

DOCUMENT RESUME

02096 - [A1322280]

[Reconsideration of Agency's Cancellation and Resolicitation of Proposals]. B-187159. May 4, 1977. 6 pp.

Decision re: Semiconductor Equipment Corp.; by Paul G. Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Navy.

Authority: 10 U.S.C. 2304(g). A.S.P.R. 3-805.4(b). B-177436 (1974). B-176764 (1974).

Reconsideration was requested of cancellation of a solicitation for which the claimant was the sole offeror in the competitive range and the subsequent resolicitation. The cancellation and resolicitation was justified where only one acceptable proposal was received. The protester's contention that competitive solicitation constituted a violation of its proprietary rights was not sustained. (RRS)

02096

Joseph Notopoulos  
Proc. II

**DECISION**



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

FILE: B-187159

DATE: May 4, 1977

MATTER OF: Semiconductor Equipment Company - Reconsideration

**DIGEST:**

1. Agency's cancellation and resolicitation of proposals for research and development effort is justified where only one acceptable proposal was received under initial solicitation and purpose of resolicitation was to obtain competition.
2. Protester's contention that agency's competitive solicitation constituted a violation of its proprietary rights is not sustained.

Counsel for Semiconductor Equipment Corporation (Semiconductor) has requested reconsideration of our decision of February 18, 1977, B-187159, in which we denied that firm's protest against the cancellation by the Navy of a solicitation under which it was the sole offeror in the competitive range, and against the subsequent resolicitation of the requirement in modified form.

The first solicitation, RFP N00123-76-R-1169, dated April 12, 1976, requested proposals for the design and fabrication of a combination of two machines--a machine known as a "border," and a second machine known as a "pull-tester"--commonly used in the assembly of integrated circuits. The Navy, in issuing the first solicitation, wanted proposals to advance the state-of-the-art by incorporating the bonding and pull-testing operations into a single machine. In addition, the new proposed machine was to have a feature called a "feedback quality monitor" (FBQM). The FBQM was to be a device permitting detection and correction of bond failures during the actual bonding process.

Two offers were received in response to the first solicitation. After evaluation, only Semiconductor's proposal was considered acceptable. During evaluation of the proposals, the Navy concluded that the FBQM requirement "tended to overshadow" the prime effort desired, and therefore decided to resolicit the requirement without the FBQM requirement.

Semiconductor was advised by letter dated June 10, 1976, that the first solicitation was canceled. On July 15, 1976, Semiconductor was advised that the reason for cancellation was inadequate specifications.

B-187159

Semiconductor was also informed that the modified requirement would be reissued within 10 days. On July 21, 1976, the Navy issued RFP No. N00123-76-R-1699, deleting the FBQM requirement. On July 26, 1976, by Amendment 0001, the Navy added the FBQM feature as a "highly desirable bonding feature." Semiconductor filed a protest with our Office on August 9, 1976, prior to the closing date for receipt of proposals under the second solicitation. Shortly thereafter, Amendment 0002 was issued, deleting Amendment 0001, thus deleting the FBQM feature.

In its initial protest, Semiconductor contended that the Navy should have made the changes in the first RFP's specifications by amendment rather than canceling and resoliciting. Moreover, it asserted that while Armed Services Procurement Regulation (ASPR) § 3-805.4(b) permits cancellation and resolicitation of an RFP after the competitive range has been established where a change or modification is so substantial as to warrant complete revision of the solicitation, the FBQM feature was worth only 3 percent of the total evaluation factors and its deletion did not constitute a substantial change.

The Navy contended that elimination of the FBQM feature was of sufficient magnitude in the context of this procurement to require resolicitation under ASPR § 3-805.4(b). The Navy also noted that as a result of the resolicitation four proposals were received--representing an increase of 100 percent of proposals received in response to the first solicitation.

We concluded that:

"Here, to prevail, SEC Semiconductor must clearly show that the Navy's determination to resolicit was without a reasonable basis. We do not believe that SEC has met that burden. Furthermore, in the circumstances of this procurement, it is our view that the Navy's determination to cancel the first solicitation and issue the second solicitation deleting the FBQM requirement was reasonable. In reaching this decision, we take particular note of the Navy's primary purpose in issuing the first and second solicitations--seeking to advance the state-of-the-art to produce a combination bonding and pull-testing machine; the fact that the FBQM feature was a step beyond the Navy's primary purpose; and the

technical opinion from a bonding expert employed by the National Bureau of Standards that the FBQM feature should have been deleted from the first solicitation."

In requesting reconsideration, Semiconductor argues that the Navy's requirements never changed since the FBQM feature was included in the second solicitation under Amendment 0001, and its removal by Amendment 0002 was not the result of a bona fide change in requirements but rather an attempt to "prevent litigation" after Semiconductor had filed a protest with this Office alleging that the inclusion of the feature in the second solicitation left the Navy without a justifiable basis upon which to cancel and resolicit. It contends that the initial decision to cancel was predicated not upon a change in requirements but rather an agency conclusion that Semiconductor did not possess a proper accounting system to perform a cost-type contract.

Semiconductor again takes exception to the Navy determination that the elimination of the FBQM feature was of significant magnitude as to require resolicitation pursuant to ASPR 3-805.4(b), and points to a particular agency memorandum in the file characterizing the matter as a "slight change." Accordingly, it challenges the Navy's determination that the change was so substantial as to warrant resolicitation. Semiconductor also charges the Navy with "unprecedented marketing activity" between the cancellation of the first solicitation and the resolicitation wherein a number of contractors who had been solicited on the first RFP were allegedly contacted and induced to compete on the second solicitation.

As we stated in the prior decision, integrated circuits are very small chips of semi-conductor material which are fabricated so as to include within the single chip entire electronic circuits of various kinds. Due to the extremely small size of integrated circuits and their complexity, electrical connections are generally made to the devices through very fine wires which are bonded by ultrasonic welding to the chip. The bonding is performed under microscopes, on machines known as "bonders." After all connections are bonded the circuits are removed from the bonder and the individual wires are tested for bond strength, typically by pulling on them at a tension designed to break weak bonds while not affecting good bonds. The machine used to test the bonds is known as a "pull-tester." The purpose of the instant design effort is to incorporate the bonding and pull-testing operations into a single machine which will permit earlier detection and correction of bonding errors and eliminate duplication of effort. The FBQM feature was intended as a device to permit the detection and correction of incipient defects in bonds during the actual bonding process.

B-187159

Only one technically acceptable proposal, that submitted by the protester, was received under the initial solicitation. (Another proposal had been received but that proposal had been found to be technically unacceptable.) It was the contracting officer's judgment that other potential offerors might have been deterred from competing because of the FBQM feature. Further, since it was reported to him that Semiconductor's accounting structure was inadequate for the cost-type contract anticipated, he felt that the delay involved in correcting that administrative problem effectively removed any time-related benefit that would accrue from not resoliciting.

It may be, as the protester contends, that elimination of the FBQM feature was not so substantial a change as to require a resolicitation. See ASPR § 3-805.4(b), which provides that if a change or modification in requirements is so substantial as to warrant complete revision of a solicitation, the original should be canceled and a new solicitation issued. Nevertheless, even if a change or modification does not meet this standard, we do not think the contracting officer is precluded from resoliciting proposals if the Government's interest would be served thereby. Where, as here, competition was not achieved under the initial solicitation (only one proposal was acceptable) and the contracting officer believes that a resolicitation with revised specifications better reflecting the Government's needs will result in obtaining competition, we believe a resolicitation of proposals is justified.

Finally, while the protester makes much of the Navy's apparently contradictory actions of reinstating the FBQM requirement into the second solicitation by Amendment 0001 and its subsequent deletion by Amendment 0002, it appears to us that these actions were taken in good faith and that FBQM was ultimately deleted from the procurement so that competition could be obtained. In this connection, we believe that the Navy's "marketing campaign" which resulted in four proposals under the resolicitation was proper. To the extent that the Navy may have undertaken to provide potential offerors with knowledge of the resolicited procurement such actions are consistent with the requirement in 10 U.S.C. § 2304(g) (1970) that proposals be solicited from the maximum number of qualified sources. Accordingly, we affirm our prior decision in this regard.

Semiconductor also asserts that the Navy violated its rights to alleged proprietary data. It states that Semiconductor had acquired from Radiant Energy Systems, Inc. (RES), patent and proprietary rights to its bondor technology, and that Navy Electronics Laboratory Center's current solicitations "relied upon and/or

B-187159

extracted from" two unsolicited RES proposals submitted to the Navy in 1974 "certain unknown explanations of proprietary data, technology, features, descriptions and improvements." On the other hand, the Navy reported that the idea of a pull-test integrated with bonding action is not novel with either Semiconductor or RES, and had been proposed by other sources several years prior; similarly the use of a separate mechanical knife is not novel since it was employed in the equipment of other firms.

After the Navy submitted the protester's references to specific alleged propriety features for independent analysis by the National Bureau of Standards, the latter responded with a detailed technical refutation from an expert in the field of ultrasonic bonding and bond testing. With regard to the concepts in the RES unsolicited proposals, he found one document a "rehash of old ideas" since the general concept of a non-destructive bond-pull apparatus built into a thermocompression bonder was described in literature in 1966; that the RES proposal reflected a misunderstanding of and lack of appreciation for key factors in the process; and that specific features alleged to be proprietary such as "6-1 ratio manipulation, stitch bond capability, loop height controls and independent bond pressure control for first and second bond" are included in referenced models of other manufacturers such as Kulicke and Soffa, Mech-El, West Bond, etc. The protester's response is that "even though, admittedly, each element may have been known independently, the combination is proprietary \* \* \*."

The question at issue involves what is essentially a dispute of a technical nature. In our prior decision we concluded that the protester's contention was untimely raised. Upon reconsideration, we believe that the issue should be considered on its merits since, as the protester points out, this matter was raised by the protester prior to the closing date for submission of proposals. However, in dealing with such issues, we have required that in attempting to halt a competitive procurement, the party alleging violation of proprietary rights must establish by clear and convincing evidence that the procurement will violate those rights. See T.K. International, Incorporated, B-177436, March 12, 1974, 74-1 CPD 126; Howell Instruments, Incorporated, B-176764, May 14, 1974, 74-1 CPD 251. It is our view that the Navy has supported the conclusion that it had independent knowledge of the techniques at issue; that such techniques pre-existed the 1974 unsolicited RES proposal; and that these techniques were commercially available from other sources. Based upon our review of the record, including protester's submissions, we do not find that Semiconductor has established that the solicitation specifications were proprietary.

B-187159

Accordingly, the protest is denied.

*Paul B. Brubaker*  
For the Comptroller General  
of the United States