



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** RMS Industries  
**File:** B-247465; B-247467  
**Date:** June 10, 1992

Richard Snyder for the protester,  
Michael Trovarelli, Esq., and Lynne E. Saurmann, Esq.,  
Defense Logistics Agency, 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

1. Protest raising same issue that was resolved in a recent decision on a protest by the same protester and involving the same agency is dismissed as no useful purpose would be served by further consideration of the matter.
2. Protest that solicitation specifications are unclear is denied where all specifications to which the protester objects reasonably describe the work to be performed and the information provided is adequate to enable firms to compete intelligently on an equal basis.

## DECISION

RMS Industries protests various allegedly ambiguous specifications contained in request for proposals (RFP) No. DLA100-91-R-0600 and invitation for bids (IFB) No. DLA100-91-E-0599, both issued as small business set-asides by the Defense Logistics Agency (DLA) for work gloves. RMS also objects to evaluation language in the RFP which provides that the agency intends to consider an offeror's consistent demonstration of a commitment to customer satisfaction and timely delivery of quality goods at fair and reasonable prices as well as an offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction.

We dismiss the protest with regard to the challenge to the evaluation language in the RFP and we deny the protests challenging the specifications.

The solicitations require the successful contractor to provide the agency with simplex-knitted cotton gloves that have a Gunn cut design and leather reinforced palm, fingers,

and Bolton thumb. Both include a drawing of the gloves for informational purposes; however, they state that in cases of inconsistencies between the written specifications and the drawing, the specification takes precedence.

Prior to bid opening under the IFB and the closing date under the RFP, RMS wrote several letters to the agency challenging various specifications in the solicitations and objecting to the evaluation language in the RFP relating to the offeror's past performance and reputation. The contracting officer concurred with RMS's assertions regarding two of the specifications and amended the solicitations accordingly; however, the contracting officer disagreed with RMS's other assertions.

#### EVALUATION FACTORS

The RFP lists the following technical evaluation factors, in descending order of importance: (1) past performance and (2) price. In explaining the past performance evaluation factor, the RFP states that past performance:

"Means the offeror's record of conforming to [g]overnment specifications and standards of good workmanship; the offeror's adherence to contract schedules, including the administrative aspects of performance; the offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the offeror's business[-]like concern for the interests of the customer."

The RFP further explains that:

"Evaluation of past performance will be a subjective assessment based on a consideration of all relevant facts and circumstances. It will not be based on absolute standards of acceptable performance. The [g]overnment is seeking to determine whether the offeror has consistently demonstrated a commitment to customer satisfaction and timely delivery of quality goods and services at fair and reasonable prices. This is a matter of judgment."

RMS contends that the evaluation factors violate Federal Acquisition Regulation (FAR) § 15.605(b). Specifically, RMS argues that: (1) because the fairness and reasonableness of prices are evaluated in the context of the price evaluation, they should not be considered a second time as part of past performance; (2) quality of products provided in the past should not be evaluated at all because the only relevant quality consideration is whether offerors will provide a product conforming to the RFP specifications,

which set the standard for quality; and (3) considering an offeror's reputation is improper because it permits contracting officers to give weight to gossip and speculation.

These protest issues are identical to the issues raised in RMS Indus., B-247229; B-247794, May 19, 1992, 92-1 CPD ¶ \_\_\_\_, which involved the question of whether FAR § 15.605(b) precludes an agency from considering, as part of past performance, the following: (1) whether an offeror has consistently demonstrated a commitment to deliver goods at fair and reasonable prices; (2) the offeror's record of consistent performance in accordance with contract specification; and (3) an offeror's reputation for reasonable and cooperative behavior demonstrating a commitment to customer satisfaction. The protester here relies upon the same arguments advanced in the earlier case in which we concluded that the agency may consider these stated factors as a part of the evaluation of the offeror's past performance. Since the issues raised and the arguments made by RMS in this protest are the same as in the earlier protest which was resolved by decision of May 19, we see no useful purpose to be served by our further consideration of this protest. Wallace O'Connor, Inc., B-227891, Aug. 31, 1987, 87-2 CPD ¶ 213.

#### AMBIGUOUS SPECIFICATIONS

RMS contends that the specifications in the solicitation are written in a manner which requires a vendor to have "superior knowledge"--information not contained in the solicitation package--in order to be able to compete for an award. RMS claims that the specifications are so unclear that only firms with superior knowledge would know what the requirement for leather reinforcement means; where the seams in the gloves are located; how much leather is required; and where to place the shirring.

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The protester's contention that the pricing history of this requirement shows that only firms with superior knowledge have received awards to provide the work gloves in the past is irrelevant because each procurement action is a separate transaction; thus, the award made under one is not relevant to the propriety of the award under the others for purposes of a bid protest, especially where there conceivably are different competitors, different quantities being purchased, and different market conditions affecting the prices offered. Ferrite Eng'g Labs, B-222972, July 28, 1986, 86-2 CPD ¶ 122.

As a general rule, the contracting agency must give offerors sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. C3, Inc., B-241983.2, Mar. 13, 1991, 91-1 CPD ¶ 279. The mere allegation that a solicitation is ambiguous, however, does not make it so. Snyder Corp., B-233939, Mar. 16, 1989, 89-1 CPD ¶ 282. There is no requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk or remove every uncertainty from the mind of every prospective offeror. A&C Bldg. and Indus. Maintenance Corp., B-230270, May 12, 1998, 88-1 CPD ¶ 451.

RMS first contends that the specifications are at best unclear because the terminology used in the description of the glove is so inconsistent that competitors cannot determine what the requirement for a "leather reinforced palm" means. According to the protester, the solicitations do not discuss how or where to attach the "leather reinforcing to the palm," and do not explain how to join the "leather piece to [the] palm and finger." As a result, the protester states that it does not know whether the leather reinforcement is simply a piece of leather on the palm and fingers of the glove or an extra piece of leather that is to be placed over the leather on the palm and fingers of the glove.

We have reviewed the contested provisions regarding the leather reinforcement and do not find that they are deficient; that they impose an improper degree of risk on the contractor; or that they otherwise impaired RMS's ability to intelligently prepare a proposal to compete on an equal basis with the other firms. The solicitations provide that the "gloves shall be a Gunn cut design having a leather reinforced palm, fingers, and Bolton thumb." They contain cutting instructions for the knitted cloth parts and the leather parts with specific instructions to "join [the] leather portion to [the] cloth palm and finger portion by stitching all outside edges." The instructions also provide that the contractor is to "join [the] leather to [the] cloth portion of [the] thumb by stitching all [the] outside edges." In light of these instructions that the leather must be joined to the knitted cloth, we are not persuaded that the solicitations are unclear or would lead an offeror reasonably to think that the leather reinforcement specification requires sewing leather onto leather for reinforcement.

Similarly, we are unpersuaded by the protester's other contentions that the specifications are unclear because they do not provide any guidance on where to sew the seam on the glove and how much leather is required as reinforcement. Regarding the placement of the seam, the solicitations provide that the "glove shall be full[y] inseamed with one row of stitching 1/16 to 3/32 inch[es] from [the] edge."

The solicitations adequately inform the competitors-- contrary to the protester's suggestion--about the correct placement of the seam because they reference only two pieces of material that are being joined by a seam; they are silent about any seam other than the inseam joining these two pieces; and the drawing in the solicitations does not have a seam other than the inseam.

With regard to the protester's alleged uncertainty concerning the amount of leather that is required, the solicitations provide measurements for the overall length and width of the gloves and clearly state that the leather would be used as reinforcement for the palm, fingers, and the thumb. With this information an offeror would be able to deduce exactly how much leather is required as reinforcement for the knitted cloth on each glove.

We also find unpersuasive the protester's contention that the shirring specifications<sup>2</sup> in the solicitations are ambiguous. The protester claims that the solicitations are unclear because the requirement that the "tips of the four fingers and thumb on the palm side shall be shirred between the joints," is inconsistent with the industry definition of shirred elastic, which means "elastic which has been stitched to the inside of a glove back so that the material is puckered and drawn by the elastic." (Emphasis added.) Regardless of what the industry definition may or may not be, the requirement in the solicitations that the tips of the finger and thumb be shirred on the palm side is not ambiguous; rather, it specifically describes where the contractor is required to place the shirring. Given the fact that the solicitations clearly advise the potential competitors that the shirring is to be on the palm side of the glove, it would be unreasonable for them to ignore the the specifications and to read the industry definition of shirring into the solicitation.

Finally, the protester argues--as it did in its agency-level protest--that even if the shirring specifications are clear and the agency actually intended to call for shirring on the palm side, the shirring specifications are improper because the shirring would create puckering and would be uncomfortable. Contracting agencies have broad discretion in identifying their needs and determining what characteristics will satisfy those needs. We therefore will not question an agency's determination of its needs so long as it has a

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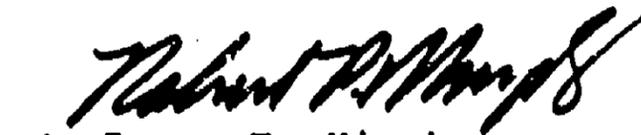
<sup>2</sup>According to Webster's Third New International Dictionary, shirring means a decorative gathering of material that is made by drawing up the material along two or more parallel lines of sketching or encased cords.

reasonable basis, Philips Info. Sys., Inc., B-208066,  
Dec. 6, 1982, 82-2 CPD ¶ 506.

The agency states that the protester's assessment of the placement of the shirring is incorrect and that the shirring on the palm side of the glove does not make the glove incapable of performing its intended function. The agency argues that--contrary to the protester's suggestion that the shirring will cause lumps and, thus, the gloves cannot fulfill their intended use, namely to make "delicate adjustments"--the gathering will not interfere with the use because (1) any delicate adjustments would be performed with the fingertips and (2) the gathering will be sewn at the seam which is on the side of the finger. The protester's mere disagreement with the agency's position does not render the agency's requirement unreasonable. Id.

Based on our review, we see no basis to object to the specifications the protester challenges. The solicitations reasonably provide the information needed for potential competitors to be able to compete intelligently and on a relatively equal basis.

The protest with regard to the evaluation language in the RFP is dismissed; the protests challenging the specifications are denied.

  
James F. Hinchman  
General Counsel