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DECISION



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

FILE: B-218598

DATE: August 20, 1985

MATTER OF: Julie Research Laboratories, Inc.

DIGEST:

Protest against use of brand name or equal description in invitation for bids (IFB) is denied where the protester does not contend that it cannot meet any particular specification or that it is otherwise prejudiced by the solicitation, and fails to show that the requirements in the IFB exceed the agency's minimum needs.

Julie Research Laboratories, Inc. (Julie), protests the use of brand name or equal specifications for decade resistance standards under invitation for bids (IFB) No. F33659-85-B-0053, issued by Newark Air Force Station, Ohio. Julie complains that the IFB purchase description unduly restricts competition. We deny the protest.

The IFB, issued on March 29, 1985, solicited bids for 80 Electro Scientific Industries (ESI) model RS925D, or equal, decade resistance standards (with an option for 43 additional units). The purchase description indicated that the instruments are to be used as adjustable resistance standards to calibrate resistance meters and as part of a precision resistance measuring system equivalent to the ESI model 242E. The IFB included a detailed list of salient characteristics of the brand name product that were to be met by instruments proposed as equal. It also cautioned bidders offering "equal" products that they were required to provide with their bids "all descriptive material necessary . . . to determine whether the product offered is in fact equal."

Julie argues that the IFB makes it impossible for bidders offering other than brand name instruments to compete. According to Julie, the requirement for ESI

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instruments, or equal, and the requirement that the equipment must function as a part of a measuring system equivalent to the ESI model, disregard the mandate of the Federal Acquisition Regulation (FAR) to maximize competition.

When a protester challenges a particular requirement as unduly restrictive of competition, it is incumbent upon the contracting agency to establish prima facie support for the restriction. Constantine N. Polites & Co., B-189214, Dec. 27, 1978, 78-2 CPD ¶ 437. While solicitations should be drafted so as to maximize competition, requirements which limit competition are acceptable as long as they represent legitimate agency needs. Superior Boiler Works, Inc., B-216472, Mar. 25, 1985, 85-1 CPD ¶ 342. Here, the Air Force states that each performance characteristic in the purchase description is related to a weapon system or general measurement requirement. With regard to the requirement that the instruments function as part of a system equivalent to an ESI model, the Air Force states that the instruments are to be used, and therefore must be compatible, with existing ESI components in the Air Force's inventory. Based on these representations, we find that the Air Force has shown that the requirements in the IFB, both with regard to the equipment being procured standing alone, and its compatibility with other equipment, reflect the agency's minimum needs and thus are reasonable on their face.

Once the contracting agency establishes prima facie support for the IFB requirements, as the Air Force has done here, the burden shifts to the protester to show that the requirements complained of are clearly unreasonable. Superior Boiler Works, Inc., B-216472, supra. As discussed in detail below, Julie has offered no relevant rebuttal to the Air Force's justification and therefore has failed to show that the requirements are unreasonable. We also note that Julie does not maintain that it cannot meet any particular requirement in the purchase description and thus is precluded from competing, or that it is otherwise prejudiced by the IFB requirements. We also note that while Julie contends that competition is unduly restricted, Julie at no point directly addresses the Air Force's position that the requirements reflect its minimum needs.

First, the Air Force has stated that it drafted the purchase description to include only its minimum requirements, without exceeding its actual needs. Julie disagrees, arguing in its response to the agency report that

the purchase description mirrored the ESI RS925D catalog description and that the Air Force merely adopted the ESI description without tailoring it to the Air Force's needs. Julie does not, however, provide any specific indication of where the purchase description exceeds the Air Force's needs. Thus, we have no basis to conclude that the purchase description is unduly restrictive. Moreover, since Julie failed to provide us a copy of the ESI catalog, we have no basis on which to determine the validity of Julie's contention. Even assuming that the purchase description was taken from the catalog, that fact, standing alone, does not show that the requirements in the purchase description exceeded the Air Force's minimum needs.

Julie next raises several arguments premised on cost savings to the government which Julie asserts would result from procuring alternative equipment. Based on its speculation that the equipment being procured will be used as part of ESI resistance measurement systems of the type already being used by the Air Force, Julie argues that acquiring a different overall system would be less expensive. Similarly, Julie argues that, if the equipment will be used to replace the Air Force's existing equipment, it would be less expensive to repair the existing units rather than acquire new ones.

Since Julie did not raise these arguments until its comments on the agency report, the Air Force had no opportunity to respond to them and we have no basis on which to determine the validity of Julie's assumptions regarding the Air Force's current equipment inventory or its specific plans for using the newly acquired equipment. In any event, Julie's contentions concern policy decisions relating to the initial identification of the Air Force's needs; like Julie's first argument, they are irrelevant to the central issue in this protest, whether the IFB requirements reflect the Air Force's minimum needs with regard to the performance characteristics of the equipment being procured.

Julie also argues that, to the extent the RS925D equipment will be used as stand-alone resistance decade boxes, the accuracy offered by the RS925D model exceeds the Air Force's calibration workload requirement. Since Julie provides no substantiation for its argument--which, again, was raised for the first time in its comments on the Air Force's report--its conclusory statement, standing alone, provides no basis on which to conclude that the salient characteristics exceed the Air Force's minimum needs.

Finally, Julie points out that, under FAR § 10.004(b) (3), brand name or equal purchase descriptions are to be used "only when an adequate specification or more detailed description cannot feasibly be made available by means other than inspection and analysis in time for the acquisition under consideration." Julie contends that the use of a brand name or equal description in this case should be found improper since the Air Force did not argue that it lacked time to develop detailed specifications. Julie's argument focuses on a narrow requirement of the regulation and ignores its underlying purpose, to help ensure that competition is not unduly restricted by the unjustified use of restrictive requirements. Where, as here, the protester makes no showing that the purchase description used does not reflect the agency's needs, or that the nature of the purchase description has in some specific way excluded it from the competition, there is no basis on which to conclude that the use of a brand name or equal description was improper.

The protest is denied.

Harry R. Van Cleve
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General Counsel