

DECISION

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

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FILE: B-185418

DATE: September 15, 1976

MATTER OF: Gardner Machinery Corporation; G. A. Braun,
Incorporated

DIGEST:

Specifications representing Government's minimum needs in procurement negotiated pursuant to 41 U.S.C. § 252(2)(c) (public exigency) for hospital laundry equipment are not unduly restrictive of competition because they cannot be satisfied by one or more prospective offerors.

Gardner Machinery Corporation (Gardner) and G. A. Braun, Incorporated (Braun), have protested the award of a contract under request for proposals (RFP) M2-Q36-76, which called for the installation of a laundry wash system at the consolidated laundry, Veterans Administration Hospital, Salisbury, North Carolina (Salisbury). The basis for the protest is their allegation that the Veterans Administration (VA) used specifications that were unduly restrictive and thus eliminated their firms from effective competition for an award.

This matter was initially protested (B-183840) to our Office by Gardner when VA rejected its proposal for the same requirement as being technically unacceptable under solicitation No. M2-22-75, issued March 28, 1975, by VA's Marketing Division for Medical Equipment. The solicitation was issued as the first step of a two-step formally advertised procurement designed to secure competitive fixed-price bids because: (1) complete specifications or purchase descriptions were not available; (2) criteria existed for evaluating technical proposals; and (3) it was believed that more than one technically qualified source would be available before and after technical evaluations. On July 31, 1975, a conference was held on the protest in accordance with section 20.7 of our Bid Protest Procedures, 4 C.F.R. § 20.7 (1975). During the conference VA indicated that the Gardner-Braun equipment failed to demonstrate the degree of automation contemplated by the solicitation, that is, the use of no

B-185418

more than two employees to complete a wash cycle. However, the presentation regarding the operation of the system made by the Gardner-Braun representatives was persuasive, and VA agreed to reevaluate its specifications. Subsequently, by letter dated August 12, 1975, the contracting officer advised all firms which responded to the first step solicitation that:

"It has been determined that the Purchase Description does not adequately describe our requirements. A new Purchase Description is being prepared which will provide more detail and better describe our requirements.

"In view of the above, Solicitation M2-22-75, is hereby canceled.

"You will be given the opportunity to furnish an offer on the new Solicitation when it is issued."

Since the issue protested had become moot by this action, we closed our file in B-183840 on September 25, 1975, without further action.

The new solicitation, issued on November 21, 1975, was negotiated (due to public exigency) rather than an advertised one. It required offerors to install a system at Salisbury within 60 days of an award to consolidate the laundry functions of the VA hospitals located at Durham and Salisbury, North Carolina. Proposals were initially requested by 4:15 p.m., December 1, 1975. Amendment 1 to the RFP, issued on November 26, 1975, changed the liquidated damages penalty from \$600 to \$1,200 per day. This change was said to reflect needed costs for commercial laundry services if the contractor failed to complete the contract within the 60-day deadline. On November 26, 1975, Amendment 2 was issued changing the closing date from December 1 to December 12 in response to requests received from three firms. VA maintains that the contracting officer considered this extension reasonable notwithstanding the public exigency. The last change, Amendment 3 (issued December 24), extended the opening date to December 30, 1975, and deleted reference in the RFP to Wheel-O-Matic Programmers, and the Klenzomatic 400 liquid supply injection unit as this equipment was to be Government-furnished.

In its present protest, Braun first questions the RFP requirement for delivery and complete installation of the system within 60 days after award. Braun maintains that to schedule, manufacture, ship and completely install the system within the time was virtually an impossible task. In this regard it states: "The only way a manufacturer could comply with this request is if the equipment description or specification was restrictive to the extent that it assures one manufacturer's participation and if that manufacturer has the equipment built and ready for shipment prior to the award." Therefore the \$1,200 per day liquidated damages was believed to have been imposed to discourage competition.

The RFP advised offerors, in the appropriate sections of the Purchase Description, of the following requirements:

"The wash system shall include washers, extractors, and a stainless steel wet belt conveying system for transporting processed linens from washer to extractors to drying conditioners. The above items shall be automated to the extent that human hands are not required for other than pushing buttons or switches * * *

* * * * *

"I. Washers:

"The system shall be a shellless wash system. As the name 'shellless' implies, the washer shall have only one cylinder for processing workload.

"The washer doors have to be capable of being opened and closed automatically through a washer programmer and the washers have to be capable of being loaded from an overhead conveyor, go through the complete washing process and unload processed linens on a wet belt conveyor without requiring the use of human hands. * * *

"II. Extractor(s):

"The extractor(s) has to be capable of receiving saturated linens from the wet belt, conveyor system, complete the

B-185418

extracting process and deposit extracted load into or onto a belt conveyor system without requiring the use of human hands. The extractor(s) has to be capable of extracting a minimum of ten (10) two hundred pound (200 lb.) saturated loads per hour and not to contain more than 53% moisture retention. The controls for operation of the extractor(s) are to be located on the one central control panel board, as noted in section IV. Only Strike Extractors will be acceptable as meeting specified requirements.

"III. The conveyor system for soiled sorted linen shall be an overhead monorail conveyor.

"The monorail system will conform to Veterans Administration Specification X-1446, dated November 30, 1972--Class 2--heavy duty system--storage of sorted soiled linen shall provide space for twenty-eight (28) one hundred pound (100-lb.) capacity slings. There shall be two storage rails, each capable of holding fourteen (14) loaded slings that will enable either flatwork or dry fold to be delivered to any washer at any time. Thirty-six (36) one hundred pound (100 lb.) dry weight capacity slings and eight (8) sorting carts that will weight soiled linen automatically during loading are to be furnished. * * *"

Braun maintains that this Purchase Description is restrictive because it provides only for the use of a shellless wash system, specifying pieces of equipment which must be included but which may not be necessarily needed or used in other automated laundry systems. Braun further asserts that equipment design should be secondary to the primary task of laundry production. In other words, it is Braun's position that production parameters should have been specified and the design features left to the offerors. Braun argues that the Purchase Description was tailored to the American Laundry Machinery (ALM) "Slant/Line" system with no regard to those offerors who could supply other systems capable of parallel or better production. In this regard, it is alleged that the "Strike Extractors" referred to in the Purchase Description are an ALM proprietary item over which it exercises control. Therefore, Braun contends that no manufacturer could compete against ALM in a competitive procurement while bidding on a system that contains that company's product.

In addition to these arguments, Gardner questions the purpose for the revisions which were made in the Purchase Description of

B-185418

the canceled IFB. In this connection, Gardner refers to the following differences in the new Purchase Description: (1) eliminates the performance requirements for processing 1,800 lbs. per hour of medium soiled linen; (2) specifies shellless washers; (3) includes the specific requirement that only Strike Extractors will be acceptable; (4) places more emphasis on a push button (automatic) operation; and (5) has eliminated provisions to prevent the complete shutdown of the system when a single phase breakdown occurs. Thus, Gardner contends that the new Purchase Description is even more restrictive than the one originally protested. Gardner also alleges that the wash system installed by the contractor pursuant to the award under the RFP does not meet the requirements specified in the new Purchase Description.

In regard to the 60-day delivery requirement, VA notes that the decision to negotiate a contract on the public exigency basis was determined to be authorized and appropriate pursuant to the provisions of 41 U.S.C. § 252(c)(2) (1970) and § 1-3.202 of the Federal Procurement Regulations (1964 ed. amend. 32). The Determination and Findings dated November 17, 1975, noted that the existing system serving about 1,280 patients had deteriorated to the point where routine repairs could not keep the equipment operating. In this regard, the 60-day installation period was determined by the contracting officer to be the minimum time acceptable for delivery in light of the public exigency. Although Braun considers this to be an unreasonable time restriction, VA points out that it received two proposals (of the eight firms solicited) that fully complied with the terms of the solicitation, including its 60-day provision. In addition, the two offers at \$221,796 and \$223,440 were considered to be reasonably near the Government estimate of \$200,000 for the procurement.

Regarding the alleged lack of production parameters, VA maintains that the RFP stated what they should be where it was feasible to do so and that offerors could easily convert such parameters to determine minimum capacity for a full productive system. VA cites, as examples, the language describing the strike extractors---"* * * has to be capable of extracting a minimum of ten (10) two hundred pound (200 lb.) saturated loads per hour * * *"--and the specification for the conveyor system stated in terms of the number of slings, capacity and storage areas.

B-185418

Whether the shellless requirement was unduly restrictive depends on whether this system constituted a true reflection of VA's minimum needs. When the RFP was issued VA was of the opinion that the shellless system represented an improvement in the state-of-the-art and that its degree of operating automation represented the agency's minimum needs. In the "Justification for Installing Shellless Washing Equipment in the VAH Salisbury," dated November 20, 1975, the Acting Director, Building Management Service, stated:

"1. At this time the shellless washing system is the only system with proven capability to be automated in a manner designed to eliminate manual handling of linen during the operation."

"2. The installation of an automated shellless washing system will result in increased production and substantial manhour savings in the washing, extracting, and drying operation. * * *"

In this connection, it is the VA position that the equipment proposed by Gardner and Braun, based upon the use of the "washer/extractor system," is unacceptable because it requires the employees to manually open doors, and remove washed material from the machine before progressing to the next phase of the cleaning cycle.

Our Office has consistently held that the contracting agencies have the primary responsibility for drafting specifications which reflect the minimum needs of the Government, and we are not required to object in the absence of evidence of a lack of a reasonable basis for the questioned specification. We have also said the fact that potential offerors may be precluded from offering their products does not render the specification unduly restrictive of competition if, in fact, it represents the legitimate needs of the Government. See 45 Comp. Gen. 365, 368 (1965). Therefore, as we stated in Johnson Controls, Inc., B-184416, January 2, 1976, 76-1 CPD 4:

B-185418

"* * * this Office will not substitute its judgment for that of the procuring agency even where competition is restricted unless there is clear and convincing evidence that the agency opinion is in error and that a contract awarded on the basis of such specifications would, by unduly restricting competition, be a violation of law. 40 Comp. Gen. 294, 297 (1960); see 49 id. 156 (1969); B-178158, May 23, 1973; 53 id. 478, 481 (1974)."

While Gardner and Braun vigorously dispute VA's position that the automated shellless washing system meets its minimum needs because of the increased production and substantial manhour savings, as compared to the washer/extractor system, we do not find that they have presented evidence sufficient to establish that the VA position is without a reasonable basis. Therefore, we have no basis for objecting to the award. Ludell Manufacturing Company; Columbia Laundry Machinery Company; Super Laundry Machinery Company, B-184154, March 8, 1976, 76-1 CPD 159.

However, in connection with resolution of this protest, at Gardner's request, we visited a civilian hospital where Gardner had recently installed a Braun "automated" washer/extractor system. In addition, we compared the Braun system with an "old" shellless system located at the nearest VA hospital. It was concluded that while the systems were not easily compared in view of the differences in design, the state-of-the-art washer/extractor system was more efficient than the shellless system examined. However, the Braun equipment examined apparently was not available at the time of issuance of the RFP, and the shellless system examined apparently was not as advanced as that offered for this procurement. VA indicates its installation of a washer/extractor system in the laundry at Alexandria, Louisiana, will be evaluated and compared to the shellless system. We suggest that a review be made of its purchase description at that time to determine if adequate justification still exists to eliminate all systems involving use of manual labor during the wash cycle. Cf. Charles J. Dispenza & Associates; Chicago Dryer Company; McCabe Corporation, B-181102, B-180720, August 15, 1974, 74-2 CPD 101; Cf. G. A. Braun, Incorporated, B-184627, August 6, 1976.

B-185418

Gardner's allegation that the shellless system installed by the successful offeror does not meet the requirements stated in the Purchase Description is denied by VA. Since this is a matter of contract administration it will not be considered by our Office.

For the foregoing reasons, the protest is denied.


Deputy Comptroller General
of the United States