

DECISION



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119049
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-206139

DATE: July 23, 1982

MATTER OF: Saxon Industries, Inc.

DIGEST:

1. Protest that estimates of requirements contained in solicitation amendment is not academic where agency rescinds the protested amendment but by another amendment it returns to original estimates which were also inconsistent with protester's view of the appropriate estimates. Also, since the protest specifically regarding the contents of the later amendment was filed prior to the closing date for receipt of proposals contained in that amendment, the protest is timely.
2. Where protester asserts that estimated quantities contained in request for proposals for Federal Supply Service requirements contract are invalid, Government need only show that its quantity estimates are based on the best available information. Estimates which meet this standard will not be questioned by GAO. Protester's introduction of statements by two user agencies that estimate may be incorrect does not provide sufficient basis to disturb estimates based on survey of all using agencies.

Saxon Industries, Inc., protests the estimated requirements for pressed paper plates contained in request for proposals No. 9FCC-OKW-N-A0548/82 issued by the Federal Supply Service, General Services Administration (GSA). Because Saxon has failed to show that GSA's estimates were

based on other than the best information available, we deny the protest.

Although the subject solicitation included many sizes and types of paper plates, this protest concerns only one type; the three-compartment, 10-1/4 inch diameter, heavy duty round paper plate used by Defense agencies, hospitals, prisons, and other Federal activities to serve meals. The present Federal specification requires that these plates be made of molded paper and only such plates were available on the Federal Supply Schedule prior to October 1981. Saxon manufactures a pressed paper plate of this same type, which since that date have been represented in GSA's catalog.

Saxon believes that its pressed paper plate is equal to the molded plate and seeks to have GSA establish a single specification encompassing both type plates. Its competitors, on the other hand, contend that molded paper plates offer many advantages over pressed paper plates, including increased rigidity and capacity. GSA is now in the process of preparing a Commercial Item Description (CID) which should resolve this dispute for future procurements. In the meantime, pending issuance of the CID, GSA is treating 10-1/4 inch diameter pressed and molded paper plates as separate items on the Federal Supply Schedule.

The subject solicitation, issued November 11, 1981, initially sought to fill the Government's requirements for paper plates for a twelve month period commencing February 1982. The solicitation projected that 153,141 boxes of molded paper plates and 2,940 boxes of pressed plates would be required during this period.

Saxon advises that it informally questioned the validity of these projections with GSA officials soon after release of the solicitation. Presumably as a result of this and other considerations, including the release of preliminary data from a comparative test of molded and pressed paper plates conducted by the U.S. Army Natick Research and Development Laboratories, GSA issued amendment

No. 1 to the solicitation with an effective date of November 16, reducing the contract period to six months to conform to the anticipated release of the CID and revising the estimates to project an even split between requirements for molded and pressed paper plates, of 32,287 boxes each. Shortly thereafter, GSA issued amendment No. 2 extending the date for receiving proposals to January 6, 1982.

GSA again revised its estimated requirements by issuing amendment no. 3 bearing an effective date of December 21. This amendment contained a revised estimate of 76,574 boxes for molded paper plates and the words "New item, estimated demand unknown" for pressed paper plates as well as an amended date for receipt of initial proposals of January 20.

On January 20, Saxon filed a protest with this Office challenging the validity of the estimated requirements in amendment No. 3 and requesting that amendment No. 3 be rescinded. GSA in its March 23 report in response to the protest, stated that it viewed the lack of an estimated quantity for pressed paper plates in amendment No. 3 as improper and indicated that it would cancel amendment Nos. 1, 2 and 3 and revert to the estimates in the original solicitation, adjusted to reflect the shorter, six month contract period. GSA subsequently issued amendment No. 4 effective on April 29, with estimates of 76,574 boxes for molded paper plates and 1,470 boxes for pressed paper plates. Saxon protested amendment No. 4 in its comments to the GSA report, urging that it contained an inaccurate estimate of the requirement for pressed plates.

GSA argues that Saxon's protest should not be considered by our Office as it has become academic because the agency has done what the protester had originally requested -- rescinded amendment No. 3. Further, the agency asserts that Saxon's protest that the estimates in the original solicitations are inadequate is also untimely under section 21.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1981), which requires that protests be filed within 10 days of when the basis of protest is known. The agency points out that Saxon was informed in the agency's report (which the protester received on March 24) that GSA intended to re-establish the provisions of the original solicitation but

the protester did not file its objections to the agency's proposed actions until April 8, more than 10 days later.

We do not agree that the protest should be dismissed. Saxon has argued since its initial January 20 submission to our Office that at least 50 percent of the total estimated requirement for 10-1/4 inch paper plates must be for pressed plates. It did not protest the estimates included in the original solicitation because amendment No. 1, which was issued five days after the solicitation was issued, provided revised estimates acceptable to Saxon. While Saxon's protest of the change in the requirement estimate ratio contained in amendment No. 3 was partially satisfied by GSA's rescinding that amendment, the protest was not made academic because GSA returned to the estimated requirements included in the original unamended solicitation, which was not consistent with Saxon's assertion that 50 percent of the requirement should be for pressed plates. Similarly, Saxon's objection to GSA's return to the estimated requirements in the original solicitation is timely because the objection reflects the view expressed in Saxon's original timely January 20 protest and in any event was filed prior to the next closing date for receipt of revised offers as required by our Procedures at 4 C.F.R. § 21.2(b)(1).

Saxon complains that GSA's return to its original projections that 98 percent of the total plate requirement will be filled by molded plates is inconsistent with the positions taken by the Veterans Administration (VA), the Federal Prison System (FPS) and the tests conducted by the Army's Natick Laboratories, all of which indicate no user preference for molded plates. The protester maintains that the estimates contained in amendment No. 1 are more consistent with the information currently available to GSA and should form the basis for soliciting the interim requirement. Saxon also argues that GSA's very small requirements estimate for pressed paper plates places it at a competitive disadvantage, because ordering agencies will be inclined to order molded plates with their established record of use and because GSA may stock an insufficient supply of pressed plates to satisfy its demand.

GSA, on the other hand, advises that the estimates included in the initial solicitation reflect the most accurate information currently available to GSA regarding demand for pressed paper plates since they are based on actual projections of the using agencies.

Generally, when the Government solicits on the basis of estimated quantities to be ordered over a given period, those quantities must be compiled from the best information available. Technology/Scientific Services, Inc., B-198252, November 28, 1980, 80-2 CPD 397. If the procedures used to obtain the data necessary to make quantity projections include the sources of information and types of factors normally relevant then we consider the estimates to have been based on the best available information and we will not object to their use. A. J. Fowler, B-191636, October 3, 1978, 78-2 CPD 252.

GSA states that its estimates were based upon a Requirements Forecast Analysis which was prepared by surveying the various agencies that use paper plates. In this connection, GSA indicates that there has been no historical demand for pressed paper plates and that since a National Stock Number for such plates was included in GSA's catalog in October 1981 only five boxes of pressed plates have been ordered. The agency recognizes the Natick Laboratory study but maintains that its conclusion that users view both types of plates as equal is subject to question. GSA also does not consider the letters from the VA and the FPS to be particularly significant as both agencies together used less than three percent of the total plate requirement during the last fiscal year.

While Saxon disputes GSA's views regarding the Natick Laboratory report and insists that its plates are functionally interchangeable with molded plates, Saxon has not shown that GSA's requirement estimate as they appeared in the original solicitation and now appear in the amendment No. 4 are not at least a reasonably accurate representation of GSA's actual anticipated needs. See Union Carbide Corporation, B-188426, September 20, 1977, 77-2 CPD 204.

Moreover, we are unconvinced by Saxon's position that it will be prejudiced by the effect such estimates may have on ordering agencies. GSA states that, in fact, the ordering agencies do not even see these estimates but that they are merely for the purposes of the solicitation. We also see no basis for Saxon's position that the low estimate of the requirements for pressed plates will cause GSA to understock the item. In fact, we think that many of the

arguments put forth by Saxon are more relevant for GSA's consideration in drafting its CID for these plates rather than to its estimate of requirements for the six month period covered by the subject solicitation.

The protest is denied.

for *Milton J. Aroskar*
Comptroller General
of the United States