Proc I

DECISION

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

10,408

FILE: B-193752 DATE: June 8, 1979

MATTER OF: Cardion Electronics DLG 00175?

[Protest Contending that RFP Should Be Canceled and Resolicited]

DIGEST:

1. Prospective offeror which chose not to submit proposal is "interested party" to protest later that RFP amendment during negotiations has changed work so substantially that agency should cancel RFP and initiate new procurement.

2. Protest by nonofferor that RFP amendment has changed work so substantially that new procurement should be initiated was timely filed within 10 working days after protester received copy of RFP amendment.

3. December 1978 protest asserted that changes in RFP are so substantial as to warrant its cancellation. In April 1979, after agency report and conference, protester asserted for first time that sole proposal received was unacceptable. Latter contention--separate basis of protest--is untimely, as protester knew or should have known basis for protest in December 1978 or January 1979. Also, protester's initiation of Freedom of Information Act request in April 1979, seeking information regarding evaluation of sole proposal, indicates failure to diligently pursue matter.

4. RFP for design and manufacture of electronic air navigation equipment contemplated that offerors propose individual technical approaches to meeting agency's needs. After negotiations with sole offeror, RFP amendment made changes in equipment configuration, delivery schedule and various technical specifications. Agency position that changes in requirements are not so substantial as to warrant complete revision of RFP (i.e., cancellation and resolicitation) is not clearly shown to have no reasonable basis.

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5. Protester, seeking cancellation of RFP, relies on GAO decisions which found that modifications to contracts were so substantial that work covered by modifications should have been subject of new procurement. Argument is not persuasive, as scope of changes which may permissibly be made to RFP without requiring cancellation and initiation of new procurement is greater than scope of changes permitted to existing contract.

6. Federal Procurement Regulations § 1-3.101 requirement for maximum practical competition in negotiated procurements does not in itself require agency to cancel RFP where only one proposal is received.

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Cardion Electronics has protested to our Office concerning request for proposals (RFP) No. LGM-8-7247, issued by the Federal Aviation Administration (FAA).

I. Introduction

The RFP, copies of which were distributed on April 20, 1978, contemplated the award of a fixed-price incentive contract for the design, fabrication, installation and testing of solid state VOR/VORTAC equipment. FAA has described this equipment as a system which combines civilian and military subsystems to provide aeronautical navigation information to aircraft, and which will replace aging vacuum tube-type equipment at hundreds of sites around the country.

The RFP (Enclosure 2, Page 1) stated in part:

> "The Technical Proposals shall clearly and fully demonstrate that the prospective offeror has a valid and practical design and engineering solution to the technical problems inherent in the design and engineering of equipment meeting the requirements of the specification. To this end, the technical proposals shall explain why the proposed design, including technical methods and engineering approach, was selected as the solution to such problems. * * * It is essential that the technical proposal shall set forth the offeror's proposed design, including its specific application of 'state-of-the-art' scientific theory and engineering techniques, with sufficient particularity * * *."

The RFP evaluation criteria listed "Proposed method of approach" as the most important criterion and stated that it was worth more than one-half the total value of all evaluation criteria.

On May 4, 1978, Cardion and other prospective offerors attended a preproposal conference. On May 17, 1978, Cardion representatives met with FAA officials, and Cardion in its words "* * * proposed that the VORTAC system be separated into its basic components in order to achieve active competition * * *." FAA did not implement this suggestion and there is no indication in the record that Cardion filed a protest with FAA prior to the closing date for receipt of initial proposals (June 1, 1978).

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One proposal--submitted by a joint venture consisting of ITT Avionics and Wilcox Electric, Inc. (ITT-Wilcox)--was received. A Cardion message to FAA dated June 1, 1978, stated in part:

> "AFTER CAREFUL CONSIDERATION CARDION ELECTRONICS WOULD LIKE TO ADVISE THAT, AT THIS TIME, WE WILL NOT SUBMIT A PROPOSAL FOR THE SUBJECT PROCUREMENT. OUR REASONS ARE AS FOLLOWS:
>
> "1) CARDION HAS TECHNICAL CAPABILITY, THE PRODUCTION CAPACITY, AND THE FINANCIAL RESOURCES TO RESPOND AS A PRIME CONTRACTOR FOR THE VORTAC PROGRAM. HOWEVER, WE FIND IT PRUDENT NOT TO MAKE A MAJOR PROPOSAL INVESTMENT WITH THE ANTICIPATED LOW PROBABILITY OF BEING CONSIDERED AS THE MOST ACCEPTABLE OFFEROR FOR THE SUBJECT NEGOTIATED PROCUREMENT.
>
> "2) AS A SUBCONTRACTOR, CARDION HAS NOT BEEN ABLE TO ESTABLISH A SATISFACTORY TEAMING OR SUBCONTRACT ARRANGEMENT WITH ANY OF THE LEADING NAVIGATIONAL AIDS MANUFACTURERS WHICH, IN OUR JUDGEMENT, WOULD BE MUTUALLY BENEFICIAL OR IN THE BEST INTEREST OF THE GOVERNMENT.

"SHOULD THE GOVERNMENT ELECT TO CHANGE THE PROCUREMENT AND SOLICIT SEPARATE TURNKEY SYSTEMS FOR THE VOR AND THE DME TACAN EQUIPMENTS WE WOULD RECONSIDER OUR DECISION. * * *"

In the course of negotiations with ITT-Wilcox, changes in the RFP specifications were made. These were reflected in amendment No. 6 to the RFP, dated Spetember 29, 1978. In December 1978 Cardion requested and received a copy of this amendment from FAA. Cardion protested to our Office on December 19, 1978, asserting that the RFP should be canceled and a new solicitation issued. No award has been made.

II. Procedural Issues

A. Interested Party Requirement

ITT argues that Cardion is not an "interested party" to protest to our Office because (1) Cardion is unable to manufacture a key VORTAC component and thus would not have been eligible for award had it submitted a proposal in June 1978, and (2) Cardion "no-bid" the procurement because of its business judgment of the risks involved, and nothing in the protest relates to or cures the reasons why Cardion elected not to compete.

Under section 20.1(a) of our Bid Protest Procedures, 4 C.F.R. Part 20 (1978), a party must be "interested" in order to have its protest considered by our Office. Whether a party is sufficiently interested depends on its status in relation to the procurement, the nature of the issues raised, and how these circumstances show the existence of a direct and/or substantial economic interest on the part of the protester. See Die Mesh Corporation, 58 Comp. Gen. 111 (1978), 78-2 CPD 374.

In Die Mesh, we pointed out that a prospective offeror which did not timely protest the terms of the RFP and deliberately chose not to submit a

proposal was not an interested party to protest later that the eventual awardees had received preferential treatment from the Government. In that situation, the class of parties eligible to protest as to which of several offerors should properly have received the awards consisted essentially of disappointed offerors (i.e., the parties which had chosen to compete in the procurement and whose direct economic interests would have been affected by the alleged preferential treatment).

In the present case, Cardion is not a non-offeror protesting as to which of several competing offerors should properly receive an award under the RFP. Rather, Cardion is protesting essentially on the basis that the RFP has been so substantially changed that it should be canceled, and that a new procurement reflecting the changed requirements should be initiated. Cardion's protest, or a protest by any other party similarly situated, involves a direct economic interest, i.e., an opportunity for the party to submit a proposal under the new RFP and compete for an award. Unlike Die Mesh, there is no other identifiable group of potential protesters whose members arguably have a more direct interest in asserting this basis for protest.

In our view, whether a Cardion proposal under the RFP would have been found unacceptable, or whether Cardion's motivation for not submitting a proposal was its business judgment of the risks involved, are not pertinent to this inquiry. None of the decisions cited by ITT in this connection involved a similar factual situation and we do not regard them as controlling.

We see no reason why Cardion is not sufficiently interested to protest that changes in the RFP are so substantial that the RFP should be canceled and a new procurement initiated.

B. Timeliness

FAA and ITT question the timeliness of the protest in certain respects. Initially, they point out that prior to the closing date for receipt of initial proposals (June 1, 1978), Cardion unsuccessfully requested FAA to break out certain VORTAC components for separate procurement. FAA and ITT view the present protest as an additional and untimely attempt to accomplish the same objective. Also, they note that while Cardion cites a change in the type of contract for VORTAC installation and testing as part of the substantial changes effected by amendment No. 6, the original RFP specifically indicated that the contract type might be changed.

To whatever extent Cardion's protest can be read as objecting to the terms and conditions of the RFP, it is untimely, because protests which are based upon apparent improprieties in an RFP as originally issued must be filed prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 20.2(b)(1). The primary ground of Cardion's protest, however, is that the aggregate of changes in the specifications effected by amendment No. 6 has altered the RFP so substantially that it should be canceled and a new RFP issued. We do not see why this reasonably should have been apparent to Cardion from the contents of the original RFP. The principal ground of protest is not based upon improprieties in the original RFP, but on the way the procurement has been conducted after the closing date for receipt of initial proposals. The applicable timeliness standard in these circumstances is 4 C.F.R. § 20.2(b)(2), i.e., protests other than those based upon apparent solicitation improprieties must be filed within 10 working days after the basis for protest is known or should have been known, whichever is earlier. See, in this regard, Telos Computing, Inc., 57 Comp. Gen. 370 (1978), 78-1 CPD 235; Computer Sciences Corporation, 57 Comp. Gen. 627 (1978), 78-2 CPD 85.

ITT maintains, however, that insofar as the protest is based upon amendment No. 6 to the RFP, it is untimely because Cardion was aware of the June-September 1978 negotiations between FAA and ITT-Wilcox and the matters covered therein, and did not protest within 10 working days after amendment No. 6 was issued on September 29, 1978. ITT does not explain how Cardion was aware of what was happening in the negotiations.

Cardion does not specifically state to what extent it had knowledge of the negotiations between FAA and ITT-Wilcox. The protester maintains essentially that it was not in a position to protest until it actually received a copy of amendment No. 6. In this regard, FAA states that Cardion requested a copy of the amendment in early December 1978, and in its letter of protest dated December 18, 1978, Cardion states that it received a copy of amendment No. 6 on December 7, 1978.

The identity of offerors in a negotiated procurement and the content of discussions with them normally are not public information prior to award. Thus, where an after-award protest is based on the contents of a competitor's proposal, a protester's reasonable statement as to when it became aware of its basis for protest will be accepted if unrefuted. Honeywell Information Systems, Inc., 56 Comp. Gen. 505 (1977), 77-1 CPD 256; see also Computer Machinery Corporation, 55 Comp. Gen. 1151, 1152 (1976), 76-1 CPD 358.

In the present case, the principal basis of protest relates to the extent of changes made in an RFP during an ongoing negotiated procurement. As discussed infra, a number of changes were made, involving matters such as equipment configuration, various individual technical specifications, and delivery and test schedules. In these circumstances, for the protester to assert that it was not aware of its basis for protest until it received a copy of RFP amendment No. 6, which formally reflected the scope of the changes, does not seem unreasonable.

ITT has not presented any evidence that the protester knew or reasonably should have known about the extent of the changes at an earlier date. Accordingly, we believe the protest on this basis is timely.

Finally, ITT in its April 10, 1979, letter to our Office argues that Cardion's attempt to expand its protest to challenge the sufficiency of the ITT-Wilcox proposal is untimely. ITT refers in this regard to Cardion's April 6, 1979, letter to our Office. There, Cardion noted that FAA representatives at the April 3, 1979, conference in this case stated that the ITT-Wilcox proposal involved a "unique engineering approach." In the protester's view, this raises a substantial question whether ITT-Wilcox's proposal was "responsive." Prior to this time, Cardion's protest correspondence did not assert that the ITT-Wilcox proposal was deficient or unacceptable. We understand that subsequent to the April 3 conference, Cardion has sought under the Freedom of Information Act information relating to the FAA evaluation of the ITT-Wilcox proposal.

Where a protester files an initial statement of protest in general terms and, within 5 working days after being so requested by our Office, furnishes additional details which appear to assert separate bases of protest not mentioned in the initial filing, we are nonetheless inclined to regard the separate bases as timely filed. See Kappa Systems, Inc., 56 Comp. Gen. 675, 681-684 (1977), 77-1 CPD 412. However, where a protester attempts, after that time, to raise additional and separate bases for protest, such bases must independently satisfy our timeliness requirements. Annapolis Tennis Limited Partnership, B-189751, June 5, 1978, 78-1 CPD 412.

In addition, under 4 C.F.R. § 20.2(b)(2), protests must be filed within 10 working days after the basis for protest is known or should have been known, whichever is earlier. Thus, we have held in certain cases that where a protester did not seek within a reasonable period of time information

which ultimately revealed a basis for protest, its failure to diligently pursue the matter calls for rejection of its protest as untimely. See, for example, Loral Electronic Systems Division, Loral Corporation, B-187779, February 22, 1977, 77-1 CPD 125.

We believe that an allegation that an RFP should be canceled because it has been so substantially changed that it is tantamount to a new procurement is a separate basis of protest from a contention that an RFP should be canceled because the only proposal submitted was unacceptable. It appears to us that the latter basis of protest should have been known to Cardion long before April 1979. In December 1978 Cardion had received from FAA copies of RFP amendment No. 6 and the revised FAA specifications, which indirectly revealed information about the technical approach proposed by ITT-Wilcox. Cardion also knew at that time that the ITT-Wilcox proposal was the only one received. In addition, comments on the protest filed by ITT and Wilcox on January 30, 1979, explicitly asserted that the ITT-Wilcox technical approach was innovative and involved proprietary information, and that participation in the procurement by Cardion would result in prohibited "technical transfusion."

Accordingly, we regard as untimely Cardion's contention that the RFP should be canceled because the only proposal received was unacceptable. In addition, we believe that Cardion had ample opportunity between December 1978 and April 1979 to seek additional information under the Freedom of Information Act, but failed to diligently pursue the matter.

III. Protester's, Agency's, and Interested Parties' Positions

Cardion states that "The gist of our protest is that the FAA should have opened the VORTAC procurement to parties in addition to [ITT-Wilcox] after issuing Amendment 6 to the RFP* * *. The

effect of this amendment 6 was to reduce drastically the scope of the VORTAC project and the risk borne by the contractor. The change in the RFP was so substantial that amendment 6 amounted to a new procurement."

The protester has submitted considerable argumentation as to the substantial nature of the technical changes made by amendment No. 6. Cardion repeatedly emphasizes that the cumulative effect of the changes is to greatly reduce the risk involved in contract performance. A summary of these points, along with responses by the FAA and interested parties, follows:

1. Cardion: Single transmitters with dual monitors at all sites have been substituted for the previous combination of single transmitters at some sites and dual transmitters at others. The number of transmitters is reduced by more than 33 percent. Facility Control and Transfer (FCT) equipment is eliminated, at a cost reduction of about $500 per site, and software is simplified. The contractor's design burden is lessened and there is a vast decrease in risk of contract performance.

FAA: Equipment configuration at some sites has been changed, with some cost reduction. However, there is no change in the total number of systems required or in the functional requirements which must be met. The FCT change involves a possible cost reduction of about $200 per site. Even accepting the protester's figure ($500/site, or $450,000), this is hardly a great amount in the context of a possible $100 million procurement. The software change involves no recognizable cost impact.

ITT: Contrary to the protester's view, the requirements are now more complex and riskier. Dual transmitters had been required at some sites for backup capability, i.e., the second transmitter would be needed in case the first failed. The substitution of single transmitters at these sites means that the contractor must supply more sophisticated, higher reliability single transmitter equipment.

Wilcox: The configuration of equipment at one-half of the sites has been changed, but the types of equipment involved at all sites are the same as those required by the original RFP. No new equipment design effort is required by amendment No. 6. The FCT change involves a trifling impact of less than .2 percent of the contract price.

2. Cardion: The Facility Central Processor Unit has been simplified by substituting a commercially available input-output terminal for the previous built-in alphanumeric display or keyboard.

FAA: This is an insignificant change involving perhaps a $200-$300 increase in cost per site.

Wilcox: This change probably involves less than .25 percent of the contract price.

3. Cardion: Amendment No. 6 provides clearer specifications regarding read only memory and support data.

FAA: This is a clarification, not a change in requirements.

Wilcox: A mere clarification with no effect on design or equipment cost.

4. Cardion: The number of monitored signals for environment equipment interface is now defined.

FAA: This is clarification, not a change in requirements.

Wilcox: This probably affects less than .2 percent of the contract price.

5. Cardion: Several changes in Frequency Shift Keying (FSK) transmission have significantly reduced design complexity.

FAA: The basic FSK capability was required by the original specification; the changes the protester refers to are minor and involve approximately the same degree of design complexity.

Wilcox: These changes have no effect on cost.

6. Cardion: Spectrum requirements for modulation sidebands have been reduced; the previous requirements are known to be very difficult to meet.

FAA: The relaxation in tolerances is not a major change and is of no consequence in terms of system performance.

Wilcox: Since Cardion has a current FAA contract under which the same relaxation in requirements occurred, it is hard to see how Cardion can claim to be surprised by this change.

7. Cardion: Goniometer sideband spectrum requirements have been reduced, with a tremendous decrease in design risk.

FAA: This is a minor change.

Wilcox: From its previous contract where the same requirements were reduced, Cardion probably had better notice of the FAA's actual needs than any other prospective offeror.

8. Cardion: Frequency deviation ratio tolerance has been reduced, lessening Goniometer design risk.

FAA: See comments on Nos. 6 and 7; this is a very insignificant change with negligible effect on design complexity.

Wilcox: This merely corrects a conflict in the specifications.

9. Cardion: The substitution of a programmable keyboard for internal monitor adjustments has clarified ambiguities in the control requirements.

FAA: This is a clarification of the specification, not a change in requirements.

Wilcox: This clarification involves less than .1 percent of the total contract price.

10. Cardion: The delivery schedule has been significantly relaxed. For example, the original requirement was 12 units per month during the first 6 months of deliveries; now only 2 or 3 units per month are required. The net effect is an enormous decrease in risk because the contractor is able to gradually deploy its resources and better assess the risks involved in the critical early stage of contract performance.

FAA: Over 1-1/2 years of design and test precede delivery of the first production VORTAC's. The protester's comments concerning the effect on risk of the changes in early deliveries are basically speculative. In the context of a 54-month program, the changes are minor. Overall delivery requirements are probably more stringent, as the initial deliveries of basic and option units are accelerated under amendment No. 6.

ITT: Amendment No. 6 accelerates the schedule for initial deliveries of VORTAC's and VOR's, as well as options.

Wilcox: The protester selectively points out relaxations in the early delivery schedule and ignores the fact that overall delivery requirements have been accelerated.

11. Cardion: There have been major changes in installation and test scheduling. Only six units must be installed in the first 5 months, whereas the original RFP called for 48 installations of dual VORTAC's during the same period. In addition, while amendment No. 6 increased the number of monitors, it substantially decreased the number of transmitters and transponders, and production testing for transmitters and transponders is substantially more burdensome than for monitors. The net result is a huge reduction in production testing. Further, reliability demonstration requirements have not been increased.

FAA: The changes in the units comprising the 950 systems are as follows:

	Original Requirement	Amendment No. 6	Difference
VOR Transmitters	1401	950	-451
VOR monitors	1401	1900	+499
TACAN/DME transponders	1214	870	-344
TACAN/DME monitors	1214	1740	+526
	5230	5460	+230

While the relative difficulty in building these units depends on the individual manufacturer, in our opinion monitors are somewhat more difficult to design and build. In any event, manufacturing and production testing is about the same regardless whether monitors or transmitters/transponders are involved. The protester has made inconsistent statements in its submissions as to whether qualification testing is more demanding under amendment No. 6, at first admitting that it probably is and later claiming it is not. In our opinion, qualification and reliability testing will be somewhat more complex under amendment No. 6.

Wilcox: The protester's assertions are misleading and oversimplified. Amendment No. 6 calls for system testing as opposed to testing of the separate units which make up the systems.

12. Cardion: The contract type for installation and testing work has been changed from firm-fixed-price to cost-plus-fixed-fee, greatly reducing the risk to the contractor.

FAA: This affects only about 10 percent of the estimated contract cost. Under the RFP, cost was not specified as a factor in determining competitive range and was not a primary factor in making a selection.

ITT: This involves only about 3 percent of the total contract price and is de minimis in the context of the procurement as a whole.

Wilcox: This affects only about 3.2 percent of the contract price.

13. Cardion: The requirements for spares have been relaxed; spare modules on option items have been reduced from 401 to 156.

FAA: This is not a major change and it does not decrease a contractor's risk.

Cardion advances the following legal theories in support of its position:

(1) Computek, Inc. et al., 54 Comp. Gen. 1080 (1975), 75-1 CPD 384, and other GAO decisions indicate that when significant changes are made in the Government's requirements, the RFP must be amended and the Government must seek "new offerors."

(2) Decisions such as American Air Filter Company, Inc., 57 Comp. Gen. 285 (1978), 78-1 CPD 136, also 57 Comp. Gen. 567 (1978), 78-1 CPD 443, and Kent Watkins & Associates, Inc., B-191078, May 17, 1978, 78-1 CPD 377 establish that where a modification to a contract changes its purpose or nature so substantially that the contract for which the competition was held and the contract to be performed are essentially different, the work covered by the modification should be obtained by a new and separate competitive procurement.

(3) Federal Procurement Regulations (FPR) §§ 1-3.101(c) and 1-3.101(d) (41 C.F.R. § 1-3.101(c), (d) (1978)) require procuring agencies to solicit proposals from the maximum number of qualified sources and to ensure that negotiated procurements are competitive whenever feasible. (Cardion stresses in this regard that the active interest in the protest expressed by three other companies indicates that a number of concerns might be willing to submit proposals if the RFP is canceled and a new procurement initiated.)

FAA, ITT and Wilcox have responded at length to the protester's legal arguments. ITT and Wilcox also maintain that since the innovative technical approach in their proposal involves proprietary information, participation by Cardion or others in the procurement would involve a prohibited "technical transfusion" of these innovative concepts. They also argue that further delay occasioned by any resolicitation will result in a substantial increase in cost to the Government.

IV. Discussion

FPR § 1-3.805-1(d) states in pertinent part:

> "When, during negotiations, a substantial change occurs in the Government's requirements or a decision is made to relax, increase, or otherwise modify the scope of the work or statement of requirements, such change or modification shall be made in writing as an amendment to the request for proposals, and a copy shall be furnished to each prospective contractor. * * *"

The regulation requires only that notice of changes be given to offerors. In the present case, Cardion is not an offeror. Thus, decisions such as Computek, supra--where we found that an agency failed to comply with the regulation and recommended that the competition be reopened and that offerors be notified of changes in the Government's requirements--are easily distinguishable. Contrary to Cardion's view, Computek did not recommend that the agency "seek new offerors" but rather that it seek new offers from the offerors in the procurement.

The FPR's do not specifically address the subject of whether or when an RFP should be canceled due to changes in the Government's requirements. However, Defense Acquisition Regulation (DAR) § 3-805.4(b) (1976 ed.) does address this point:

> "(b) The stage in the procurement cycle at which the changes occur and the magnitude of the changes shall govern which firms should be notified of the changes. If proposals are not yet due, the amendment should normally be sent to all firms solicited. If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment should normally be sent only to the responding offerors. 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, any firms added to the original mailing list and any other qualified firms." (Emphasis supplied.)

The DAR is not applicable to FAA procurements. However, in the absence of a directly applicable FPR provision, we will use it as a guide. Iroquois Research Institute, 55 Comp. Gen. 787, 797 (1976), 76-1 CPD 123.

It is well established that contracting agencies enjoy a broad range of discretion in deciding whether or not to cancel an RFP, and that our Office will not object to an agency's decision in this regard unless it is clearly shown to have no reasonable basis. See United States District Court for the District of Columbia, 58 Comp. Gen. ___ (B-194088, April 26, 1979), and decisions cited therein. The issue in this case, therefore, can be stated as follows: has Cardion shown that FAA's decision that the changes in requirements are not so substantial as to warrant complete revision of the RFP has no reasonable basis?

Considering the nature of the changes, as characterized by the parties supra, we see no basis on the record to answer this question in the affirmative. Insofar as the changes are readily and objectively quantifiable, such as the numbers of transmitters or monitors or the alterations in the delivery schedule, it is by no means obvious or self-evident why they must be regarded as "so substantial as to warrant a complete revision" of the solicitation. If anything, FAA's and ITT-Wilcox's characterizations of the changes as being of the type which might normally occur in negotiations for the acquisition of a major system appears more obvious and reasonable, especially where, as here, the RFP expressly contemplated that each offeror would provide its own design and technical approach to meeting the requirements, and technical approach was the most important evaluation criterion.

The protester's citation of Frequency Electronics, Inc., B-178164, July 5, 1974, 74-2 CPD 8, is not in point. There, the protester objected to the cancellation of an RFP which had called for specific models of electronic equipment. We found no basis to object to the Navy's view that amending the RFP was impracticable, because it was ultimately possible that a considerably different type of equipment might be procured under a new RFP. Whether the FAA in the present case could reach a reasonably based conclusion that the changes in the specification are so substantial as to warrant a complete revision of the RFP is beside the point. The protester, to succeed, must show in effect that FAA would be totally unreasonable if it reached any other conclusion. The protester's presentation falls far short of such a showing.

Insofar as the alleged substantial nature of the changes is premised on the protester's perception of the reduced risk they entail, it must be noted that an individual prospective contractor's perception of the risk is of no especial concern to the Government. The Government's concern is whether its minimum needs will

be satisfied at a reasonable price. See Comten, Inc., B-186983, December 8, 1976, 76-2 CPD 468, affirmed, 77-1 CPD 173. When the Government issues a solicitation, it is required to provide a clear statement of its requirements so that all offerors will be competing on an equal basis (Fiber Materials, Inc., 54 Comp. Gen. 735 (1975), 75-1 CPD 142) but the Government makes no guarantee that each offeror will be facing the same degree of risk; one offeror, due to its superior experience or resources, may well enjoy a competitive advantage over another. Telos Computing, Inc., supra. We see little merit, therefore, in the idea that the substantial nature of changes in an RFP should be judged in terms of an individual prospective offeror's perception of their effect on risk.

Cardion has lately introduced an argument akin to detrimental reliance, i.e., that the changes effected by amendment No. 6 relate to the same areas of risk which caused Cardion to forego submitting a proposal in June 1978. However, the contemporaneous documentation (see Cardion's June 1, 1978, "no bid" message to FAA, supra) does not substantiate this after-the-fact assertion. If a prospective offeror believes the terms of the RFP involve too much risk, it has a choice of either submitting a proposal in response to the RFP, or protesting prior to the closing date for receipt of initial proposals and specifically challenging those areas of the RFP it believes should be changed. We agree with Wilcox's comments to the effect that the Government cannot conduct its negotiated procurements on a "start and stop" basis, with procurements being halted as various nonofferors change their minds about the degree of risk.

Further, we do not find decisions such as Kent Watkins and American Air Filter, supra, to be in point. The relevance of these and similar decisions to the present case rests on the theory that in determining whether changes to an RFP are so substantial as to warrant its complete revision, it is pertinent to consider whether such changes--if made to a contract already awarded--would constitute a change so substantial that the work covered by the modification should be

the subject of a new procurement. The difficulty with this reasoning is that a change to a contract is not the same thing as a change to an RFP, whether considered from the perspective of the opportunity to compete or from the perspective of the best interests of the Government in satisfying its needs on the most advantageous terms. A contract modification is accomplished in what amounts to a sole-source environment; the Government deals only with the contractor and no other party has an opportunity to compete. A change to an RFP, on the other hand, does not in itself preclude any party which chose to compete in the procurement from competing for the changed requirements, nor is the Government, even if there is only one offeror, locked into a sole-source situation to the same degree in a precontract environment as it is when dealing with a contractor.

Thus, in our view, the scope of changes to an RFP which may be permissible without requiring a new solicitation is greater than the scope of changes permitted to an existing contract. See, in this regard, Alton Iron Works, B-183955, August 29, 1975, 75-2 CPD 131, where we stated:

> "Alton also questions the propriety of an award for 895 items when the original RFP called for only 418 items. When the contracting officer learned that increased quantities would be needed he negotiated only with Yarway because it was the only offeror submitting an acceptable offer on the lesser quantity. We can find no reason to object to this procedure since ASPR § 3-805.4(b) (1974 ed.) provides, in effect, that changes in the Government's requirements that do not warrant a complete revision of the solicitation and which occur after the competitive range for the procurement has been established need only be conveyed by amendment to those offerors determined to be in the competitive range.* * *"

Compare Kent Watkins, supra, where we found that a contract modification which doubled contract costs and performance time was in fact an unjustified sole-source award and recommended that the agency conduct a competitive procurement.

Thus, we do not find the "contract modification" line of decisions to be controlling here, and the various court decisions cited by Cardion which deal with cardinal changes are even further afield. The cardinal change cases deal with the rights of the Government and the contractor in a breach of contract situation and are not directly concerned with the subject of when certain work must be the subject of a competitive procurement.

Even if the Kent Watkins and American Air Filter rationale were to be applied here, it offers no support for the protester's position. In this regard, in our second American Air Filter decision, in discussing to what extent a contract can be modified before the statutory requirement for competition comes into play, we stated (57 Comp. Gen., supra, at 573):

> "The impact of any modification is in our view to be determined by examining whether the alteration is within the scope of the competition which was initially conducted. Ordinarily, a modification falls within the scope of the procurement provided that it is of a nature which potential offerors would have reasonably anticipated under the changes clause.
>
> "To determine what potential offerors would have reasonably expected, consideration should be given, in our view, to the procurement format used, the history of the present and related past procurements, and the nature of the supplies or services sought. A variety of factors may be pertinent, including: whether the requirement was appropriate initially for

> an advertised or negotiated procurement; whether a standard off-the-shelf or similar item is sought; or to whether, e.g., the contract is one for research and development, suggesting that broad changes might be expected because the Government's requirements are at best only indefinite."

By analogy, the scope of changes to an RFP which would be permissible without requiring cancellation and resolicitation would have to be judged in terms of what changes in the RFP prospective offerors might reasonably have anticipated would be made after proposals were received. Cardion and all other prospective offerors were on notice that in this negotiated procurement the RFP explicitly contemplated individual design approaches by offerors. To assert in these circumstances that an RFP amendment incorporating technical changes based on the particular technical approach taken by the sole offeror makes the RFP as amended fundamentally different in purpose or nature from the original RFP is totally unpersuasive.

As for Cardion's argument that the RFP should be canceled because FPR § 1-3.101 requires agencies to seek maximum competition in negotiated procurements, our decision Environmental Protection Agency - request for modification of GAO recommendation, 55 Comp. Gen. 1281 (1976), 76-2 CPD 50, is pertinent. There, our Office had sustained a protest and recommended that negotiations be reopened with the six offerors. The agency proposed instead to cancel the RFP, partly on the basis that issuing a new RFP would maximize competition by allowing parties other than the six original offerors an opportunity to submit proposals. Our decision stated (55 Comp. Gen. at 1284-1285):

> "[FPR] § 1-3.101(d) (1964 ed. amend. 153) provides that negotiated procurement shall be on a competitive basis to the maximum practical extent. However, we do not believe that this principle, considered in and of itself, necessarily justifies canceling an

> existing RFP and issuing a new RFP. Unless there is a reasonable basis to believe that continuing the competition under an existing RFP will not lead to the receipt of technically acceptable proposals whose realistic probable costs are considered reasonable, we see no grounds why the RFP should be canceled in the hope of experiencing better results under a new RFP."

A decision to cancel, in other words, should not be undertaken based solely on speculation about possible increased competition under a new RFP and irrespective of the results obtained under the original RFP. In 55 Comp. Gen. 1281, six proposals had been received as opposed to only one in the present case. However, the FAA initiated the current procurement as a competitive one and ITT-Wilcox's proposal was prepared in anticipation of competition. There is no requirement that an agency cancel an RFP solely because only one acceptable proposal is received. See, in this regard, Cessna Aircraft Company et al., 54 Comp. Gen. 97 (1974), 74-2 CPD 91; Cf. Alton Iron Works, supra.

V. Conclusion

The protest is denied.

R. F. Keller

Deputy Comptroller General
of the United States