



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Source

File: B-266362

Date: February 7, 1996

William E. Conner, Esq., and Joseph J. Petrillo, Esq., Petrillo & Associates, for the protester.

Anita D. Polen, Esq., and John A. Pendleton, Department of the Navy, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly used protester's proprietary data in drafting a solicitation is denied where the protester does not show that the specifications in the solicitation were derived from technical data which is proprietary to the protester.
 2. Protest challenging agency's failure to furnish request for quotations to protester under small purchase procedures is denied where the record shows that the contracting officer was not aware of the protester's interest in the procurement and provided the solicitation to three potential suppliers.
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DECISION

The Source protests any award of a contract under request for quotations (RFQ) No. 95-M-QE33 for mess deck improvements to the U.S.S. Peterson on the ground that the specifications in the RFQ are based upon proprietary information The Source provided to the Navy.

We deny the protest.

The RFQ, issued by the Navy's Fleet and Industrial Supply Center under small purchase procedures on September 26, 1995, requested quotations for mess deck improvements to the ship. The RFQ's specifications did not include any drawings. The contracting officer provided copies of the RFQ to three suppliers known to perform these services and awarded a contract to the firm quoting the lowest price, \$19,742, on September 30.

In the course of making several unsolicited sales calls on the ship's supply officer prior to the issuance of the RFQ, The Source submitted a price and detailed plans for the mess deck improvements, as well as a drawing of the beverage line layout. The Source argues that this data formed the basis for the specifications here. The Navy responds that the specifications were not developed on the basis of proprietary data furnished by The Source, but were independently developed for the Navy by API Consulting Services under an August 1995 contract to do so.

We have recognized the right of a firm to protect its proprietary data from improper exposure in a solicitation in the context of a bid protest. Ingersoll-Rand Co., B-236495, Dec. 12, 1989, 89-2 CPD ¶ 542; Zodiac of N. Am., Inc., B-220012, Nov. 25, 1985, 85-2 CPD ¶ 595. To prevail on a claim of violation of proprietary rights, the protester must show that: (1) its material was marked proprietary or confidential or that it was disclosed to the government in confidence; and (2) the material involved significant time and expense in preparation and contained material or concepts that could not be independently obtained from publicly available literature or common knowledge. Litton Applied Technology, B-227090; B-227156, Sept. 3, 1987, 87-2 CPD ¶ 219; Zodiac of N. Am., Inc., supra.

The record here shows that the only document generated by The Source which was provided to API was a drawing.¹ Unlike The Source's plans, the drawing contains no proprietary markings of any kind. It merely consists of a rough dimensional sketch of the beverage line layout, with boxes drawn to represent the placement of the glass and cup lowerators, ice dispensers, "bug juice" dispensers, coffee urn, and milk machine. In fact, the only words on the page are the names of these machines. The absence of any proprietary markings or of any indication of confidentiality is striking, considering that each and every page of The Source's plans contains a prominent proprietary legend. We conclude that The Source has not provided sufficient evidence to establish the proprietary nature of the drawing which it had furnished the agency, and thus that the protester has not shown that the RFQ's specifications were derived from technical data which is proprietary to The Source.² Zodiac of N. Am., Inc., supra.

¹The ship's supply officer attests that he did not provide The Source's pricing or detailed plans to API, and API confirms this statement. We are also unpersuaded by the protester's efforts, in support of its contention that its proprietary information was in fact "leaked" to API, to demonstrate any similarity between its plans and the specifications.

²We also note that our review of the drawing does not show that it would have met the second prong of the inquiry, i.e., that the drawing involved significant time and (continued...)

The Source also argues that the contracting officer intentionally excluded it from competing for the work solicited under the RFQ. The record does not support this contention. The requisition received by the contracting officer contained no suggested sources, and the RFQ was issued to three randomly selected firms known to perform this type of work. This was consistent with the applicable rules for simplified acquisitions, under which contracting officers are to solicit quotations from a reasonable number of sources—generally, at least three sources—to promote competition to the maximum extent practicable. Federal Acquisition Regulation § 13.106-1(a)(1), (3). The supply officer attests that he did not advise the contracting officer of The Source's interest in this matter, and the contracting officer confirms this statement. There is simply no basis to conclude that the contracting officer deliberately excluded The Source from competing.

The protest is denied.

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²(...continued)

expense in preparation and contained material concepts that could not be independently obtained from publicly available literature or common knowledge. See EDN Corp., 66 Comp. Gen. 563 (1987), 87-2 CPD ¶ 31.