



Comptroller General
of the United States

4-1-94

Washington, D.C. 20548

Decision

Matter of: Science Pump Corporation
File: B-255803
Date: April 4, 1994

Fernand A. Lavallee, Esq., Carla D. Craft, Esq., and James F. Worrall, Esq., Venable, Baetjer, Howard & Civilatti, for the protester.
John E. Reilly, Esq., Reilly & Purcell, for EN-SCI Corporation, an interested party.
F. Jefferson Hughes, Esq., and James K. White, Esq., Department of the Commerce, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for proposals which incorporates by reference the standard "Inspection of Supplies-Fixed Price" clause, as set forth at Federal Acquisition Regulation § 52.246-2, is not ambiguous as to whether the prospective contractor is required to perform tests to determine if the product offered complies with the solicitation's specifications; the standard clause requires that contractor provide only supplies that it has found to be in conformity with the requirements of the contract, with the agency having the right to inspect and test the supplies to ensure conformance if it so chooses.
2. Specifications for scientific instruments requiring that the instruments be provided with certain capabilities and features are not unduly restrictive of competition where the record establishes that the agency has been modifying instruments previously procured in-house to incorporate these features.

DECISION

Science Pump Corporation protests the terms of request for proposals (RFP) No. 52-RANR-4-00017, issued by the National Oceanic and Atmospheric Administration (NOAA), Department of

Commerce, for ozonesondes. Science Pump argues that the specifications are unduly restrictive of competition and do not reflect the agency's minimum needs.

We deny the protest.

The RFP, issued November 9, 1993, contemplates the award of a firm, fixed-price, requirements contract, for a base year with two 1-year options. The RFP sets forth detailed design/performance specifications for the ozonesondes, including the protested specifications regarding pump efficiency, the capability to monitor pump temperature throughout the ozonesonde's flight, and the provision of an attached metal case for mounting an electronics circuit board to the ozonesonde.

Science Pump first argues that the specification regarding pump efficiency is ambiguous because "[t]he requirement does not define which party is responsible for testing and certifying pump efficiency."

It is basic principle of procurement law that specifications must be sufficiently definite and free from ambiguity so as to permit competition on a common basis. Essex Electro Eng'rs, Inc., B-252288.2, July 23, 1993, 93-2 CPD ¶ 47. The mere allegation that a solicitation is ambiguous does not, however, make it so. Pulse Elecs., Inc., B-243769, Aug. 2, 1991, 91-2 CPD ¶ 122. A solicitation requirement is not ambiguous unless it is susceptible to two or more reasonable interpretations. Id. When a dispute exists as to the

¹Ozonesondes are borne aloft by balloons, and take atmospheric pressure, temperature, and humidity readings. These readings are transmitted to a NOAA ground station, and the data received is translated into useful information about the ozone layer.

²Science Pump also protested that another manufacturer of ozonesondes, EN-SCI Corporation, should be excluded from the competition because EN-SCI is owned by a government employee, and because the firm has an organizational conflict of interest and one of its key employees has a personal conflict of interest. We dismissed this aspect of Science Pump's protest as premature on December 9, 1993, because proposals in response to the solicitation had not yet been received by the agency, and the agency informed our Office that it had not made any determination regarding EN-SCI's status or eligibility for award under the solicitation. Recently, in Science Pump Corp., B-255737, Mar. 25, 1994, 94-1 CPD ¶ ____, we reviewed these same contentions with regard to another NOAA procurement of ozonesondes and found them to be without merit.

actual meaning of a solicitation requirement, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234.

The RFP incorporates by reference the standard "Inspection of Supplies-Fixed Price" clause, as set forth in Federal Acquisition Regulation (FAR) § 52.246-2. This clause provides, in pertinent part, that;

"(b) The Contractor shall provide . . . only supplies that have been . . . found by the Contractor to be in conformity with the contract requirements.

"(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event, before acceptance The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor"

This clause clearly delineates the responsibilities of the contractor and the government with regard to the testing and inspection of the ozonesondes to be supplied under this RFP. In this regard, under the clause the contractor is responsible for ensuring that the ozonesondes supplied conform with the requirements set forth in the RFP, including the pump efficiency requirements, and the agency has the right, if it so chooses, to inspect and test the ozonesondes to ensure that they are in fact in compliance with the terms of the solicitation. We simply fail to see how the RFP, in light of the standard "Inspection of Supplies-Fixed Price" clause contained therein, can be considered ambiguous with regard to the obligations of the contractor and government as to testing and inspection.

Science Pump next argues that the requirements set forth in the RFP that the ozonesondes be provided with the capability to monitor pump temperature throughout the ozonesonde's flight, and with a metal case for mounting an electronics circuit board to the ozonesonde, are overly restrictive of competition and do not reflect the agency's minimum needs. Science Pump contends that these requirements correspond to features of the ozonesondes manufactured by EN-SCI, and thus "favor the ozonesondes produced by EN-SCI."

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition,

and may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 41 U.S.C. § 253a(1)(A) and (B) (1988); Sunbelt Indus., Inc., B-246850, Mar. 31, 1992, 92-1 CPD ¶ 325. Where a protester alleges that a requirement is unduly restrictive, we review the record to determine whether the requirement has been justified as necessary to satisfy the agency's minimum needs. Admiral Towing and Barge Co., B-245600; B-245602, Jan. 16, 1992, 92-1 CPD ¶ 83. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable; that is, whether the explanation can withstand logical scrutiny. Abescon Mills, Inc., B-251685, Apr. 19, 1993, 93-1 CPD ¶ 332.

The agency explains, with regard to the requirement that the ozonesondes be provided with the capability to monitor pump temperature throughout the ozonesondes' flight, that this capability is "absolutely necessary in obtaining even minimally acceptable data from the ozonesonde," and that since 1990, the agency itself has been modifying the ozonesondes it has purchased--including those purchased from Science Pump--to add this capability. The agency states here that the parts necessary to complete this modification cost approximately \$5, and take about 10 minutes per ozonesonde to install. The agency adds that, while it has performed this modification in the past, it no longer wishes to do so, especially in view of the fact that this procurement may result in the acquisition of 1,350 ozonesondes.

The agency offers a similar explanation for the requirement that the ozonesondes be supplied with a metal case for mounting a circuit board. The agency explains here that the circuit board is used to convert the electrical current produced by the ozonesonde sensor to a digitized signal that can be telemetered to the ground receiving station, and that the metal case is necessary because it provides a place to mount the circuit board and protects instrument operation from radio interference. The agency adds that for the past 3 years it has been modifying the ozonesondes it purchases, including those purchased from protester, to enable it to mount a circuit board on the ozonesonde. With regard to the protester's ozonesondes, the agency states that it designed the circuit boards to fit into the metal cases which exist on the protester's current ozonesondes, but that because Science Pump's metal case was originally designed to house a set of instruments which the agency no longer uses, the current mounting screws on Science Pump's ozonesondes do not match those needed for the mounting of the circuit board. The agency adds that it currently uses an adapter to mount the circuit board on Science Pump's ozonesondes, which costs about \$2 and takes 30 minutes to install.

The fact that the agency currently modifies ozonesondes to provide these features establishes that they are necessary to meet the agency's minimum needs. With regard to the protester's assertion that the modifications were based upon features of EN-SCI's ozonesondes, and thus unfairly favored that firm, we point out that even specifications that are based upon a particular product are not necessarily improper in and of themselves. An assertion that a specification was "written around" design features of a particular product will not provide a valid basis for protest if the record, as it does here, establishes that the specifications are reasonably related to the agency's minimum needs. Abescon Mills, supra; Bombardier, Inc., Canadair, Challenger Div., B-243977; B-244560, Aug. 30, 1991, 91-2 CPD ¶ 224.

The protest is denied.


Robert P. Murphy
Acting General Counsel