

Protest of)	Date: October 19, 1987
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SAFETY FIRST SYSTEMS, LTD., INTEC)	
VIDEO SYSTEMS, INC., TWC, INC.,)	
and FLEET SPECIALTIES)	
)	
Solicitation No. 104230-87-A-0131)	P.S. Protest No. 87-88

DECISION

Safety First Systems, Ltd. (Safety First), Intec Video Systems, Inc. (Intec), TWC, Inc. (TWC), and Fleet Specialties (Fleet) protest the terms of Solicitation No. 104230-87-A-0131 for 4,853 electronic back-up warning devices. The protesters contend that the terms of the solicitation are unduly restrictive.

Invitation for Bids (IFB) 104230-87-A-0131 was issued by the Office of Procurement, Headquarters, on June 26, 1987, with an offer due date of July 27.^{1/} The IFB sought bids for electronic backup warning devices to be installed on 1- to 2 1/2-ton parcel delivery vans (Line Item 1, total quantity 3751) and 5- to 7-ton cargo vans (Line Item 2, total quantity 1102). Mandatory requirements at issue in the protests are set forth in USPS Specification W-1093 (ESC) dated March 23, 1987, attached to the solicitation, which reads in pertinent part as follows:

3.4.1.1 Operating Features -When the vehicle is placed in reverse gear a momentary audible sound shall be emitted indicating that the unit has been activated. The system shall be designed such that an obstacle detected at a distance of 4 feet to 10 feet and within the blind area directly behind the vehicle...shall...energize an intermittent [sic] audible alarm in the vehicle cab and at the rear of the vehicle. An obstacle detected directly behind the vehicle in the blind area...shall cause...the energizing of a continuous audible alarm in the operator's cab and at the rear of the vehicle....

* * *

^{1/} Amendment A03 extended the date for the receipt of bids for an indefinite period pending resolution of the protests and response to other technical inquiries.

3.4.3 Sensor Cables - All cables between the system controller and sensor(s) shall be of the shielded wire type providing protection against electro-magnetic sources and shall be fitted with automotive socket type connectors....

* * *

4.2.2.5.1 Four Inch Diameter Bollard Test - A 4-inch diameter pipe bollard 48-inches in height shall be placed in the grid and its location noted....If the test bollard is in a coordinate location greater than 4 feet from the rear of the vehicle an intermittent alarm...shall sound....If the bollard is located at a coordinate location less than 4 feet from the rear of the vehicle a continuous alarm shall sound....

4.2.2.5.2 False Signal Test - A 4-inch diameter pipe bollard 48-inches in height shall be placed one foot outside of the coordinate system at the 5 foot location and in view of the vehicle operator through the installed mirror system. Detection of the bollard while in this position shall constitute failure of this test....

* * *

4.2.2.5.4 Differentiation Test - The vehicle equipped with the test electronic backup warning device shall be placed 6 feet from a dock and/or wall....[w]ith the ignition key in the "on" position....[A] 2.5th percentile female (58.7 inches in height and 88 pounds) shall walk between the vehicle and the dock/wall at a distance not greater than 3 feet behind the vehicle. Failure of the electronic backup warning device to change from an intermittent signal to a steady signal shall constitute failure of this test.

* * *

Protest of Safety First

Safety First asserts that it submitted comments and recommendations to proposed specifications for the backup devices prior to the issuance of the IFB.^{2/} It states that its recommendations were not acted upon. It argues that the solicitation should have been issued as a negotiated, rather than an advertised, procurement, which would have allowed the various claims of the offerors to have been evaluated. Safety First urges that the specifications are not reasonably achievable on a competitive basis. It asks that the solicitation be canceled and reissued. Safety First does not reference or object to specific sections of the specifications.

^{2/} The record reflects that on January 2, 1987, the contracting officer forwarded the proposed specifications to twenty-one known potential bidders. Eleven vendors responded. Their responses were forwarded to the Postal Service Engineering Support Center for review and comment.

The contracting officer states that the specifications were carefully reviewed by Postal Service technical personnel and were forwarded to 21 vendors for comment. The comments submitted by Safety First were reviewed by the Postal Service Engineering Support Center (ESC) staff. Several of its recommendations were adopted. However, it was the judgment of the technical personnel that the issued specifications define the actual minimum needs of the Postal Service. Concerning the method of procurement, the contracting officer states that where adequate specifications are available, Postal Contracting Manual (PCM) 2-102.1(a) requires that procurements be accomplished by formal advertising.^{1/} Additionally, the circumstances enumerated in PCM 3-201 through 3-217, which would permit negotiations, were not present in the contemplated procurement. He states that the protester's assertion that the solicitation does not permit competitive bidding is incorrect, and that many vendors stated that they were capable of producing a backup warning device meeting the requirements of the IFB.^{1/}

Protest of Intec

Intec protests the terms of the solicitation on the basis that the specifications cover sensors with visual or audible alarms, rather than the camera or video-type system that it markets. It asserts that the detection of an object in the rear of a vehicle as defined in Section 3.4.1.1 will be significantly less effective than allowing a driver to see into the blind spot, and additionally that its device is not susceptible to interference from external electromagnetic fields.

The contracting officer states that Intec's protest consists only of a marketing statement for its product and affords no basis for relief. He additionally asserts that video systems are more expensive than sensing type devices, and that postal procurement regulations provide that specifications shall state only the actual minimum needs of the Postal Service, which was done here.

Protest of TWC

TWC urges that the specifications require a special design which does not permit it to offer its commercially available device. It states that the Postal Service can achieve the

^{3/} PCM 2-102.1(a) provides in pertinent part as follows: "Procurements shall be made by formal advertising unless (i) formal advertising is impracticable, and (ii) conditions and circumstances satisfy the requirements of Section 3 for negotiation."

^{4/} Three firms (Castleton, Inc.; Safety Technology, Inc.; and Dal-Star Research) submitted comments in response to the protest filed by Safety First. Castleton, Inc. states that the protest is without merit and that it stands willing and able to provide a product that complies fully with the specifications. It states that it has produced such a device for over three years. Safety Technology, Inc. asserts that it has produced backup warning devices that meet the postal specifications for many years, and that Safety First's allegations are not correct. Safety Technology contends that Safety First is attempting to delay the procurement process in order to have sufficient time in which to develop the required equipment. Dal-Star Research, Inc. also contends that Safety First is delaying in order to complete its research and development efforts on a new product. Dal-Star states that it has been marketing a conforming device for over two years, and that the protest is unfair to experienced vendors who already sell backup warning devices.

desired result by accepting commercial, off-the-shelf devices. TWC claims that its commercial device has been previously installed on Postal Service vehicles. TWC also objects to the warranty provision in the specifications. As its warranty is offered by separate contract, TWC requests that pricing for the warranty be listed as a separate line item.

The contracting officer states that commercially available devices are not excluded under the specifications, and that other vendors have stated that they will supply off-the-shelf devices. He states that the actual minimum needs of the Postal Service cannot be compromised to accommodate all potential bidders. He also states that neither his office nor the Office of Fleet Management has any knowledge of a product sold by TWC having been installed on postal vehicles. He notes that the warranty requirements are customary in the trade and that he determined that inclusion of the warranty was in the best interest of the Postal Service because due to the nature of this device the inspection and acceptance systems would not be likely to provide adequate protection without the warranty. Other factors considered were the importance of meeting the specifications and the operation of the warranty as a deterrent against deficiencies.

Protest of Fleet

Fleet protests against Section 3.4.1.1 of the specifications, requiring a momentary sound to be emitted when the vehicle is placed in reverse gear to reflect that the warning device has been activated. Fleet states that most of the industry has abandoned this type of auditory signal in favor of a pilot light which remains lit once the system is activated. Fleet also objects to the requirement in Section 3.4.1.1 of an active beam area of ten feet behind the vehicle. The protester asserts that the immediate danger zone is only six feet. At distances greater than six feet, non-threatening objects could set off the alarm and confuse the driver. Fleet states additionally that the requirement that the cables be shielded (Section 3.4.3) is not necessary.

Fleet also objects to Section 4.2.2.5.4, requiring the audible signal to change from an intermittent signal to a constant signal when an object is within three feet of the vehicle. The protester states that its product reflects the exact location of an object by changes in the frequency and tone of the audible signal. Finally, Fleet objects to Section 4.2.2.5.1 (Bollard Test - bollard behind vehicle) and 4.1.1.5.2 (False Signal Test - bollard outside of the coordinate system behind the vehicle). It states that the bollard test appears to have been designed for one particular system and may eliminate otherwise competitive systems.

The contracting officer states that the selection of an audible alarm to indicate that the unit has been activated, rather than a pilot light, was based on experience which has shown that the driver's focus on the rear view mirror should not be distracted. Also, the requirement that the cables be shielded is reasonable as it is necessary to protect against interference from outside electromagnetic sources. He states that the requirement that the warning device detect an object up to ten feet immediately behind the vehicle was established by postal technical personnel having experience in this area, and that it defines the actual minimum needs of the Postal Service.

The contracting officer further states that the false signal and bollard tests were

developed by Engineering Support Center personnel after careful consideration of various factors such as the layout of loading docks routinely encountered by Postal Service vehicles. Such tests are reasonable, he contends, since they require only that an object in the rear of the vehicle be detected, and that an object outside the given area must not activate the alarm.

Discussion

Postal Contracting Manual (PCM) 1-1101 provides that specifications shall state only the actual minimum needs of the Postal Service and shall describe the supplies or services in a manner which will encourage maximum competition and will eliminate, insofar as possible, any restrictive features.

The determination of the procuring agency's minimum needs, the method of accommodating them, and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. T.J. O'Brien Company, Inc., et al., P.S. Protest No. 87-83, September 17, 1987; S.H. Demarest, P.S. Protest No. 84-1, February 9, 1984; Doehler-Jarvis Division of N.L. Industries, P.S. Protest No. 77-19, July 22, 1977. Accordingly we will not disturb the requirements of a specification unless they are clearly shown to be without a reasonable basis. Portion-Pac Chemical Corp., P.S. Protest No. 84-49, August 1, 1984; S.H. Demarest, supra. Moreover, if a specification is otherwise reasonable, the fact that one or more potential offerors may be precluded from participating in the solicitation does not render its terms restrictive if they reflect the legitimate needs of the procuring activity. See Willard Company, Inc., Comp. Gen. Dec. B-187628, February 18, 1977, 77-1 CPD & 121; Illinois Bell Telephone Company, Comp. Gen. Dec. B-202238, October 20, 1981, 81-2 CPD & 320.

Applying these standards, the protests must be denied. Here, Safety First has presented no evidence in support of its broad allegation, disputed by the contracting officer, that the specifications preclude competitive bidding. A protester's unsupported contentions provide no basis to sustain the protest. See Edsal Machine Products, Inc., P.S. Protest No. 85-84, January 29, 1986; Concept Office Furnishings, Inc., P.S. Protest No. 85-59, November 18, 1985; Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984. While the contracting officer also disputes Safety First's assertion that its comments on the proposed specifications were ignored, we note that the Postal Service was under no obligation to adopt the vendors' suggestions; contracting officials bear the responsibility of drafting specifications. S.H. Demarest, supra.

Safety First's arguments that the procurement should have been negotiated are also unpersuasive. PCM 1-301.2 provides that contracts for supplies and services shall be made by formal advertising except in those circumstances set forth in Section 3, Part 2, of the PCM, when procurement by negotiations is permitted.^{1/} The contracting officer determined that there were no

^{5/} An example of one such circumstance is a situation where it is impossible to draft adequate specifications or any other adequately detailed description of the required supplies or services. PCM 3-210.2(xiii).

conditions or circumstances that would warrant negotiations in this solicitation. We have been presented with insufficient information with which to overturn that determination.

While Intec argues that its video-type product has advantages over sensor-type systems, it has not presented evidence that the specifications are unreasonable or otherwise fail to reflect the minimum needs of the Postal Service. Even if Intec, or other vendors, are precluded from participating in the solicitation, the terms are not per se restrictive. Willard Company, Inc., supra.

TWC protests that the specifications preclude it from offering a device which it sells and which has been installed on postal vehicles in the past. We agree with the position of the contracting officer that the restrictions imposed by the specifications are reasonably related to the needs of the Postal Service. Therefore, to prevail TWC must show that the requirements are clearly unreasonable. See Illinois Bell Telephone Company, supra, at page 7. This it has failed to do. The use of the warranty provision has also been reasonably supported and justified in this procurement.

Fleet claims that most of the industry has replaced auditory signals (to reflect activation of the system) with a pilot light, and additionally states that the danger zone in the rear of a vehicle is six feet, rather than ten feet as specified by the solicitation. The contracting officer disagrees with these arguments. While we recognize that there may be differences of opinion with respect to the optimum design to solve a given problem, this office will not substitute our judgment for that of the contracting officer unless it is clearly shown to be without a reasonable basis. See Ruud Lighting, Inc., P.S. Protest No. 85-19, June 12, 1985. Fleet has not shown that the requirements complained of are clearly unreasonable, and the contracting officer's assertions are persuasive.

Fleet's contention that the cables do not need to be shielded must also be rejected; the requirement is supported in the record. The protester's unsupported assertions provide no basis to sustain its protest. Concept Office Furnishings, Inc., supra.

Fleet's argument with respect to Section 4.2.2.5.4 (requiring the audible signal to change from an intermittent signal to a constant signal) appears misplaced. The contracting officer states that the operation of the protester's product (through a change in the alarm frequency) would appear to meet these requirements, mooted Fleet's allegation. In addition, the requirement appears reasonable and Fleet has presented no contrary evidence.

Finally, Fleet objects to the Bollard Test (Section 4.2.2.5.1) and the False Signal Test (Section 4.2.2.5.2), noting that these requirements appear to be designed for one particular system. Again, the contracting officer contests these assertions. A contracting officer has considerable flexibility in determining what specifications are within the minimum needs of the agency, Ruud Lighting, Inc., supra, and we will not disturb such a determination unless it is clearly shown to be without a reasonable basis. This has not been shown here.

The protests are denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

**[Compared to original 3/12/93 WJJ -- NoteHardcopy version of this decision
appears to omit the first two lines on page 7.]**