

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

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FILE: B-216947.2

DATE: June 11, 1985

MATTER OF: Fleetwood Electronics, Inc.

DIGEST:

Protest against specifications as unduly restrictive is sustained where contracting agency has not established prima facie support for specific design requirements it has imposed. Needs should be stated functionally to permit consideration of other equipment that is capable of meeting the government's actual needs.

Fleetwood Electronics, Inc. protests certain specifications contained in the Department of the Army request for proposals (RFP) No. DAAG08-84-R-0399, issued for language laboratory systems for the Defense Language Institute (DLI), Presidio of Monterey, California. The contractor will be responsible for furnishing a central control console, central audio equipment (including tape recording/reproducing machines), wiring, student enclosures, and individual student cassette recorders to equip several complete language laboratories. Each laboratory will permit an instructor, working from the central console, to talk with and transmit prerecorded audio materials to 36 semi-enclosed student workstations. According to Fleetwood, the specifications are unduly restrictive of competition. We sustain the protest.

Nine provisions of the specifications are disputed. The nine provisions concern the design of four features that DLI has required. These are as follows:

1. Independent Power Supply: DLI has required that each student's unit contain its own power supply to convert ordinary electric current to direct current used to power the equipment. Fleetwood states that this requirement is too restrictive, and points out that a number of language laboratory systems use centrally located power supplies which, it contends, promotes safety and ease of maintenance.

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2. Interlocked Record Switch. As interpreted by the parties, the solicitation requires a specific switch configuration for selecting the record or play function. This configuration consists of two switches, one of which must be in an "on" position for the selection of either function. The other switch must be activated for selection of the record function. It is unclear from the protest file whether DLI also intends that these switches should be activated simultaneously to activate the record function. Regardless, Fleetwood believes the specification does not reflect state-of-the-art designs, which, Fleetwood says, do not require the mechanically interlocked play and record switches that are typical of earlier equipment. Newer equipment accomplishes the same functions with distinct play and record switches. This simplifies operation of the equipment, Fleetwood says.

3. Dual Channels. As interpreted by the parties, the solicitation requires that student-machine dialogue must be recorded on a second track of the master tape on which the transmission was prerecorded. Fleetwood says that some manufacturers achieve the same objective--they allow the student's conversation to be recorded for later review by the instructor--without recording the conversation on the master tape.

4. Record Lockout and Transport Control Switches. The specifications state that the equipment must contain a switch or device that will prevent students from copying master tapes except when a function selector switch and a record lockout switch are simultaneously activated. When the system is in the copy mode, any change in operation must cause it to revert to a playback mode, or to stop.

The specifications further require that when student equipment is switched in the "master" position, student tape start and stop functions must be subject to control from the instructor's console. When this control is in the "off" position it shall not be possible for the students to erase the master track.

Fleetwood says these provisions describe obsolete equipment and that state-of-the-art equipment would meet DLI's actual needs. According to Fleetwood, such equipment is designed so that the students have no control over the master track, the students' equipment cannot erase the master track, and all student equipment functions can be controlled from the instructor's console, including access

B-216947.2

to the master record. As a result, Fleetwood explains, this state-of-the-art equipment does not use record lockout or other switches of the type described in the solicitation.

When a protester challenges a specification as unduly restrictive of competition, it is incumbent upon the procuring activity to establish prima facie support for its restriction. Sparklet Division, Inc., 60 Comp. Gen. 504 (1981), 81-1 CPD ¶ 446, aff'd, B-199690.2, Oct. 8, 1981, 81-2 CPD ¶ 285; Constantine N. Polites & Co., B-189214, Dec. 27, 1978, 78-2 CPD ¶ 437.

The protested provisions are imposed as design requirements, and Fleetwood essentially asserts that the provisions are unduly restrictive. While the use of a design specification does not necessarily provide a basis for determining that a solicitation is unduly restrictive (Christie Electric Corp., B-197481, Oct. 14, 1980, 80-2 CPD ¶ 273), design requirements are inappropriate where an agency is capable of stating its minimum needs in terms of performance specifications which alternative designs could meet. Viereck Co., B-209215, Mar. 22, 1983, 83-1 CPD ¶ 287; Charles J. Dispenza & Associates; Chicago Dryer Co; McCabe Corp., B-181102, B-180720, Aug. 15, 1974, 74-2 CPD ¶ 101. This is because, as a result of the legal requirement that the government maximize competition, specifications must state only the government's minimum needs. Specifications that focus on performance or functional characteristics, which are directly linked to an agency's intended use of a product, may permit equipment to be offered that would be excluded by specifications that describe one particular equipment design. Where, as here, equipment of differing designs may be equally capable of performing the tasks for which equipment is being acquired, that equipment cannot be excluded and, if particular design features included in a specification are challenged, the agency must be able to explain, in terms that will withstand logical scrutiny, why the design specified, and only that design, will afford it adequate assurance that its needs will be satisfied.

We sustain the protest because, in a number of instances, the agency has not adequately justified its need for the specific features involved and because, to the extent it may have legitimate needs related to these requirements, it is clear that those needs can be expressed less restrictively in functional terms.

Power Supply

The engineering statement included in the Army's report indicates that independent power supplies are required so that each student module would have the "essential flexibility" of continuing operations in the event of a power supply failure in one module. The statement is not explained in the report; nor is any analysis of the requirement presented. As we pointed out in Constantine W. Polites & Co., supra, the adequacy of an agency's explanation of its requirement is determined not simply in terms of the rationale asserted, but by examining the analysis that supports it.

On this record, we find that the Army has not established a prima facie case for the power supply restriction.

We recognize that under these specifications a power supply failure in one unit may not affect the operation of other units, although, of course, the likelihood of a power supply failure increases as the number of power supplies is increased. We must also recognize, however, that a requirement for independent power supplies, standing alone, does not compel the conclusion that the specification is reasonable, particularly in the context of this solicitation, which does not define acceptable power supply reliability, and which does not appear to preclude the use of common components (other than power supplies) that could place the entire system out of service should they fail. By this we mean simply that having independent power supplies is only one way to enhance the reliability of a particular system. It is not the only way of achieving dependability, since it is possible that the reliability the Army seeks can be obtained from a system incorporating a well designed, fused and surge protected central power source. Such a system may be more reliable than a poorly-designed system using separate power sources.

In this connection, the likelihood that DLI, as the end user, will experience significant difficulty due to failure of a well designed central power supply appears to be remote. The record indicates DLI has used systems with common power supplies in the past, has never experienced a power supply failure, and intends to stock spare parts, including power supplies, allowing it to quickly replace a power supply should one ever fail.

In fact, it is not DLI that is insisting upon the separate power supply requirement, but rather, the Army's Television-Audio Support Activity (TASA). TASA was responsible for drafting the challenged specifications. TASA insists that DLI's need for separate power supplies is supported by its experience. However, TASA has not documented its experience or established that its experience is relevant to this procurement.

Record Switch

According to DLI, the specified record switch design is necessary to reduce inadvertent erasures. Again, DLI does not explain why this is so or provide any kind of supporting analysis. Elsewhere the solicitation requires that controls must be located to minimize the risk that the equipment can be inadvertently turned on. If DLI's purpose in the protested requirement is to minimize the risk of inadvertent erasures, we see no reason why it could not so state without requiring that offerors provide any one specific electro-mechanical design.

Dual Channels

The DLI engineering statement says it is necessary that the instructor be able to monitor and record the responses of selected students. The report says that "this can be accomplished through the use of a dual channel multimode machine at the instructor's console." Fleetwood does not contend that DLI should accept equipment that would not permit recording and monitoring of student responses. Rather, Fleetwood objects because it believes DLI has used the phrase "dual channel" as a term of art to require a specific equipment configuration, an interpretation that is supported by a November 20, 1984, letter to Fleetwood in which DLI defined dual channel as requiring simultaneous recording of student dialogue on the master tape. That DLI's requirement to monitor and record student conversation can be met in this manner is not disputed, but is irrelevant in determining whether DLI has stated only its actual requirement. We think this requirement should be amended to make it clear that dual channel capability refers only to the need for equipment that can support monitoring and recording of student-machine dialogue.

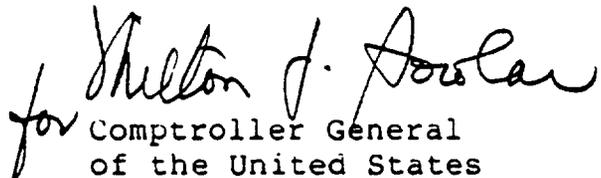
B-216947.2

Lockout and Transport Control

Similarly, the solicitation provisions concerning record lockout and transport control switches should be restated in functional terms. According to DLI, its teaching method requires both control by the instructor and capability to permit students to work independently at their own pace. As a matter of sound engineering design, this need includes a need for assurance that the student cannot record over prerecorded material, or possibly, gain improper access to such materials. DLI, however, has presented no evidence in its reports to support the specific switching configuration that the specifications, as outlined earlier, require.

The protest is sustained.

DLI has postponed the date for receipt of proposals pending our decision in this case. We are recommending that DLI amend the protested provisions of its solicitation by defining the reliability the system must meet and by modifying the other protested provisions to make it clear that its needs can be met by other designs that may be capable of satisfying its functional requirements.

for 
Comptroller General
of the United States