



Comptroller General
of the United States

Washington, D.C. 20548

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#11610

Decision

Matter of: Isratex, Inc.

File: B-253691

Date: October 13, 1993

Fredric T. Rekstis, Esq., Kostos and Lamer, P.C., for the protester.

Karen Rogers, Esq., Kaye, Scholer, Fierman, Hays & Handler, for Tennier, Inc., an interested party.

E.J. Stolark, and John B. Bennett, Esq., U.S. Marine Corps, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that specifications for a modular sleeping bag system were too vague to place offerors on notice of the agency's actual requirements is denied where the record shows that the specifications include performance requirements (rather than more restrictive design requirements) that may be met in a variety of ways and tend to enhance, rather than restrict, competition.

DECISION

Isratex, Inc. protests the terms of request for proposals (RFP) No. M67854-93-R-0039, issued by the Marine Corps Systems Command for a quantity of modular sleeping bags. Isratex contends that the solicitation is overly restrictive of competition, alleging that the agency chose to work with a select group of contractors when it drafted its specifications and that the statement of work lacks sufficiently specific information to allow any other firm to prepare an acceptable offer.

We deny the protest.

In January 1992, a Marine Corps program officer initiated a market survey to determine the feasibility of procuring a sleeping bag system that was composed of various separate layers that could be used alone or in combination, in order to protect Marine Corps personnel in a wide range of climates and conditions in the field. The agency approached a number of commercial sleeping bag manufacturers with its draft requirements, and found that one firm had already

begun manufacturing a sleeping bag system of this type. The Marines began testing this product. In August, the agency distributed a draft Modular Sleeping Bag description at a trade conference and invited firms to comment on its feasibility. The following month, the agency discovered that a second firm had developed a similar system, with design modifications that improved upon the agency's initial draft. The agency drafted performance criteria for the insulation materials that would be used in the sleeping bags, contacting several manufacturers to ensure that the agency's requirements were reasonable and achievable. In November, the Marine Corps announced in the Commerce Business Daily (CBD) that it intended to buy 200 modular sleeping bags from the two known manufacturers of such systems, for further developmental testing. In response, three additional firms identified themselves to the agency as potential suppliers. The agency reviewed the various prototypes and drafted modifications to its product description, including changes in shell material and design features. In January 1993, the requirement for 2,400 modular sleeping bags with four options of 50,000 each was synopsisized in the CBD. The 200 sleeping bags that had already been purchased were field-tested, resulting in further modifications to the product description. Isratex did not participate in the pre-solicitation stages of the procurement.

In April 1993, the RFP was issued, contemplating the award of a firm, fixed-price contract for the fabrication, manufacture and delivery of 2,400 modular sleeping bags during the base year, with four 1-year options for 50,000 additional sleeping bags. The RFP's specifications were further modified by amendments to the RFP, in response to comments and questions from prospective offerors. Four offerors submitted proposals with nine bid samples by the closing date of June 8. Prior to the closing time set for receipt of initial proposals, Isratex filed its protest in our Office.

Isratex contends that the specifications in the RFP are not sufficiently precise to inform potential offerors of the agency's actual requirements. The protester alleges that the agency chose to work with a select group of contractors in the industry to develop specifications that only those contractors could understand, and thereby limited competition to that group.¹

¹Isratex also objects in its protest comments to the use of the term "Commercial Item Description" (CID) in the solicitation (instead of "Specification" or "Purchase Description"). The record shows there are no existing commercial items which precisely meet the agency's needs.

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The determination of the agency's minimum needs and the best method of accommodating them are primarily within the agency's discretion and therefore, we will not question such a determination unless the record clearly shows that it was without a reasonable basis. See CardioMetrix, B-234620, May 1, 1989, 89-1 CPD ¶ 415. Once the agency has determined its needs, it must select plans, drawings, specifications, standards or purchase descriptions that state only the government's actual minimum needs and describe the supplies and/or services in a manner designed to promote full and open competition. Federal Acquisition Regulation (FAR) § 10.004(a)(1). As the protester correctly asserts, the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(a)(1)(A)(iii) (1988), provides that agencies should develop specifications in such a manner that will obtain full and open competition consistent with the nature of the supplies or services being acquired. However, contrary to the protester's assertions, CICA also provides that specifications may be stated in terms of performance requirements that establish the range of acceptable equipment characteristics. 10 U.S.C. § 2305(a)(1)(C)(ii).

We think there was nothing improper in the manner in which the Marine Corps developed its specifications. Rather than "selecting" a particular group of firms toward which it would direct its specifications, as Isratex alleges, the agency took steps to ensure the fullest participation of industry in the specification development process and invited the participation of any interested firm through informal contacts and by formal synopsis of the requirement. We consider this market research effort, for the purpose of developing specifications that promote full and open competition, entirely proper. See FAR § 10.002(a)(3). Isratex had the same opportunity to participate in the specification development effort as any other firm, but apparently chose not to.

The specifications describe a two-component sleeping bag, including a lightweight patrol bag for use in a specified temperature range and an intermediate cold bag for use in a colder, specified temperature range. The description specifies such design features as the ability to combine together to create an extreme cold weather bag (for use at a designated temperature), compatibility with a cover sack

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The Marine Corps reports that the use of the "CID" label was not intended to indicate that it considered this acquisition as being conducted under the FAR Part 11 which establishes purchase procedures for acquisition of commercial products. In any event, Isratex does not explain how it was prejudiced by the use of the term in this RFP.

(identified by its National Stock Number), and a maximum gross weight for the two components. The salient characteristics of the component bags are described at length. For example, the lining fabric to be used in the patrol bag is described as being constructed, at a minimum, of "a black, hydrophobic, 1.9 oz. ripstop nylon with a thread count of 112x86. This inner liner must be strong enough to resist tearing when the bag's user is entering and exiting the bag while wearing combat boots."

Isratex alleges generally that the specifications are too vague to permit competition on any common basis, citing the FAR requirement that an adequate purchase description set forth the essential physical and functional characteristics of the materials required. FAR § 10.004(b)(1). Isratex lists examples from the FAR of the type of characteristics that may be included to express the government's minimum requirements (e.g., "kind of material, electrical data, dimensions, principles of operation, restrictive environmental conditions," etc.), and includes comments it received from an apparel industry consultant which raise questions concerning the specifications' clarity. The consultant questions, for example, the description of the shell fabric in the specifications as "hydrophobic," asserting that this could apply to a variety of fabrics such as nylon, polyester, polypropylene, or coated cotton; whether the insulation material should be staple or filament in length; how much insulation is to be added to the foot section of the heavier sleeping bag, where the specifications state that "the foot section will have an anatomically designed foot box and added insulation," and asserts that the requirement for the patrol bag's liner fabric is vague because it does not specify how many times it must withstand the entering and exiting of the bag's user.'

²The consultant also questioned the launderability requirement in the RFP, commenting that no mention was made of insulation migration. However, the solicitation specifically addressed this concern, stating that the sleeping bags "must be constructed so that the insulation will not migrate from one area of the bag to another," and describing the laundering process (including such detail as the temperature, wash and dry cycles, and the minimum number of wash cycles) the bags must withstand without any obvious signs of deterioration. While the consultant appears to be concerned that the issue of migration is not addressed in the section of the specifications covering launderability, we think both migration and launderability are adequately addressed.

These questions primarily reflect the protester's desire for design specifications. As stated above, however, performance specifications may also be used, and that is what the Marine Corps is utilizing here.¹ These specifications are not impermissibly vague as the protester asserts; they merely set forth the government's needs in a less restrictive way than would a detailed design specification. Thus, for example, offerors indeed could use any of the broad range of fabrics that meet the description of "hydrophobic," so long as they meet the performance requirements, such as threads-per-inch, durability, compressibility and weight. Similarly, the insulating material need only meet the performance requirements such as temperature range, overall weight, loft retention and compressibility. Further, the amount of additional insulation required in the foot section of the sleeping bags is governed by the performance requirements; it should be enough to permit use of the bag within the designated temperature range, and no more than the amount permitted by the maximum overall weight.

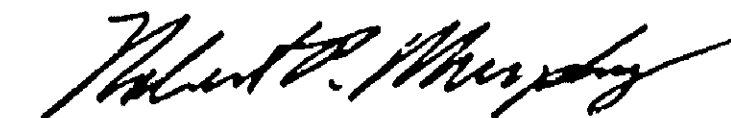
Regarding the number of times the bag must withstand a Marine getting in and out, the requirement provides that the inner liner must be strong enough to resist tearing when the bag's user is entering and exiting the bag while wearing combat boots. The specifications provide minimum construction characteristics including thread count and ripstop material for the inner liner which will meet the performance requirement. Finally, the specifications state that the bag must not show any obvious signs of deterioration after five wash cycles. We think this information is sufficiently descriptive of the agency's minimum needs.

While the protester urges that more precise design specifications were necessary to permit competition, we do not find this argument persuasive; an agency can state its minimum needs in terms of performance specifications which alternate designs can meet. Morse Boulger, Inc., 56 Comp. Gen. 174 (1986), 86-2 CPD ¶ 715. These performance specifications rather than being overly vague, simply allow a variety of design approaches, with offerors free to select whatever fabrics and insulation materials they considered best to

¹We note that commercial sleeping bags, sold to the public, are routinely described in sales literature by specifications showing their overall weight, compressibility when stuffed, loft retention and the temperature range within which they provide effective protection; this is the type of information provided here.

meet the performance requirements described in the solicitation. This is consistent with CICA and the FAR and in fact, is more enhancing of competition than the type of specification advocated by the protester. Accordingly, we see nothing in the specifications which is contrary to law or regulation.

The protest is denied.


for James F. Hinchman
General Counsel