



Comptroller General
of the United States

Washington, D.C. 20548

92-1 CPD 243

PR

Decision

Matter of: Herley Industries, Inc.

File: B-246326

Date: February 28, 1992

Myron Levy for the protester.

Edward L. Martin, Jr., Esq., Cooper Industries, an interested party.

Sandra Baker-Jumper, Esq., and Jonathan H. Kosarin, Esq., Department of the Navy, for the agency.

Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the decision.

DIGEST

Protest that salient characteristic specifications for intercable connectors solicited on a brand name or equal basis are unduly restrictive of competition is denied where the contracting agency reasonably determined that the salient characteristics at issue are necessary safety features.

DECISION

Herley Industries, Inc. protests the terms of request for proposals (RFP) No. N00104-91-R-E937, issued by the Department of the Navy for intercable connectors for shore-to-ship application. Herley alleges that the specifications are unduly restrictive of competition because they are tailored to one vendor's product and exclude a type of connector available on a qualified products list (QPL).

We deny the protest.

The RFP, issued on a brand name or equal basis, calls for three phase, intercable connectors for shore-to-ship, that is, pier-side, application. The male connectors are to be approximately 6-7/16 inches in diameter and 22-5/32 inches in length, and the female connectors are to be 6-1/6 inches in diameter and 19-7/32 inches in length. The purchase description states that the cable connector set (one male and one female):

"will be used to simultaneously connect and/or disconnect three phases of 500 AMP, 440 Volt alternating current service. The connector set shall be compatible with MIL-C-915/6 Type THOF 500 cable, be watertight, rugged, have a self-locking feature to preclude accidental disconnect and be

furnished with captive protective caps for use when the connectors are not in use. A product equal to Crouse-Hinds Molded Products part number X8998-1 (male) and part number X8998-2 (female) is required."

The solicitation provides for first article approval with testing to be accomplished by the contractor. Waiver of first article approval is permitted where identical or similar items have been delivered by the offeror and accepted by the government. Award will be "based on the lowest offered price for a product that is in compliance with the salient characteristics."

Herley asserts that the specifications are overly restrictive because they do not permit Herley to offer certain single phase intercable connectors which are on a Navy QPL and are made in accordance with military specifications, but do not comply with the specified salient characteristics. The protester argues that its QPL connectors must be considered acceptable under this solicitation since they are on the QPL and have been acceptable in the past for pier-side application. Herley points out that Federal Acquisition Regulation (FAR) § 10.006(a)(2) provides that "Military specifications and standards are mandatory for use by the Department of Defense. . . ." The protester further contends that it is improper to issue a solicitation with specifications "written around" a particular product.

Contracting agencies have broad discretion in identifying their needs and determining what characteristics will satisfy those needs. We therefore will not question an agency's determination of its needs so long as it has a reasonable basis. Bombardier, Inc., Canadair, Challenger Div., B-243977; B-244560, Aug. 30, 1991, 91-2 CPD ¶ 224. The fact that specifications are based upon a particular product is not improper in and of itself; nor will an assertion that a specification was "written around" design features of a particular product provide a valid basis for protest if the record establishes that the specification is reasonably related to the agency's minimum needs. Hewlett-Packard Co., 69 Comp. Gen. 750 (1990), 90-2 CPD ¶ 258. When a protester challenges a salient characteristic included in a brand name or equal solicitation as unduly restrictive of competition, we will review the record to determine whether the restrictions imposed are reasonably related to the contracting agency's minimum needs. Soltec Corp.; Astro-Med, Inc., B-234597; B-234597.2, June 16, 1989, 89-1 CPD ¶ 568.

Herley contends that its QPL connectors are better than those solicited; for example, they are much smaller-- 3 inches in diameter and 7 inches long; thus they can be connected faster and with less manpower than the solicited connectors. Herley also challenges the requirement that the connectors have a safety interlock system, arguing that the Navy has used connectors without this feature, such as its QPL item, since 1967.¹ The protester argues that if this system creates unsafe operating conditions, the Navy should back up its statements with proof of accidents. Herley further contends that if its QPL product posed a safety hazard, the agency would have prepared new QPL specifications. The protester also questions the agency's allegations of safety problems experienced with single phase connectors, stating that it knows of no harmful incidents.

The Navy explains that it did not solicit the QPL connectors, for which Herley is the only listed manufacturer, because these connectors do not meet their minimum needs. Therefore, the Navy asserts that it did not violate FAR § 10.006(a) which provides that mandatory use of specifications only applies when the item is "covered by the specifications and standards." The QPL in question was issued to identify plugs to be installed in--and used on-- Navy ships to transfer power from ship-to-shore and ship-to-ship. These single phase connectors are smaller than the three phase connectors, which is advantageous for ship-to-ship usage where the cables being connected are generally short and a larger connector would be cumbersome. The Navy states that the primary reason that the QPL item is unacceptable is that it does not have a safety interlock system to prevent an individual phase disconnect. Without the safety interlock system, the potential exists for any one or more of the single phases to disconnect while the other phases remain intact. Under these circumstances, the total live current passes through the connected poles causing "hot wires;" a problem which has caused fires, personnel electrical shock, and electrocution due to the pier-side use of single phase connectors.

Herley argues that its connectors are designed to withstand a pull force in excess of 1,500 pounds, as are the Crouse-Hinds' connectors, but does not dispute that if a single pole disconnects the voltage passing through the others will increase and can cause a fire hazard. We do not find it unreasonable for the Navy to be concerned that a pull force in excess of 1,500 pounds will occur between a ship and the pier, causing one or more poles to disconnect, thus providing a legitimate basis for the agency to require a safety device which automatically shuts off the power. We


¹Herley's QPL connector was approved in December 1989.

do not agree with Herley that the contracting activity must provide evidence of incurred damage before it can determine to procure a safer item. The solicited product is a single, three pole, quick disconnect connector. This three pole design assures that the three phases are connected and disconnected simultaneously, which is safer than single phase connectors because it has an interlock system to prevent accidental single phase operation or disconnection of the system. The Navy's design policy letter states, in relevant part:

"In the interest of system standardization, safety, and ship compatibility, three phase connectors, and receptacles must be used for shore-to-ship in-line and terminal connections. Single phase connections should only be used within shipyards for temporary installations. . . ."

Herley argues that Navy has been using single phase connectors for many years and if they were truly unsafe it would have discontinued use, which it has not done. The protester also states that it is absurd to think that some activities within the Navy would use an unsafe connector. The Navy explains that certain commands still use the item for ship-to-ship use since, under the controlled circumstances present there, the Herley connectors are not as unsafe. Pier-side application, however, includes public access to the connectors, which the Navy believes entails higher risks. We find this concern reasonable. The fact that different activities in the Navy use different connectors does not establish that one activity is incorrect or unreasonable, especially where each activity is responsible for different areas of operation. The contracting activity here has reasonably justified the use of the three phase connector for pier-side application given the safety concerns and problems experienced in the past with single phase connectors.

The protest is denied.


for James F. Hinchman
General Counsel