



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: G.H. Harlow Company, Inc.

File: B-245050; B-245051; B-245051.3

Date: November 20, 1991

John F. Bradach, Esq. Stoel, Rives, Boley, Jones & Grey, for the protester.

Jeffrey A. Wayne, Esq., Paul M. Fisher, Esq., and David W. LaCroix, Esq., Department of the Navy, for the agency. Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency determination that specifications under invitation for bids (IFB) are inadequate to meet the government's minimum requirements constitutes a compelling reason to cancel IFB after bid opening.

2. Protest that proprietary specification for fire alarm radio receiver unduly restricts competition is denied where the specification was reasonably based on the agency's need for compatibility of the new receiver with transmitters already installed under other contracts.

DECISION

G. H. Harlow Co., Inc. protests the cancellation of invitation for bids (IFB) No. N62471-90-B-2046 (IFB-90) and the issuance of IFB No. N62471-91-B-2475 (IFB-91), by the Department of the Navy for provision of a fire alarm radio receiver console and antenna at Pearl Harbor Naval Shipyard, Hawaii. Harlow contends that it was improper to cancel IFB-90, which was unrestricted, and reissue the requirement under IFB-91, which specifies a King-Fisher Company product.

We deny the protests.

Radio transmitter fire alarms for Department of Defense (DOD) buildings and installations (with the exception of Hickam Air Force Base) on Oahu, Hawaii, are monitored by the

fire alarm dispatch headquarters at Pearl Harbor Naval Shipyard on radio receiver consoles. In general, without modification, the transmitter of one manufacturer cannot be received by the console of another manufacturer. In accordance with National Fire Protection Association requirements, each receiver console may accept a maximum of 500 transmitters on the same frequency. At the time the original solicitation was issued, the Navy was using a King-Fisher console to receive 484 King-Fisher alarm transmitters and it anticipated that the 500-unit maximum would be reached in December 1991 or January 1992. IFB-90 was intended to procure a new console for transmitters installed after that time.

IFB-90 was issued on April 19, 1991, and provided technical requirements for the new console without specifying the product of any particular firm. Harlow was the apparent low bidder at \$21,520, with the highest bidder at \$96,394. Due to the disparity in bids, the Navy reviewed its estimate and the specifications to ensure that no bidders had been misled. While the Navy confirmed the accuracy of its estimate, a review by the Navy's Fire Protection Engineer revealed that the unrestricted specifications were inadequate to ensure satisfying the Navy's minimum needs for a compatible system.

This need for compatibility was based upon the existence of 31 King-Fisher transmitters (26 Navy and 5 Army) which had been procured under other contracts and were scheduled to come on line in the "near future."¹ Since only 16 of these transmitters could be accommodated by the existing console and the remaining 15 could only be received by a King-Fisher console, the Navy determined to cancel IFB-90 and issue IFB-91 specifying the King-Fisher console. In making this determination, the Navy considered the feasibility and attendant costs of modifying the 15 transmitters to create a "mixed" system, and the need to provide fire alarm protection for the 15 buildings affected at the earliest time.

When Harlow learned of the Navy's decision, it filed a protest with our Office contending that the Navy should have awarded it a contract under IFB-90 and, therefore,

¹The Navy informs us that this number does not include any Air Force transmitters or various other pending solicitations which may have specified King-Fisher transmitters.

improperly canceled IFB-90. It further contends that the issuance of IFB-91 on a restricted basis was improper.² We disagree.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Southwest Marine, Inc., B-229596; B-229598, Jan. 12, 1988, 88-1 CPD ¶ 22. As a general rule, the need to change inadequate specifications and to revise them, after the opening of bids, to express properly the agency's minimum needs constitutes such a compelling reason. FAR § 14.404-1(c)(1), (2); Alliance Properties, Inc., 64 Comp. Gen. 854 (1985), 85-2 CPD ¶ 299. Contracting officials have broad discretion to determine whether appropriate circumstances for cancellation exist, and our review is limited to considering the reasonableness of the exercise of that discretion. Southwest Marine, Inc., supra. Where award under the deficient IFB would not serve the actual minimum needs of the agency, we regard cancellation after opening to be appropriate. Id.

We find that the record establishes a compelling reason to cancel IFB-90. According to the Navy, modification of the 15 transmitters to allow them to be received by a non-King-Fisher console, resulting in a "mixed system," would void the Underwriters Laboratory (UL) or Factory Mutual (FM) listing required by the specifications to ensure quality, suitability, and reliability of the system. New, single manufacturer systems require a minimum of 11 months to become appropriately listed and, to date, there is no known mixed system which has received such approval. In view of

²In a subsequent protest (B-245051.3), Harlow alleged that King-Fisher did not meet a requirement that the radio receiver have a Federal Communications Commission (FCC) type acceptance for the radio frequency used at Pearl Harbor. Harlow alluded to this allegation in earlier correspondence, which indicated that the firm was aware of the situation prior to bid opening under IFB-91. Since Harlow did not raise the allegation as a bid protest ground either before bid opening or within 10 working days of knowing the basis, this protest allegation appears untimely. In any event, the agency has submitted evidence that King-Fisher's equipment is, in fact, authorized to operate within the frequency range at Pearl Harbor by the Joint Military Frequency Office, which constitutes the equivalent of the FCC type acceptance specified in the IFB.

the need to provide fire alarm protection to the 15 buildings affected,³ it is not feasible to attempt to obtain a UL or FM listing for a mixed system. Harlow agrees that it is not possible to use a mixed system operating on one console.

The Navy also determined that the extra costs involved in modifying or replacing the transmitters (valued at \$3,500 each plus \$800 each for interface panels) would be substantial and would far exceed the \$21,520 cost of Harlow's console. Under the circumstances, we find the Navy's decision to cancel IFB-90 was rationally based. Harlow's offer, in its bid protest submissions, to provide 15 replacement transmitters at no cost to the government does not affect the reasonableness of this conclusion since the offer is not binding on Harlow, nor was it before the Navy when it made its decision.

The Navy relies upon the same circumstances with which it justified the cancellation of IFB-90 as the rationale for issuing IFB-91 on a restricted basis. In general, determinations of the agency's minimum needs and the best method of accommodating those needs are primarily matters within the agency's discretion. Glock, Inc., B-236614, Dec. 26, 1989, 89-2 CPD ¶ 593. Where, as here, a proprietary specification is challenged as unduly restrictive of competition, we will review the record to determine whether the restriction imposed is reasonably related to the agency's minimum needs. Id. We will conclude that an agency has established a reasonable basis for a restrictive specification if the explanation supporting the specification withstands logical scrutiny. Worldwide Primates, Inc., B-227146, July 7, 1987, 87-2 CPD ¶ 21.

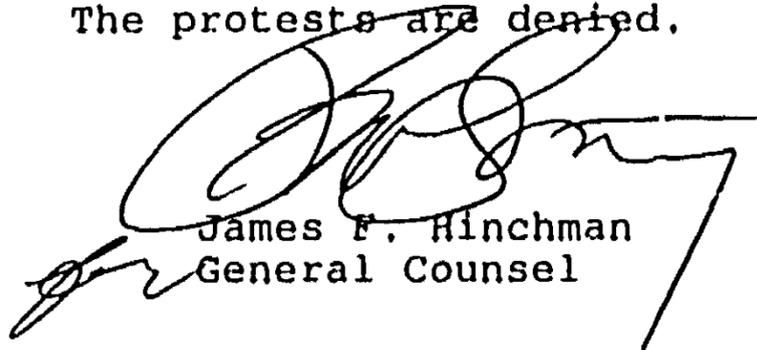
Here, the Navy persuasively contends that it must specify a King-Fisher console to ensure compatibility with the 15 plus (see n. 1, supra) existing King-Fisher radio transmitters and to provide fire alarm protection for the affected installations as soon as possible. We believe the Navy properly considers modification of the existing transmitters and creation of a mixed system as unacceptable in view of the reasonable requirement for UL or FM listing, and the unfeasibility of obtaining a listing for a mixed system. Similarly, we agree that compared to the apparent cost of a console, the substantially higher cost of replacement of the existing transmitters would be unreasonable. We thus

³In this regard, the Navy has determined that the need for fire alarm protection at these buildings constitutes urgent and compelling circumstances necessitating award and performance of the contract without waiting for our decision.

conclude that the Navy's minimum needs required a proprietary specification in IFB-91, in order to provide a console to operate with the existing King-Fisher transmitters.

We note that the legitimate need to provide a compatible receiver console for 15 transmitters would not justify the future procurement of up to 485 additional transmitters from King-Fisher simply because the receiver has the capacity to receive more transmitters. In view of the general requirement for full and open competition, we expect that for future acquisitions the Navy will coordinate the purchase of transmitters and receiver consoles to ensure obtaining competition for a system which meets the government's minimum needs.

The protests are denied.



James F. Hinchman
General Counsel