



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Imperial Schrade Corporation  
File: B-223527.2  
Date: March 6, 1987

### DIGEST

1. When a solicitation provides that user preference will be considered slightly less important than price in the evaluation of offers for bayonet systems, award to a higher-rated, higher-priced offeror than the protester is not unreasonable in view of a critical safety deficiency in the lower-priced system that called into question the reliability of that system for use in the field. An agency is not required to procure a bayonet system that does not meet minimum safety requirements.
2. The General Accounting Office will not question an agency determination concerning the reasonableness of an offeror's price for bayonet systems, which involves the exercise of business judgment by the contracting officer, unless it is unreasonable or there is a showing of bad faith or fraud. Protester's statement that it could offer an equivalent system for 20 percent less does not establish the unreasonableness of the determination where the awardee's system received a substantially higher technical rating than the protester's system; all of the systems receiving a higher technical rating were substantially higher-priced than the protester's system; and the agency's detailed price/cost analysis indicates that the contract price was reasonable.
3. A protest that the contracting agency unduly restricted competition by allowing only 61 days for submission of proposals and by providing functional specifications instead of detailed design specifications concerns an alleged impropriety which was apparent prior to the closing date for receipt of initial proposals, and therefore is untimely where not filed until after the closing date.
4. A protest that the contracting agency unduly restricted competition by allowing only 61 days for submission of proposals is without merit when (1) the period exceeds the statutorily mandated minimum time of 30 days; (2) 6 offerors submitted samples which passed the initial inspection for

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conformance to essential physical requirements, and (3) the agency conducted the procurement to obtain a non-developmental item.

5. A protest that the contracting agency unduly restricted competition by providing functional specifications instead of detailed design specifications is without merit when six offerors submit samples that pass an initial inspection indicating that they can perform the required functions. To ensure that specifications are stated in terms that will permit the broadest field of competition, agencies may require offerors to use their own inventiveness and ingenuity in devising approaches to meet the minimum needs of the government.

6. Protest that awardee lacks manufacturing capability and intends to rely substantially on subcontractors is denied where the solicitation places no limit on subcontracting and does not otherwise restrict the government's authority to accept a proposal based on substantial subcontracting.

7. Protest that awardee's employment of a retired Army officer as its program manager should disqualify the firm is denied where the officer retired 22 months before the solicitation was issued and the record does not show that any action by the retired officer resulted in prejudice for or on behalf of the awardee. Mere sales "puffery" by the awardee about the influence of the retired officer in soliciting potential subcontractors is insufficient evidence of an impropriety to warrant barring the awardee from the procurement.

8. Offeror's employment of a retired Army officer who allegedly wrote the specifications for the procurement does not violate the post-employment restrictions on government employees in 18 U.S.C. § 207 (1982), when no specific party, i.e., an offeror for the procurement, was involved in the particular matter under the former employee's responsibility.

9. The General Accounting Office will not review a challenge to an affirmative determination of an awardee's responsibility on the ground that the awardee's former program manager lacks integrity where there is no showing of possible fraud or bad faith on the part of contracting officials.

10. Protest that awardee's product fails to meet mandatory solicitation requirements is untimely where protester first raised specific alleged deficiencies at a debriefing but did

not file its protest until 5 weeks later. Bid Protest Regulations require protests not based on solicitation improprieties to be filed within 10 working days after protester knew or should have known the basis for its protest.

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## **DECISION**

Imperial Schrade Corporation protests the award of a contract to Phrobis III Ltd. under request for proposals (RFP) No. DAAA21-86-R-0155, issued by the Department of the Army, Armament, Munitions and Chemical Command, for a Multipurpose Bayonet System. Imperial Schrade contends that the solicitation unduly restricted competition, challenges both the responsibility of Phrobis and the acceptability of its proposal, and questions the propriety of the award decision in light of the evaluation factors in the RFP.

We deny the protest in part and dismiss it in part.

The solicitation, issued on March 28, 1986, requested proposals to supply a bayonet system comprised of a multipurpose knife carried in a detachable scabbard. The Military Specification and Functional Purchase Description included in the solicitation described the bayonet in terms of four required functions (bayonet, field craft knife, combat knife and wire cutter); performance criteria (e.g., resiliency, impact-resistance, ability to cut certain materials, time required to perform each function, and corrosion-resistance); and certain physical requirements such as maximum weight.

The solicitation required offerors to certify conformance to the specifications, as verified by testing, and to provide 55 samples of their proposed bayonet system, identified only by number and not by the manufacturer's name. The solicitation provided that the samples initially had to pass an inspection to determine if they met certain essential physical requirements set forth in the Functional Purchase Description. Those passing this inspection were to be evaluated by potential users of the bayonet systems. The RFP included a copy of the questionnaire to be completed by each soldier, who would evaluate the bayonet system for its overall performance and performance in each of the four required functional areas.

The solicitation stated that discussions conducted after evaluation would be limited to price, analysis of the test data submitted in support of the certificate of conformance to the specifications, data rights and contract terms. The RFP cautioned that discussions were not intended to include a

review of the performance of the sample bayonet systems, that information in this regard would not be released during discussions, and that modifications to the proposed bayonet systems could not be included in the final offers. The solicitation provided for award based upon user preference and price, with user preference "slightly less important than price."

The Army received eight proposals in response to the solicitation. Two were found unacceptable and not evaluated because the required 55 samples were not submitted. The bayonet systems proposed by the other six offerors were found to meet the essential physical requirements and underwent user evaluation.

Based upon user evaluations by 28 infantrymen, 6 Ranger combat knife experts and a number of Army Infantry Board parachutists at Fort Benning, Georgia, the Army ranked the proposals with respect to user preference, price, and the number of failures encountered during the user evaluation tests as follows:

|                | Overall User<br>Preference Rating<br>(Maximum of 57.4) | Best and Final<br>Price | Mission<br>Failures |
|----------------|--|-------------------------|---------------------|
| Phrobis        | 49.3   | \$49.56                 | 0                   |
| Marto, S.L.    | 43.2   | \$39.85                 | 12                  |
| Royal Ordnance | 40.2   | \$45.00                 | 37                  |
| Imperial       |  |                         |                     |
| Schrade        | 37.4   | \$19.75                 | 3                   |
| A. Eickhorn    | 36.2   | \$19.29                 | 9                   |
| S-Tron         | 33.7   | \$52.58                 | 15                  |

Imperial Schrade submitted a two-piece scabbard held together by a "press-fit." On two occasions during the user evaluation tests the lower portion of the scabbard separated from the upper portion, exposing the bayonet blade. This occurred once when a parachutist was attempting to sit in a helicopter and once during a parachute landing. The Army concluded that these failures represented a critical safety deficiency.

The Phrobis bayonet system received the highest overall user preference score, and the Army made award to Phrobis on October 6 at a total price of \$15,640,820 for the base quantity of 315,600 bayonets. On October 20, Imperial Schrade filed this protest. Since the protest was filed more than 10 calendar days after award, too late to require suspension of performance under the Competition in Contracting Act of 1984

(CICA), 31 U.S.C. § 3553(d) (Supp. III 1985), see Federal Acquisition Regulation, 48 C.F.R. § 33.104(c)(5) (1986), the agency elected not to suspend performance.

#### RELATIVE EVALUATION OF PROPOSALS

Imperial Schrade initially questions the reasonableness of the price-technical tradeoff made by the agency in selecting Phrobis' higher rated (49.3 vs. 37.4 points out of 57) but substantially more expensive (\$49.56 vs. \$19.75) bayonet system, since the evaluation criteria indicated that user preference would be "slightly less important than price."

After a market survey, the Army elected to procure the bayonet systems as non-developmental items. Based upon this approach and a desire to minimize costs, the Army did not conduct engineering tests but instead required offerors to certify that their products met the performance requirements of the RFP and evaluated the bayonet systems through extensive field tests by potential users. The Army considered user preference to be especially important since a bayonet is a "personal" item. The solicitation clearly laid out the ground rules for the procurement, including the importance of user evaluation tests.

The Phrobis bayonet system, in addition to receiving the highest overall user preference score, was rated highest by a substantial margin in each of the four functional areas. As illustrated below, user comments reflected this superiority:

"(A) Candidate's [Phrobis'] performance was a lot better than any of the other candidates; it performed very well."

"I felt A candidate was the best overall because it always kept a good edge, was very steady, the perfect weight and very durable."

"Alpha . . . was the best overall knife; it was comfortable to use; tasks were easier to perform with it."

"Overall A candidate was the best. The bayonet was strong, sturdy . . . and never lost its sharpness."

"(A) Candidate did [an] outstanding job in all the tests; it never let me down."

"Cand. [Candidate] A has great quality production and is equipped for the various things that we tested . . . . Perfect balance, sturdy, durable."

"Alfa - It performed excellent on all of the tests."

"Cand. A. . .[was] far, far superior."

Moreover, while no mission failures were "charged" to the Phrobis bayonet system, Imperial Schrade's bayonet system suffered three mission failures, including two resulting in a critical safety deficiency. The solicitation required that the Multipurpose Bayonet System be compatible with a parachutist's individual equipment and not present a hazardous or unsafe condition to the parachutist during jumping operations. The Army Infantry Board and the Army Infantry School found that the two instances in which Imperial Schrade's bayonet scabbard separated and exposed the bayonet blade during airborne operations--once while the parachutist was attempting to sit in the aircraft and once during a parachute landing--represented a critical safety deficiency which could cause serious injury. Accordingly, the contracting officer reports that the protester's bayonet system as submitted could not be fielded.

In addition, our examination of samples of the Phrobis and Imperial Schrade bayonet systems, including the Imperial Schrade samples in which the upper and lower portions of the scabbard separated, supports the Army's conclusions regarding the relative quality of the two systems. Phrobis' bayonet blade is larger and more substantial than the Imperial Schrade blade, while its one-piece scabbard appears sturdier than the protester's two-piece scabbard. Moreover, we note that not only did the lower portion of the two-piece Imperial Schrade scabbard separate from the upper portion, but in one of the two instances the lower portion fractured and broke off, rather than merely separating from the upper portion.

Clearly, an agency is not required to procure a bayonet system that does not meet minimum safety requirements. Thus, although the evaluation criteria referred "primarily" to user evaluation and price, we think the overall statement of award criteria--the "Government reserves the right of such flexibility in evaluation, as is necessary, to assure placement, of a contract in both the public's and Government's best interests"--must be read as permitting the Army, based upon the results of the field testing, ultimately to reject any

off-the-shelf bayonet system that was found to have a fundamental defect. The testing indicated that a critical safety deficiency existed in Imperial Schrade's bayonet system which rendered it unsafe for rigorous use in the field. Although we recognize that Imperial Schrade's price was substantially less than Phrobis' price, we believe that the Army was not required to buy an unsafe bayonet system at any price. Cf. Thomas Engineering Co., B-220393, Jan. 14, 1986, 86-1 CPD ¶ 36 (price proposed by offeror is irrelevant where proposal is properly rejected as technically unacceptable).

Accordingly, we deny this portion of the protest.

#### PRICE REASONABLENESS

Imperial Schrade further alleges that the award to Phrobis was characterized by a "significant price overrun." As indicated above, the protester maintains that it could "manufacture the required item" for 20 percent less than Phrobis' price. The contracting officer awarded Phrobis a firm, fixed-price contract at \$49.56 per unit. Based on a detailed price/cost analysis of Phrobis' proposal, which recommended a unit cost of \$48.78, the contracting officer found Phrobis' proposed price to be fair and reasonable.

A determination concerning price reasonableness involves the exercise of business judgment by the contracting officer, and we will not question that determination unless it is unreasonable or there is a showing of bad faith or fraud. See Alan Scott Industries et al., B-212703 et al., Sept. 25, 1984, 84-2 CPD ¶ 349.

Imperial Schrade's claim that it could offer an equivalent bayonet system for 20 percent less than Phrobis' price does not establish that the Army's price reasonableness determination was unreasonable or improper. See Systematics General Corp., B-224991, Feb. 20, 1987, 87-1 CPD ¶ \_\_\_\_\_. The claim in fact suggests an explanation for the price disparity between the two bayonets, since Imperial Schrade in effect admits that the higher price of the Phrobis bayonet system largely resulted from a more expensive design than that of Imperial Schrade's bayonet system. All three of the bayonet systems receiving a higher overall user preference rating than Imperial Schrade's system also cost substantially more.

In light of the price range of the offerors in this procurement, the substantially higher user preference rating given the Phrobis bayonet system, and the agency's detailed price/cost analysis, we conclude that the protester has not demonstrated that the price reasonableness determination was unreasonable or made in bad faith. We therefore deny this portion of the protest.

## RESTRICTIVE SPECIFICATIONS

Imperial Schrade argues that the Army unreasonably restricted competition by allowing only 61 days for the submission of proposals and by providing functional specifications instead of detailed design specifications. In particular, the protester argues that "any manufacturer would have required up to 6 months to redesign its best and most suited 'off-the-shelf' blade to the . . . [Army's] announced requirements." The protester also maintains that due to a lack of design specifications, offerors were not proposing on the same products.

The Army's acquisition strategy for the Multipurpose Bayonet System was based on a market survey, dated July 31, 1985, conducted to determine whether the Army's needs could be met by suppliers with commercially available items or whether a contract to develop a suitable system would be required. The survey was announced in the Commerce Business Daily and the Army received responses from 13 firms. Imperial Schrade, in its response, proposed to meet the Army's functional requirements with "minor" or "simple" modifications of a current bayonet and scabbard. Four other firms stated that they had products meeting the agency's requirements, and an additional firm stated that it had such a product in final development.

Based on these responses, the Army solicited proposals on a non-developmental or "off-the-shelf" basis. As stated above, although two offerors failed to provide the required 55 samples, the remaining offerors provided samples which passed the initial inspection for conformance to essential physical requirements.

Our Bid Protest Regulations, 4 C.F.R. part 21 (1986), are designed to give protesters and interested parties a fair opportunity to present their cases without unduly disrupting the orderly and expeditious process of government procurements. See Hartridge Equipment Corp.--Reconsideration, B-219982.2, Oct. 17, 1985, 85-2 CPD ¶ 418; Pennsylvania Blue Shield, B-203338, Mar. 23, 1982, 82-1 CPD ¶ 272. Accordingly, they require protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals to be filed prior to that date. 4 C.F.R. § 21.2(a)(1).

The Army's use of functional specifications and its establishment of a 61-day period for submission of offers were clearly apparent on the face of the solicitation. Instead of protesting these matters before the closing date so that they could be resolved at an early stage in the

procurement, Imperial Schrade filed its protest nearly 5 months later. Accordingly, these bases of protest are untimely.

In any case, we consider the allegations to be without merit. The 2 months allowed by the agency for the preparation of offers exceeds the statutorily mandated minimum time of 30 days, 15 U.S.C. § 637(e)(3)(B) (Supp. III 1985); 41 U.S.C. § 416(a) (Supp. III 1985); Federal Acquisition Regulation (FAR), 48 C.F.R. § 5.203(b) (1986), and the period does not appear inconsistent with the Army's desire for a non-developmental item. Also, CICA provides that subject to the needs of the agency and the market available to satisfy such needs, specifications may be stated in terms of either function, performance, or design requirements. 10 U.S.C. § 2305(a)(1)(C). The Conference Report stated that "[w]herever practical . . . contractors should be told what the Government needs in functional terms. This approach allows the Government to take advantage of the innovative ideas of the private sector." H.R. Rep. No. 861, 98th Cong. 2d Sess. 1429 (1984). We also have held that to ensure that specifications are stated in terms that will permit the broadest field of competition to meet the minimum needs of the government, agencies may state requirements in terms of performance rather than design specifications, requiring offerors to use their own inventiveness and ingenuity in devising approaches that will meet the government's performance requirements. See SAFECOR Security and Fire Equipment Corp., 64 Comp. Gen. 511 (1985), 85-1 CPD ¶ 527.

#### QUALIFICATIONS OF AWARDEE

##### Subcontracting

Imperial Schrade argues that Phrobis is only a "bid broker," lacking manufacturing capability and relying instead on subcontractors. The record indicates that Phrobis III Ltd., formed in October 1985 to develop a new bayonet system, is an affiliate of Phrobis Ltd. and another firm. Phrobis Ltd. previously developed the Buckmaster Knife, licensed to Buck Knives, Inc. for commercial sale. Phrobis apparently offered a modified Buckmaster Knife to meet the Army's requirement for the Multipurpose Bayonet System. The Army's price/cost analysis of Phrobis' initial offer indicated that the firm proposed to subcontract more than 90 percent of the total proposed cost, with Buck Knives acting as the principal subcontractor.

In the absence of a restriction in the RFP against subcontracting, the government generally may accept a proposal which is based on substantial subcontracting. Nations, Inc., B-220935.2, Feb. 26, 1986, 86-1 CPD ¶ 203. Imperial Schrade has pointed to no applicable restriction on subcontracting in this solicitation. Accordingly, we deny this basis of the protest.

#### Employment of a Retired Officer

Imperial Schrade contends that Phrobis' employment of a retired Army officer as its program manager for the procurement should disqualify the firm. The protester alleges that on July 21, 1986--after the closing date for receipt of initial proposals but before the submission of best and final offers--the retired officer contacted one of its employees on behalf of Phrobis, indicated that Phrobis would receive the award in late September, and asked whether Imperial Schrade would be interested in becoming a subcontractor. The retired officer allegedly stated that he had worked for a number of years in the office responsible for procurement of the Multipurpose Bayonet System, that he had personally drawn up the specifications for the system, that only he knew exactly what the Army was looking for, and that he had founded Phrobis for the purpose of developing a bayonet to meet the specifications he had written.

Imperial Schrade claims that the retired officer drew up the specifications for the Multipurpose Bayonet System in 1981 while working for the Army Research and Development Command in Dover, New Jersey, as a research and development coordinator for light infantry weapons. In support, the protester states that it employed an investigator who was told by three former co-workers of the retired officer that he was directly involved in development of a bayonet system while in the Army.

The protester is concerned that the retired officer or others may have improperly influenced the Army's selection decision, and it points to an undated letter from Phrobis to potential subcontractors stating that it "has received information that indicates it is in a strong position to win the contract . . . ." Imperial Schrade also alleges that as a result of information from the retired officer, Phrobis might have had significant time before announcement of the procurement to prepare its proposal and that the specifications may have been tailored to an existing Phrobis product.

Finally, Imperial Schrade reports that on July 22, 1986, a federal grand jury returned an indictment against the retired officer, charging him with exporting transport aircraft to Libya in violation of applicable export license requirements. Although the retired officer was immediately replaced as Phrobis' program manager for the Multipurpose Bayonet System procurement, Imperial Schrade argues that his continued association with the firm as a part-time consultant assisting in the coordination of subcontractors and vendors renders Phrobis nonresponsible for lack of integrity.

The Army responds that its own investigation revealed: (1) that the retired officer worked on pistols, revolvers, and silencers for small arms, but not on bayonets, between 1977 and 1981, and (2) that he worked on robotic weapons between 1981 and his retirement from active service in May 1984. His retirement occurred 14 months before issuance of the market survey and 22 months prior to the date of the Military Specification and Functional Purchase Description for the bayonet system in this case. The Army further reports that there was no bayonet program during the years the retired officer worked for the Research and Development Command in Dover and that the retired officer did not write the specifications for the current bayonet procurement.

The Army contacted the three co-workers identified by Imperial Schrade and they denied making the statements attributed to them by the protester. The record includes copies of signed statements by two of the three individuals denying Imperial Schrade's characterization of their comments. One states that he told the protester that the retired officer was not involved in any aspect of bayonet development, while the other states that he told the protester that he did not know if the retired officer had been involved in any of the "[b]ayonet programs [that] had come and gone over the years."

Phrobis has submitted an affidavit from the retired officer denying any involvement in or awareness of Army efforts to develop or procure a new bayonet prior to being contacted by Phrobis in this regard in August 1985, 15 months after his retirement. It has also submitted the retired officer's military performance appraisal reports for the relevant periods, none of which mentions involvement in bayonet development or procurement.

There are several issues raised by Imperial Schrade's allegations about the retired officer. The first is whether the likelihood of a conflict of interest or impropriety concerning the procurement requires exclusion of Phrobis in

order to ensure the integrity of the procurement system. Such an exclusion must be based upon "hard facts" and not mere "suspicion or innuendo." CACI, Inc.-Federal v. United States, 719 F.2d 1567 (Fed. Cir. 1983); NKF Engineering, Inc., 65 Comp. Gen. 104 (1985), 85-2 CPD ¶ 638. In view of the fact that the officer retired more than 14 months before the Army conducted its market survey and 22 months before the solicitation was issued, we cannot say that any role he may have played in the bayonet program as an Army officer resulted in an improper advantage to Phrobis. The mere employment of a former government employee who is familiar with the type of work required but not privy to the contents of the proposals or to other inside agency information does not confer an unfair competitive advantage. Regional Environmental Consultants, B-223555, Oct. 27, 1986, 86-2 CPD ¶ 476. The only "hard" evidence in the record regarding whether any action by the retired officer resulted in prejudice for or on behalf of Phrobis is the retired officer's alleged statement to Imperial Schrade that "only he knew exactly what the Army was looking for" and Phrobis' statement that it had information that it was in a strong position to receive an award. In our view, these statements can be viewed as sales "puffery" in soliciting potential subcontractors and are insufficient evidence of an impropriety to warrant barring the firm from the procurement, particularly in view of the Army's conclusion from its own investigation that the retired officer's prior duties did not concern bayonets.

A second issue raised by Imperial Schrade is whether Phrobis is ineligible because the employment of the retired officer violated post-employment restrictions on government employees. The interpretation and enforcement of post-employment restrictions are primarily matters for the Department of Justice, not this Office. In this case, the provisions cited by Imperial Schrade appear inapplicable, since they address a former employee's actions in connection with a particular government matter "involving a specific party" during his employment. See 18 U.S.C. §§ 207(a) and 207(b)(i) (1982); 5 C.F.R. §§ 737.5 and 737.7 (1986).<sup>1/</sup> Here, no "specific party," i.e., an offeror for the procurement, was involved in

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<sup>1/</sup> 5 C.F.R. § 737.5(a) summarizes the basic prohibition of 18 U.S.C. § 207(a) as follows:

"No former Government employee, after terminating Government employment, shall knowingly act as agent or attorney for, or

the matter under the former employee's responsibility. See Regional Environmental Consultants, B-223555, Oct. 27, 1986, 86-2 CPD ¶ 476. As the court stated in United States v. Medico Industries, 784 F.2d 840, 843 (7th Cir. 1986), with regard to 18 U.S.C. § 207(a):

"The employee is disqualified only if the contract or other particular matter involves the same 'specific party or parties.' So we take it that an official who drafts specifications for a weapon may represent people who later submit bids to make the weapon; specifications (or regulations) do not have specific parties."

See also 5 C.F.R. § 737.5(c)(2), Example 2. Consequently, in our view the post-employment restrictions on government employees provide no ground for finding Phrobis ineligible.

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otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter such employee participated personally and substantially as a Government Employee." (Emphasis supplied.)

5 C.F.R. § 737.7(a) summarizes 18 U.S.C. § 207(b)(i) as follows:

"No former Government employee, within 2 years after terminating employment by the United States, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party, (3) if such matter was actually pending under the employee's responsibility as an officer or employee within a period of 1 year prior to the termination of such responsibility." (Emphasis supplied.)

Finally, the protester challenges the agency's affirmative determination that Phrobis is a responsible firm under FAR, 48 C.F.R. subpart 9.1, because of the alleged lack of integrity of its former program manager, including the individual's indictment for violating export license requirements. Our Office will not review such a determination in the absence of a showing of possible fraud or bad faith on the part of contracting officials. 4 C.F.R. § 21.3(f)(5); see Northwest Forest Workers Assoc., B-217588, Jan. 24, 1985, 85-1 CPD ¶ 99 (allegation of criminal conviction); John C. Holland Enterprises, B-216250, Sept. 24, 1984, 84-2 CPD ¶ 336 (allegation of criminal conviction).

The fact that the contracting officer made an affirmative determination of Phrobis' responsibility in the face of the retired officer's indictment falls far short of demonstrating possible fraud or bad faith on the part of contracting officials, especially when that determination was made after the replacement of the retired officer as program manager.

#### MANDATORY SOLICITATION REQUIREMENTS

Finally, in a submission filed with our Office on December 3, Imperial Schrade generally alleged that the Phrobis bayonet system failed to meet the mandatory requirements of the solicitation. At the bid protest conference on December 7 and in its subsequent comments on the conference, the protester identified five specific mandatory requirements which the Phrobis bayonet system allegedly failed to meet.

The Army, while contending that the Phrobis bayonet system meets the mandatory solicitation requirements, argues that Imperial Schrade's allegations are untimely. We agree. Imperial Schrade, based on a photograph of the Phrobis bayonet system published on October 20, first raised the specific alleged deficiencies with the Army at its October 29 debriefing. The Army informs us that it confirmed at the debriefing that the photograph in question accurately depicted the Phrobis bayonet system, but denied that the system failed to meet the specification requirements. Our Bid Protest Regulations require protests not based on solicitation improprieties to be filed within 10 working days after the basis of protest is known. Imperial Schrade waited more than 5 weeks to file its protest. While Imperial Schrade did not physically examine the Phrobis bayonet system until

November 20, in view of the firm's specific allegations on October 29, its basis for protest was known no later than that date.

The protest is denied in part and dismissed in part.

*Harry R. Van Cleve*  
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