

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

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**FILE:** B-213143                      **DATE:** March 13, 1984  
**MATTER OF:** Julie Research Laboratories, Inc.

**DIGEST:**

1. Where protester alleges that specifications for calibration systems are unduly restrictive of competition, contracting agency is required to make prima facie case that specifications are related to its minimum needs. However, once contracting agency has made prima facie case, protester must bear burden of affirmatively proving its case. Protester fails to carry this burden when its arguments do not show that agency's determination of its actual minimum needs has no reasonable basis.
2. Protester's allegation of inadequacy of specifications is untimely pursuant to 4 C.F.R. § 21.2(b)(1), since it relates to an apparent impropriety which should have been protested prior to the closing date for receipt of initial proposals.
3. Restrictive language contained in congressional appropriation committee reports is not legally binding on an agency where those expressions are not carried over into an appropriation act.

Julie Research Laboratories, Inc. protests the allegedly restrictive specifications for calibration standards systems set forth in request for proposals (RFP) No. DAAH01-83-R-0298, issued by the Army Missile Command, Redstone Arsenal, Alabama. We deny the protest in part and dismiss it in part.

Julie contends that the specifications preclude it from supplying its standard calibration equipment and thereby improperly limit competition to two firms. Specifically, Julie objects to the specification provisions that require the following equipment characteristics: 1) auto-ranging and programmable voltage standards (specification

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para. 1); 2) five decade voltage ranges with a specified overrange (para. 6a); 3) front panel indicator of voltage output within specified parameters (para. 6e); and 4) output current capability for the equipment of at least 25mA (para. 7).

According to the Army, the protested specifications reflect the unique and essential minimum needs of the Army Primary Standards Laboratory, which requires equipment with the highest accuracy standards. The Army states that a previous solicitation for the same requirement was canceled after Julie protested the specifications as unduly restrictive in May 1983. The specifications were thereafter relaxed based upon technical submissions from Julie during the agency's consideration of Julie's previous protest. For example, concerning the requirement for "five decade voltage ranges," the Army states that Julie, in a letter to the Army that included a technical presentation of its equipment, specifically advised the Army that its equipment exceeded the requirement. As a further example, Julie also represented to the Army that its equipment exceeded the technical requirement of paragraph 7 of the specifications concerning output current capability.

The Army further argues that, except for Julie's bare allegations concerning the allegedly restrictive specifications, the record contains no technical support of Julie's conclusory assertions since Julie has failed to present any specific reason as to why it considers the specifications to be restrictive. The Army states that while it is willing to consider any additional valid technical reasons to further relax the specifications, Julie has provided none. Nevertheless, in support of its position that the specifications are not unduly restrictive of competition and represent its minimum needs, the Army has provided a brief technical rationale for each of the protested specifications, and believes that Julie, by failing to substantiate its allegations, has failed to carry its burden of proof to show that the specifications are unduly restrictive. We agree.

The determination of the government's minimum needs and the best method of accommodating those needs is primarily the responsibility of the contracting agencies. We have recognized that government procurement officials, since they are the ones most 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, are generally in the best position to know the government's actual needs. Consequently, we will not question an agency's determination of its actual minimum needs unless there is a clear showing that the determination has no reasonable basis. Frequency Electronics, Inc., B-204483, April 5, 1982, 82-1 CPD 303.

When a protester challenges a specification as unduly restrictive of competition, the burden initially is on the procuring agency to establish prima facie support for its contention that the restrictions it imposes are needed to meet its minimum needs. But once the agency establishes this prima facie support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable. Mid-Atlantic Industries, Inc., B-202682, August 26, 1981, 81-2 CPD 181.

In addition to explaining the general background and purposes of the specifications, the Army has provided a brief technical rationale for each protested specification despite Julie's failure to furnish specific technical reasons for its allegations of specification restrictiveness. Here, we find this satisfies the prima facie support that the contracting agency must provide when a protester challenges a specification as unduly restrictive of competition. In light of this, the burden is thus on Julie to prove that the Army's requirements are clearly unreasonable.

Julie presents no arguments, technical or otherwise, to refute the Army's determination. Instead of advancing arguments concerning the technical specifications of this solicitation, much of what Julie has submitted in support of its protest involves Julie's view of the Army's calibration programs over the past 15 years and Julie's unsuccessful efforts to sell its equipment to the Army during that time. Julie's presentation includes extracts from congressional testimony, audit reports by our Office, and Julie's television appearances in support of its general condemnation of the Army's calibration program. While we sympathize with Julie's past difficulties in attempting to sell its equipment to the Army, we do not think that its presentation is an adequate substitute for specific relevant evidence concerning the validity of the present solicitation's specifications.

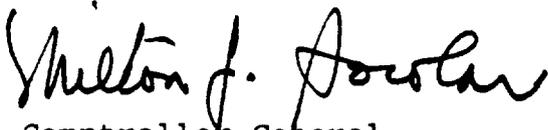
In this regard, we have already noted that the determination of an agency's minimum needs is largely a matter of discretion on the part of the agency's contracting officials. It is also important to note that a procuring agency's technical conclusions concerning its actual needs are entitled to great weight and will be accepted unless there is clear showing that the conclusions are arbitrary. Industrial Acoustics Company, Inc., et al., B-194517, February 19, 1980, 80-1 CPD 139. As stated above, Julie has not shown that the Army's determination was arbitrary or unreasonable--it has only disagreed with the Army's conclusion and has thus not satisfied its burden of proof. See Walter Kidde, Division of Kidde, Inc., B-204734, June 7, 1982, 82-1 CPD 539. Therefore, we have no basis to find the specifications unduly restrictive of competition. Mid-Atlantic, Inc., supra.

Next, Julie, in its comments on the agency report, alleged for the first time that the agency's specifications were "tinplated" and "lead lined" because the requirements underspecify the government's minimum needs for operational performance, efficiency, effectiveness and economy of the equipment. According to Julie, the specifications reflect only two of nine essential requirements, such as accuracy, reliability, and speed. Julie states that by underspecifying its requirements, the Army places firms like Julie at a competitive disadvantage because its equipment is not given appropriate credit during evaluation for necessary, but higher cost, features and characteristics.

In its reply to these allegations, the Army argues that this portion of Julie's protest is untimely under our Bid Protest Procedure, 4 C.F.R. § 21.2(b)(1) (1983), which require that protests of apparent improprieties in a solicitation be made prior to the closing date for receipt of initial proposals. The Army continues to withhold award and argues that Julie's piecemeal presentation of its protest is resulting in unreasonable delay of the procurement. We agree. The appropriate time for questioning the adequacy of the specifications was prior to the closing date for receipt of initial proposals since the alleged defects were apparent on the face of the solicitation. 4 C.F.R. § 21.2(b)(1). See Lamson Division, B-190752, December 14, 1977, 77-2 CPD 463, reconsidered on other grounds, January 31, 1978, 78-1 CPD 82. Accordingly, this portion of Julie's protest is dismissed.

Finally, Julie contends that the Army failed to follow congressional directives as expressed by the Senate and House Appropriations Committees in committee reports which required the Army to submit a comprehensive report and an acquisition plan prior to the award of any production contract for calibration equipment. The Army states that it has strictly adhered to the congressional directives and that, in any event, the present solicitation is only for four items which does not constitute a production contract. The Army further states that language in committee reports cannot be construed as incorporating any restrictions on its spending authority. We think the Army's position is correct. We have stated that Congress is well aware that agencies are not legally bound to follow what is expressed in committee reports where, as here, those expressions are not explicitly carried over into statutory language. See LTV Aerospace Corporation, 55 Comp. Gen. 307 (1975), 75-2 CPD 203. Thus, we have held that language in committee reports is not legally binding upon the department or agency concerned unless it is specified in the appropriation act itself. Newport News Shipbuilding and Drydock Company, 55 Comp. Gen. 812 (1976), 76-1 CPD 136.

The protest is denied in part and dismissed in part.

for   
Comptroller General  
of the United States