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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** FirstPage of Virginia

**File:** B-243747

**Date:** August 2, 1991

Michael R. Farley for the protester,  
Jonathan H. Kosarin, Esq., and Michael D. Rigg, Esq.,  
Department of the Navy, for the agency.  
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Termination of contract for the convenience of the government was proper where shortly after award the agency determined that one of the specifications in the solicitation was defective and did not adequately describe its needs.

### DECISION

FirstPage of Virginia protests the termination for convenience of its contract for pagers with the Naval Supply Center (NSC), Norfolk, Virginia which was awarded under request for proposals (RFP) No. N00189-91-R-0094. FirstPage contends that termination is improper because there were no defects in the award of its contract.

We deny the protest.

The RFP, issued on February 4, 1991, contemplated the award of a contract for 590 Motorola Bravo/Panasonic EK-2096/3096 brand name or equal pagers as well as related paging services. The RFP required the contractor to provide pagers that operated on "VHS" frequency; the parties to the protest agree that no such frequency exists. Prior to issuing the current RFP, the requiring activity, the Naval Hospital, Portsmouth, Virginia, had obtained Motorola Bravo pagers directly from the manufacturer under the Federal Supply Schedule program. The agency purchased air time from Metromedia Paging and the pagers operated in the Very High Frequency (VHF) range. Based on the successful transmission and operation of these pagers and their ability to penetrate areas throughout the Hospital (including the operating rooms, mechanical rooms, laboratories, and the basement), the agency decided that it

should obtain additional Motorola Bravo/Panasonic pagers operating in the VHF range.

Of the nine firms that submitted best and final offers (BAFO), FirstPage was the low-priced offeror. While FirstPage proposed the brand name pagers, its proposal was silent regarding which frequency FirstPage would use to broadcast. The agency reports that it nevertheless decided to make award to FirstPage on the basis that the firm in its offer agreed to provide a product meeting the salient characteristics set forth in the solicitation.

Subsequent to the award, the Navy received two agency-level protests from unsuccessful offerors; a third offeror contacted the Navy and protested verbally, but never filed a written protest. Both of the companies that did file agency-level protests questioned FirstPage's ability to meet the requirements in the RFP. These challenges were based on the protesters' belief that FirstPage's pagers operated in the Ultra High Frequency (UHF) range, not the VHF range. According to the protesters, the solicitation required pagers that are operable in the VHF range.

As a result of the concerns raised by these agency-level protests, the Navy reviewed its specifications; contacted the requiring activity; and determined that the solicitation was intended to obtain pagers operating in the VHF range, not the VHS range as stated in the RFP. Having determined that the RFP should have called for pagers operating within the VHF range, the Navy confirmed that FirstPage's proposed pagers were operable only in the UHF range. The Navy determined further that its specifications led to confusion on the part of the offerors; four offerors interpreted the specifications to call for a VHF system, while seven offerors interpreted the specifications to call for a UHF system. None of the offerors purported to offer pagers that would be operable in the nonexistent VHS range erroneously called for in the solicitation.

After reviewing the information that resulted from the agency-level protests, the Navy decided to terminate the contract awarded to FirstPage and to resolicit after further reviewing the evaluation criteria and the needs of the contracting agency. Following receipt of the notice that its contract had been terminated for the convenience of the government, FirstPage protested to the Navy and then to our Office. FirstPage contends that the agency's decision to terminate its contract was improper because the award to it was proper.

Our Office generally does not review an agency's decision to terminate a contract for the convenience of the government

since that is a matter of contract administration which is not within our bid protest jurisdiction, Special Waste, Inc., 67 Comp. Gen. 429 (1988), 88-1 CPD ¶ 520. However, where the decision to terminate results from the agency's finding that the initial contract award was improper, we will review the protest to examine the award procedures that underlie the termination action. Id. Here, we find that the agency properly decided that award could not be made under the RFP.

The protester offers the following three reasons to support its assertions that the original award was properly made: (1) FirstPage met the specifications in the solicitation; (2) none of the offerors, including FirstPage, was confused by the typographical error calling for VHS frequency rather than VHF frequency; and (3) the Naval Hospital did not intend to limit the competition to companies operating in the VHF range.

Whether FirstPage proposed pagers which meet the agency's actual needs is not dispositive of whether award properly can be made under the RFP. Rather, termination of a contract and resolicitation is proper when, subsequent to award, the contracting agency discovers that the solicitation did not properly describe the government's needs, id., or that the solicitation contains ambiguous specifications which misled competitors and deprived the government of the full benefits of competition. See Flow Technology, Inc., 67 Comp. Gen. 161 (1987), 87-2 CPD ¶ 633. The specification requiring that the pagers operate on a VHS frequency is at best ambiguous since it describes a nonexistent frequency, and does not reflect the government's needs since it does not identify the VHF range that the agency states it intended to require.

Contrary to FirstPage's contention that offerors were not misled by the error, only four of the offerors who submitted BAFOs proposed to operate in the VHF range. FirstPage does not agree that the fact that the other offerors proposed operating in the UHF range shows that they were misled by the reference to VHS frequency in the RFP. Rather, FirstPage argues that the UHF range does in fact meet the RFP requirement that the pagers transmit at a minimum of 152.24 megahertz (MHz) and operate in the VHF range. The protester claims that since "VHF is in a range of 30 to 300 MHz and UHF is in a range of 300 MHz to 3 gigahertz (GHz), it follows that UHF would meet the minimum specifications of VHF." Thus, according to the protester, since all the offerors met the RFP requirements by proposing pagers operable in either range, the agency cannot conclude that any of the

offerors were misled by the error in the specified frequency.1/

FirstPage's interpretation that the RFP does not require that pagers operate in either the VHF range or the UHF range but only that they "operate on a minimum of VHF" is unreasonable. To be reasonable, an interpretation must be consistent with the solicitation read as a whole and in a reasonable manner. Captain Hook Trading Co., B-244013, Nov. 17, 1986, 86-2 CPD ¶ 566. When a dispute exists as to the actual meaning of a solicitation requirement, we will resolve the dispute by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Vitro Servs. Corp., B-733040, Feb. 9, 1989, 89-1 CPD ¶ 136. Here, in addition to requiring transmission at a minimum of 152.24 MHz, the RFP requires that the pagers operate in the VHS (actually VHF) frequency, defined by the protester as the range from 30 MHz to 300 MHz. Pagers that operate above that frequency--that is, in the UHF range as proposed by the protester and other offerors--by definition operate outside the VHF range required by the agency.2/

In its comments on the agency report, FirstPage argues that the requiring activity, the Naval Hospital, does not want pagers operating only in the VHF range. To support this argument, FirstPage contends that: (1) the Hospital successfully used the protester's pagers as part of a demonstration; (2) the Hospital asked the contracting activity not to terminate FirstPage's contract; and (3) FirstPage had been recommended as a potential source for the contract even though it is licensed to operate only in the UHF range. The record does not support FirstPage's position. Rather, from the beginning of the requisition the Hospital specified its preference for VHF based on its prior purchase of air time from Metromedia Paging, which operated successfully on an assigned VHF range. With regard to the protester's specific contentions concerning the termination of its contract, the record shows, for example, that the Hospital questioned the proposed termination only because it believed that all the offerors understood that operation in the VHF range was


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1/ This is the same argument that FirstPage makes to show that its pagers, which operate in the UHF range, meet the RFP requirements.

2/ The protester has not alleged that the agency's specification of the VHF range is unduly restrictive. Any such allegation constitutes a challenge to a solicitation impropriety which would have to be raised before the time set for receipt of initial proposals. See 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(1)).

required and that none were misled by the error in the RFP. Since the protester has presented no evidence to substantiate its allegations, and we see none elsewhere in the record, we find that the agency acted properly in terminating the protester's contract after concluding that the award to the firm was improper.

The protest is denied.

  
for James F. Hinchman  
General Counsel