

DECISION

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

FILE: B-220451 **DATE:** March 18, 1986
MATTER OF: Fry Communications, Inc.

DIGEST:

Requirement that "Compano only" typeset be used to print certain casebound books is not unduly restrictive where agency's minimum needs require typeset consistency with previous volumes published and agency's determination that only one typeset will meet this requirement is not unreasonable.

Fry Communications, Inc. protests the specifications used in an invitation for bids (IFB) issued by the United States Government Printing Office (GPO) for the printing of casebound books and paperbound books for the State Department, Program B428-S. Fry argues that the IFB restriction limiting the acceptable typeset to "Compano only" is unduly restrictive of competition because it precludes Fry from offering an equivalent typeset.

We deny the protest.

The solicitation for this requirement was initially issued on February 21, 1985, and at that time the IFB required the contractor to furnish "Palatino with italic" and "Palatino semibold" typesets. Although alternate typesets would not be considered, the IFB indicated that manufacturers' generic equivalents would be accepted.

Fry's bid price was \$230,017.28 and at bid opening, Fry was the apparent low bidder. During the preaward survey, it was discovered that Fry intended to utilize a generic equivalent and State Department officials, assisting in the survey, determined that the generic typeset proposed by Fry was incompatible with the typeset used in previous books. The State Department requested that GPO cancel the IFB because it was "unsuitable to the Department's needs," and by letter dated June 17, GPO notified Fry that the solicitation was canceled.

A new solicitation was issued on September 30 with a bid opening date of November 18. By letter dated June 10, the State Department had advised GPO that the only acceptable typesets are Palatino and Baskerville and GPO's new solicitation reflected these requirements and also indicated that no generic equivalents would be accepted.

Subsequently, GPO received an inquiry from Sogitec, Inc., concerning the acceptability of the Compano typeset. Sogitec further advised GPO that if the State Department required the same typeset as used in previous volumes, it should be specifying a Compano typeset rather than Palatino. After verifying within GPO that previous volumes had been printed in Compano and after conferring with State Department officials, GPO issued amendment No. 0001 on October 16, deleting Palatino, and substituting Compano.

GPO received four bids on the scheduled opening date and Sogitec, with a bid of \$221,365.24, was the apparent low bidder. Fry, because it did not have access to a proprietary Compano printer, submitted a joint venture bid in the amount of \$300,326.44.

Initially, we note that Sogitec argues that Fry is not an interested party under our Bid Protest Regulations, 4 C.F.R. § 21.0 (1985). The solicitation stated as follows: "Subcontracting: The predominant production function is photocomposition." Based on this statement, Sogitec contends that bidders are required to be primarily engaged in photocomposition in order to submit a bid. Sogitec argues that Fry does not meet this requirement and since Fry's joint venture partner has not joined in the protest, Fry has no standing because Fry itself could not have submitted a bid.

Our Office will only consider protests brought by parties having a legitimate interest in the procurement. In making this determination, we consider a variety of factors, including the nature of the issues raised and the benefit or relief sought by the protester. Communique, Inc., B-219391, Sept. 5, 1985, 85-2 CPD ¶ 271. In our view, the solicitation language cited by Sogitec does not establish as a precondition to submitting a bid that the bidder must be predominantly engaged in photocomposition. Cf. Urban Masonry Corp., B-213196, Jan. 3, 1984, 84-1 CPD ¶ 48 (requirement that firm be "regularly engaged for a minimum of 5 years in the erection of architectural precast

concrete units" constituted a definitive responsibility criterion). If Fry is successful in its protest, Fry would be a potential competitor on the resolicitation in its own right, and therefore, Fry has the requisite direct economic interest to be an interested party. Swan Industries-- Request for Reconsideration, B-218484.2, May 17, 1985, 85-1 CPD ¶ 569.

Fry contends that there is no basis to restrict the typeset to Companso only since equivalent typesets, like Palatino, are available and are virtually identical to Companso. In this regard, Fry has submitted samples of Companso and Palatino and argues that there is no distinction between the two which would lead to any inconsistency in the typesets of the volumes. Fry complains that the Companso typeset requires access to a proprietary typesetter and that only a limited number of bidders have such access. Fry argues that equivalents, such as Palatino, are more easily produced, are more readily available, and will equally satisfy the agency's needs.

GPO recognizes the confusion regarding the required typeset, but argues that the State Department has a bona fide need for a typeset which will match its previous volumes. GPO indicates that this typeset will be used to print additional volumes of the State Department's Foreign Relations and American Foreign Policy, and that the same typeset is required to maintain typeset consistency throughout the series. Although a typeset may be designated an equivalent and share the same general characteristics, GPO argues that each typeface is unique and that the State Department's minimum needs require that the same typeset be used. GPO contends that utilizing different typesets would detract from the aesthetics of the set and would be inconsistent with the State Department's high publishing standards for these publications.

In addition, GPO contends that many firms have access to the proprietary Companso typesetter and that effective competition was obtained since four firms submitted bids. Also, GPO notes that Sogitec's low bid on the allegedly restrictive specification was lower than Fry's bid on the solicitation which permitted generic typesets.

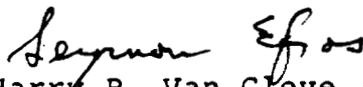
Generally, when a protest challenges a specification as unduly restrictive of competition, the burden is on the procuring agency to establish prima facie support for its

position that the restriction imposed is necessary to meet its minimum needs. R.R. Mongeau Engineers, Inc., B-218356, et al., July 9, 1985, 85-2 CPD ¶ 29. In our review of the issues, we examine the adequacy of the agency's position not simply with regard to the reasonableness of the rationale asserted, but also the analysis given in support of these reasons in order to assure that the agency's explanation will withstand logical scrutiny. ITT Carrier Terminal Systems, B-218653, Aug. 8, 1985, 85-2 CPD ¶ 148.

Based on the record, we are unable to conclude that GPO's determination to require the use of the same typeset as used in previous editions is unreasonable. We have recognized that an agency's need for uniformity of appearance can properly lead to a specification which assures consistency with the agency's previous acquisition and, in our view, GPO may properly require that the publication of different volumes in a series be printed with a typeset that ensures such consistency. See R-173372, Aug. 19, 1971. This is especially the case where, as here, the agency has set high publishing standards for the publications and the aesthetics and appearance of the set is an important consideration. Furthermore, although Fry asserts that equivalent typesets are virtually identical, a comparison of the Companso and Palatino samples submitted by Fry to prove its point shows that, while the general characteristics are similar, discernible differences between the two are readily apparent.

In addition, we point out that GPO received four bids on the allegedly more restrictive IFB, and Sqritec's bid price was lower than that submitted by Fry on the initial solicitation. Thus, the record clearly shows that a reasonable price was obtained. Accordingly, we find that GPO has established a reasonable basis for the Companso only requirement and we cannot agree with Fry that this provision unduly restricts competition. Saxon Corp., B-214977, Aug. 21, 1984, 84-2 CPD ¶ 205.

We deny the protest.

for 
 Harry R. Van Cleave
 General Counsel