

DOCUMENT RESUME

02721 - [A1882942]

[Alleged Nonresponsive Technical Proposal]. B-188713. July 1, 1977. 5 pp.

Decision re: Bristol Bluewater Boats, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Definition of Performance Requirements in Relation to Need of the Procuring Agency (1902).

Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Slickbar, Inc.; Department of the Navy:
Naval Facilities Engineering Command, Alexandria, VA.

Authority: A.S.F.R. 2-303.1(a) (viii). 4 C.F.R. 20.2(b) (1). 54
Comp. Gen. 512. B-182899 (1975).

The protester alleged that the low bidder's technical proposal was nonresponsive and that the Government's waiver of the weight requirement on the craft was improper. The protest against the inclusion of weight requirement waiver in the solicitation was untimely and was not considered. The technical evaluation of the contracting activity was accepted since it did not appear to be unreasonable, the result of arbitrary abuse of discretion, or to have been made in violation of procurement statutes and regulations. (Author/SC)

2942
02721

DECISION



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

FILE: B-188713

DATE: July 1, 1977

MATTER OF: Bristol Bluewater Boats, Inc.

DIGEST:

1. Where Purchase Description, as amended, clearly permitted deviations beyond plus or minus 10 percent in weight and/or dimensional requirements, such permitted deviation was properly made without issuance of amendment to solicitation. Schedule requirement that Purchase Description, as amended, must be followed was fulfilled since deviations in this area were permissible under Purchase Description.
2. Since allegation that inclusion of provision permitting acceptance of deviations in solicitations did not allow proper price competition should have been made prior to receipt of proposals, issue was raised untimely and is not for consideration.
3. Technical evaluation of contracting activity will be accepted where, although alleged to be faulty, such evaluation does not appear to be unreasonable, the result of arbitrary abuse of discretion, or to have been made in violation of procurement statutes and regulations.

Bristol Bluewater Boats, Inc. (Bristol), protests any award to the low bidder, Slickbar, Inc., by the Naval Facilities Engineering Command under invitation for bids No. N62578-76-B-0223 (the second step of a two-step formally advertised procurement) for essentially two reasons. First, Bristol contends that by offering a craft weighing in excess of 4,000 pounds Slickbar's technical proposal was nonresponsive to the Purchase Description requirement that the basic craft weigh 3,500 pounds, plus or minus 10 percent, and should, consequently, have been rejected.

Bristol observes that while paragraph 2-503.1(a)(viii) of the Armed Services Procurement Regulation (ASPR) (1976 ed.) permits the Government to request from an offeror who has submitted an offer "reasonably susceptible of being made acceptable * * * additional information clarifying or supplementing but not basically changing any proposal as submitted," the alleged waiver (assuming the original Slickbar proposal appeared to comply with the specification) by the Government of

B-188713

the weight requirement and the subsequent negotiations on that basis can only be regarded as the improper acceptance of information which basically changed the Slickbar proposal.

Also, Bristol argues that since the following language was provided in the Schedule of the invitation, and inasmuch as it was provided in paragraph 19--ORDER OF PRECEDENCE--of the Solicitation Instructions and Conditions that Schedule provisions would govern in resolving any inconsistency between solicitation provisions, waiver of the weight requirement by the Government is improper:

"* * * overall weight of basic craft to be in conformance with the contractor's approved design, all in accordance with Purchase Description PD-1945-156-77-1 dated 10 May 1976 entitled 'Platform, Pontoon, Workboat (Oil Containment Boom Handling) consisting of 12 pages as amended by Deviations/Changes. Items 1 thru 15 attached to Section M, as interpreted by Attachment 'C' to Solicitation letter of 28 September 1976, and in accordance with the bidder's technical proposal as finally accepted under the Request for Technical Proposal identified in Section M and incorporated herein by reference. Nothing contained in the contractor's technical proposal identified in Section M shall constitute a waiver of any of the provisions of Purchase Description PD-1945-156-77-1 as amended." (Emphasis supplied.)

Secondly, it is contended that the craft proposed by Slickbar cannot meet the Purchase Description requirements that the craft be able to carry a 6,000-pound payload while "operating safely and efficiently while withstanding 3 foot waves, 2 knot current and 20 knot wind," inasmuch as the craft will not be able--as it must under solicitation requirements--to comply with the pertinent standards developed by the United States Coast Guard (USCG), the American Boat and Yacht Council (ABYC), and the Boating Industry Association (BIA).

As regards the first contention, the pertinent solicitation requirements found in the Purchase Description are set out immediately below:

B-188/13

"3.4 Design.

3.4.1 Overall characteristics.

Type:	Catamaran or trimaran.
Overall length:	26 feet (nominal).
Beam:	14 feet (nominal).
Platform deck:	24 feet by 14 feet (nominal).
Hulls:	Reinforced plastic - approximately 26 feet long.
Freeboard to draft ratio:	1 to 1 (nominal).
Capacity:	6,000 pounds (lb) (nominal).
Open deck space:	330 square feet (nominal).
Freeboard:	Top of deck to waterline 20 inches (nominal).
Weight:	Basic craft (excluding engines, fuel tanks, batteries, and ancillary equipment) 3,500 lb (nominal).
Propulsion:	Two 85 horsepower (hp) outboard engines.

In addition to BIA certification, the platform workboat shall conform to the ABYC and USCG standards for craft of this type."

Attachment "C" referenced in the Schedule provided in pertinent part:

"3. Exceptions to purchase description. The design requirements covered in paragraphs 3.1 through 3.13.5 of the purchase description provide basic criteria and should not be considered as imposing constraints for the development of alternate or modified designs meeting or exceeding the functional requirements of the purchase description. If any area of the technical requirements are considered by the proposer to be overly restrictive or otherwise not in consonance with the proposer's standard engineering practice, include such areas in the proposal with recommended changes including a rationale/justification for each change. Also, any areas of the requirements which may be in question shall be discussed and, if necessary to complete the proposal, reasonable assumptions made.

B-188713

"11. Evaluation of Proposals. The criteria for evaluating the technical proposals are as follows and will be applied on an acceptable/nonacceptable basis.

* * * * *

"3. Dimensional and weight requirements to be as specified in paragraph 2.4-1 with a plus or minus tolerance of 10 percent to be applied to the specified values to establish acceptability/nonacceptability of design unless overriding design considerations dictate or justify additional variation in specific values." (Emphasis supplied.)

From the above language, in particular "unless overriding design considerations dictate or justify additional variation in specific values," it seems evident that should an offeror convince the procurement activity that a deviation in dimensions and/or weight would be necessary in order to be able to put forward an otherwise acceptable proposal, such a relaxation of the requirements would be permissible. Also, since all offerors were advised of this fact by the above-quoted solicitation language, we see no reason why an amendment should have been issued, after Slickbar was permitted the weight requirement relaxation, so as to advise offerors of a fact that they should have already known. Therefore, we regard the argument that the Schedule forbids acceptance of deviations and that that requirement consequently negated any other provision to the contrary to be clearly without merit.

Concerning Bristol's argument that because of the deviations permitted under Attachment "C" it and Slickbar were not really bidding on the same item and that this is detrimental to the obtaining of price competition, since the use of this provision should have been protested to our Office prior to the deadline for the receipt of proposals, it is untimely and not for consideration by our Office. See 4 C.F.R. § 20.2(b)(1) (1976).

Regarding whether or not the Slickbar craft will comply with boating standards laid down by the USGC, the ABYC, and the BIA so as to operate safely and efficiently under the stated conditions, the procurement activity in evaluating the technical proposal of Slickbar determined that the craft would and could be operated as required by the Purchase Description. It is not the function of our Office to

B-188713

resolve technical disputes of the nature present here. The overall determination of the relative desirability and technical adequacy of proposals is primarily a function of the procurement activity, and this will not be questioned by us without a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the procurement statutes and regulations. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44; Harding Pollution Control Corporation, B-182899, July 3, 1975, 75-2 CPD 17.

There is nothing in the record which indicates this evaluation was improper or unfair or that the contracting activity abused its discretion in finding the Slickbar craft acceptable.

Accordingly, the protest is denied.

Deputy 
Comptroller General
of the United States