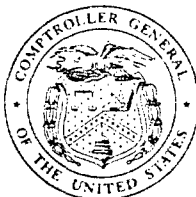


DECISION



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

12432

FILE: B-194557.2

DATE: January 4, 1980

MATTER OF: Audiometer Corporation of America DLG-03555

DIGEST:

1. GAO will not question delivery schedule established by agency, alleged to be unrealistically short and restrictive of competition, unless the schedule is clearly without a reasonable basis.
2. RFP requirement for delivery of initial quantities of audiometers within 24 days of award was reasonable and not unduly restrictive of competition since existing audiometers at Armed Forces Entrance Examination Stations across country were in need of replacement and their current condition hampered orderly processing of enlistees.

AGC00378  
Audiometer Corporation of America (Audiometer) protests the allegedly restrictive nature of request for proposals (RFP) No. DLA-120-79-R-1003 issued by the Defense Logistics Agency (DLA) for the purchase of "Autotech" brand screening audiometers manufactured by Environmental Technology Corporation (ETC) or their "equal." Audiometer alleges the delivery schedule contained in the RFP is unrealistically short and is unduly restrictive of competition. DLG03556

The RFP, issued on March 13, 1979, required delivery of an initial quantity of six audiometers within 24 days of award and delivery of the remaining quantity over an 82 day period following initial deliveries. Audiometer and Maico Hearing Instruments, Inc. (Maico) protested, objecting to what they considered to be unjustifiable salient characteristics which an item DLG03557

[Protest ~~Indicate~~ ALLEGING RFP unduly Restrictive]

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had to satisfy to be considered equal to "Autotech" audiometers, as well as to the brevity of the RFP's delivery schedule. In addition, Audiometer maintained it did not have sufficient time to submit a proposal in response to the RFP.

Following a conference at our Office attended by DLA, the protesters, and other interested parties, DLA amended the RFP to clarify certain salient characteristics and permitted Audiometer to submit a proposal. DLA did not, however, as urged by the protesters, amend the delivery schedule contained in the RFP. Thereafter, Maico withdrew its protest as well as its offer under the RFP, and Audiometer withdrew all of its objections except as to the RFP's delivery schedule. On September 20, 1979, DLA made an award to Tracor Instruments, Inc. (Tracor) notwithstanding Audiometer's pending protest.

DLG 03562

DLA maintains the RFP's delivery schedule was justified because the audiometers were needed to replace existing audiometers at Armed Forces Examining and Entrance Stations (AFEES) across the country. In this regard, DLA advises that the screening systems at many AFEES were either constantly breaking down or were in extremely poor condition, and the manufacturer of those audiometers had indicated the availability of spare parts could not be guaranteed. DLA states that continued problems with the systems precluded the administration of audiometric examinations to enlistees and disrupted the orderly completion of the initial processing of enlistees thereby jeopardizing the national security.

Audiometer takes exception with DLA's justification for the RFP's delivery schedule. Audiometer argues that, in most instances, the AFEES had audiometer testing capacity far in excess of their actual requirements and that only in a national emergency would the AFEES capacity be insufficient. Audiometer asserts that since no such national emergency existed or was likely to exist, the delivery schedule was unduly restrictive. Additionally, Audiometer states that it is its understanding that personnel could have been enlisted conditionally, subject

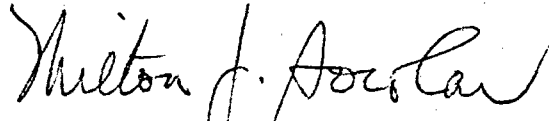
to taking a hearing test at another facility, thereby eliminating the need for delivery of initial quantities within 24 days of award. Furthermore, Audiometer maintains that the AFEES asserted by DLA to have the most urgent need for audiometers are not scheduled to receive deliveries until late in the delivery sequence, thereby casting doubt on DLA's justification. In this regard, Audiometer asserts that if the audiometers were so urgently needed DLA should have amended the delivery schedule to have initial deliveries made to the AFEES with the most critical need for replacement audiometers.

Our Office has long held that when contracting for goods or services the Government is required to draft specifications reflecting its actual minimum needs and specifications reflecting more than those minimum needs are generally unduly restrictive of competition. D & S Word Processing Systems, B-194247, June 25, 1979, 79-1 CPD 451; 32 Comp. Gen. 384 (1953). However, we will not question an agency's determination of its minimum needs unless there is a clear showing the determination has no reasonable basis. D & S Word Processing Systems, supra; Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. The mere fact that one firm is unable or not willing to meet the terms of a solicitation does not render the solicitation unduly restrictive if it represents the legitimate needs of an agency. J. S. Tool Co., Inc., B-193147, March 7, 1979, 79-1 CPD 159.

Although Audiometer has raised some doubt regarding the degree of urgency surrounding the procurement, on balance we cannot hold the RFP's delivery schedule to be without a reasonable basis. It is undisputed that the audiometers at the majority of AFEES across the country were and are in need of replacement and that their condition hampers the orderly processing of enlistees. Although we are informed it is possible to enlist personnel on the condition that they successfully complete an audiometric examination at a later date, we do not

believe the AFEES should be required to operate on that basis. Additionally, although it is true no national emergency currently exists, we believe the real issue is whether audiometric examinations could be administered in an orderly fashion in the event of such an emergency. Since DLA indicates they could not, and Audiometer has not established otherwise, we are not prepared to question DLA's position. Furthermore, the fact that DLA made an award to Tracor indicates that the delivery schedule could in fact be met by someone other than the "brand name" manufacturer.

The protest is denied.

A handwritten signature in dark ink, appearing to read "Milton J. Fowler". The signature is fluid and cursive, with the first name "Milton" being the most prominent.

For the Comptroller General  
of the United States