



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Essex Electro Engineers, Inc.

**File:** B-252288

**Date:** July 23, 1993

Michael R. Hatcher, Esq., Israel and Raley, for the protester.

Richard S. Ewing, Esq., Arnold & Porter, for Trielectron Industries, Inc., an interested party.

Richard Paul Castiglia, Jr., Esq., Department of the Air Force, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that total small business set-aside solicitation's proposal format instructions are overly burdensome to small business offerors is denied where: (1) protester has not shown that particular format requirements are unreasonable; (2) General Accounting Office review of instructions shows that agency's format requirements are generally reasonable; and (3) because all offerors are required to be small businesses, protester suffers no competitive prejudice.

2. The only reasonable interpretation of several provisions in request for proposals is that certified cost or pricing data need not be submitted with initial proposals, but, depending upon the degree of competition obtained, such data might be required at a later time.

3. Request for proposals (RFP) that states agency's needs in terms of performance requirements and includes very detailed evaluation scheme, including significant factors and relative importance of each, need not include statement of internal agency standards to be taken into account under stated evaluation factors where it is clear from RFP what is expected of offerors and how proposals will be evaluated.

4. Protest that total small business set-aside solicitation's 180-day proposal acceptance period exposes small business contractors to unnecessary risk of inflation is denied where 180 days represents agency's best estimate of how long it will take to complete all necessary

procurement actions and there is no evidence that the agency estimate is erroneous or that the risk placed upon knowledgeable offerors is unreasonable.

5. Where request for proposals (RFP) for generator sets requires first article units to be tested first by the contractor and then by the government, but tests contain different acceptability criteria, RFP is not ambiguous where generator sets must comply with RFP's overriding engineering performance specifications which will insure compliance with both tests' acceptability criteria.

6. As the objective of the General Accounting Office's (GAO) bid protest function is to ensure full and open competition for government contracts, GAO will not review a protest that a solicitation should contain more restrictive specifications. Therefore, protest that request for proposals is deficient because it does not contain a specific test for product acceptability is dismissed.

7. Protest that agency officials tested one offeror's generator sets prior to issuing the current solicitation for generator sets thereby giving that offeror inside information concerning performance requirements is denied where: (1) tests were performed as standard acceptance tests in an earlier procurement for generator sets with similar but not identical performance requirements; (2) agency issued draft of specification used in current procurement to potential offerors, including protester, 6 months prior to conducting acceptance tests on competitor's product; and (3) any advantage enjoyed by competitor was the result of its incumbency in earlier contract and agency was not required to take any action to nullify that advantage.

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#### DECISION

Essex Electro Engineers, Inc. (Essex) protests the terms of request for proposals (RFP) No. F04606-92-R050900, issued by the Department of the Air Force as a total small business set-aside for acquisition of a number of generator sets, spare parts, related data and training. Essex contends that: (1) the RFP's proposal preparation instructions are too detailed and impose onerous paperwork requirements on small business contractors; (2) the RFP requirements for cost information are inconsistent and unclear; (3) the RFP does not disclose the evaluation standards against which proposals will be evaluated; (4) the technical specifications contain contradictory requirements which prevent potential offerors from knowing the government's actual minimum needs and preparing proposals to meet those

needs; (5) the 180-day proposal acceptance period is unduly burdensome on small business offerors; and (6) one offeror had access to "inside information" regarding the agency's actual performance requirements. We deny the protest.

The procurement was initiated in July 1991, when the Air Force issued a draft specification for the generator sets to potential offerors for comment. In October 1992, the Air Force issued a draft RFP to potential offerors (including Essex) soliciting comments and suggestions. A presolicitation conference was also held with interested firms in November of that year. Essex did not comment upon the draft specification or the draft RFP and did not participate in the presolicitation conference. On December 8, the current RFP for supplying 225-kilowatt (KW), 400-hertz (Hz), trailer mounted, diesel engine driven, generator sets for use as ground support for E-3, E-8, and EC-18 aircraft was issued; the closing date for submission of initial proposals was January 20, 1993. A 6 1/2-year, fixed-price requirements type contract is contemplated, including, among other things, supplying first article and production units, technical data, technical support, training, and warranties.

From December 21, 1992, through February 5, 1993, Essex wrote the contracting officer seven letters asking for clarification of all types of RFP provisions--from apparent technical discrepancies to seemingly simple proposal format directions. For example, on one occasion, Essex asked for clarification of provisions describing engine overspeed testing methodology, while on another occasion, Essex asked what type of binder it should use in preparing its proposal. Essex's letters usually included a request for an extension of the proposal due date. The contracting officer responded to each letter and, in fact, the due date was extended to February 9, 1993.

By letter of February 4, Essex again wrote to the contracting officer advancing several of the same issues--concerning proposal preparation instructions, cost information requirements, and lack of evaluation standards--later raised in its protest to our Office. By letter of February 5, Essex pointed out several alleged technical ambiguities and discrepancies to the contracting officer. The contracting officer responded to both letters on February 8, the day before the proposal due date. Regarding the protest, the contracting officer stated that the Air Force would not be able to resolve the protest by February 8 as requested, but would process the protest in due course. Regarding the alleged technical deficiencies, the

contracting officer gave very brief responses, devoting a short paragraph or less to each. Essex filed this protest in our Office just hours before closing on February 9.<sup>1</sup>

Essex contends that the RFP's proposal preparation instructions are "overly burdensome and require an unusual and unnecessary amount of desktop publishing capabilities which tend to exclude the small business contractor." Among other things, Essex objects to requirements dictating the number of spaces a paragraph must be indented, prohibiting the placing of contractor names and logos in the text of proposals, and requiring offerors to cross reference their proposals with requirements from the statement of work, specifications, proposal preparation instructions, etc.

The Air Force is conducting this procurement in accordance with Air Force Regulation (AFR) 70-30, "Streamlined Source Selection Procedures," which encourages limitations on the number of proposal pages in order to eliminate the submission of data and information which is not germane to the decision making process. The proposal preparation instructions contain page limitations for the various portions of proposals and state that excess pages will not be read or evaluated. The detailed instructions--specifying the number of spaces that paragraphs should be indented, that printed text should be double spaced, the number of characters per printed inch, margin size, and a host of other format characteristics--are designed, in part, to ensure that all offerors are held to the same limitations regarding the amount of information they can present.

The Air Force reports that offerors are instructed not to put their names or logos in the text of proposals to ensure that the technical evaluation will be based solely on the content of the proposals and to eliminate any risk that evaluators might be influenced by knowing offerors' names. Essex asserts that the restriction prevents offerors from protecting proprietary information in proposals and from using commercial literature containing names or logos in proposals. We think these arguments are not convincing. The Federal Acquisition Regulation (FAR) provisions

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<sup>1</sup>The Air Force argues that the protest regarding solicitation deficiencies is untimely, because Essex did not comment on alleged ambiguities and discrepancies when given the opportunity to comment on the draft RFP or at the presolicitation conference, both of which took place more than 2 months before Essex filed its protest with our Office. However, as the protest was filed before the time set for receipt of initial proposals, these allegations were timely filed under our Bid Protest Regulations. See 4 C.F.R. § 21.2(a)(1) (1993).

concerning use of restrictive legends on proprietary data used in proposals require an offeror to identify the protected data but do not require the offeror to state its name or put its identifying logo in the restrictive legend. See FAR §§ 3.104-4(j)(2) and 52-215-12. Furthermore, in our opinion, it is not overly burdensome to require an offeror desiring to submit commercial literature with its proposal either to separate the preprinted literature from the text of its proposal or to black out the name/logo where necessary.

The agency reports that a cross reference index is required in proposals to help evaluators locate information and to serve as a checklist for offerors to make certain that they have provided all requested information.

The amount of information to be included in proposals and proposal format requirements are matters properly within the judgment of contracting officials; we will not disturb that judgment unless it is unreasonable. See American Contract Servs., Inc., B-231903, Nov. 2, 1988, 88-2 CPD ¶ 432. In our view, the Air Force's format requirements are reasonable and can easily be met using a personal computer. Furthermore, we fail to see how the proposal preparation instructions are overly burdensome to small business offerors. Id. Because this procurement is a total small business set-aside and all offerors are required to use the same proposal format, we fail to see how the instructions would eliminate small business offers. Nor has Essex shown that it is competitively prejudiced by them, and on this record, we deny this protest issue. See Tampa Shipyards, Inc., B-231802, Sept. 30, 1988, 88-2 CPD ¶ 304.

Essex also contends that the RFP's requirements concerning cost or pricing data are inconsistent and ambiguous. Essex argues that several RFP clauses require submission of certified cost or pricing data while other RFP clauses expressly state that such data is not required. Essex asserts that the Air Force cannot properly require offerors to submit detailed cost or pricing data, because the contracting officer determined that there was adequate price competition.

The Air Force responds that the RFP's provisions are clear and consistent. The agency reports that cost or pricing data is required to assist the contracting officer to determine realism, completeness, and reasonableness of proposals and to assess offerors' understanding of the work. The agency states that because the contracting officer made

a preliminary determination that adequate price competition would be obtained, the RFP allows offerors initially to submit cost or pricing data that has not been certified as accurate, complete and current.

Submission of cost or pricing data is mandated by the Truth in Negotiations Act, 10 U.S.C. § 2306a (1988), for all negotiated contracts, or modifications to contracts, in excess of \$100,000, except in certain circumstances. Contracting agencies are granted the discretion to request such data, even when it is not otherwise required under the Act, where the agency determines the information is necessary to assure that prices are reasonable. 10 U.S.C. § 2306a(c); Hudson Defense Sys., Inc.--Recon., B-244522.3, Sept. 24, 1992, 92-2 CPD ¶ 201; Bay Cities Servs., Inc., 70 Comp. Gen. 4 (1990), 90-2 CPD ¶ 271. Here, there is no evidence that the contracting officer abused her discretion in determining that certified cost or pricing data should not be required initially. We also think that the solicitation conveys the agency's intent to require certified cost or pricing data only if adequate price competition is not obtained.

At clause M-900e.4, the RFP states:

"As this requirement will be solicited under competitive procedures, certified cost and pricing data will not be required initially; however, the Contracting Officer reserves the right to request and require certified cost and pricing data if it is subsequently needed." [Emphasis added.]

Almost identical directions are repeated in RFP clauses L-322(a) and L-900G(c).

The only reasonable interpretation of these provisions is that cost or pricing data need not be submitted with the initial proposal, but, depending upon the degree of competition obtained, such data might be required at a later time.

The protester specifically identifies clause L-900G of the RFP as inconsistent with the RFP provisions quoted above. We disagree.

Clause L-900G states in pertinent part:

"(a) Instructions for the cost proposal are designed to provide a uniform format for submission of cost or pricing data fitting the pricing arrangements prescribed. This data is required by Public Law 87-653, the 'Truth in

Negotiation Act.' The Government needs this data to evaluate the realism, completeness, and reasonableness of your proposed price."

We think that the only reasonable interpretation of this clause is that cost or pricing data must be submitted in the current procurement to the extent such data is required by the Truth in Negotiations Act. However, the Act does not require that agencies obtain certified cost or pricing data for contracts awarded pursuant to "adequate price competition." 10 U.S.C. § 2306a(b)(1)(A); FAR § 15.804-3. Here, the contracting officer made a determination that adequate price competition was anticipated, and the RFP clearly indicates that certified cost or pricing data need not be submitted.

Furthermore, the protester ignores the remainder of clause L-900G which states in part:

"(c) These instructions are based on the contracting officer's preliminary determination that adequate price competition exists. If the Contracting Officer determines, at any time, that adequate price competition does not exist, this solicitation shall be amended to require submission of certified cost or pricing data, as required by FAR 15.804."

Thus, clause L-900G read in its entirety also notifies offerors that certified cost or pricing data will not be required initially. This notification clearly is consistent with the other solicitation provisions which advise that no cost or pricing data is required initially in view of the expectation of adequate price competition.

The protester also argues that the RFP requirement that Standard Form (SF) 1411 be used as a cover sheet for required cost data is inconsistent with the RFP's several statements that certified cost or pricing data need not be submitted initially. However, FAR § 15.804-6 identifies SF 1411, Contract Pricing Proposal Cover Sheet, as the form on which cost or pricing data is to be submitted whether or not the data is required to be certified. Here, the contracting agency specified, as it was authorized to do in accord with 10 U.S.C. § 2306a(c), that detailed cost or pricing data had to be included in cost proposals so that the government could evaluate the realism, completeness, and reasonableness of proposed prices. We do not believe that requiring use of SF 1411 for these purposes is inconsistent with the RFP's directions that certified cost or pricing data is not required initially. We thus conclude that the solicitation was not defective concerning the cost information required for evaluation.

Essex next contends that the RFP is deficient because it states that proposals will be evaluated against government standards but does not disclose what those standards are. The Air Force's position is that the RFP properly states the evaluation factors and their relative importance in the award decision, but that evaluation standards were properly excluded from the RFP. The Air Force explains that here the evaluation standards are the source selection team's own internal standards used to assess in a uniform manner the degree to which each offeror has complied with the RFP requirements.

Section 15.605(e) of the FAR requires that solicitations clearly state all evaluation factors, including price or cost and significant subfactors, that will be considered and the relative importance of those factors. We think the current RFP fully complies with the FAR provisions.

The RFP contains nine very detailed pages describing completely how proposals will be evaluated and lists the evaluation factors, in descending order of importance, as: technical/management, performance risk, and cost. Within each evaluation factor, the RFP gives a clear description of the various subfactors that will be considered and describes how they will be evaluated. The RFP also contains a very detailed statement of work and a host of performance specifications. We conclude that the RFP is very clear concerning what is expected of offerors and how proposals will be evaluated.<sup>2</sup> Thus, we deny the protest on this issue.

Essex next argues that the RFP's requirement for a 180-day proposal acceptance period exposes small business contractors to unnecessary risk of inflation and other marketplace factors. The contracting officer responds that

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<sup>2</sup>After reporting on the protest, contracting officials actually drafted some internal evaluation standards to provide guidance to the evaluators and to promote uniformity in the evaluation of proposals. We examined the standards and believe they are limited to providing evaluators with guidelines as to the quality of proposals and are consistent with the RFP's evaluation factors and the FAR provisions. These standards do not establish any additional minimum performance requirements or significant evaluation subfactors in the RFP which the agency would be required to disclose to offerors. See Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., B-252406; B-252406.2, June 25, 1993, 93-1 CPD ¶ \_\_\_\_.

180 days was the Air Force's best estimate of how long it would take to evaluate proposals, issue clarification requests and deficiency reports, conduct discussions, and prepare contracts, etc.

There is some amount of risk inherent in any procurement, and offerors are expected to use their professional expertise and business judgment in taking these risks into account in computing their offers. See Neil Gardis & Assocs., Inc., B-238672, June 25, 1990, 90-1 CPD ¶ 590. A solicitation is not defective merely because it may put contractors at risk, and contracting agencies may decide to impose reasonable risks on contractors in order to reduce the burdens on the government. Id.; see also Tumpane Servs. Corp., 70 Comp. Gen. 406 (1991), 91-1 CPD ¶ 369. Here, we have no basis to conclude that the agency's estimate of the time needed to complete all necessary procurement actions is erroneous or that the risk placed upon knowledgeable offerors is unreasonable.

Essex also contends that the RFP contains three material ambiguities in its performance specifications.<sup>3</sup> Essex alleges that the RFP requires first article units to pass two tests, but the tests' acceptability criteria regarding "voltage transients"<sup>4</sup> and "frequency transients" are inconsistent. In addition, Essex asserts that the RFP's "crowbar"<sup>5</sup> performance characteristic is ambiguous.

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<sup>3</sup>Initially, Essex protested to our Office that the RFP contained six deficient technical requirements. The Air Force rebutted the allegations in its report. Essex addressed only three of the alleged technical deficiencies in its comments on the report. Accordingly, we consider three of the allegations abandoned and will not consider them further. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

<sup>4</sup>As defined in Military Standard 704E, a "transient" is a changing value of a characteristic that usually occurs as a result of a normal disturbance such as an electric load change or engine speed change. The disturbance causes the value of the characteristic (frequency or voltage) to temporarily exceed the steady state limits.

<sup>5</sup>As we understand it, a "crowbar" is an industry term for an extraordinary transient caused by a short circuit or other malfunction in an airplane's radar system. Its name is derived from the fact that the graph representing this type of voltage transient looks like a crowbar.

The RFP requires contractor testing in accord with Appendix A and government testing in accord with Appendix D; both appendices require testing for the electric performance characteristics "AC voltage transient" and "frequency transient." Regarding the voltage transient characteristic, Appendix A allows a range of 80 to 180 volts. However, Appendix D allows only 103.5 to 126.5 volts, a substantially narrower range. Regarding the frequency transient characteristic, Appendix A establishes an acceptable frequency transient range of 375 to 425 Hz. On the other hand, Appendix D allows only 390 to 410 Hz. Again, Appendix D's range is significantly narrower than that allowed by Appendix A.

Regarding the crowbar characteristic, the RFP's engineering specification or statement of work (SOW) states that the system voltage shall not drop below 93.5 volts in the event of a crowbar. However, a crowbar is a type of voltage transient, albeit an extraordinary one. As noted above, Appendix A allows the voltage transient characteristic to vary between 80 and 180 volts. Accordingly, the minimum crowbar voltage allowed by the engineering specification (93.5 volts) is different from the minimum specified for contractor testing (80 volts).

Here, on first reading, the RFP does appear to contain more than one set of performance standards for the voltage and frequency transient and crowbar performance characteristics; the RFP could have been clearer. In addition, we believe that the contracting officer should have been more forthright in answering the protester's questions regarding technical specifications before the date initial proposals were to be submitted. However, we do not agree that the RFP was fatally flawed as the protester suggests.

It is a basic principle of procurement law that specifications must be sufficiently definite and free from ambiguity so as to permit competition on a common basis. See McCotter Motors, Inc., B-214081.2, Nov. 19, 1984, 84-2 CPD ¶ 539. Upon reading the RFP and its appendices as a whole, we conclude that the various provisions are generally consistent and susceptible to only one reasonable interpretation.

Regarding voltage and frequency transient characteristics, the RFP requires first articles to be tested by both the contractor and the government. Contractor testing is done at the contractor's plant while the generator is not connected to the aircraft. The Air Force explains that since the generator is not connected to any aircraft equipment, liberal acceptance criteria are sufficient. The

Air Force states that during subsequent government testing the generators are connected to sophisticated aircraft equipment and, therefore, must meet more rigorous test criteria to avoid damaging that equipment.

After a thorough reading of the RFP and appendices, it is clear that the tests will be conducted serially; government testing takes place only after the generators have already passed contractor testing. Since the two types of tests are designed to be performed at different times and in very different circumstances it is easy to understand that the Air Force wanted generators to meet more demanding acceptance criteria for the second test. Upon reading the RFP as a whole, we believe the only reasonable interpretation of the different voltage and frequency transient acceptance criteria is that, while the generators initially need to meet only the more relaxed contractor testing criteria, ultimately, the generators will be required to also meet the more stringent government testing criteria.

In any event, to the extent that a potential offeror viewed the test criteria of the appendices as inconsistent, or for that matter viewed the RFP to be ambiguous regarding the minimum crowbar voltage, the RFP itself resolved the ambiguity. The RFP stated at paragraph 2.0 of the statement of work or engineering specification:

"In the event of conflict between the documents referenced herein and the detailed requirements contained in sections of this SOW, the detailed requirements of this SOW shall be considered a superseding requirement."

Therefore, the engineering specification's performance characteristics are of paramount importance, overriding the acceptance criteria of either test. Thus, the Air Force reports that generator sets must be designed to meet the engineering specification's performance criteria<sup>6</sup> rather than the test acceptability criteria and that, if the generator sets meet the engineering specification's performance standards, then the generator sets will also meet either test's acceptability criteria.<sup>7</sup> Accordingly,

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<sup>6</sup>Paragraph 3.3.2 of the engineering specification requires a protective system with protection activated for overvoltage at 132 volts, undervoltage at 108 volts, overfrequency at 410 Hz, and underfrequency at 390 Hz.

<sup>7</sup>Essex does not refute this assertion, but continues to assert that the test criteria are inconsistent with each other.

we believe the RFP was sufficiently clear and definite as to what was required and offerors were given enough information so that they could compete on a common basis, and, therefore, the protest is denied on this point.

Essex also protests that the RFP is deficient because it does not contain any requirement for or description of a crowbar test. However, as the objective of our bid protest function is to ensure full and open competition for government contracts, our Office will not review a protest that a solicitation should contain more restrictive specifications. See Ingersoll-Rand Co., B-224706; B-224849, Dec. 22, 1986, 86-2 CPD ¶ 701. Moreover, the procuring agency is responsible for establishing testing procedures necessary to determine product acceptability. Id. Therefore, this protest issue is dismissed.

Essex also contends that one offeror, Trielectron Industries, Inc., had access to inside information concerning the Air Force's actual performance requirements. The protester learned from a test report furnished by the Air Force that the agency had conducted performance testing on a particular type of Trielectron generator set prior to issuing the present RFP. The protester deduces that, since the testing was conducted before the present RFP was issued, Trielectron knew the Air Force's performance requirements before other potential offerors. Essex also charges that Trielectron knew from its participation in the testing of its own product that the Air Force would require the generator sets being procured to meet the less stringent of two power quality requirements set forth in the RFP.

The record shows that the Air Force purchased a commercial Trielectron generator set for the government of Saudi Arabia and, in January 1992, performed certain acceptance tests before accepting delivery. The generator sets were to be used as ground support for E-3 airplanes, but not for E-8 and EC-18 aircraft as required in the current procurement, and, therefore, the requirements were similar but not identical to the current requirements.<sup>8</sup> The record also shows that the Air Force sent a copy of its draft specification to be used in the present procurement to potential offerors, including Essex, in July 1991--more than 6 months before it conducted acceptance testing on the Saudi purchase.

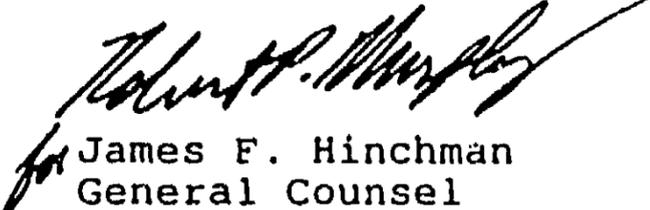
We fail to see how Essex suffered competitive prejudice, especially since the Air Force provided Essex a copy of the draft specification well before issuing the present RFP.

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<sup>8</sup>According to the Air Force, the current procurement has more stringent requirements than the earlier Saudi purchase.

See Tampa Shipyards, Inc., supra. In any event, any advantage accruing to Trielectron was the result of its having had its generator sets tested under the earlier contract and not improper actions by contracting officials, and the Air Force was not required to take any action to nullify any advantage Trielectron might have gained thereby. See Holmes & Narver Servs., Inc., B-242240, Apr. 15, 1991, 91-1 CPD ¶ 373. As there is no evidence that Trielectron received inside information or had a competitive advantage due to improper actions by Air Force officials, the protester's allegation appears to be mere speculation and provides no basis for finding any impropriety on the part of the Air Force. See Glock, Inc., B-236614, Dec. 26, 1989, 89-2 CPD ¶ 593; Electra-Motion, Inc., B-229671, Dec. 10, 1987, 87-2 CPD ¶ 581.

The protest is denied.

  
for James F. Hinchman  
General Counsel