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

Decision

Matter of: RMS Industries

File: B-248678

Date: August 14, 1992

Richard Snyder for the protester.
John Linarelli, Esq., Dickstein, Shapiro & Morin, for Nationwide Glove Co., Inc., an interested party.
Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

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 the specification in invitation for bids (IFB) No. DLA100-92-B-0154, issued by the Defense Logistics Agency (DLA) for gloves. RMS contends that Specification No. MIL-G-10849 contains ambiguities which can only be resolved on the basis of the agency's "superior knowledge."

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

DLA issued the IFB on March 5, 1992, for the manufacture and delivery of 13,632 pairs of electrical worker's glove shells. By letter dated March 20, 1992, RMS requested that DLA correct alleged "discrepancies" in MIL-G-10849, the controlling specification. Although grouped as nine items, those discrepancies included (1) two instances of incorrect types of materials being named (for example, horsehide was mistakenly identified as type V material rather than type VII); (2) three instances where RMS claimed that the specification was ambiguous; (3) three instances where RMS contended that the specification defined as a defect something which RMS believed was permissible; and (4) eight

instances in which RMS believed that the specification unnecessarily repeated a requirement already set forth elsewhere.

By letter of April 23, 1992, the contracting officer responded to each of RMS' complaints. In its response, the agency conceded that two type numbers had been erroneously listed and agreed to correct them. The agency denied that any ambiguity existed in the three instances which RMS alleged were ambiguous; it affirmed that the IFB defines as defects the three circumstances that RMS contended were not so defined; and it explained why it viewed the eight allegedly superfluous requirements as appropriate. By letter to the agency dated April 24, 1992, RMS criticized this response and reiterated RMS' view as to some, but not all, of the issues previously raised. Rather than clearly responding to the agency's explanations, RMS' letter featured invective and ad hominem attacks on agency personnel. On May 11, RMS protested the specification to our Office.

Bid opening was held on May 12, 1992; RMS did not submit a bid. Award has been suspended pending resolution of this protest.

RMS' contentious but inarticulate protest to our Office does not clearly indicate which of its earlier concerns it intends to raise. The only issue explicitly raised in the protest is that of alleged ambiguities. According to the protester, the specification does not make clear whether shirring is to be on the side or the face of the fingers.

The agency report to our Office quotes the language of the specification to explain the basis for the agency's view that it is clear that the shirring is to be performed on the tips of the four fingers on the palm side. RMS' comments on the agency report do not respond to the agency's rebuttal, but instead raise, for the first time, one of the instances of allegedly duplicative specifications.[1]

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

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[1]The comments also raise a new ground of protest, an allegation that the agency's needs should have been set forth in performance specifications, rather than design specifications. Because this protest ground was raised after bid opening and more than 10 days after it was known to RMS, it is untimely. See 4 C.F.R. § 21.2(a) (1992).

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, 1988, 88-1 CPD ¶ 451.

As to each of the three alleged ambiguities, RMS has failed to demonstrate that any genuine ambiguity exists. First, RMS' argument that bidders cannot know where the shirring belongs is unsupported by the record because the specification plainly states that the contractor is to "[s]hirr the tips of the four fingers on the palm side." RMS has not explained how this language can be subject to two reasonable interpretations, nor has it responded to the agency report on this point.

The second alleged ambiguity set forth in RMS' correspondence with the agency concerns the specification provision that distorting or twisting of any finger or thumb "affecting serviceability seriously" would be considered a defect. RMS contends that the quoted words have no specific meaning and therefore are unacceptably ambiguous. RMS has failed to demonstrate that the quoted language sets forth a standard less specific or manageable than other fairly general standards routinely used in government contracting. See, e.g., Federal Acquisition Regulation (FAR) § 15.802 (contracting officer shall purchase supplies and services at "fair and reasonable prices.")

The third alleged ambiguity concerns the specification statement that, in inspection of the packaging, materials would be examined to determine whether any component is missing, damaged, or not as specified. In its March 20, 1992, letter to the agency, RMS claimed not to know to which components the specification referred. The agency's April 23, 1992, reply listed the components of the packaging that were to be inspected: the liner, the box, and the tape or twine used to tie the bundles. RMS' April 24, 1992, letter argued that the gloves themselves as well as their markings were also components of the packaging. Although RMS has not explicitly addressed this purported ambiguity in its protest to our Office, we note that RMS' interpretation of the specification is implausible. The contents of the packaging, i.e., the gloves, cannot credibly be considered components of the packaging. Accordingly, RMS has failed to demonstrate that any ambiguity exists here. We conclude that, as to this as well as the other ambiguities alleged by

RMS, the specification reasonably describes the work to be performed and the information provided is adequate to enable firms to compete intelligently on an equal basis.

As for the three points that RMS earlier claimed could not properly be considered defects, we note that the agency provided a reasonable explanation, unrebutted by RMS, for its view that the IFB does explicitly define as defects the circumstances that RMS contended were "non-defects." In any event, RMS has not raised this issue during the protest process before our Office and we therefore need not consider it.

Finally, RMS' contentions that certain specification provisions are duplicative does not provide a valid basis of protest. See 4 C.F.R. § 21.3(m) (1992). The purpose of our bid protest procedure is to protect the interests of actual and potential offerors, where agency action is alleged to have prejudiced those interests. If agency action, even though improper, has not prejudiced a party, that party cannot state a valid basis of protest because prejudice is an essential element of any protest. Corporate Jets, Inc., B-246876.2, May 26, 1992, 92-1 CPD ¶ 471. RMS merely claims that the contested specification provisions are superfluous, not that their inclusion in the IFB hurts or even affects RMS. RMS' concern about the superfluous nature of the provision, even if it were well-founded, does not provide a valid basis for protest.

The protest is denied in part and dismissed in part.

James F. Hinchman
General Counsel