



The Comptroller General  
of the United States

Washington, D.C. 20548

132128

## Decision

Matter of: Abel Converting, Inc.

File: B-224223

Date: February 6, 1987

### DIGEST

1. Protest that requirement for "pop-up" packaging of paper towels exceeds the agency's needs and is unduly restrictive is denied where the requirement is reasonable.
2. Agency decision not to set aside procurement for small business competition is upheld where record supports contracting officer's conclusion that because of changes in packaging requirement for paper towels, it was not reasonable to expect to receive bids from two small businesses.

### DECISION

Abel Converting, Inc. protests the General Services Administration's (GSA) packaging requirements for various categories of paper towels under invitation for bids (IFB) No. 7PRT-53054/M3/7S8. Abel also objects to GSA's decision not to set the entire procurement aside for small business. Abel argues that the packaging requirements are overly restrictive, and that adequate small business competition could have been obtained. We deny the protest.

The IFB contemplated the award of multiple requirements contracts for delivery of paper towels of six different sizes (identified by National Stock Numbers) to several locations.

The contracts were to meet the needs of federal agencies using GSA as a supply source for the period February 1, 1987, or date of award, to January 31, 1988. Only two types of towels were set aside for small businesses.

The IFB required that five of the six types of towels be packaged in "pop-up design dispenser type paperboard"

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boxes. The IFB for the previous year's requirements had permitted packaging in either "pop-up" or "reach-in" boxes.<sup>1/</sup>

At the October 22 bid opening, GSA received bids from four different firms for each of the line items requiring "pop-up" boxes.

The record shows that prior to 1984, the GSA solicitation for towels required "pop-up" boxes. For 1984, the packaging specification was relaxed to allow either a paperboard box, a sleeve wrapped in paper or a shrink or stretch film wrap.

The packaging requirements were again revised for 1985 to mandate paperboard boxes, either "pop-up" or "reach in" type. Again, the 1986 requirements specified either "pop-up" or "reach in" boxes but specified that towels must be "C - folded" in "reach in" boxes. As a result of a survey of its user agencies, GSA found that "reach in" packaging was not satisfactory because after the box was opened its contents were subject to contamination, the dispensing of single towels was difficult, and the "reach in" container was not a normal commercial package. GSA thus concluded that only "pop-up" boxes would meet the user agencies' needs and included such a restriction for five of the six size towels in the current solicitation.

Abel argues that the elimination of "reach-in" boxes as an acceptable form of packaging is unduly restrictive of competition because GSA's requirement for "pop-up" dispensers is beyond the agency's actual needs. Abel disputes GSA's characterization of its survey as showing that "pop-up" packaging was preferred by the user agencies. The protester contends that the agency complaints concerned packaging types other than the "reach in" boxes that it intends to offer.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 41 U.S.C. § 253a(a)(1)(A) (Supp. III 1985). Consequently, when a solicitation provision is challenged as exceeding the agency's actual needs, the initial burden is on the procuring agency to establish support for its contention that the

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<sup>1/</sup> "Pop-up" boxes are constructed so that removal of one towel automatically exposes a portion of the next; "reach-in" boxes of the type supplied by the protester contain a perforated punch-out section which includes a portion of the top of the box and extends down one side so that towels can easily be removed one at a time.

provision is justified. Daniel H. Wagner, Associates, Inc., 65 Comp. Gen. 305 (1986), 86-1 CPD ¶ 166. We determine the adequacy of the agency's justification by examining whether its explanation can withstand logical scrutiny. R.R. Mongeau Engineers, Inc., B-218356 et al., July 8, 1985, 85-2 CPD ¶ 29. Once the agency establishes support for the challenged specifications, the burden shifts to the protester to show that the specifications in dispute are unreasonable. Information Ventures, Inc., B-221287, Mar. 10, 1986, 86-1 CPD ¶ 234.

We do not find that the protester has shown that the agency preference for "pop-up" packaging is unreasonable. GSA's conclusion that only "pop-up" boxes will meet the user agencies' needs is based on complaints from user agencies and a survey conducted by GSA. One laboratory complained, for example, that plastic-wrapped towels were subject to contamination once the package has been unsealed. Two other complaints focused on the wastefulness inherent to plastic or paper wrapped packaging which made it difficult to remove one towel at a time. While the complaints cited by GSA in the protest report relate to towels packaged in plastic or paper sleeves (forms of packaging permitted under earlier solicitations) rather than towels packaged in "reach-in" boxes, the agency concluded that the contamination and wastefulness problems would also apply to "reach in" boxes which also expose a number of towels and, according to GSA, can make it difficult to extract a single towel. Since the "reach in" boxes are open at the side, we think that GSA's conclusions that these problems will also affect towels in "reach in" boxes is reasonable.

Further, GSA states that its survey revealed that 30 of the 48 agencies that had been identified as the largest users of towels required "pop-up" boxed towels. In this regard, GSA notes that virtually all of the responding agencies that used towels in laboratories and research centers said they needed the "pop-up" packaging.

Thus, we find that the record supports GSA's conclusion that its using agencies need the "pop-up" packaging. See Independent Products Co., Inc., B-207519.2, Apr. 22, 1983, 83-1 CPD ¶ 434. We, therefore, have no basis upon which to object to GSA's inclusion of the requirement for "pop-up" boxes in the solicitation.

We note also that the record does not support Abel's contention that this requirement has unduly restricted competition. In fact, of the four bids received on each line item, it appears that the protester is low on several including some which contain the "pop-up" box requirement.

In addition, Abel complains about GSA's failure to set aside for small business portions of the requirement that had in prior years been set aside.

Here, the record shows that after the specifications were revised to include the "pop-up" packaging requirement, the contracting officer attempted to contact all four of the small businesses who had responded to the previous solicitation. All three of the firms which she succeeded in contacting, including the protester, said that they did not themselves have the capacity to meet the requirement, but either would have to purchase new equipment or subcontract the packaging portion of the requirement. Based on this information the contracting officer concluded that because the government could not expect to receive competitively priced bids from small business, the items should not be set aside.

The regulations pertaining to small business recognize that a procurement which has been conducted previously as a set-aside may be withdrawn by the contracting officer when it is determined that there is no reasonable expectation of receiving bids from at least two responsible small businesses, and that award cannot be made at a reasonable price. Federal Acquisition Regulation, 48 C.F.R. §§ 19.501(g) and 19.506 (1986). The determination as to whether adequate competition reasonably may be expected is essentially a business judgment within the discretion of the contracting agency which we will not disturb, absent a clear showing of abuse of discretion. The Quality Inn Midtown, B-219312.3 et al., Apr. 4, 1986, 86-1 CPD ¶ 324. Here, based on the record before her at the time the decision was made, we think that the contracting officer reasonably decided that the agency would not receive bids from two small businesses because of the addition of the more complex packaging requirement. In fact, in its initial protest submission the protester, itself, contended that no small business could compete for the contract because of the packaging requirement.

The protest is denied.

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