

Gazette

16040

DECISION



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

FILE: B-200469

DATE: February 4, 1981

MATTER OF: Maxton Lock Company, Inc.

DIGEST:
[Protest Alleging]

1. Mere assertion that specification is impossible ~~of performance~~ *to perform* is not sufficient to meet protester's burden to affirmatively prove case.
2. Whether low bidder can furnish supplies conforming to specification is matter of responsibility, and whether conforming supplies actually are furnished is matter of contract administration, neither of which GAO will review.

Maxton Lock Company, Inc. [protests award to any firm under invitation for bids AT/TC 18986 issued by the General Services Administration (GSA) for office machine locks. The locks were required to meet Interim Federal Specification FF-H-001687B, issued by GSA's Federal Supply Service, which specified that the lock mechanism permit a minimum of 1,000 different key combinations. Maxton, which apparently does not manufacture a lock meeting that requirement, protests that products offered by the firms that bid will not permit 1,000 combinations. Maxton also suggests that the specification requirement for 1,000 combinations is "virtually impossible" to meet because of the mechanical design of the mechanism.]

To the extent that Maxton is protesting that locks of the type solicited cannot be manufactured, GSA advises that the specification is based on currently available technical information. [GSA also advises that the agency in fact has purchased locks in the past which permit 1,000 key combinations; while Maxton suggests that those locks may never have been tested with respect to whether

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they actually met the specification, the firm has proffered no evidence to show that they did not or that the specification is impossible of performance. In this respect, speculation on an issue does not meet a protester's burden to affirmatively prove its case. Dynal Associates, Inc., B-197348, July 14, 1980, 80-2 CPD 29.

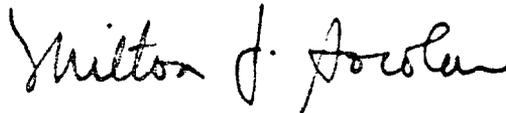
This Office has long recognized the broad discretion of procuring activities in drafting specifications to reflect their minimum needs. We will not disturb a procuring activity's determination of its minimum needs unless it is shown to be without a reasonable basis. Science Spectrum, B-189886, January 9, 1978, 78-1 CPD 15. Other than its mere assertion that the specifications are "virtually impossible" of performance, Maxton has provided no basis to refute GSA's position on this matter.

Accordingly, this portion of the protest is denied.

Concerning whether the successful bidder under GSA's solicitation can furnish conforming locks (GSA reports that two bids were received), the determination of whether a bidder can meet an invitation's requirements involves the firm's responsibility. Edw. Kocharian & Company, Inc. -- request for modification, 58 Comp. Gen. 516, 519 (1979), 79-1 CPD 326. This Office does not review protests against affirmative determinations of responsibility unless fraud is alleged on the part of procurement officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Keco Industries, Inc., B-199934, September 22, 1980, 80-2 CPD 219. Neither exception is involved here.

Finally, whether the eventual contractor actually fulfills its obligation to furnish conforming locks is a matter of contract administration, and thus is not for our consideration. Industrial Maintenance Services, Inc., B-195216, June 29, 1979, 79-1 CPD 476.

(The protest is denied in part and dismissed in part.)



For the Comptroller General
of the United States