



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Harbor Branch Oceanographic Institution, Inc.

File: B-243417

Date: July 17, 1991

Charles G. Berry, Esq., Milbank, Tweed, Hadley & McCloy, for the protester.

Paul Shnitzer, Esq., Crowell & Moring, for MAR, Inc., an interested party.

Stephen H. Tryon, Esq., Department of the Navy, for the agency.

Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Solicitation requirement for resumes of key personnel to operate and maintain specialized, high-speed naval research support vessels is not unduly restrictive of competition; agency reasonably concluded that individuals already having specialized training and experience with the same type of vessels were needed, and that consideration of resumes as part of proposal was necessary to ascertain whether prospective contractor could operate and maintain the vessels without interruption.

2. Fact that incumbent may enjoy competitive advantage by virtue of employing personnel already possessing highly specialized skills required by solicitation does not render skill requirements improper, and requirements need not be relaxed by agency, where agency reasonably concluded they were necessary to avoid interruption of naval research programs due to inadequately trained personnel.

DECISION

Harbor Branch Oceanographic Institution, Inc. protests as unduly restrictive the specifications in request for proposals (RFP) No. N000167-91-R-0001 issued by the David Taylor Research Center, Department of the Navy, for the operation and maintenance of high-speed research support vessels. Harbor asserts that the RFP requirements for resumes demonstrating highly specialized training and experience effectively

preclude all but the incumbent from competing, and therefore improperly restrict competition.^{1/}

We deny the protest.

The solicitation provides for the operation and maintenance of two high-speed naval research support vessels, ATHENA and ATHENA II, originally designed and used as combat gunboats (PG-84 class) and converted to their present use in the mid-1970s. The incumbent contractor, MAR, Inc., has been operating and maintaining the vessels for the Navy since their conversion; the RFP provides for a 5-year replacement for MAR's current 5-year contract, which expires on September 30, 1991. The requirements at issue concern the qualifications of key personnel--the master, mate, and chief engineer--for which resumes must be provided as part of the proposal, at the time of proposal submission. The following requirement is representative of those at issue:

"C. 4.2.1.1 Master (Key Personnel). Masters shall . . . be experienced in hands-on operation of Combined Diesel and Gas Turbine (CODAG) ships of the PG-84 Class and shall be graduates of the . . . Navy . . . PG-84 school, or have a minimum of four months training under a . . . Navy . . . school graduate, or have not less than four months training by a master having not less than one year operational experience in command of a PG-84 Class vessel."

Harbor acknowledges that the RFP's training and experience requirements are reasonable and appropriate for the operation and maintenance of the ATHENA vessels. The protester states, for example, that it is not claiming "that the training or experience requirements are excessive, for we do not believe them to be so." Harbor asserts, however, that it is unduly restrictive of competition for the Navy to require an offeror to demonstrate that its personnel have the necessary qualifications by submitting resumes with its proposal.

Harbor contends, in this regard, that the number of available individuals with the required experience or training is so limited as to preclude all but the incumbent, MAR, from being able to offer a sufficient number of resumes to compete. According to Harbor, only 17 vessels of the PG-84 class were ever built; the ships were in service only a few years; they had an unusual and complex CODAG propulsion system; the last

^{1/} The RFP, as amended, called for the submission of proposals by April 4. Proposals were submitted by three offerors, including Harbor, which filed its protest prior to the closing date. No contract has been awarded.

pertinent courses offered by the Navy were terminated in the mid-1970s; there have been no operational PG-84 class ships with CODAG systems still intact, other than the two ATHENAs, since 1977; and the ATHENAs themselves have been operated by only one contractor, MAR, for approximately 16 years. Due to these considerations, Harbor states, the pool of individuals trained or experienced in the operation of these vessels has diminished over the years to the point where only MAR, as operator of the ATHENAs, has been able to retain enough key personnel, and provide them with the necessary experience, to perform this contract.

Harbor argues that the procurement should be made more competitive by amending the solicitation to eliminate the requirement that resumes be submitted prior to award; this would enable an offeror to make a commitment in its proposal to provide the necessary personnel after the contract was awarded, in lieu of submitting specific names or resumes as a precondition of obtaining the award. Alternatively, Harbor suggests that the RFP be modified to provide for post-award training of personnel by the incumbent contractor, so that individuals lacking the requisite training and experience with the ATHENAs may be proposed.

In disagreeing with Harbor, the Navy explains that the ATHENAs (as Harbor acknowledges) are highly complex, highly specialized, and virtually unique vessels. The Navy also points out that the vessels are part of a larger system that includes management, engineering and logistics support, test structures, and support craft. This ATHENA ship system supports a variety of significant naval research and testing programs, including developmental efforts and experiments in towed array hydrodynamics, self-induced flow noise reduction, and enhancement of the acoustical performance of arrays. According to the agency, it cannot afford to have those programs interrupted due to possible mishandling or improper maintenance of the vessels by inadequately trained personnel. In effect, the Navy's position is that individuals proposed to be trained on the ATHENAs after award, who have only general experience with other types of vessels, would not provide the same level of assurance of uninterrupted research operations as will evidence of the individuals' specialized training and experience with ATHENAs prior to award, where such evidence is submitted as part of the proposal and evaluated in the award decision.

The Competition in Contracting Act of 1984 (CICA) requires that solicitations specify an agency's needs and solicit offers in a manner designed to achieve full and open competition, 10 U.S.C. § 2305(a)(1)(A)(i) (1988), and allows restrictive provisions only to the extent necessary. 10 U.S.C. § 2305(a)(1)(B)(ii). Where a solicitation includes

requirements that restrict the ability of offerors to compete, the agency must have a reasonable basis for imposing the restrictive requirements. See Engineered Fabrics Corp., B-239837; B-239839, Oct. 3, 1990, 90-2 CPD ¶ 268.

The requirement here is reasonable. While Harbor's alternate approach might make it easier for firms other than the incumbent to compete, it also would impose on the agency increased performance risk in essential programs. Agencies are not required to compromise their needs in this manner, as we have stated in prior cases. For example, in Product Research, Inc., B-223439.2, Sept. 18, 1986, 86-2 CPD ¶ 317, the protester asserted that, because personnel with the requisite specialized experience were difficult to find, the RFP should be modified to permit post-award training for proposed personnel. (As noted above, this is an alternative urged by Harbor as well.) We held that the agency reasonably concluded that experience with one type of system did not necessarily equate with being able to operate a completely different, sophisticated system; the requirement was reasonable, therefore, in light of the agency's need to assure that ongoing operations would not be interrupted because inexperienced personnel could not be trained quickly or adequately enough.

Similarly, in Skyland Scientific Servs., Inc., B-229700, Feb. 9, 1988, 88-1 CPD ¶ 129, the protester contended that, because of its small size, it was unable to field a group of qualified individuals in advance of the contract start date; it argued, therefore, that a solicitation requirement for the submission of resumes did not permit full and open competition because it unduly discriminated against businesses of its size. As we stated there:

"It is apparent that the Navy is requesting resumes in order to evaluate the quality of an offeror's proposed personnel. Since performance of the contract requires specific expertise and skill, and substandard performance would adversely affect the Navy's weapons system, we do not believe that the Navy's request for resumes can reasonably be viewed as unduly restrictive. The Navy clearly is in a better position to evaluate offers and to select the most technically qualified offer by having offerors provide resumes on their personnel."

Likewise, under the circumstances here, we think it is reasonable for the Navy to prefer an approach under which it will be able to determine, prior to award, that the contractor's personnel have the specialized experience to assure continuity of operations affecting significant naval research and development efforts. Again, the alternatives suggested by

Harbor would entail waiting until after award to determine whether the contractor could provide key personnel with the requisite skills, or it would be necessary to train individuals; in either case, the agency would run a risk that operations would be interrupted in the transition to the new contractor. We find no support, therefore, for Harbor's contention that the resume requirement is unduly restrictive. See Skyland Scientific Servs., Inc., B-229700, supra.

As noted above, Harbor also argues that the personnel requirements improperly favor the incumbent, which already has employees with the required specialized skills. According to Harbor, moreover, this unfair advantage will be compounded if the Navy adds a third ship to the ATHENA fleet. In that regard, Harbor states that it believes the Navy is about to convert a third ship, the DOUGLAS, to an ATHENA-type vessel under its present contract with MAR, thus increasing the number of skilled personnel needed to manage the ATHENA system. Under those circumstances, Harbor argues, it will be even less likely that any firm other than MAR will be able to compete for the replacement contract.


We find no merit in these assertions. As a general matter, a competitive advantage gained through incumbency is not an unfair advantage that must be eliminated, Product Research, Inc., B-223439.2, supra; rather, such an advantage is improper only where it results from preferential treatment of an offeror or other unfair action by the government. Skyland Scientific Servs., Inc., B-229700, supra. Harbor does not allege, and the record does not suggest, that any advantage that MAR may enjoy is due to unfair action on the part of the Navy. There is, therefore, no basis to conclude that any competitive advantage enjoyed by the incumbent is improper. Id. Further, as explained above, we have found that the resume requirements with respect to the present ATHENA system are reasonable and are based on the Navy's need for continuity of operations in its research programs. Expansion of the system by one additional vessel, if it occurs, would not make that requirement less reasonable. In our view, the need to assure continuity of operations would be present whether the ATHENA system includes two ships or three.

In any case, Harbor's assumptions about the conversion of a third ship are speculative. The protester refers, for example, to the "potential" inclusion of the DOUGLAS in the scope of work to be undertaken under the new contract and states that it would "appear" that the Navy is "poised" to accomplish full conversion of the DOUGLAS. The fact of the matter, however, is that the scope of work of the solicitation has not been amended to provide for such a contingency. In fact, the Navy reports that the DOUGLAS is not being converted to an ATHENA-class vessel at all, but that MAR is simply

determining the extent of work required to make it seaworthy; that work, the Navy points out, is within the scope of the existing contract, which provides that specific guidance concerning additional, non-ATHENA research vessels may be provided by the ATHENA system manager. A protest such as this, which merely anticipates allegedly improper agency action, is too speculative to provide a basis for consideration. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512.

Finally, we point out that Harbor is not precluded by the solicitation or any procurement regulations from offering resumes of skilled employees currently employed by MAR. In that regard, Harbor itself admits that it is not prohibited from obtaining resumes from the incumbent contractor's employees for submission as part of its proposal; the protester merely states that "the practical hurdles to doing so are considerable." Consequently, we find no support for Harbor's contention that the solicitation improperly bestows an unfair competitive advantage on the incumbent.

The protest is denied.


for James F. Hinchman
General Counsel