of the regulatory preference for maximum competition, a proposal must be included in the competitive range so as to require discussions unless the proposal is so technically inferior or out of line as to price that any discussions would be meaningless. 53 Comp. Gen. 1 (1973); Monitor International, Inc., B-200756, September 14, 1981, 81-2 CPD 214. Contrary to Eastern's impression, therefore, inclusion of a technically deficient proposal in the competitive range means not that the agency has relaxed the specifications to conform to that proposal, but that the agency believes it reasonably possible that the offeror can establish the acceptability of its proposal during discussions. A procuring agency later may revise its competitive range determination to eliminate a proposal formerly considered to be within the competitive range if discussions reveal the proposal no longer has a reasonable chance of acceptance. In this event, the offeror submitting the proposal need not be given an opportunity to submit a best and final offer. See Cotton & Company, B-210849, October 12, 1983, 83-2 CPD 451. Establishing a revised competitive range does not evidence a change in the agency's interpretation of its requirements.

The Coast Guard states it did not reject Eastern's proposal outright because it believed there might be a 2-engine version of the SAR-33 in operation somewhere, and that there was a possibility Eastern could meet the propulsion configuration requirement. In view of this possibility, no matter how remote (Eastern claims the agency should have known, at least after reading its proposal, that there was no 2-engine version), we think the Coast Guard's decision to negotiate with Eastern was a proper exercise of its discretion in this area.

We also find no basis for Eastern's contention that it was misled by the Coast Guard's action. The elimination of Eastern's proposal from the initial competitive range following completion of negotiations was entirely consistent with both the RFP and the information furnished Eastern during the negotiation process. The evaluation sequence set forth in RFP section M-2 indicated that an initial competitive range would be established, that offerors in the initial competitive range would have the opportunity to correct deficiencies and weaknesses in their proposals during negotiations, and that the final competitive range would be based on offerors' responses to these deficiencies. Eastern was informed in letters of August 31 (as clarified by telephone advice<sup>3</sup>) and November 8 that the 3- versus 2-engine configuration was considered a deficiency. The November 8 letter, furthermore, while stating that Eastern was in the competitive range, also advised Eastern that:

". . . After receipt of responses to these deficiencies/weaknesses, the [source selection official] has empowered the [source evaluation board] to eliminate any offeror which does not revise its offer to meet minimum (mandatory) RFP requirements. . . .

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<sup>3</sup> Eastern maintains that for the same reason it could not rely on pre-award oral advice as to the RFP requirements, it should not be considered to have been on notice of the propulsion configuration deficiency based on this telephone advice. We do not agree. Unlike the allegedly misleading oral advice discussed above, this phone call was part of the negotiation process. Standard Form 33A does not prohibit oral negotiations. See Technical Assistance Group, Incorporated, B-221117.2, October 24, 1983, 83-2 CPD 447. In any event, we do not think it is reasonable for an offeror to ignore such an oral explanation.

. . . Deficiencies represent points where the proposal does not meet mandatory RFP requirements. If these deficiencies are not corrected the [source evaluation board] will eliminate your proposal from further consideration . . . ."

Thus, the Coast Guard proceeded in accordance with the RFP and, since the parent craft technical requirements under COR Section 042b were mandatory (pass/fail) items, Eastern was or should have been aware that its proposal was considered deficient in a material respect.

#### IV. Restrictiveness

Eastern argues that the identical propulsion configuration requirement is unnecessary, and thus unduly restrictive, since it prevents Eastern from offering patrol boats based on the SAR-33 even though the planned change in the propulsion configuration would make the patrol boats superior to the SAR-33, and the boats would perform as specified in the RFP.<sup>4</sup> Eastern's position is based on the affidavits of an expert in engineering and hydrodynamic design stating his opinion on Eastern's behalf that elimination of the centerline engine and shaft from the SAR-33 will introduce no technical risk and in fact will lead to improved overall performance.

Under our Bid Protest Procedures, protests of allegedly unduly restrictive solicitation provisions ordinarily must be filed prior to the closing date for the receipt of initial proposals, or they will be dismissed as untimely. See 4 C.F.R. § 21.2(b)(1) (1983). This rule assures that such allegations will be brought to the agency's attention at a time when the solicitation can be amended, if necessary, without interrupting the procurement process. We will review otherwise untimely protests, however, where, as here, the court has requested our opinion on the merits. See 4 C.F.R. § 21.10.

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<sup>4</sup> Eastern actually argues that the Coast Guard's interpretation of the requirement is unduly restrictive. Since we already have found that the Coast Guard's interpretation is in accord with the plain language of the RFP, we consider the related question of whether the requirement itself is restrictive.

The contracting agency has the primary responsibility for determining its needs and for drafting requirements which reflect those needs. Romar Consultants, Inc., B-206489, October 15, 1982, 82-2 CPD 339. This is because it is the contracting agency which is most familiar with the conditions under which the services or supplies have been and will be used. Taking this fact into account, our Office will not disturb agencies' decisions concerning the best method of accommodating their needs absent clear evidence that those decisions are arbitrary or otherwise unreasonable. See Interstate Court Reporters, B-208881.2, February 9, 1983, 83-1 CPD 145. While agencies should formulate their needs so as to maximize competition, specifications which may limit competition are not unduly restrictive so long as they reflect the government's legitimate minimum needs. See PittCon Preinsulated Pipes Corporation, B-209940.2, July 11, 1983, 83-2 CPD 70.

It does not appear that the Coast Guard's judgment that the identical propulsion configuration requirement reflects its minimum needs was unreasonable. The record shows that the Coast Guard's insistence on this requirement is based on the parent craft concept underlying this procurement--acquisition of patrol boats built from a design proven, in all material respects, in performance. The Coast Guard considered the propulsion configuration one of the design features which had to remain identical to the parent craft in order to insure that the parent craft's performance would be a valid gauge for predicting how the patrol boats would perform. In other words, it appears that the Coast Guard wanted to reduce to the extent practicable the risk that the patrol boats will not perform as well as the parent craft.<sup>5</sup>

We have recognized that reduction of technical risk is a legitimate basis for a restrictive solicitation requirement, see Interscience Systems, Inc.; Amperif Corporation, B-201943, B-202021, August 31, 1982, 82-2 CPD

<sup>5</sup>The Coast Guard has not furnished our Office any specific technical justification for its conclusion that propulsion configuration changes will inject unacceptable risk into the patrol boat performance. The Coast Guard apparently considered this data unnecessary in view of the untimeliness of the allegation. We believe, however, that the Coast Guard's obvious desire for a patrol boat based on a proven acceptable parent craft is sufficient justification for the identical propulsion configuration requirement under the circumstances here.

187, and we think requiring that certain material design components of the patrol boats be identical to the parent craft is a legitimate means of achieving this purpose. Eastern does not dispute that elimination of the SAR-33's centerline engine will change performance; it merely seeks to require the Coast Guard to rely on its technical opinion that the change will improve performance in lieu of actual performance data. While Eastern may consider theoretical technical analysis sufficient to prove an acceptable level of performance, the Coast Guard clearly does not. We agree with the Coast Guard that performance data is more reliable than theoretical analysis and, indeed, likely is the most reliable gauge of performance. Based on the record before us, we see no reason why the Coast Guard should not be permitted to limit its consideration to designs proven in performance, and therefore do not believe it was unreasonable for the Coast Guard to prohibit material changes in certain features of the parent craft design, including the propulsion configuration.

Eastern claims it is unfair for the Coast Guard to require "slavish adherence" by Eastern to the identical propulsion configuration requirement while at the same time relaxing other firm requirements to the alleged benefit of other offerors. Specifically, Eastern notes that in Amendment 0006 the Coast Guard relaxed the requirement for identical displacement and center of gravity (in connection with the speed and seakeeping performance requirements under COR section 070b), and that the Coast Guard also has permitted certain changes to underwater appendages (relocation of shaft struts, changing of shaft lines, and relocation and resizing of rudders) despite the section 042b requirement for identical underwater appendages. Eastern submits that since the Coast Guard has relaxed these requirements to accept unproven design changes which inject risk into performance, it also must relax the identical propulsion configuration requirement and accept Eastern's proposed change.

The question whether certain requirements in a solicitation should be relaxed or revised is not a matter of fairness but rather is directly related to an agency's minimum needs determination. If an agency decides based on its technical judgment that certain requirements should be omitted at the outset, later eliminated from the solicitation as unnecessary, or revised, it may do so; indeed, to the extent those requirements no longer represent the agency's minimum needs, they must be eliminated in order to ensure full competition. See, e.g., Doug Lent, Inc.,

B-209287.2, June 21, 1983, 83-2 CPD 9. On the other hand, as discussed above, a requirement is proper, and need not be revised or relaxed, if it is necessary to satisfy the government's minimum needs.

As discussed, we are persuaded that the requirement for an identical propulsion configuration is a legitimate means of reducing the risk of unacceptable performance and thus is part of the Coast Guard's minimum needs. It follows that this requirement need not be relaxed just so Eastern will be able to compete. The fact that other requirements have been changed in a manner which enables other offerors to compete is inapposite.

We will not question an agency's decision to relax solicitation requirements, and thus enhance competition, absent evidence of favoritism, fraud or intentional misconduct by government officials. See Davey Compressor Company, B-203781.2, May 10, 1982, 82-1 CPD 444. Eastern's implications notwithstanding, we find no such evidence here. The Coast Guard states that it considers the permitted changes to the underwater appendages to be minor, and that the displacement/center of gravity requirement was relaxed because no offeror could meet it as originally written (although Eastern claims it met the original requirement). An agency may relax specifications to increase competition, see Davey Compressor Company, supra, but is not required to do so. The Coast Guard apparently considered the propulsion configuration requirement too important to relax for Eastern in the name of increased competition.

#### V. Evaluation Scheme

Eastern finally contends that the Coast Guard "erred in structuring its evaluation scheme." It argues that since Department of Transportation (DOT) Order 4200.11A, which governed this procurement, provides for determining competitive range based on "ambiguities," "weaknesses," "deficiencies," and "clarifications," it was improper for the Coast Guard to establish "pass/fail" and other different evaluation factors in the RFP ("major factors" and "minor factors"). This argument concerns an alleged defect on the face of the solicitation and, since not raised prior to the initial closing date, is untimely. See 4 C.F.R. § 21.2(b)(1). We find it particularly inappropriate for Eastern to question at this juncture an evaluation scheme under which it competed without complaint, and of which it was aware as early as May 1983. In any event, the DOT

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order is an internal agency procedure which is not binding but, rather, serves only as guidance; the evaluation factors used here are neither unusual nor improper. See generally Moore Service, Inc., et al., B-204704.2, et seq., June 4, 1982, 82-1 CPD 532.

The protest is denied.

*for* Milton J. Rowland  
Comptroller General  
of the United States