Reports

The Comptroller General
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Weksler Instruments Corporation

**File:** B-234001; B-234140

**Date:** April 18, 1989

**DIGEST**

Protests that solicitations for pressure gauges are overly restrictive because they allow direct drive but not C-spring, gear drive gauges are denied where: (1) C-spring gauges are being over-requisitioned, leading agency to conclude that the gauges are failing at an unacceptable rate; (2) agency made technical determination that direct drive gauges will be more reliable due to fewer moving parts, as confirmed by limited testing; and (3) gauges are for use on shipboard and failure could result in fire hazard or failure of vital system.

**DECISION**

Weksler Instruments Corporation protests the award of any contracts under Defense Logistics Agency (DLA) requests for proposals (RFP) Nos. DLA400-89-R-0738 (RFP -0738) and DLA400-89-R-1265 (RFP -1265), for quantities of pressure gauges. Weksler contends that the RFPs are unduly restrictive of competition because they specify that the gauges must be of the direct drive type, rather than the C-spring, gear drive type manufactured by Weksler.

We deny the protests.

RFP -0738 calls for 350 simplex pressure indicators in accordance with military specification MIL-G-18997D(SH). RFP -1265 calls for 200 compound, vacuum-pressure gauges in accordance with the same specification. Both RFPs require the direct drive mechanism. The closing date for receipt of proposals for RFP-0738 was December 29, 1988. Two offers were received, one proposing the required direct drive gauges, and the other taking exception to that requirement by offering C-spring, gear drive gauges. The initially scheduled closing date for receipt of proposals for RFP -1265 was January 19, 1989, but that date has been extended indefinitely pending our decision here.

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The primary difference between the C-spring and direct drive gauges, for our purposes here, is that the direct drive gauge records pressure with a mechanism (a hollow tube, which detects the pressure, wound in a helix around the pointer shaft) that has fewer moving parts than does the C-spring mechanism (a C-shaped hollow tube connected to a pinion gear that in turn drives another gear connected to the pointer shaft). The Navy has submitted statements from its technical staff to the effect that the direct drive gauges are more reliable because they operate with fewer moving parts and that, also due to this configuration, the gauges remain more accurate under stressful applications.

DLA ordinarily permits offers on either type of gauge, but restricted the procurements here based on information that the Navy was having problems with shipboard gauge failures. Specifically, the Navy found that there were high failure rates in applications with compressors and diesel engines and recommended that a number of gauges, including those here, which are used for such vital applications as fuel line monitoring, nuclear steam turbine systems, water distillation, and the Poseidon weapons system, be limited to the direct drive mechanism.

The Navy's conclusions were based on a Navy Maintenance and Material Management Information System Report dated February 26, 1988, which traced repair parts issued for maintenance during the period January 1985 to December 1987. Data in this report indicated that during the 3-year period the C-spring gauges here were requisitioned in substantially greater numbers than warranted; one gauge per requisition would be considered normal, but the report showed three or more gauges per requisition. Once the Navy concluded there was unexplained overusage, it cross-referenced each gauge to its end item application and found that more gauges were requisitioned for stressful applications, e.g., diesel engines or compressors; the Navy considered this verification that overusage of the gauge was due to excessive failure of the gauge.

When a protester challenges a specification as being unduly restrictive of competition, the burden initially is on the procuring agency to establish a prima facie case that the restriction is needed to meet its actual minimum needs. Determinations of the agency's minimum needs and the best method of accommodating those needs are primarily matters within the agency's discretion and, thus, once the agency establishes prima facie support for challenged specifications, the burden shifts to the protester to show that the specifications complained of clearly are unreasonable.

Monitor Security & Control Systems, Inc., B-227643.2, Sept. 15, 1987, 87-2 CPD ¶ 253; Rolm Corp., B-214052, Sept. 11, 1984, 84-2 CPD ¶ 280.

We find that the foregoing explanation constitutes a prima facie case in support of the restriction here. The direct drive gauge is considered by agency technical personnel to be the most reliable, most accurate gauge available; the Navy's shipboard needs dictate the most reliable, accurate gauge available; and overrequisitioning suggests that the C-spring gauges currently in use are failing at a high rate in applications where safety, reliability, and accuracy are important.

Weksler maintains that the restriction is not reasonable because it is based only on the indirect evidence of excessive requisitioning, and not on any actual, documented failures of the C-spring gauges. Weksler notes that causes other than inherent unreliability, such as manufacturer defects or improper installation and maintenance, could be responsible for any failures leading to overrequisitioning. Weksler also points out that it has received two other DLA contracts under which it is delivering C-spring gauges with the identical range required under the subject RFPs, and that it has never received any notice of any failure of its product.

While Weksler is correct that the overrequisitioning report DLA relies upon is only indirect evidence, and DLA concedes that there has been only one documented failure of the C-spring gauge, DLA attributes the absence of more direct evidence to the desire of Navy personnel to avoid preparing reports, and their jettisoning of replaced gauges overboard. Further, the possibility that failures were due to the alternative causes suggested by Weksler would seem to be reduced by the breadth (repair parts issued for all Navy gauge applications) and duration (3 years) of the over-requisitioning report; there is no reason to believe, or evidence presented, that manufacturing defects or improper installation and maintenance procedures would extend to all stressful applications or continue unabated for a 3-year period.

In any case, the more significant aspect of DLA's justification, we think, is the position of agency technical personnel that the direct drive gauge, due to its design, is superior to the C-spring gauge in both reliability and accuracy. Although DLA acknowledges that the C-spring gauge has been the workhorse gauge for the Navy, it believes that even the fairly limited shipboard testing of the relatively

new direct drive technology to date has been sufficient to establish the new gauge's superiority and desirability for shipboard functions. Weksler notes that the direct drive gauge is more expensive than the C-spring gauge, but has presented no evidence establishing that the agency's technical conclusions are incorrect or not well-founded.

As for the other Weksler contracts, DLA reports that one of the contracts is in fact for a gauge the Navy recommended be limited to direct drive, but that this particular gauge was not then available with the direct drive mechanism, and was procured on an unrestricted basis in order to satisfy supply requirements. The other contract referred to by Weksler reportedly was for a quantity of cable assemblies entirely unrelated to pressure gauges.

We conclude that the restriction in the RFPs calling for direct drive gauges reasonably reflects the government's minimum needs and therefore is unobjectionable. See Pacific Bell Telephone Co., B-231403, July 27, 1988, 88-2 CPD ¶ 93.

The protests are denied.

James F. Hinchman
General Counsel