

Phillips



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gould, Inc.
File: B-224365
Date: October 17, 1986

DIGEST

1. Notwithstanding protester's contention that Navy's needs can be met by alternative circuit breaker technologies, solicitation which restricts research and development proposals to one technology is not unduly restrictive of competition where Navy seeks to limit procurement in order to permit it to evaluate the specified technology for shipboard application. The government will not obtain the information it needs unless competition is limited to proposals for technology to be evaluated.

2. Protest founded on assumption that Navy, by pursuing research and development using one of several alternative technologies, will, at later date, limit competition to approaches it has developed is premature. The Navy has made no selection of equipment it may procure once its current research and development effort is completed.

DECISION

Gould, Inc., Systems Protection Division, protests the award of a contract under request for proposals (RFP) No. N00024-86-R-4016, issued by the Naval Sea Systems Command (NAVSEA) for the design of insulated case circuit breakers (ICBs). We dismiss the protest in part and deny it in part.

A circuit breaker is a switch that automatically interrupts an electrical circuit under abnormal conditions such as overloads. The Navy will use the subject circuit breakers to protect ships' electrical power distribution systems. We are concerned in this case with two types of circuit breakers: ICBs, mentioned above, and air frame circuit breakers (ACBs).

The RFP contemplates the award of a negotiated cost-plus-fixed-fee research and development (R&D) contract for the development of an improved type ICB for shipboard

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use. The work is to be divided into three phases. Phase I requires the design of various size ICBs. Phase II requires the contractor to manufacture and test ICB prototypes and provide related mounting hardware, training, and logistics support data. Phase III requires the contractor to provide technical and engineering services to incorporate changes in the ICBs and accompanying data and technical documentation. Phases II and III are included as contract options.

Gould objects to NAVSEA's exclusion of ACBs from consideration because Gould believes that by limiting award to firms offering ICB designs, the Navy is unduly restricting competition. Gould argues that ACBs are proven equipment now in use by the Navy which meets all mission requirements and can be readily adapted to meet projected future mission requirements. According to Gould, ICBs have no inherent technical advantages vis-a-vis ACBs.

Also, Gould objects to the RFP requirement that the ICBs be compatible with integrated rapid response electric systems (IRRES), which are being developed to monitor, control, and reconfigure ship electrical power systems to insure continuous and reliable power. In Gould's view, the effect of requiring IRRES compatibility in an ICB development contract will be ultimately to preclude ACB manufacturers from competing for future Navy circuit breaker business.

Finally, Gould objects to a requirement in phase II calling for development of a retrofit kit to equip existing Navy power circuit breakers with solid state electronic trips. Gould contends that the kit involves very little development, and virtually no research, and is separate and distinct from the development work sought by NAVSEA under the RFP. Gould contends that the retrofit work should be separated from the RFP and offers for the work solicited on a competitive non-developmental basis.

NAVSEA argues first that Gould is not a proper party to file a protest against the solicitation. NAVSEA states that although Gould is alleging that the RFP is unduly restrictive, that firm does not argue that it is unable to submit a proposal for the design of ICBs, or that it was placed in an unfair competitive position by the requirements of the RFP. Gould, in fact, did submit a proposal. Therefore, NAVSEA contends, Gould is not an interested party who may protest that the RFP is restrictive.

Our Bid Protest Regulations define an interested party as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract." 4 C.F.R. § 21.0(a) (1986). Gould states that it would be forced to retool its existing facility to supply ICBs. We therefore think that Gould had an economic stake as an established ACB manufacturer in the solicitation's restriction to ICB technology. Gould thus qualifies as an interested party. See Julie Research Laboratories, B-218598, 85-2 CPD ¶ 194, where we held that a protester may be an interested party if it is precluded from submitting a bid or proposal or is "otherwise prejudiced" by the specifications it challenges.

Regarding Gould's allegation that the ICB design restriction unduly restricts competition, the contracting agency has broad discretion in determining its minimum needs and the best methods of accommodating those needs. The Trane Co., B-216449, Mar. 13, 1985, 85-1 CPD ¶ 306. An agency may, however, only include restrictive provisions in a solicitation to the extent necessary to satisfy its needs or as otherwise authorized by law. 10 U.S.C. § 2305(a)(1)(B)(ii) (Supp. III 1985). Where, as here, the protester challenges a specification as being restrictive of competition, the burden is on the procuring agency to establish prima facie support for its position that the restriction imposed is necessary to meet its minimum needs. R.R. Mongeau Engineers, Inc., B-218356, et al., July 8, 1985, 85-2 CPD ¶ 29.

NAVSEA states that the RFP is not restrictive because it is for research and development of an improved ICB suitable for military use. Most commercially available circuit breakers, NAVSEA notes, are ICBs; such ICBs incorporate technical advances over existing circuit breakers used by the Navy. These advances include the use of solid state sensing and control technology, greater shock resistance, adaptability, and ease of use. NAVSEA expects the ICB to be smaller, lighter and less expensive than existing circuit breakers. NAVSEA also points out that ICBs now available for industrial use are manufactured by a number of companies, while ACBs suitable for Navy use are manufactured by only one or two firms. NAVSEA agrees with the protester that ACBs have been widely used in Navy ships (and points out that money has been periodically spent to upgrade ACB designs), but suggests that reliance on ACBs stems from the fact that ICBs have not been tested to determine their military suitability. NAVSEA adds that, contrary to Gould's fears, no determination concerning

the use of ICBs in the fleet can or will be made until completion of the contract. NAVSEA asserts it is seeking at this point to conduct research and development to permit it to assess the potential value of ICB designs.

We think the Navy acted properly in restricting competition to firms that are interested in developing ICB technology. According to Gould, ACBs can now meet the Navy's needs, or can easily be made to meet them. The Navy here is attempting to determine whether future circuit breaker requirements could be met as well, or better, through the use of ICB technology. It cannot accomplish this unless it restricts competition for this particular contract to proposals to develop ICBs for potential use in Navy vessels. Since the imposition of the restriction is the only way the Navy can meet its needs in this respect, we have no basis for concluding that the competition was unduly restricted.

Further, we dismiss Gould's contention that the contractor selected for this procurement should not be asked to develop an ICB that is compatible with IRRES, which the Navy is developing separately to control shipboard electric systems. Essentially, Gould contends that by developing links to IRRES, the Navy may advance the state-of-the-art in shipboard circuit breaker systems to the point that it will be tempted in the future to specify ICB technology to the exclusion of ACB.

It is, we think, reasonable for the Navy to evaluate ICB potential in light of anticipated future needs, such as ICB use with IRRES. Gould's complaint really concerns whether the Navy should also spend money in a parallel effort to develop ACB IRRES compatibility before choosing a circuit breaker design. However, that question, and indeed, the entire matter of the ultimate selection of a circuit breaker design for shipboard use, is not a matter for our consideration here since, as the Navy indicates, it will make no decision regarding ICB use until completion of the ICB development program. Aerodyne Investment Castings, Inc., B-221725, Mar. 24, 1986, 86-1 CPD ¶ 291.

Finally, we disagree with Gould's argument that the Navy has included an option clause in the present solicitation which could be used to order field modifications to retrofit older circuit breakers that remain in use with the fleet. As the Navy points out, the requirement in the solicitation is for the design, not for the installation of retrofit kits. The

Navy also states that Gould has previously submitted a proposal concerning these modifications based on the use of ACB technology.

To the extent Gould is arguing that the present contract should not include an option for retrofit kit design, its protest must be denied because, like the inclusion of IRRES considerations, kit development is reasonably a part of the Navy's evaluation of ICB technology. Moreover, to the extent Gould is concerned that the Navy will order retrofit kits, we must assume, as we have with regard to the other issues raised in this case, that the Navy will not proceed with the selection of circuit breakers for fleet use without first properly considering all available sources.

The protest is dismissed in part and denied in part.

for Seymour E. Gross
Harry R. Van Cleve
General Counsel