



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Teledyne Industries, Inc., CME/MEC Divisions

File: B-231020

Date: July 8, 1988

DIGEST

Protest that 29 days was not sufficient time for the completion and submission of proposals following the issuance of a solicitation amendment that was accompanied by voluminous software documentation is denied where there is no contention that the amendment substantially changed solicitation requirements; complete analysis of the software data did not appear to have been necessary in order to prepare an adequate proposal; and the agency received timely proposals from four offerors, none of which had either requested the software documentation or suggested that more time was needed in order to analyze it.

DECISION

Teledyne Industries, Inc., CME/MEC Divisions, protests request for proposals (RFP) No. 87-R-5416, issued by the Department of the Navy, for certain components for a specified electronic warfare system. Teledyne contends that the solicitation, as amended, did not allow sufficient time for the firm to prepare its proposal and that the agency did not provide all offerors with equal access to required information. We deny the protest.

The Navy issued the solicitation to seven potential offerors^{1/} on September 30, 1987, and initially required that proposals be submitted by November 18. Some potential

^{1/} The Navy is conducting this procurement under 10 U.S.C. § 2304(c)(6) (Supp. IV 1986), which permits an agency to use other than competitive procedures when "disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. . . ." Because of the classified nature of the procurement, our discussion in this decision is necessarily limited.

042727

offerors, including Teledyne, submitted a number of requests to the agency for clarification of the solicitation. The agency advised Teledyne on November 12 that it was reviewing the questions and that the due date for proposals would be postponed. On November 18, Teledyne requested responses to its questions and suggested that the agency hold a pre-proposal conference. When a further response from the Navy was not forthcoming, Teledyne informed the agency that it had "suspended activity" regarding the procurement pending receipt of the information requested; the firm stated that upon receipt of the information, "a full thirty (30) days will be required to finish the proposal."

The Navy amended the solicitation on January 6, 1988. According to the agency, while the amendment responded to many of the questions raised by potential offerors, answers to questions that could reveal a potential offeror's technical approach were provided only to that particular firm. Questions bearing on an offeror's understanding of the system's design--a factor to be evaluated--were not answered at all. The amendment forwarded to all potential offerors copies of three software-related documents: the software program description document, the software source data document, and the interface design specifications. The amendment extended the closing date for receipt of proposals to February 4.

After receiving the amendment, Teledyne requested an additional 60-day extension of the closing date. The firm said that it would need to reassemble its disbanded proposal team and that a thorough review of the data accompanying the amendment was not feasible prior to February 4. When the Navy refused to grant a further extension, Teledyne filed a protest with the agency. The Navy denied the protest, and Teledyne then filed a protest with this Office. Four firms submitted proposals by February 4; Teledyne was not among them.

The protester points out that the solicitation provided that the contractor would be required to modify the existing software package for the system in order to allow for integration of the components into the system. Therefore, argues the protester, potential competitors needed access to the software package in order to prepare acceptable proposals. Given the volume of the software documentation that accompanied the solicitation amendment--approximately 14,000 pages of material in microfiche format, says the protester--an offeror would have needed prior experience with the documentation in order to prepare an acceptable proposal by February 4. Teledyne contends that some of the firms that submitted proposals in this procurement had such prior

experience and that the proposal preparation period cannot be deemed reasonable merely because these "incumbents" were able to submit timely proposals. The protester also complains that the Navy did not disclose to it the answers to all questions raised by the other offerors.

The Navy reports that, in its judgment, the RFP contained sufficient information to enable offerors to ascertain the changes to the system software that would be required, and that access to all of the software documentation for that system was unnecessary. In any event, says the agency, while the material provided with the solicitation amendment may have been voluminous, the material contained a table of contents to facilitate access. The agency further reports that by the nature of the software a change in one system area would not necessarily require changes in any other area.

The Navy concedes that two of the offerors in this procurement did have prior experience with the software documentation as a result of previous work in the program. (The record does not indicate that the other two offerors that submitted timely proposals had such prior experience). Further, the agency points out that the component specifications were based in large measure on the equipment that will be replaced and that Teledyne had supplied some of this equipment in connection with the program.

Finally, the agency says that an extension of the closing date would not have been appropriate here because of the need to replace existing equipment as soon as possible. The specific facts that required the agency to act expeditiously have been disclosed to this Office with restrictions on further disclosure.

When a solicitation is amended prior to the closing date for receipt of proposals, the agency must determine the extent, if any, to which the closing date should be extended. Federal Acquisition Regulation (FAR) § 15.410(b). In this regard, the decision as to the appropriate time allowed for preparation of proposals is a matter within the discretion of the contracting officer. Uniserv, Inc., et al., B-228530, et al., Dec. 23, 1987, 87-2 CPD ¶ 621. We will not question that decision unless it is shown to be unreasonable. See Singer Co., Librascope Division, B-227140, Sept. 8, 1987, 87-2 CPD 225. In this case, we cannot find unreasonable the Navy's determination to require proposals to be submitted by February 4 following the issuance of an amendment on January 6.

The protester does not contend that the amendment issued on January 6 changed the solicitation requirements so substantially that the firm could not submit a proposal by February 4. Rather, the protester's sole basis for contending that the 29-day period allowed by the agency was insufficient is that the amount of software data provided with the amendment was so great that the firm was unable to complete an analysis of the data within the time allowed.

According to the agency, however, no firm other than Teledyne requested an extension of the closing date in order to analyze the software documentation that accompanied the amendment. One firm did request a 2-week extension--which the agency denied--but the reason for the request was that the particular firm decided to participate in the procurement as a prime contractor rather than as a subcontractor to a firm that recently had been suspended from contracting with the government. The firm that requested the 2-week extension ultimately joined with yet another firm in submitting a timely proposal. Thus, aside from Teledyne, it appears that the length of the post-amendment proposal preparation period did not materially affect the field of potential competitors.

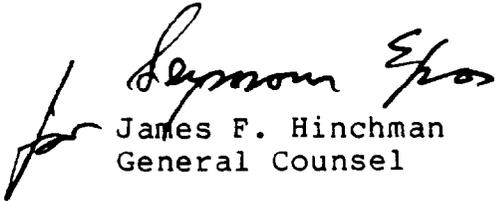
Further, this procurement is for hardware to replace existing equipment. The new equipment must be interchangeable with the old in terms of form, fit and function, and Teledyne was the supplier of some of the equipment to be replaced. It is reasonable to conclude, therefore, that Teledyne must have had at least some familiarity with the system and its software. In fact, in response to an agency announcement in September 1986, seeking sources for the component, Teledyne advised the Navy that it was "[u]niquely knowledgeable on the [system] due to Teledyne CME senior managers who designed and delivered the [system] while employed at" another firm. We are not persuaded, therefore, that Teledyne was prevented from submitting a timely proposal merely because of the time available to it for review of the software documentation. Rather, it appears from the record that any inability on the part of Teledyne to complete its proposal by February 4 was attributable in large part to the firm's unilateral decision to disband its proposal team when it perceived that the Navy was not proceeding diligently in addressing its questions concerning the solicitation.

We also have no reason to question the agency's judgment that unnecessary delays in this procurement could not be tolerated given the need for the equipment to be delivered as soon as possible. In this regard, there is no indication in the record that, contrary to the protester's allegations,

the agency was other than diligent in reviewing the numerous questions posed by potential offerors subsequent to the issuance of the initial solicitation.

Finally, we reviewed the questions raised by the other potential competitors and the answers provided by the agency. Almost without exception, the agency responded to the questions in the same manner as it did in responding to most of Teledyne's questions; that is, the agency either referred the offeror to specific RFP provisions or informed the offeror that the agency would not provide interpretations of the solicitation. We are not aware of any requirement that the agency disclose such responses to all potential competitors. In this regard, the FAR requires disclosure of information to all offerors only if the information is necessary for the submission of a proposal or the lack of the information would prejudice a prospective offeror. FAR, § 15.410(c).

The protest is denied.


James F. Hinchman
General Counsel