

DOCUMENT RESUME

03619 - [A2553715]

[Protest to Exclusion from Competitive Range]. B-188117.
September 15, 1977. 5 pp.

Decision re: Sentinel Electronics, Inc.; by Robert F. Keller,
Deputy 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 Army: Army Electronics
Command.

Authority: 4 C.F.R. 20.2(b)(2). B-186719 (1976). B-185764
(1976). A.S.P.R. 3-805.4(b).

Company protested the award of a contract to any offeror other than itself after notifying the Army of an alleged defect in the solicitation, which was later amended, and requesting reconsideration of its exclusion from the competitive range. The protest to the firm's exclusion from the competitive range was untimely. Specification modifications were not considered substantial enough to warrant complete revision and, therefore, were only required to be furnished to offerors previously determined to be in competitive range. (HTW)

3715
03619

DECISION



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

FILE: B-188117

DATE: September 15, 1977

MATTER OF: Sentinel Electronics, Inc.

DIGEST:

1. Protest of offeror's exclusion from competitive range which is filed more than 10 days after protester is informed of basis for rejection of proposal is untimely. However, protest allegation that protester should be afforded new opportunity to compete because of agency's amendment of solicitation is timely since it was filed within 10 days of protester's learning that agency was unwilling to provide that second opportunity.
2. Where agency's modification of RFP specifications concerns changes to testing station and does not appear to involve significant impact on overall procurement, change is not substantial enough to warrant complete revision of solicitation within meaning of ASPR § 3-805 4(b) and therefore modification need be furnished only those offerors previously determined to be in competitive range.

Sentinel Electronics, Inc. (Sentinel) protests the award of a contract to any offeror other than itself under request for proposals (RFP) No. DAAB07-76-R-0479 issued by the U.S. Army Electronics Command (Army).

The solicitation, for 380 telephone signal converters, was issued on July 27, 1976. The closing date for receipt of initial proposals was September 9, 1976. By letter dated November 17, 1976, the Army notified Sentinel that its proposal was determined to be technically unacceptable. The letter also furnished, in general terms, the reasons for rejection. On December 22, 1976, Sentinel notified the Army of an alleged defect in the solicitation and requested reconsideration of its exclusion from the competitive range. On December 23, 1976, the Army informed Sentinel that the RFP changes suggested did not bear upon the basic unacceptability of Sentinel's proposal. On January 5, 1977, the Army amended the solicitation to conform it with the changes suggested by Sentinel, but did not provide a copy of the amendment to Sentinel. On the same date, Sentinel protested to this Office.

Sentinel objects both to the determination that its technical proposal was unacceptable and to the agency's refusal to allow the firm to further compete either under the revised RFP or under a new RFP.

At the outset, we must consider the Army's contention that the protest is untimely. Section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1977), states that protests, other than those based upon alleged improprieties in a solicitation, shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. Clearly, Sentinel's objection to the finding that its proposal was unacceptable is untimely. Sentinel was informed by letter dated November 17, 1976, that its proposal was determined to be unacceptable. In a letter dated December 17, 1976, to the Army, Sentinel states:

"We must assume, based upon the advice in your letter of November 17, 1977, rejecting our proposal, that we made gross errors in our judgment of your technical proposal requirements. We further believe that our misunderstanding of your requirements notwithstanding, we have already demonstrated * * * technical competence * * * as a result of another contract."

"Therefore, we respectfully request that you permit us to continue to participate in negotiations for the CV-548."

It was only on January 5, 1977, that Sentinel filed a protest, alleging that its proposal did not receive due and proper consideration, and not until February 1, 1977, that Sentinel provided a detailed statement of why the Army's evaluation of its proposal was erroneous. Accordingly, we will not consider Sentinel's protest with respect to the firm's exclusion from the competitive range. See Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256.

We do not, however, view the other protest issue as untimely. This issue concerns the agency's refusal to allow Sentinel to compete on the basis of the revised specifications. It was only on December 23 that the Army so informed Sentinel, and it was not until January 5, 1977, the date Sentinel protested, that the specifications were actually changed. Thus, the protest on the second issue clearly was filed within 10 working days of the date Sentinel learned of the basis for protest.

B-188117

Sentinel's position is that test requirement specification (TRS) drawing SM-B-528719 was "seriously defective" prior to the time the agency amended the RFP and that the amendments to the drawing were "major in the sense that, had they not been made prior to award of the contract, the probable cost to the protestor of conducting an engineering investigation and of resolving the defects during performance would have been in excess of \$25,000." The protester also points out that "this figure would, of course, vary from firm to firm." The Army's position, on the other hand, is that the amendments were minor and did not affect price, quality, quantity or delivery.

Armed Services Procurement Regulation (ASPR) § 3-805.4(b) (1976 ed.) provides, in pertinent part, as follows:

"The stage in the procurement cycle at which * * * /specification changes occur/ and the magnitude of the changes shall govern which firms should be notified of the changes. * * * If the competitive range has been established, only those offerors within the competitive range should be sent the amendment. However, no matter what stage the procurement is in, if a change or modification is so substantial as to warrant complete revision of a solicitation, the original should be canceled and a new solicitation issued. In such cases, the new solicitation should be issued to all firms originally solicited * * *."

Thus, the question presented is whether the magnitude of the changes warranted "complete revision" of the RFP.

According to the contracting officer, TRS drawing SM-B-528719 shows, "for informational purposes, an optional method of building the test station" for testing the 18A3B component of the converters. The contracting officer states that the corrections to the drawing involved the following "three clarifying changes" to "facilitate building the test station." First, the circuitry of the test station was changed by reducing the value of one resistor to allow satisfactory production yield. Second, two output limits were changed in order to clarify and more accurately reflect actual testing conditions. Third, the testing procedure itself was clarified "by more explicitly identifying a few component and test circuit interconnections, and by deleting nonapplicable areas."

B-188117

The effect of these changes is described in the Army's report as follows:

"The discrepancies and errors * * * in the specifications involve only changes to limits, step-by-step procedures depicted in the Test Requirement Specification, drawings (TRS) for the 18A3B Panel Assembly, and the value of one resistor of the test circuit componentry. No changes are required to be made to the hardware being procured.

* * * * *

"Since hardware to be procured is not impacted and only one minor test circuit hardware change is required in order to correct the TKS 'defective data,' this lack of information should have no impact at this time on the offerors' best and final proposals." /Emphasis in original./

The Army further states, with respect to initial proposals, that the defects in the drawing were minor in that "they would not affect the content or approach of any proposer in its initial proposal" and that an offeror's "consideration of such minor defects would in no way cause a proposal to be acceptable or not technically acceptable."

On this record, we are unable to conclude that the Army's position is incorrect. Although Sentinel has provided an analysis by a consulting engineer which refers to the drawing changes as "major", that opinion appears to be based primarily on a concern with changes of "almost 3 to 1" and "almost 2 to 1" in test limits and output levels which "can't be considered minor or insignificant." However, in view of the Army's explanation and the overall scope of the procurement, we are not inclined to view the changes as coming within the ASPR § 3.805.4(b) requirement for RFP cancellation when a modification is so substantial as to warrant a "complete revision" of the solicitation. That Sentinel might have expended in excess of \$25,000 in resolving the drawing defects does not establish that the changes made by the Army to remedy the defects, which appear to have involved little or no impact on cost, are in fact "major." Accordingly, under ASPR § 3-805.4(b), the Army needed only

B-188117

to advise those offerors remaining in the competitive range of the RFP amendment and was under no obligation to cancel the solicitation or to allow the protester to submit a revised proposal. See Rantec Division, Emerson Electric Co., B-185764, June 4, 1976, 76-1 CPD 360.

Sentinel has also alleged that a competitor received an unfair competitive advantage in that the competing firm knew of the drawing defects prior to Sentinel's discovery of the defects. We see no need to address this issue since it is clear from the record that the defects did not have any effect on the evaluation of initial proposals.

The protest is denied.

R. Z. Keller
Deputy Comptroller General
of the United States