

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

27006

FILE: B-210792**DATE:** December 14, 1983**MATTER OF:** Arwell Corporation**DIGEST:**

Procuring agency need not furnish the protester with a copy of a request for quotations needed to respond to the agency's Commerce Business Daily synopsis of its intent to place an order against an automatic data processing schedule contract, where the protester concedes that it can supply only used equipment and has not shown to be unreasonable the agency's determination that its minimum need is for new equipment.

Arwell Corporation has protested the refusal of the Army Communications-Electronics Command, Ft. Monmouth, New Jersey, to consider Arwell's attempted offer of used automatic data processing equipment in response to a synopsis placed in the Commerce Business Daily (CBD). For the reasons stated below, the protest is denied.

Ft. Monmouth, seeking to acquire certain International Business Machines (IBM) automatic data processing equipment "or Equal, to include Installation and Maintenance," and anticipating placing an order under IBM's General Services Administration (GSA) schedule contract, first synopsisized its requirement in the CBD in accordance with Federal Procurement Regulations (FPR) § 1-4.1109-6 (1964 ed. amend. 211). In the synopsis, Ft. Monmouth described the equipment it was acquiring, advised that "all [acquisition] plans will be taken into consideration," that it was "utilizing GSA schedule" and that interested firms could request a copy of a request for quotations (RFQ) which was to be "issued" on January 23 with a closing date of February 7. We note that neither the FPR nor the relevant provision in the Defense Acquisition Regulation, § 4-1104.6, specifies the manner in which interested firms are to respond to CBD synopses.

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Here, Ft. Monmouth prepared an RFQ for this purpose. Depending upon the responses received from potential suppliers, the contracting officer is to determine whether it would be most advantageous to the government to order from the schedule or to conduct a competition through the issuance of a formal solicitation. FPR § 1-4.1109-6(g)(1).

Arwell contacted Ft. Monmouth by telephone to request a copy of the RFQ for the purpose of responding to the CBD synopsis. In the course of this conversation, Arwell was asked if it could supply newly manufactured equipment and it replied that it could furnish only used, remanufactured equipment. Ft. Monmouth, however, had determined that its minimum need was for new equipment, a fact which did not appear in the CBD synopsis. Since Arwell concededly could not supply it with new equipment, Ft. Monmouth refused to provide Arwell with a copy of the RFQ. This precipitated Arwell's protest, in which it argues that it should be provided with a copy of the RFQ so that it may respond to the CBD synopsis by quoting on used, remanufactured equipment.

Our Office has consistently held that the determination of minimum needs is the responsibility of the contracting agency. The agency is in the best position to ascertain its needs due to familiarity with particular requirements and environments in which the products will be used. Thus, our Office will not question an agency's determination of its minimum needs or the technical judgment forming the basis for that determination unless it is clearly shown to be unreasonable. Dictaphone Corporation, B-209477, March 1, 1983, 83-1 CPD 214.

Ft. Monmouth determined that it required new equipment because (1) such equipment is necessary to insure that it meets a critical mission need of meeting requisition cycle requirements in order to provide support for troops in the field--a function for which it states it must have the most reliable equipment possible, and (2) the equipment must have a minimum system life of 8 years and with used equipment--unlike with new equipment--there is no way of accurately determining the system life of the equipment.

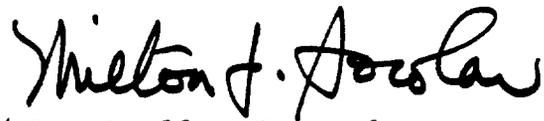
Arwell argues that in the computer industry it is accepted that used, remanufactured IBM equipment meeting current engineering change levels and subject to IBM maintenance agreements (which Arwell states it would provide) is equal to new equipment. It suggests that its

position is supported by our decision International Business Machines Corporation, B-198094, B-198094.2, November 18, 1980, 80-2 CPD 363.

Arwell has not specifically addressed the Army's argument that its mission needs in this instance require a degree of reliability and assurance of system life which can be met only by new equipment. In addition, our prior IBM case which both the Army and Arwell have discussed does not recognize, as Arwell appears to suggest, that remanufactured and new equipment are necessarily equal. In that case, the General Services Administration was acquiring new equipment to be used at a naval air testing facility. IBM, wishing to offer remanufactured equipment, objected to the specification requirement that the equipment be "new," making much the same argument as Arwell does here. After considering the criticality of the Navy's need for equipment which would operate reliability over the 8-year system life, we concluded that IBM had not shown the Navy to have been arbitrary in requiring new equipment and that therefore the "new equipment" provision of the solicitation was not unduly restrictive of competition.

Similarly, in the instant case Arwell has not shown that the Army's requirement that the equipment be new was unreasonable. We do not, therefore, find the requirement to be improper. Since Arwell concedes that it cannot satisfy the Army's requirement for new equipment, it does not appear that Arwell could provide an acceptable response to the CBD synopsis even were it to be provided with a copy of the RFQ.

The protest is denied.

for 
Comptroller General
of the United States