

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

10,121

FILE: B-193117; B-193117.2;
B-193117.3 B-193117.4;

DATE: May 10, 1979 DLG 01555

MATTER OF: Klopf Audio/Video Company; Barnes Engineering
Company; Glen Industrial Communications; Venus
Scientific, Incorporated; Technical Industries,
Incorporated

DIGEST:

[Request For Reinstatement of terminated Contract]

1. GAO will consider contractor's protest against termination for convenience when termination is based upon impropriety in the award process.
2. Where agency fails to amend specifications to reflect revised requirements, award based on proposal which deviates from specific design characteristic specified in solicitation was improper and termination of such contract for convenience of Government is appropriate.
3. Where agency has admitted that mandatory design requirement is restrictive of competition and not essential to its minimum needs, specification is defective, and resolicitation under revised specifications is required.

Klopf Audio/Video Company (Klopf), Barnes Engineering Company (Barnes), Glen Industrial Communications (Glen) and Technical Industries, Incorporated, (Technical) protest the award of contract DAAG08-78-C-0201 to Venus Scientific, Incorporated (Venus), under request for proposals (RFP) DAAG08-78-R-0201, issued by the Department of the Army, Sacramento Army Depot, for the furnishing and installation of a Low Light Level Closed Circuit Television Surveillance System at the Seneca Army Depot. *AGC 702*

Subsequent to the Klopf, Barnes and Glen protests, the Army terminated the Venus contract for the convenience of the Government after it concluded that the

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Venus camera, offered as an "equal" to a "brand name or equal" specification, failed to comply with a design characteristic listed in the specification. Venus, however, protests the termination, asserting that its camera should be considered acceptable because the camera's performance satisfies the specification's intent.

Technical, which offered the brand name cameras and was the second low offeror under the solicitation, concurs with the termination of the Venus contract but objects to the Army's determination to resolicit the procurement. Technical believes it is entitled to the award under the original RFP as the low offeror offering the brand name camera. The Army's decision to resolicit was predicated upon a determination that the brand name specification overstated the Army's minimum needs and was therefore restrictive of competition. We find the termination of the Venus contract to be proper, and accordingly deny the Venus and Technical protests. The Klopff, Barnes and Glen protests, since they are directed to the award to Venus, are moot and need not be considered further.

Although we do not normally consider protests against convenience terminations, where an alleged impropriety in the award process is the basis of the Government's decision to terminate, our Office will review the contract award to determine if the award was valid and proper and whether the termination was justified given the facts of the original contract award. Safemasters Company, Inc., B-192941, January 22, 1979, 58 Comp. Gen. ____, 79-1 CPD 38.

Venus' contract was terminated when it was determined that its camera was not a "SIT" (Silicon Intensified Target Tube) camera as required by the following RFP specifications:

"3.2 System Requirements. The system shall include the following equipment, but not be limited to these items: 64 Low Light Level SIT TV Cameras; 16 Sequential/ Alarm Switchers; 16 9" Monochrome Monitors, and other items as described in this Statement of Work.

"3.2.1 SIT Cameras. These TV cameras shall be fully automatic and have remote controls for zoom, focus, pan, tilt and iris. These cameras * * * shall be equipped with all lenses, remote controls, remote controlled pan/tilts, SIT vidicons and ancillary hardware to provide complete working units. * * *

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"3.5 Equipment Quality Baseline. Equipments cited in this baseline are to be used as a guide in determining the minimum basic needs of this Statement of Work. Other equipment may be offered on a 'brand name, or equal' basis.

"3.5.1 Camera: RCA TC1030/HRO" [Emphasis added].

Agency technical personnel advise that the Venus camera model DV-2-9022 meets all of the specification requirements with the exception of the SIT tube. Rather than embodying a SIT tube, the Venus camera used a double intensified vidicon tube. It is explained that both the SIT tube and Venus tube use silicon intensifiers to achieve the required light requirements, the only difference being that the RCA SIT tube is an integral one piece configuration whereas the Venus tube is a 3-piece system which contains a silicon intensifier and a vidicon tube. Agency technical personnel assert that the Venus camera meets and exceeds the light level performance characteristics of the SIT tube, and can resolve an image in a lower light level. They accordingly assert that the Venus tube's difference in design and construction does not affect the suitability of the product for its intended use.

In requesting that the terminated contract be reinstated, Venus emphasizes the finding of agency technical personnel that its camera meets or exceeds the performance capabilities of the brand name camera, and submits that a reading of the specifications in their entirety indicates that the Army was purchasing only the essential technology of low light vision.

Venus also argues that the Army has overlooked the clear language of paragraph 3.5 of the Statement of Work set forth above, specifying that equipment cited in that subsection is to be used as a guide in determining the minimum basic needs of the Statement of Work, and that other equipment may be offered on a "brand name or equal" basis. Inasmuch as paragraph 3.5. et seq. failed to make reference to a SIT camera, and since the Venus camera meets or exceeds the brand name camera in performance, Venus contends its camera meets specification requirements.

We find Venus' argument unpersuasive, for to so interpret the specification would do violence to the purchase description set forth in paragraphs 3.2 and 3.2.1 which clearly required the supply of SIT cameras. For this reason, we do not believe the "brand name or equal" designation set forth in paragraph 3.5 is necessary for the determination of whether or not the contract was properly awarded to Venus, as the SIT tube was specified as a "particular feature" of the product to be purchased. Parkson Corporation, B-187101, February 11, 1977, 77-1 CPD 103.


Thus, because we view the SIT tube as a mandatory design feature for the cameras, when the agency decided it was willing to accept a proposal which deviated from that specific design characteristic, all offerors should have been informed of these revised needs through amendment to the solicitation so that they could have had an opportunity to submit proposals on the basis of the revised specification. See Cohu, Inc., B-191264, September 6, 1978, 78-2 CPD 175. It was therefore improper to award the contract to Venus on the basis of the unamended specification. Under these circumstances, we agree that termination of the Venus contract for the convenience of the Government was appropriate. Parkson Corporation, supra.

With regard to Technical's protest, Army technical personnel arrived at a post-award determination that SIT cameras clearly are not necessary to satisfy the agency's actual minimum needs, and that restricting the specification to SIT cameras would be detrimental to Government

interests since there are other products currently on the market (including Venus') which are capable of meeting its needs.

Our Office has stipulated that procurement agencies are required to state specifications in terms that will permit the broadest field of competition within the minimum needs required, and where a specification requires something beyond the Government's demonstrated minimum needs, it is restrictive of competition. Gardner Machinery Corporation; G.A. Braun, Incorporated--Request for Reconsideration, B-185418, September 25, 1978, 78-2 CPD 221. Where, as here, a contracting agency has admitted that a specification has overstated its minimum needs and has thereby restricted competition, it is defective and resolicitation under revised specifications is required, if practicable under the circumstances. Engineered Handling Systems; Litton Unit Handling Systems, B-184227, March 9, 1976, 76-1 CPD 163. This is particularly true where the record substantially demonstrates that equipment not containing a specified design characteristic will meet the Government's intended needs. Keystone Diesel Engine Company, Inc., B-187338, February 23, 1977, 77-1 CPD 128; Parkson Corporation, supra.

Since the record establishes that restriction of the procurement to SIT cameras is not essential to the Army's minimum needs, we concur with the Army's position that resolicitation is appropriate under revised specifications deleting the SIT requirement. Accordingly, Technical's protest is denied.


Deputy Comptroller General
of the United States