



Comptroller General
of the United States

Washington, D.C. 20548

ms. ISRIN

Decision

Matter of: Marine Instrument Company

File: B-242166

Date: March 29, 1991

William Nadel for the protester.

Jonathan H. Kosarin, Esq., Department of the Navy, for the agency.

Jeanne Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation specifications are defective is dismissed where protester disagrees with certain specifications, but does not allege that it cannot supply an item meeting them, or that it is economically affected by the specifications in any way.

2. Allegation that absence of adequate assembly and alignment information will preclude equal competition is without merit where agency plans to assure proper assembly and alignment through first article test, and protester makes no showing that agency's approach in fact will restrict competition.

DECISION

Marine Instrument Company protests request for proposals (RFP) No. N00104-90-R-G199, issued by the Department of the Navy as a total small business set-aside for 49 stadimeters, NSN 7H6605-01-168-8508. Marine maintains that several specifications in the RFP's technical data package are deficient.^{1/}

We dismiss the protest in part and deny it in part.

Marine filed an agency-level protest alleging that drawings in the technical data package, produced for the Navy by a competing company, were inadequate for use by other companies in manufacturing the stadimeters. The protester cited

^{1/} A stadimeter is used aboard ship to measure the ship's range from other objects of known height, enabling it, for example, to maintain formation within a convoy.

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28 deficiencies in the drawings. On November 27, prior to the Navy's response, Marine protested the same alleged deficiencies to our Office. In its report on the protest, the Navy disagreed with Marine on 21 of the alleged deficiencies, and issued an amendment addressing the other seven, which it deemed meritorious. In its comments on the report, Marine rebutted the Navy's response only as to six of the 21 items. The Navy has changed its position on one of these six (the accuracy of the frame casting/frame machining drawings), and addressed the deficiency in an amendment. We consider here only the remaining five alleged deficiencies; we deem the other 15, on which Marine did not comment, to be abandoned. See A.G. Personnel Leasing, Inc., B-238289, Apr. 24, 1990, 90-1 CPD ¶ 416. The closing date for receipt of initial proposals was February 15, 1991. No award has been made pending resolution of the protest.

The five remaining alleged deficiencies are as follows:

(1) the RFP does not require the most recent version of the operating manual; (2) the RFP should require the handle bracket stud to be finished to protect it from corrosion; (3) the specified carriage and drum screw assembly will allow excessive side shake or backlash resulting in errors in range readings; (4) excessive shimming will be necessary under the specifications as stated to avoid radial play between the inner and outer centers; and (5) the assembly and alignment information is inadequate to assure that all potential offerors will be able to compete on an equal basis.


The first four alleged deficiencies appear to be based on Marine's view that certain changes in the specifications are necessary to assure the proper care and operation of the instrument, and would better serve the agency's needs. We will not consider these arguments. Under the Competition in Contracting Act of 1984, we consider protests by interested parties. 31 U.S.C. § 3553(a) (1988). An interested party is defined by the act as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(2). This definition is reflected in our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991). Marine has not suggested that it cannot furnish items in accordance with the specifications as written, or that it is economically affected by the questioned specifications in any way. Consequently, it is not clear that Marine is an interested party with respect to these provisions. Mid-Atlantic Serv. & Supply Corp., B-218416, July 25, 1985, 85-2 CPD ¶ 86.

In any case, Marine's view of the requirements for stadimeters, and its belief that the agency should adopt its views, raise an issue of agency policy that we generally will not

consider. It is the agency that must determine its needs, and we will not consider arguments such as these absent a showing of possible fraud or willful misconduct, neither of which is present here. Mid-Atlantic Serv. & Supply Corp., B-218416, supra.

The fifth alleged deficiency--Marine's claim that the stadimeter assembly and alignment information in the data package is inadequate--is without merit. The Navy believes the assembly and subassembly drawings are adequate for any manufacturer to be able to assemble the items, and explains it plans to test for accuracy as part of a first article test; in this way, it will be assured that the stadimeters are both assembled and aligned correctly without having to spell out procedures necessary to attain this. Although Marine broadly asserts that competition may be reduced under the agency's approach, there simply is nothing in the record indicating that this is the case; Marine does not assert that the assembly and alignment information is deficient such that it will not be able to submit a competitive offer. See generally MRI Mechanical Contractors, B-224170; B-224172, Dec. 24, 1986, 86-2 CPD ¶ 712.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel