

DECISION



12698 *Jannelli Prov F*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-196159

DATE: January 31, 1980

MATTER OF:

M. J. Rudolph Corporation *DLG 3791*

DIGEST:

Specifications in solicitation for lease of crane to stevedore vessels were susceptible to two reasonable interpretations and, therefore, offerors did not compete on common basis. Since specifications were not sufficiently definite as to permit competition on common basis, protest is sustained. Resolicitation of requirement and termination of present contract for convenience of Government are recommended.

M. J. Rudolph Corporation (Rudolph) protests against award of a contract to Moody Brothers of Jacksonville, Inc. (Moody), for a 1-year lease of *DLG 3792*
a crane to stevedore vessels at the Naval Air Station, Bermuda, pursuant to request for proposals (RFP) *DLG 63*
No. N0003379R1402. The protester contends that the award to Moody was improper because the crane offered by Moody did not meet the minimum requirements stated in the RFP.

For the reasons that follow, the protest is sustained.

The RFP required the lessor to certify that the crane offered would be capable of lifting up to 40 short tons, and indicated that the crane would be used primarily to load and discharge 20-foot and 40-foot loaded containers on an oceangoing vessel the breadth of which would be 38 feet 2 inches. Rudolph contends that the crane proposed by Moody has a capacity of 40 short tons only up to a 42-foot radius. Since the crane will be positioned on the shore beside

008511 111427
[Protest ALLEGES Award WAS Improper]

the vessel, Rudolph calculates that Moody's crane will only be able to lift and load safely to a maximum of 22 feet into the vessel if it is lifting 40 short tons. Rudolph computes that the Moody crane will only be able to load this weight to a point 3 feet past the center line of the vessel and argues that Moody's offer should have been rejected because the RFP required that the crane be able to load 40 short tons to any part of the vessel.

The Navy replies that Rudolph has misinterpreted the RFP requirements which specify that the crane must be capable of lifting up to 40 short tons but which do not specify any radius. The Navy argues that Moody's crane meets the RFP requirements because it is capable of lifting 89,650 pounds or almost 45 short tons at a radius of 40 feet. The Navy admits that Moody's crane will not be able to reach the offshore side of the vessel safely while lifting 40 short tons. However, the Navy contends that its actual needs will be met by Moody's crane since most conventional containers to be lifted will not exceed 33 short tons. The Navy is satisfied that Moody's crane will be able to lift heavier loads when those occasions arise, even though such loads cannot be lifted at a radius of more than 40 feet. Moreover, the Navy points out that, even if a container weighing 40 short tons were loaded on the outboard side of the vessel when it docked, Moody's crane could be used to unload the container if the ship were simply turned around so that the unusually heavy container would be nearer to the dock and well within the safety of the 40-foot radius.

It is a basic principle of Government procurement that specifications must be sufficiently definite so as to permit competition on a common basis. Accordingly, the specifications must be free from ambiguity. An ambiguity exists if the specifications are susceptible to more than one reasonable interpretation. Telectro-Mek, Inc., B-190653, April 13, 1979, 79-1 CPD 263. In the present case, the specifications have been interpreted in two ways.

Paragraph 5 of the RFP required the offered crane to be able to lift up to 40 short tons. Paragraph 6 indicated that the offered crane would have to be able to service a ship 38 feet 2 inches in width. The Navy and Moody read these two requirements totally independent of each other and conclude that, since Moody meets the 40-ton requirement and can service a ship of the specified dimensions by turning the ship, Moody's crane is in compliance with the specifications. Rudolph contends that these requirements should be read together and, in addition to meeting the 40-ton requirement, the crane must have an adequate radius to service the ship without the necessity of it being turned. Under the latter interpretation, the crane must be able to service a ship which is 38 feet 2 inches wide while lifting 40 short tons. Even though no radius is stated in the specifications, we believe that it is implicit in the above requirements that a radius sufficient to service the entire ship is required while lifting 40 short tons. We do not think that the RFP contemplated that the vessel could be turned around when heavier than normal weights need to be lifted. In any event, we think that this interpretation is at least as reasonable as that of Moody and the Navy.

In this light, we find that the specifications were at best ambiguous and Moody and Rudolph were not competing on a common basis. Therefore, we recommend that the Navy resolicit this requirement using specifications which are free from ambiguity and, after having obtained an acceptable offer, if from other than Moody, terminate the existing contract with Moody for the convenience of the Government and make award under the resolicitation. If Moody is successful under the resolicitation at a lower price, award thereunder should be made and its current contract terminated.

Since this decision contains a recommendation for corrective action, we have furnished a copy to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the House

Committee on Government Operations, Senate Committee on Governmental Affairs, and House and Senate Committees on Appropriations concerning the action taken with respect to our recommendation.

Milton J. Fowler

For The Comptroller General
of the United States

HSE01500
HSE00302
SEN06600
SEN00300