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Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Skyline Industries, Inc.

File: B-257340

Date: September 22, 1994

Joseph E. Cates II for the protester,
Niketa L. Wharton, Esq., Defense Logistics Agency, for the
agency.
Christine F. Davis, Esq., and Guy R. Pietrovito, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Protest of an alleged solicitation defect, filed with the agency 1 day after an oral request for quotations, was timely, where there was no formal or informal closing date for the receipt of quotations, and the time for receipt was practically simultaneous with the solicitation itself.
2. Protest that solicitation provisions are ambiguous is denied, where all provisions to which the protester objects reasonably describe the work to be performed.

DECISION

Skyline Industries, Inc. protests the terms of purchase request No. YPG94045000958, issued by the Defense Logistics Agency (DLA) pursuant to the small purchase procedures of Federal Acquisition Regulation (FAR) Part 13, for the acquisition of UH-1 helicopter seat bottom covers. Skyline protests that the purchase request lacked sufficient detail to allow offerors to prepare their quotations in response to the agency's oral request for quotations.

We deny the protest.

The purchase request specified a requirement for 384 UH-1 seat covers, identified by National Stock Number 1680-00-453-5677. The purchase request stated that the seat covers must conform to the fabrication, testing, and inspection requirements set forth in technical data package (TDP) No. AV1040-11-00. The TDP identified two tests that the seat covers must satisfy: a static load test for preproduction units and a dimensional conformance test for production units. For the static load test, the contractor

was to fit a seat cover over a model seat frame and test the durability of the seat cover by applying various loads to the seat frame. For the dimensional conformance inspection, the contractor was to fit a seat cover over a model seat frame to ensure that the production units matched the dimensions of the UH-1 helicopter seats. The TDP identified the part number of the test seat (No. AL1040-5) and advised all prospective sources that such a seat must be purchased or received from the original equipment manufacturer, from an approved source, or from the controlling government agency.

The protester is a qualified source for the seat covers. It has received three prior awards for this product and has competed in several recent acquisitions, including the present small purchase acquisition and an earlier large purchase acquisition. Regarding the large purchase acquisition, DLA issued a request for proposals (RFP) on November 16, 1993, and issued a solicitation amendment on January 18, 1994, which revised the TDP testing requirements applicable to the procurement. Specifically, the amendment provided that the government would furnish the test seat and added a requirement that the contractor would perform a dimensional conformance check of the seat itself, before using the seat to test the covers.¹

On February 17, Skyline received a copy of the purchase request that is the subject of this protest, and advised the agency that it needed clarification of the technical requirements before it could submit a quotation. Specifically, Skyline asked whether the government would furnish the test seat and whether the contractor would be required to perform a dimensional conformance check of the seat itself before testing the seat covers.² These questions basically concerned whether the government intended to amend the technical requirements applicable to this acquisition, as it had with respect to the large purchase acquisition.

The agency did not respond to the protester's questions and, on March 21, asked Skyline to submit a quotation immediately. On March 22, Skyline furnished a written quotation of \$62.50 per unit and also protested that the agency had failed to answer the questions asked in its February 17 letter. On April 5, the agency awarded a

¹The agency subsequently deleted these revised testing requirements in a June 17 amendment to the RFP.

²Skyline "strongly suggest[ed]" that the government require such an inspection to ensure that the stress load tests did not deform the seat prior to inspecting the covers.

contract for its requirements to the Conrad Company at a price of \$34.83 per unit. Skyline learned that award had been made on May 17 through a government contract abstract service, notwithstanding its request to the agency that it "be notified immediately of any award made on this requirement." On May 17, Skyline protested to our Office the agency's failure to clarify its specifications.

Initially, we note that, contrary to the agency's allegations, Skyline's protest to our Office was timely filed. Our Bid Protest Regulations ordinarily require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed, either with our Office or with the procuring agency, prior to the closing date for receipt of initial proposals.¹ 4 C.F.R. § 21.2(a) (1994). There is an exception to this timeliness rule where, as here there was no formal or informal closing date for the receipt of proposals, and the time for receipt was practically simultaneous with the solicitation itself. See Eagle Sys.--Recon., B-245741.2, Nov. 8, 1991, 91-2 CPD ¶ 440; Ampex Corp., B-190529, Mar. 16, 1978, 78-1 CPD ¶ 212. Under such circumstances, the protester must file its protest of the specifications either with the contracting agency or with our Office within 10 working days of the solicitation. Ampex Corp., supra. Thus, Skyline's protest to the agency, which was filed along with its quotation 1 day after receiving the agency's oral solicitation, was timely. Skyline's subsequent protest to our Office was also timely because it was filed within 10 days of "actual or constructive knowledge of initial adverse agency action," namely when Skyline learned that award had been made and that its agency-level protest had been ignored. See 4 C.F.R. § 21.2(a)(3).

Skyline argues that it was unable to submit a competitive quotation because of the agency's failure to clarify the terms of the purchase request and the referenced TDP. Skyline complains that it did not know whether the government would furnish the test seat or whether the government would require a dimensional conformance inspection of the seat itself before testing the covers. Skyline states that, without knowing the answer to these questions, it was forced to include the cost of the seat and the cost of the additional inspection in its quotation.

As a general rule, a contracting agency must give offerors sufficient detail in a solicitation to enable them to

¹This requirement is applicable to a request for quotations issued under small purchase procedures. Metro. Fed. Network, B-232096, Nov. 21, 1988, 88-2 CPD ¶ 495.

compete intelligently and on a relatively equal basis. Nat'l Customer Eng'g, B-254950, Jan. 27, 1994, 94-1 CPD ¶ 44. However, the mere allegation that a solicitation is ambiguous does not make it so. RMS Indus., B-247465; B-247467, June 10, 1992, 92-1 CPD ¶ 506. There is no requirement that an agency draft specifications 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.

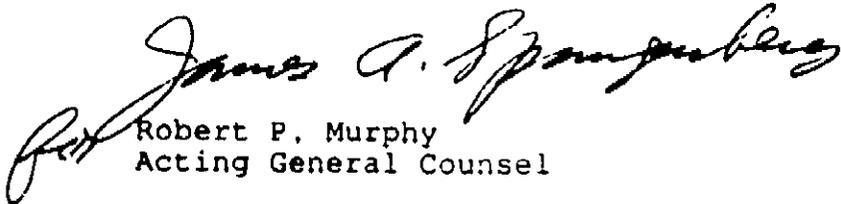
At the outset, we note that there is no evidence that the agency made any attempt to answer Skyline's questions during the 1-month period before soliciting the firm's quotation, even though it would have been a simple matter to do so. Nonetheless, we do not find any ambiguity in the specifications that should have hindered Skyline in preparing its quotation. While Skyline questions whether the government would furnish the test seat, the TDP clearly imposes the responsibility for obtaining the test seat on the contractor. Further, the TDP only requires the contractor to perform a dimensional conformance inspection of the seat covers, but does not contain a similar inspection requirement for the seat itself.⁴

The record indicates that Skyline asked these questions because, in another procurement, DLA issued a solicitation amendment that made the government responsible for furnishing the test seat and added a requirement for a dimensional conformance inspection of the test seat. However, Skyline is apparently aware that, absent such an amendment, it would be responsible for furnishing the test seat, as it has done in the past, and it would not be

⁴In addition to its questions regarding the applicable testing requirements, Skyline, an approved source for the test seat, also asked the government to specify which revision of the Test Seat TDP (No. AV1040-5) applied to this procurement. In response to this protest, DLA advised that it purposely did not specify a particular revision of the Test Seat TDP because the UH-1 Helicopter fleet has seats corresponding to all TDP revisions and the covers should fit all the different frames. We need not resolve whether the specifications were ambiguous absent this explanation because Skyline does not assert that it was prejudiced by any uncertainty over the applicable TDP revision in preparing its quotation. See Laser Diode, Inc., B-249990, Dec. 29, 1992, 93-1 CPD ¶ 18.

required to inspect the seat for dimensional conformance.³ Accordingly, we find no basis to object to the technical specifications in this case.

The protest is denied.


Robert P. Murphy
Acting General Counsel

³As noted above in footnote 2, Skyline "strongly suggest[ed]" that the government require a dimensional conformance inspection of the test seat, which evidences Skyline's knowledge that the TDP does not currently impose such a requirement. To the extent that Skyline is protesting that the agency should include this requirement in the TDP, our Office generally does not review contentions that specifications should be more restrictive, since our role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met. See Petchem Inc., B-228093, Sept. 8, 1987, 87-2 CPD ¶ 228.