



Comptroller General  
of the United States

Washington, D.C. 20548

147533

## Decision

**Matter of:** Mine Safety Appliances Company; Interspiro, Inc.

**File:** B-247919.5; B-247919.6

**Date:** September 3, 1992

J. Eric André, Esq., Howrey & Simon, for Mine Safety Appliances Company, and Philip J. Davis, Esq., Stanley R. Soya, Esq., and Phillip H. Harrington, Esq., Wiley, Rein & Fielding, for Interspiro, Inc., the protesters. Gerald D. Morgan, Esq., William H. Espinosa, Esq., and Lance D. Bultena, Esq., Winthrop, Stimson, Putnam & Roberts, for National Draeger, Inc., an interested party. Gregory Petkoff, Esq., Department of the Air Force, for the agency. John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Award of a contract was improper where the awardee's proposal did not show that the product offered met the material requirement regarding the proposed product's maximum weight.

### DECISION

Mine Safety Appliances Company (MSA) and Interspiro, Inc. protest the award of a contract to National Draeger, Inc. under request for proposals (RFP) No. F08635-91-R-0203, issued by the Department of the Air Force for self-contained breathing apparatus (SCBA), and the development of chemical warfare (CW) kits for the SCBAs, for use by Air Force fire fighters. MSA and Interspiro assert that Draeger's proposal failed to comply with a number of mandatory RFP specifications.

We sustain the protests.

The RFP was issued on October 2, 1991, for commercially available SCBAs and the development of CW kits for the

SCBAs,<sup>1</sup> The RFP provided that award would be made to the responsible offeror whose offer, conforming to the requirements of the RFP, was determined most advantageous to the government, cost and other factors considered. The evaluation factors listed in descending order of importance were: (1) technical, (2) management, and (3) cost/price. One of the assessment criteria to be used in the evaluation of proposals was "[c]ompliance with requirements."

The proposal preparation instructions informed offerors that technical proposals should:

"[B]e specific and complete in every detail . . . . The proposal shall not merely offer to conduct an investigation or perform work in accordance with the [s]tatement of [w]ork, but shall outline the actual investigation or method proposed as specifically as possible. Repeating the statement of work without sufficient elaboration will not be acceptable. . . . The [q]overnment shall not assume that an offeror possesses any capability unless specified in the proposal."

These instructions further informed offerors that their technical proposals "should be presented in as much detail as possible following the Statement of Work," and were to include a "[c]omplete detailed statement of solution" and a "[s]pecific statement of any interpretations, deviations, and exceptions to the Statement of Work/Specifications."

An attachment to the RFP set forth in detail the specifications for the SCBAs and the CW kits. In the paragraph containing the overall description of the SCBA, it is required that "[t]he completely assembled and fully charged [SCBA] shall not weigh more than 35 pounds." The RFP specified that the SCBA "shall consist" of, among other things, a "personal communication system capable of transmitting and receiving at the face mask assembly with a radio interface." This particular requirement was clarified by the Air Force in a letter sent to all the offerors, which stated in relevant part that in calculating the weight of their SCBAs, offerors were to "include the communications set minus radio weight."

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<sup>1</sup>The SCBAs will be used by Air Force fire fighters in oxygen deficient environments, e.g., structural fire fighting and rescue, parked aircraft fire fighting and rescue, and aircraft crash fire fighting and rescue. The CW kits will be used during these same operations when they are conducted in a CW or suspected CW environment.

The Air Force received six proposals in response to the solicitation. Four offers, including those of MSA, Interspiro, and Draeger, were included in the competitive range and deficiency reports and clarification requests were issued and responded to. Discussions were held and best and final offers (BAFO) received and evaluated. The agency determined that Draeger's proposal conformed to the RFP and offered the best overall value to the government based on technical and price considerations. After award was made to Draeger, these protests were filed. The Air Force has suspended contract performance pending the resolution of these protests.

The protesters argue that Draeger's proposal fails to meet a number of mandatory RFP specifications, including the requirement that the SCBA weigh 35 pounds or less, and that the award to Draeger was thus improper.

The Air Force argues that it reasonably determined that Draeger's proposed SCBA met the 35-pound weight limit based on the fact that Draeger did not include, in its technical proposal, a statement that it was deviating from this requirement, and Draeger's representation in its proposal that its SCBA was approved by the National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA). With regard to the NIOSH/MSHA approval, the Air Force explains that an SCBA can only gain such approval if it weighs 35 pounds or less. See 30 C.F.R. § 11.85-4 (1991).<sup>2</sup>

As a general rule, a proposal need not show compliance with each aspect of a solicitation where the solicitation does not require such a showing. See Jarrett S. Blankenship Co., B-241704, Feb. 19, 1991, 91-1 CPD ¶ 187. However, even where a solicitation does not so require, a proposal that does not explicitly show compliance with a material requirement may not be accepted where there is reason to doubt that the offeror is agreeing to meet that requirement. See Telemetrics, Inc; Techniarts Eng'g, B-242957.7, Apr. 3, 1992, 92-2 CPD ¶ \_\_\_\_\_ (agency unreasonably accepted offeror's general representation of compliance, where other offerors of the same equipment took exception to a material requirement); Corbetta Constr. Co. of Ill., Inc., 55 Comp. Gen. 201 (1975), 75-2 CPD ¶ 144, aff'd except recomm. withdrawn, 55 Comp. Gen. 972 (1976), 76-1 CPD ¶ 240 (offeror's failure to address various requirements can reasonably be interpreted as a limitation of its offer to

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<sup>2</sup>We note that under certain circumstances that do not appear to be present here, an SCBA can be NIOSH/MSHA approved if it weighs 40 pounds or less, rather than 35 pounds or less. 30 C.F.R. § 11.85-4.

only what it proposed and creates reasonable doubt as to whether the offeror will meet those requirements; agency may not make award on the basis of that offer without assuring compliance). With respect to the weight limit, we think this is such a case.

First, it is undisputed that the 35-pound limitation is one of the critical parameters of the SCBA. The limitation is clearly set forth in the primary paragraph of the SCBA specifications, and one proposal that offered an SCBA that exceeded the 35-pound limitation by a small amount was eliminated from the competitive range for that and one other deficiency.

Second, notwithstanding the critical and firm nature of the 35-pound requirement, Draeger's proposal did not expressly address the weight of its SCBA; the proposal nowhere states or claims that the offered SCBA weighs 35 pounds or less.<sup>3</sup> In contrast, other offerors, including the protesters, expressly addressed their compliance with this fundamental SCBA requirement. It is also notable that Draeger, as well as other offerors, addressed their respective compliance with virtually all of the SCBA requirements per the RFP's request for detailed proposals addressing the statement of work.<sup>4</sup>

Under the circumstances, we think the failure of Draeger's proposal to address this critical requirement, while addressing virtually all other SCBA specification requirements, should have led the agency to assure itself that Draeger in fact was offering an SCBA that was compliant with the 35-pound limitation. See Corbetta Constr. Co. of Ill., Inc., supra.

The Air Force asserts that it had no doubt as to Draeger's SCBA's compliance with the weight limitation by virtue of the offered SCBA's NIOSH/MSHA approval, since, as noted above, an SCBA must weigh less than 35 pounds in order to receive such approval. However, from our review of Draeger's proposal, Draeger's SCBA's NIOSH/MSHA approval

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<sup>3</sup>Draeger does specify the weights of various components and accessories of the SCBAs.

<sup>4</sup>The RFP required the submission of detailed proposals demonstrating that the proposals met the requirements of the RFP. The RFP expressly required offers to comply with the RFP requirements and the proposal instructions required a detailed response following the statement of work. Offerors were admonished that the government would not assume any capability not specified in the proposal.

should have raised further questions as to its compliance with the 35-pound weight limitation. As stated in Draeger's proposal, the Draeger SCBA, which is NIOSH/MSHA approved, is not equipped with any integral electronic communications system as required by the RFP. That is, Draeger included in its proposal the NIOSH/MSHA approval label for its SCBA, and the parts listed on this label as comprising the approved SCBA assembly do not include this type of communications system.<sup>5</sup> As such, while it may be reasonable to conclude from the NIOSH/MSHA approval that the SCBA offered by Draeger weighs 35 pounds or less without the required communications system, it is impossible to determine whether the offered SCBA with the communications system added per the RFP's requirements will weigh 35 pounds or less.<sup>6</sup> See Telemetrics, Inc.; Techniarts Eng'g, supra.

We sustain the protests.<sup>7</sup>

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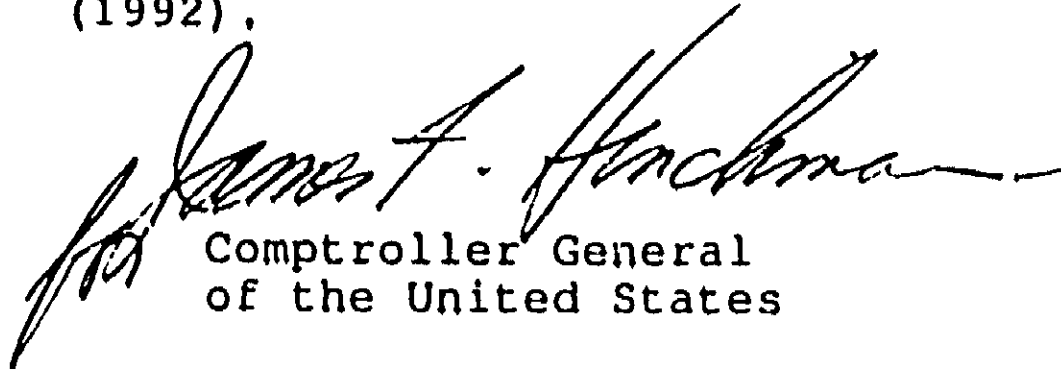
<sup>5</sup>While the Draeger NIOSH/MSHA-approved SCBA has a speaking diaphragm permitting communication while the SCBA is in use, it does not have "an integral method of electronically transmitting and receiving speech with an interface connection for existing Air Force fire fighter radios" as required by the RFP.

<sup>6</sup>We note that descriptive literature furnished by Draeger during the course of this protest regarding the "commercially available" SCBA it offered still does not specify the weight of the SCBA or depict the SCBA equipped with any communications system such as that required by the RFP. Descriptive literature concerning Draeger's products furnished by the protesters provides that an SCBA manufactured by Draeger, which carries the same NIOSH/MSHA approval number as the SCBA that Draeger has offered here and from which the SCBA offered by Draeger is apparently derived, weighs 34.7 pounds. This literature similarly does not depict the SCBA equipped with any communications system as required by the RFP; the protesters persuasively assert that the addition of a communications system would cause this model to exceed the weight limitation. In sum, Draeger has not submitted any convincing evidence during the course of this protest as to the weight of its SCBA, with or without a communications system meeting the RFP requirements, despite this matter being brought into issue.

<sup>7</sup>The protesters also contend that National Draeger was unacceptable for a number of other reasons and that the protesters' proposals were improperly underrated. Since we sustain the protests on the basis that the agency had no reasonable basis to conclude that the awardee's proposal met a mandatory solicitation requirement and recommend a reopen-

(continued...)

We recommend that the Air Force reopen negotiations and request another round of BAFOs from all competitive range offerors.<sup>7</sup> If a proposal other than Draeger's is selected following submission of BAFOs, Draeger's contract should be terminated and award made consistent with the provisions of the RFP. We also find that MSA and Interspiro are entitled to the costs of filing and pursuing their protests, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1992).

  
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<sup>7</sup>(...continued)  
ing of discussions, no useful purpose would be served by addressing these other matters.

<sup>8</sup>The Air Force may choose to reassess whether its minimum needs require all of the requirements included in this RFP, including the weight requirement. In this event, the RFP should be amended to reflect any such revised assessment.