



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Vacco Industries
File: B-232146
Date: November 17, 1988

DIGEST

1. General Accounting Office (GAO) will not consider argument that agency's definition of its minimum needs was not sufficiently restrictive since GAO role in resolving bid protests is to promote full and open competition.
2. Where agency's report specifically addresses arguments raised in initial protest, and protester fails to rebut the agency position in its comments on the agency report, the issues are deemed abandoned.
3. To be timely, protest allegation that solicitation amendment allowed insufficient time to prepare a best and final offer (BAFO) must be filed no later than due date for BAFOs.

DECISION

Vacco Industries protests the award of a contract to Fluid Conditioning Products, Inc. (FCP), under request for proposals (RFP) No. N00104-88-R-ZH51, issued by the Naval Ships Parts Control Center for replacement components (50 filter element assemblies) for Vacco's quiet high pressure air reducing manifold.^{1/}

The solicitation was issued as a sole-source procurement to Vacco, but was amended to include FCP's filters after FCP

^{1/} Nuclear submarines store air in small spaces under high pressure. The manifolds are used to quietly release the air (to avoid detection by enemy listening devices) at the lower air pressures required for torpedo and missile firing, ship ballasting, and life support. The filters prevent particulate contamination from entering the manifold's regulating valve.

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demonstrated its ability to supply an acceptable filter. Vacco protested the amendment at the agency level, arguing (1) that the filters are integral to the manifold's design and "cannot be separated under an individual component specification without compromising the integrity of the manifold performance characteristics," and (2) that non-Vacco filters should not have the same national stock number (NSN) as Vacco filters. Following the Navy's denial of its protest, Vacco protested the award to our Office on the same bases with additional contentions that (3) the agency improperly relaxed the testing requirements without giving Vacco an adequate opportunity to respond to the changed requirements, and (4) that the agency may have allowed the awardee improper access to Vacco's proprietary data.

We dismiss the protest.

In response to the initial sole-source procurement, the protester offered the filters at \$1,994.62 each. Even though the RFP was announced as a sole-source procurement, FCP tendered an offer to furnish filters at \$744 each. Learning that FCP had been approved under its replenishment parts purchase or borrow program (also known as the bailment program) as a potential supplier, the agency amended the solicitation to specify both the protester's and the awardee's filters, include first article testing, reduce the quantity from 55 to 50 units, and request best and final offers (BAFO). Both offerors repeated their previous offers, and award then was made to FCP based on its lower price.

Central to the protester's position is the question whether testing requirements applicable to the manifold should also apply to the filter. The manifold consists of several components, including manual shutoff valves, safety relief valves, regulating valves, filters and fittings to connect the manifold to ships' piping systems, and is qualification tested under a military specification. The testing is performed on the entire manifold system and includes operational, noise, shock, vibration and endurance tests; the filter, as part of the manifold system, in effect passed all of the above tests when the manifold qualified. Under the military specification, the filter itself is specifically subject to additional qualification tests consisting of bubble point, operational, strength, cleanability, flow surge and dirt holding. The RFP at issue only requires the filter to pass these filter-specific tests and does not mention the noise, shock and vibration testing required for the manifold system.

Following a conference at our Office, the protester stated in its conference comments that it was not contending that FCP was not responsible or should be prequalified, and that it did not object to FCP reverse engineering its filter "per se . . . but only the unsafe and unequal test criteria (or lack of objective test criteria) that . . . [the agency] has interjected into the new competition." In essence, Vacco contends that additional testing of the filter for noise, shock and vibration is required to ensure that, with the filter installed, the manifold will meet the applicable military specification.^{2/} The Navy disagrees, arguing that the current testing requirements in the RFP are sufficient to ensure that the filter will not compromise the integrity of the manifold.

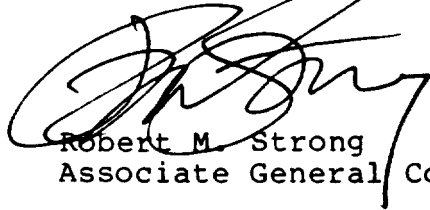
The crux of Vacco's contention is that the Navy, by not requiring additional testing of the filter, improperly relaxed its requirement to permit FCP to compete and in so doing compromised the Navy's needs. We will not consider this basis of protest since Vacco is in essence arguing that the agency's statement of its needs, as reflected in the filter testing requirements, is not sufficiently restrictive. Our role in resolving bid protests is to ensure that the statutory requirement for full and open competition in the award of government contracts is met; we therefore will not consider a protest that an agency requires more restrictive specifications to meet its minimum needs. Vacco Industries, B-230036, Apr. 21, 1988, 88-1 CPD ¶ 393.

The protester initially objected to the use of the same NSN to describe both the protester's and the awardee's filters, and the alleged misuse of Vacco's proprietary data to qualify FCP's filter. In its report the Navy responded to both objections. Vacco has not disputed or refuted the substance of the agency response. Where an agency specifically addresses issues raised by the protester in its initial protest and the protester fails to rebut the agency response in its comments, we consider the issues to have been abandoned by the protester. Front Desk Enterprises, Inc., B-230732, June 23, 1988, 88-1 CPD ¶ 603.

^{2/} To the extent Vacco challenges the Navy's initial decision to break out the filters for procurement separate from the manifold, its contention is based on the same premise, i.e., that procuring the filters separately was improper because the RFP lacks the additional testing requirements which Vacco contends are necessary to ensure that the filters will not degrade the performance of the manifold.

Finally, in its conference comments Vacco for the first time contends that it had insufficient time to prepare its BAFO after receiving the amendment allowing FCP to participate in the competition. To be timely, this issue had to be raised before the due date for BAFOs; because it was not raised until Vacco's conference comments, the issue is untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988); Alexandria Graphics & Reproduction Service, B-200249, Oct. 7, 1980, 80-2 CPD ¶ 251.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name and title.

Robert M. Strong
Associate General Counsel