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DECISION



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

FILE: B-199416 **DATE:** June 16, 1981

MATTER OF: Julie Research Laboratories, Inc.

DIGEST:

1. Solicitation designating required sources for most components of equipment to be furnished does not unduly restrict competition since agency need to standardize equipment with that previously bought in order to avoid maintaining another set of spare parts, publishing and maintaining additional technical manuals and having to conduct another training program has not been shown to be without reasonable basis.
2. Allegation that solicitation was unduly restrictive of competition because insufficient time was permitted for prime contract bidders to obtain quotations from alternate subcontractor sources is without merit where 83 days elapsed from solicitation issuance to bid opening.
3. Small business set-aside solicitation which requires majority of equipment components to be acquired from large firms is not improper since prime contractor need only make significant contribution to manufacture or production of contract end item and record shows contractor will necessarily make such contribution to satisfy total contract requirements.

Julie Research Laboratories, Inc. (Julie) protests the allegedly restrictive specifications for manual calibration standards systems contained in invitation for bids (IFB) No. DAAH01-80-B-0332, issued by the U.S. Army Missile Command. Julie contends the specifications prohibit it from supplying its calibration equipment. Julie also contends that the designation of more than one-third of the 607 line items as required source items which must be obtained from large business concerns is inconsistent with the small business set-aside nature of the procurement. We deny the protest.

[Protest Alleging Restrictive Specifications in IFB]
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The procurement, which is set aside for small business concerns, is for calibration standards sets which are to be mounted in racks in Government-furnished vans. The equipment consists of 607 components which the prime contractor must either purchase or manufacture: 511 components are "required source" items, while the remaining 96 components are "suggested source" items which the contractor may either acquire from the source suggested or manufacture itself.

The required and suggested source listings arise out of a procurement which was conducted in 1978. At that time the equipment was acquired through a two-step formal advertising procedure, in which each bidder (four small businesses and one large business) provided a comprehensive listing of sources for the components it offered. This documentation was standardized for use in future purchases. The Army states that the successful bidder in the 1978 procurement, Aul Instruments, Inc., had listed two of Julie's products as "required source" items, but that Julie's items were removed from the documentation after Julie insisted that Aul purchase the entire multi-year quantity, including option quantities, at the outset of the multi-year contract.

Julie's interest in this procurement is not as a prime contractor but as a subcontractor who wishes to supply a number of the sets' components. Julie is precluded from participating as a subcontractor because the IFB specifications direct the prime contractor to obtain these components from other sources. Julie asserts, for example, that it could replace 9 of the specified components with 6 components which occupy half the rack space and which cost less (\$34,655 as opposed to \$35,235, a difference of \$580). In addition, Julie argues that the time permitted for the preparation of bids was so short that prospective prime contractors did not have an opportunity to investigate alternate sources of supply. This circumstance, Julie maintains, further inhibited competition among potential subcontractors. Finally, Julie argues that the procurement was improperly set aside for small business concerns because many of the components of the calibration sets are manufactured by large business concerns.

Much of what Julie submitted in support of its protest involved Julie's view of the Army's calibration programs over the past 15 years and Julie's unsuccessful efforts to sell its automatic equipment to the Army during the past six years. However, the precise principal issue before us is whether the IFB specifications for this procurement were unduly restrictive of competition. The Army has offered basically three reasons why its minimum needs dictated specifying the majority of the sets' components by a particular manufacturer and model number: (1) the "integrity" or configuration of the sets must be maintained because of space limitations on the mobile vans; (2) provisioning (spare) parts have been purchased and new equipment training conducted, while technical bulletins have been published and furnished to the users; and (3) the substitution of other instruments would cause delay in getting the equipment to the field and such delay cannot be tolerated because of an urgent requirement.

The protester has taken issue with the Army's position, arguing that the agency has not adequately justified its restriction of equipment sources. As for maintaining the identity of the sets, the protester states that this is an illusory goal if the same set is updated by changes to the instruments comprising it. As one example, the protester points out that the specified Hewlett-Packard 745 and 746 voltage sources are no longer produced by that manufacturer and will be replaced by a similar item of another manufacturer.

As for the cost and delay attendant to substituting alternate instruments, the protester does not deny that these occur but argues that in situations other than this protest the Army considers them "routinely acceptable accompaniments of progress and non-obsolescence." In any event, the protester asserts, the life-cycle cost savings obtained from using its equipment would outweigh these expenses. Finally, Julie argues that the Army's actions belie its claim that there is an urgent need for this requirement: for example, the protester suggests the Army has failed to take steps to expedite delivery of the balance of the sets being refurbished under Aul's 1978 contract.

Procuring agencies have a duty to foster maximum practicable competition and to avoid unduly restricting competition by overstating their actual minimum needs. Maremont Corp., 55 Comp. Gen. 1362, 1376 (1976), 76-2 CPD 181; 32 Comp. Gen. 384 (1953). We have long recognized, however, that it is the agency procurement officials who are familiar with the conditions under which supplies, equipment or services have been used in the past, and how they are to be used in the future, and that therefore they are generally in the best position to know the agency's actual needs. Maremont Corp., supra. Consequently, we will not question an agency's determination of its actual needs or of the equipment which will satisfy such needs unless there is a clear showing that the determination has no reasonable basis. Jarrell-Ash Division of Fisher Scientific Company, B-188582, January 12, 1977, 77-1 CPD 19; Herely Industries, Inc., B-186947, September 30, 1977, 77-2 CPD 247.

There are many reasons why an agency's minimum needs may result in the imposition of some restriction on competition. See, e.g., Gould, Inc., Advanced Technology Group, B-181448, October 15, 1974, 74-2 CPD 205. One such recognized need is to standardize the equipment in use. Jazco Corp., B-193993, June 12, 1979, 79-1 CPD 411. In this case, the Army has determined that its needs require standardization, and we do not believe the protester has shown that determination to be unreasonable.

First, the equipment involved has an approximate life span of eight years and is to be used by field Army units deployed throughout the world. Army personnel must be trained in using, maintaining, and repairing the equipment and the Army, in furtherance of that requirement, must publish and distribute appropriate manuals and technical bulletins to field units. We think that under such circumstances, involving approximately 200 calibration standards sets consisting of more than 600 separate components, a requirement for equipment standardization is not unreasonable since the lack of standardization obviously would require duplicate training, multiple maintenance and repair manuals, and a more extensive spare parts inventory. See generally Dumont Oscilloscope Laboratories, Inc., B-185267, April 16, 1976, 76-1 CPD 259.

Second, the exclusion of certain components from this procurement does not follow a prior non-competitive award so that it could be said that the Army is engendering a long-term sole-source situation. Rather, the specifications for this procurement grew out of the 1978 procurement which was unrestricted and in which Julie had an opportunity to have some of its equipment utilized. In this regard, see Hoffman Electronics Corp., 54 Comp. Gen. 1107 (1975), 75-1 CPD 395, where we upheld a solicitation restriction limiting competition for a production contract to the winners of a previous competitive award of a prototype development contract. See also Jazco Corp., *supra*, where, in a case remarkably similar to this one, we upheld the Army's designation, following a competitive procurement, of components by brand name because of a standardization requirement.

Third, Julie's rebuttal to the Army's position is not persuasive. Although the Army appears to concede Julie's point that absolute identity of the sets cannot be achieved because of the discontinuance or obsolescence of some component parts, this in no way establishes that standardization, to the extent it is possible to achieve it, is an unreasonable goal. We believe there is a significant difference, and significant difference in impact, between no standardization at all and standardization to the extent possible with only occasional modifications to the original components specified as those modifications become necessary. Further, while Julie asserts it would be less expensive over the life of the sets to use its equipment even after factoring in the additional cost of not standardizing, Julie has not established that to be the case. Moreover, cost considerations alone would not be controlling; the agency properly may consider additional administrative burdens (such as an increased spare parts inventory) and delays that would result from not standardizing in connection with its operational needs. Jazco Corp., *supra*.

In addition, we point out that the specifications did not restrict competition to one or two sources of supply; they only required certain brand name components. Under these circumstances, there was no restriction on

the number of firms eligible to compete imposed by the specifications, and no firm has complained that it was prevented from competing for the prime contract by these specifications (although competition was necessarily limited by the small business set-aside restriction).

In short, despite Julie's intense concern that the Army has acted improperly, we cannot find on the record before us that the Army's specifications were unduly restrictive of competition.

Similarly, we find no merit to Julie's contention that inadequate time was afforded bidders to investigate alternative subcontract suppliers. To some extent, we fail to understand the relevance of this argument to Julie's situation, since the essence of Julie's protest is that it is precluded from supplying certain set components because of the Army's "required source" specification. If a potential prime contractor is required to obtain the components from sources other than Julie, it would seem that no amount of additional time would benefit Julie. In any event, we note that the solicitation was issued on May 6 and bid opening, as extended, was July 28, a total of 83 days. We fail to see why this period did not afford competitors an adequate opportunity to obtain quotations from potential subcontractors.

Finally, Julie finds the solicitation, which requires the purchase of so many components of the system from large business firms, to be in "fundamental conflict" with a procurement set aside for small business. Julie apparently believes that, given the nature of the procurement as a small business set-aside, the Army improperly imposed the required source limitations because many of the required sources are large businesses. This aspect of the protest is also without merit.

The applicable regulations require that when a procurement is totally set aside for small business the end product to be furnished must be manufactured or produced by small business concerns. Defense Acquisition Regulation §§ 1-706.5 (c), 7-2003.2 (1976 ed.). In this connection, we have held that even though a small business concern subcontracts the

major portion of the work to a large business, it meets the contractual requirement that the "end item" be manufactured or produced by small business if it makes some significant contribution to the manufacture or production of the contract end item. Jazco Corporation, supra; Fire & Technical Equipment Corp., B-191766, June 6, 1978, 78-1 CPD 415; 49 Comp. Gen. 41 (1969).

The Army points out that while slightly more than half of the 511 directed source items must be obtained from large business the remainder must be obtained from small business. In addition, the awardee may purchase the 96 suggested source items from small businesses or manufacture them itself. Thus, more than half of the end items may be produced by small businesses. The Army further states that the awardee must make a significant contribution to the end items by the purchase, fabrication and installation of electrical distribution systems in the racks, performance of burn-in tests, packaging, etc. Thus, it appears that the small business contractor will make a significant contribution to the sets to be furnished and that there is nothing improper under the circumstances with this set-aside solicitation.

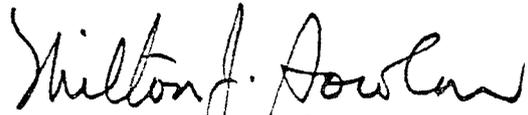
For these reasons, Julie's protest is denied.

We point out, however, that our audit staff recently conducted a study of the Army's calibration program in light of Julie's assertions regarding the effectiveness of that program, particularly with regard to the Army's need for, and possible cost savings which could be obtained from, automated calibration equipment. No conclusions were reached as to whether manual equipment in mobile vans could be replaced by Julie's automated equipment or whether Julie's equipment could satisfy the needs of the Army and as to whether cost savings could reasonably be expected from the use of Julie's automated equipment. Nevertheless, in view of the favorable impressions reported by some Army personnel who have observed the Julie equipment in operation, we recommended that the Army develop accurate workload data and then reexamine equipment capabilities through hardware demonstrations. In addition, we are further examining the activities of the Army activity responsible for the acquisition of

B-199416

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calibration equipment.


Acting Comptroller General
of the United States