



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

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D-178288

MAY 24 1973

E. C. Campbell, Incorporated
Post Office Box 98
Springfield, Virginia 22150

Attention: Mr. E. C. Campbell, Sr.
President

Gentlemen:

By letter dated April 24, 1973, and prior correspondence, you protested against award of a contract to any other firm under invitation for bids (IFB) No. FA-3-05351, issued March 5, 1973, by the Smithsonian Institution (Smithsonian).

The invitation requested bids on one electric fork lift truck with 6,000 pound lift capacity in accordance with Military Specification MIL-T-40529, dated August 23, 1962, and exceptions cited thereto. The IFB was mailed to 14 firms and synopsised in the Commerce Business Daily. The procuring activity received only one bid and award is being withheld pending our decision on the merits of your protest.

Basically, it is your contention that MIL-T-40529, particularly as amended here, is restrictive to equipment manufactured by the Raymond Corporation. Furthermore, you question the relaxation of certain of the requirements called for in MIL-T-40529, contending that such downgrading of performance will result, in effect, in a 4,000 pound capacity truck rather than the 6,000 pound capacity desired by the Smithsonian. In this connection, you question the need for retention of the dual drive capacity in view of a reduction in the slope ascension requirement and you also question the reduction of the lift capacity, acceleration, speed, and the lifting and lowering speeds. You assert that in addition to not being needed, the second wheel drive costs at least an additional \$1,000. You also contend that the 24 volt electrical system called for is not sufficient to operate a full work shift and that the IFB is deficient in not

[Protest Aikman Restrictive Specifications]

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stipulating the minimum ampere hour capacity for the battery. Moreover, you note that only one bid was received (from Raymond Corporation's dealer), and express the belief that since 1962 only the Raymond Corporation or its dealer has received awards in past Government procurements using MIL-T-40529. You contend that the specification is also restrictive because it is design-oriented. Finally, you state that the procurement should be made either on a "brand name or equal" basis or negotiated. You cite our decision B-177353, April 4, 1973, in support of your protest.

In response to your contentions, the Smithsonian reports that in the absence of its own specification covering the requirement it was determined that MIL-T-40529 (as amended) would best meet its minimum essential requirements. The Transportation Officer reports with regard to the changes in the Military Specification, that the 6,000 pound lift capacity is necessary considering the work to be performed because the Smithsonian's 4,000 pound lift capacity truck had been damaged due to overloading and is no longer operational. The changes in the slope ascension from 15 percent to 10 percent, retention of the dual drive capacity, and the reduction in acceleration were made because the truck will not be operated on grades of more than 10 percent and the dual drive and reduced speed will enable the truck to obtain adequate traction, constant speed and stability. In this connection, speed and acceleration are not considered extremely important; however, slow and steady operation are of prime importance. Dual wheel drive is also considered necessary based upon past unsatisfactory experience with single drive units. These characteristics are considered to be performance-oriented and, thus, any firm may produce a truck with these attributes. Therefore, Smithsonian officials contend that the specifications are not restrictive.

The procuring activity has the primary responsibility for drafting specifications which reflect the minimum needs of the agency. While the procurement statutes require that specifications be drawn so as to permit the greatest amount of competition consistent with the needs of the procuring activity, neither the letter nor the spirit of the competitive bidding statutes is violated because only one firm is able or willing to supply its needs, provided the specifications are reasonable and necessary to meet the agency's actual needs. 45 Comp. Gen. 365 (1965). We have also held that where the legitimate needs of the Government can

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be satisfied from only a single source, the law does not require that these needs be compromised in order to obtain competition. B-159550, February 13, 1967; B-178903, July 6, 1971. Nor must an agency purchase equipment merely because it is offered at a lower price, without intelligent reference to the particular needs to be served. B-178775, March 29, 1972. It is our view, based upon review of the record, that the Smithsonian has adequately established that the use of MIL-T-40529, as amended, was reasonably determined necessary to meet its essential minimum requirements.

In B-177353(1), April 4, 1973, the item purchased was a 4000 pound capacity fork lift truck, using the same Military Specification. You protested contending that the use of another Military Specification would have generated more competition and a lower price. In that case, the agency did not dispute that the Military Specification you cited, with one revision, would have met its needs. We, therefore, concluded that the specification used unduly restricted competition. In the present case, however, we have concluded that the agency has adequately established the necessity for the specification used. Consequently, we do not agree that the holding in the cited case is controlling here.

With regard to your contention that the procurement should be negotiated, the applicable statute, 41 U.S.C. 252, provides that all purchases and contracts shall be made by advertising, except in certain enumerated circumstances. Since none of the exceptions are applicable in the present case, we find no impropriety in the Smithsonian's use of formal advertising procedures. See FPR 1-2.102(a). Finally, the use of a "brand name or equal" purchase description would not be justified because a suitable Government specification is available. See FPR 1-1.307-5(a).

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Doehling

For the Comptroller General
of the United States



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

B-101404

May 25, 1973

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The Honorable Howard H. Callaway
The Secretary of the Army

Dear Mr. Secretary:

This is in reply to the May 6, 1973, letter from the Assistant Secretary of the Army (Installations and Logistics), requesting concurrence with his determination to omit the Examination of Records clause from the contract to be entered into between the Army Missile Command and the British Aircraft Ltd., for the purchase of one each Tracker and Ancillary Units, Modified Rapier. In accordance with 10 U.S.C. 2313(c) and Armed Services Procurement Regulation 6-1091(a)(1), I concur in the determination.

Sincerely yours,

PAUL G. DEMBLING
For the Comptroller General
of the United States



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

B-101404

May 25, 1973

The Honorable Howard H. Callaway
The Secretary of the Army

Dear Mr. Secretary:

This is in reply to the May 8, 1973, letter from the Assistant Secretary of the Army (Installations and Logistics), requesting concurrence with his determination to omit the Examination of Records clause from a contract to be entered into between the Army Missile Command and the British Aircraft Ltd., for the purchase of one each Tracker and Ancillary Units, Modified Rapier. In accordance with 10 U.S.C. 2313(c) and Armed Services Procurement Regulation 6-1001(a)(1), I concur in the determination.

Sincerely yours,

PAUL G. DIEBLING
For the Comptroller General
of the United States