

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

50853

FILE: B-181359

DATE: June 30, 1975 97/23

MATTER OF: Allen and Vickers, Inc.

DIGEST:

1. In general, burden is on protester to obtain such information it deems necessary to substantiate its case. While request for reconsideration alleges agency failed to fulfill promised opportunity for protester to participate in laundry system design and to submit competitive proposal, it is noted that initial protest did not specifically make such complaints. Assuming agency refused to release information on its requirements, protester should have pursued disclosure request under Freedom of Information Act.
2. Decision is affirmed that blanket offer by protester to provide laundry system is insufficient to show arbitrariness of noncompetitive procurement from only source believed capable of furnishing system meeting Army's requirements.

Allen and Vickers, Inc., has requested reconsideration of our Office's decision which denied its protest against the sole-source procurement of an automated laundry system from American Laundry Machinery (ALMI) by the Walter Reed Army Medical Center (WRAMC) (Allen and Vickers, Inc., et al., 54 Comp. Gen. 445 (1974)).

Our decision rejected the protester's contentions (1) that WRAMC had overstated its minimum needs; (2) that Allen and Vickers could, in any event, furnish a system meeting WRAMC's requirements; and (3) that some components of the system should have been procured competitively.

The request for reconsideration goes essentially to the second of these issues. Allen and Vickers alleges that it did not have a fair opportunity to show that it could furnish a system meeting WRAMC's requirements. The protester's request for reconsideration states in pertinent part:

"Please consider that we and others were aware several years ago that there would be a new laundry provided for the Walter Reed Army Medical Center. We met with

designated authorities several times prior to any design effort. Each time we were told that when that stage of planning was reached, we would be given the opportunity to offer suggestions and recommend plans. Part of our protest is based on the fact that all the while, plans were being made and being made with a sole supplier contrary to what we were being told.

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"* * * We and others were never given the opportunity to consider WRAMC objectives or to submit a proposal. There are other 'sole sources of supplies,' the purchase of which would provide the automated laundry processing desired. Also, if ALMI could provide a proposal in time to qualify for appropriated funds so could we and other companies, HAD THE OPPORTUNITY TO DO SO BEEN GIVEN TO US.

* * * * *

"To summarize:

Many months before the decision to purchase the new laundry, we met several times with designated authorities. We were told that when the point in planning for the WRAMC laundry equipment was reached, we would be asked to submit our proposal. BECAUSE WE WERE NOT GIVEN THIS OPPORTUNITY, WE DO PROTEST THE PROCEDURE USED TO MAKE THE SELECTION THAT HAS BEEN MADE."

In addition, in a subsequent letter the protester offers to submit a proposal, stating that it will be comparable to the ALMI proposal in all respects; that it will offer a fully automated system; that it will offer batch processing integrity; that it will involve only minor changes to the laundry building; and that it will save the Government a substantial amount of money. The protester states it will submit such a proposal if it is provided with a complete set of drawings and specifications and if the Government promises to give its proposal fair and adequate consideration.

Certain background facts involved in the protest bear repetition here. WRAMC conducted an investigation of laundry systems and equipment and made on-site visits to observe several systems in operation. WRAMC determined that only the ALMI system

could meet its requirements. We understand that a notice regarding WRAMC's procurement of the system from ALMI was published in the Commerce Business Daily in April 1974. It was apparently at about this time that the protester became aware of the sole-source procurement and made an inquiry to WRAMC. By WRAMC's letter dated May 17, 1974, Allen and Vickers was forwarded a copy of the solicitation and advised that WRAMC was conducting negotiations with ALMI. Allen and Vickers then protested to WRAMC, by letter dated May 23, 1974, and to our Office by letter dated May 28, 1974. Based upon a determination of urgency, WRAMC proceeded with an award to ALMI in June 1974 notwithstanding the pendency of the protest.

It was with due regard to the foregoing circumstances that our Office stated in its earlier decision:

"* * * the protester points out that it learned of the present procurement only shortly before the contract award and, therefore, that it is difficult to suggest specific components which would make up an acceptable system.

"We can appreciate the problems involved in attempting to develop on short notice a detailed proposal offering to supply a system, especially in view of the fact that WRAMC spent a number of months developing its requirements and selecting a system. Nevertheless, it is incumbent on the protester to substantiate its allegation that it could have been an alternative source of supply and, thus, that the procurement should have been competitive. We think that the protester's blanket offer to meet the requirements is insufficient substantiation. * * *"

Where a contracting agency justifies a sole-source procurement on the basis that only one source of supply can meet its requirements, the protester must meet the heavy burden of presenting evidence which shows that such action is arbitrary, capricious and an abuse of procurement discretion. See, generally, BioMarine Industries et al., B-180211, August 5, 1974; Hughes Aircraft Company, 53 Comp. Gen. 670 (1974). Also, we have held that where an RFP requires offerors to submit detailed technical proposals, a blanket offer of compliance is not an adequate substitute. 53 Comp. Gen. 1 (1973).

Moreover, we are of the view that the burden rests on the protester to obtain such information from the contracting agency which it deems necessary to make out its case. In this regard, we note that Allen and Vickers' initial letter of protest to WRAMC, dated May 23, 1974, does not complain of any refusal by WRAMC to respond

to prior requests for information or documents, nor does it specifically make any requests along these lines. We would also note that this letter does not specifically complain either of a failure by WRAMC to fulfill promises to allow the protester to participate in the planning of the laundry system, or of a failure by WRAMC to provide a promised opportunity to Allen and Vickers to submit a proposal. Since the May 23, 1974, letter formed the basis of Allen and Vickers' May 28, 1974, protest to our Office, these allegations were thus not brought before our Office in connection with the original statement of protest.

In this regard, we believe that it is desirable, from a standpoint of sound procurement policy, for an agency to give consideration to the views of potential offerors which desire an opportunity to compete prior to initiating a sole-source procurement. In this connection, we believe the agency should, upon request, make available to interested potential offerors existing performance standards which it believes only a sole source of supply can meet. See the discussion in BioMarine Industries, supra.

However, if the agency refuses to make available to potential offerors information concerning the requirements, it must be noted that potential offerors have a disclosure remedy under the Freedom of Information Act, 5 U.S.C. § 552 (1970). In the present case, assuming that prior to April 1974 WRAMC failed to fulfill promises to Allen and Vickers to participate in the formulation of the laundry system requirements, it would appear that the protester should have proceeded at that time to obtain the pertinent information from the agency.

As noted, the initial protest did not specify the protester's complaints of improper actions by WRAMC in the preproposal phase of the procurement. At various points during the protest--for example, at page 5 of its July 18, 1974, letter commenting upon the Army's report--Allen and Vickers did make reference to futile attempts to obtain necessary information from WRAMC. However, there is no indication in the record that the protester either before or during the protest pursued its remedies under the Freedom of Information Act to obtain information. Instead, Allen and Vickers relied in effect upon a blanket offer to meet the requirements. As indicated supra, this is insufficient substantiation for the protester's position.

In this light, the protester's offer to submit a proposal at this time relates to matters which should have been presented in its original protest. The same observation applies to the protester's mention in its request of additional system components which were not presented in connection with its protest--for

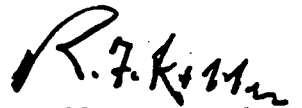
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example, Patterson-Kelly waste water heat reclaimers and the Challenge model DFSII dryer.

In addition, Allen and Vickers in its request continues to object to several aspects of WRAMC's statement of minimum needs. For example, the protester again asserts that it is costly and inefficient to wash 35-pound laundry loads in large capacity washers. Also, Allen and Vickers challenges a WRAMC statement concerning estimated downtime of equipment. In this regard, we do not believe that the protester has presented any new evidence which would require revision of our holding that the statement of minimum needs has not been shown to be without a reasonable basis.

Allen and Vickers also contends that our decision made an erroneous statement that the Voss Archimedia washer allows intermixture of washing solutions and therefore is of doubtful suitability for WRAMC's needs. We note that the contracting officer, as indicated in the Army's supplemental report dated March 17, 1975, is of the view that our decision's statement was technically correct. Even assuming that it is incorrect, it does not establish the validity of Allen and Vickers' protest against the ALMI system, as the washer is but one component of the laundry system.

In view of the foregoing, we do not believe the protester has demonstrated any errors of fact or law in our prior decision, and the decision is accordingly affirmed.



Deputy Comptroller General
of the United States