

Miller 147857



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter: Mas-Hamilton Group, Inc.

File: B-249049

Date: October 20, 1992

Mark D. Colley, Esq., Davis, Graham & Stubbs, for the protester,
James H. Roberts, III, Esq., Manatt, Phelps, Phillips & Kantor, for Safemasters Co., Inc., and Mark C. Miller for Lockmasters, Inc., interested parties.
John P. Patkus, Esq., Defense Logistics Agency, for the agency.
Behn Miller, Esq., Ralph O. White, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where record shows that agency had an inadvertent, critical shortage of locks, but was not in a position to proceed with fully competitive award for these items, agency's utilization of small purchase procedures to make interim, emergency filler buys on an as-needed, urgency basis was not improper.
2. Solicitation's purchase item description identifying standard commercial lock by manufacturer part number and national stock number (NSN) is not unduly restrictive where (1) procurement is conducted under Federal Acquisition Regulation small purchase procedures; (2) offerors could readily obtain additional item information using either the listed part number or the NSN item number; and (3) solicitation permitted offers for functionally interchangeable, alternate products.

DECISION

Mas-Hamilton Group, Inc. protests any award under request for quotations (RFQ) No. DLA500-92-Q-PD53, issued by the Defense Logistics Agency (DLA) for combination security locks. Mas-Hamilton contends that DLA improperly issued the solicitation under the small purchase procedures, and that the RFQ's purchase item description unduly restricts competition.

We deny the protest.

BACKGROUND

This protest--although nominally about an RFQ for a purchase of combination security locks--raises questions about a number of DLA procurements for the locks used on file cabinets reserved for safeguarding sensitive and classified government records throughout the Department of Defense (DOD).

Specifically, the RFQ here, issued June 1, 1992, for 337 Sargent & Greenleaf (S&G) combination security locks, is the seventh in a series of small purchases--i.e., less than \$25,000--for DLA's combination lock needs. While DLA explains that the purchases have been necessary to meet its needs during a period when it has been unable to complete a full competition, Mas-Hamilton argues that DLA is repeatedly using small purchase procedures to avoid specifications that would otherwise be mandatory for a fully competitive procurement, and to restrict competition to one manufacturer's lock.

DLA's Earlier Efforts to Procure Locks

In early 1990, DLA recognized that its inventory of combination security locks had fallen to the point where future orders could result in serious shortfalls. As a result, on May 14, 1990, DLA issued request for proposals (RFP) No. DLA500-90-R-0329 ("the 1990 RFP") for a "primary quantity" of 4,900 mechanical combination security locks.¹

The 1990 RFP set forth the full text of Military Specification MIL-L-15596G which requires all commercially available mechanical combination security locks procured by DOD to meet testing requirements enumerated in the specification. In this regard, the RFP required each offeror to submit 14 locks for "bid sample" testing. The RFP also provided that award would be made to the lowest priced, technically acceptable offeror.

¹The RFP also requested offerors to provide a price for a "First Alternate Quantity" of 7,350 locks, and a "Second Alternate Quantity" of 9,800 locks. DLA explains that the primary quantity represents the agency's actual demand for locks at the time the RFQ was issued, while the first and second alternate quantity figures represent the inventory manager's estimate of possible changes in the agency's demand for locks. According to DLA, the agency intended to consider changes in inventory and then procure the quantity closest to the agency's current demand.

By the June 14 closing date, DLA received three offers, and on July 11, the agency submitted each offeror's lock samples to the Naval Civil Engineering Laboratory (NCEL) for testing, as required by MIL-L-15596G. On November 29, 1990, NCEL advised DLA that none of the lock samples met the requirements of MIL-L-15596G, and that all samples had failed the specification's testing requirements. NCEL also advised the agency that since none of the locks met the requirements, NCEL intended to amend the specification to relax the testing requirements.

On April 11, 1991--after receiving NCEL's revisions to MIL-L-15596G--DLA issued amendment No. 0002 to the RFP which incorporated the revised specification and requested a second submission of lock samples from each offeror by August 12. On February 28, 1992, after 6 months of laboratory testing, NCEL again advised DLA that all lock samples had failed to pass the revised testing criteria.

At this point, DLA was faced with a choice between canceling the 1990 RFP or procuring the locks despite the testing failures. In the interim, however, there was an on-going DOD controversy about whether the agency should continue to purchase mechanical combination locks, or should purchase locks employing newer lock technology.

DOD's Directives on Combination Locks

While DLA was attempting to procure mechanical combination locks under the 1990 RFP, other elements of DOD were considering how the agency could improve the security of combination locks for safeguarding sensitive materials. As part of these considerations, agency officials began looking at requiring combination locks used to safeguard sensitive materials to meet higher testing standards than those set forth in MIL-L-15596G.

The contracting officer explains that shortly after receiving the news that all lock samples submitted under the 1990 RFP had again failed to meet the requirements of the specification for mechanical locks, he learned of a pending DOD directive that would require all combination locks procured by DOD agencies to meet an even more stringent, federal specification. The directive, issued April 14, 1992, stated:

"The [DLA] will procure and stock replacement locks meeting FF-L-2740. Procurement of mechanical combination locks meeting Military Specification MIL-L-15596G is to be discontinued."

The federal specification referenced in the DOD directive delineates more stringent testing standards than those set forth in MIL-L-15596G; thus far, only electrical combination security locks have met the federal specification. After receiving the directive instructing DLA to procure all combination locks in accordance with federal specification FF-L-2740, DLA canceled the 1990 RFP on May 5, 1992.

On May 20, DOD issued a second directive modifying the earlier instruction. The May 20 directive required the purchase of combination security locks in accordance with FF-L-2740 only when the storage container for which the lock was required was produced "on or after October 1, 1991," or where the material to be protected is classified at the level of "top secret." Upon receiving the May 20 directive, DLA apparently decided that it should again attempt to procure locks using the MIL-L-15596G specification.

On September 1, 1992, DLA issued an RFP for a large purchase of locks, using the MIL-L-15596G specification. This procurement was also protested by Mas-Hamilton and will be considered in a separate decision.

DLA's Use of Small Purchases During the 1990 to 1992 Time Period

While DLA was attempting to procure combination security locks via its 1990 RFP--i.e., from early 1990 until mid-1992--the agency made a number of small purchases for mechanical combination security locks. The record shows the following purchases:

<u>Date of Award</u>	<u>Quantity</u>	<u>Amount</u>
March 17, 1990	380 locks	\$24,829.20
October 9, 1990	330 locks	21,806.40
March 1, 1991	250 locks	17,782.50
October 26, 1991	250 locks	17,312.50
April 22, 1992	350 locks	24,895.00
June 6, 1992	330 locks	24,763.20

As an apparent continuation of this practice, the agency again issued an RFQ, on June 1, 1992, for 337 S&G locks. On June 12, Mas-Hamilton filed this protest against the RFQ with our Office.

PROTESTER'S CONTENTIONS

In its protest, Mas-Hamilton argues that DLA is improperly dividing its requirement for combination security locks into a series of small purchases in order to avoid using federal lock specification FF-L-2740, which the protester contends is required for purchases in excess of \$25,000. Mas-Hamilton also contends that the solicitation here unduly

restricts competition to the S&G mechanical combination lock by not providing potential offerors with a list of the lock's salient characteristics, and by specifying a mechanical lock design, thus excluding Mas-Hamilton's electrical lock. For the reasons explained below, we deny the protest.

DISCUSSION

Agency's Use of Small Purchase Procedures

With respect to Mas-Hamilton's challenge to DLA's decision to issue the current RFQ using small purchase procedures, as a general rule, the Competition in Contracting Act of 1984 (CICA) requires contracting agencies to obtain full and open competition through the use of competitive procedures when conducting a procurement for property or services, 10 U.S.C. § 2304(a)(1)(A) (1988). CICA and its implementing regulations authorize the use of less competitive small purchase procedures where the amount involved does not exceed \$25,000. 10 U.S.C. § 2304(g)(2) (Supp. III 1991); Federal Acquisition Regulation (FAR) § 13.000. These procedures set forth abbreviated requirements designed to minimize administrative costs, East West Research, Inc., B-239516, Aug. 29, 1990, 90-2 CPD ¶ 178, and to promote efficiency and economy in contracting. 10 U.S.C. § 2304(g)(1) (1988). In order to prevent an agency from dividing a requirement in order to circumvent the CICA mandate for full and open competition, both CICA and the FAR contain explicit admonitions against manipulating requirements so as to be able to use small purchase procedures. 10 U.S.C. § 2304(g)(3) (Supp. III 1991); FAR § 13.103(b).²

According to Mas-Hamilton, the statutory prohibition against dividing purchases to stay within the small purchase ceiling means that this RFQ has been improperly issued under small purchase procedures. Specifically, Mas-Hamilton contends that this RFQ represents one of a series of procurements undertaken because DLA is dividing its total requirement for

²In this regard, CICA provides that:

"[a] proposed purchase or contract for an amount above the small purchase threshold may not be divided into several purchases or contracts for lesser amounts in order to use the small purchase procedures . . ." See 10 U.S.C. § 2304(g)(3) (Supp. III 1991).

combination security locks to avoid using a federal lock specification--FF-L-2740--which the protester asserts is otherwise mandatory for full and open procurements of combination locks. See FAR § 10.006(a).³

In response, DLA explains that it conducted this series of small purchase RFQs in an effort to cope with a "chronic problem of backorders." Since the agency continued to expect that a fully competitive award was imminent, DLA explains that it specifically chose to continue to procure its urgent requirements using small purchases.⁴

The record simply does not support Mas-Hamilton's argument that the previous six small purchases show that the agency intends to continue conducting small purchase procurements until its total requirement for combination security locks is satisfied. With regard to the prior procurements, as well as the current RFQ, the record shows that throughout the 27-month period from February 2, 1990⁵ until May 5, 1992--when the agency was conducting its full and open competition for these locks--the DLA inventory manager received numerous, urgent customer requests for mechanical combination security locks. In providing locks in response to these requests, the agency's on-hand lock inventory level was repeatedly reduced to a quantity of only a few locks. Thus, on six occasions, in order to address the depleted stock levels, the agency issued each of the small purchases--described by DLA as "emergency filler buys."

³FAR § 10.006(a) provides that all federal and military specifications--such as FF-L-2740--"are mandatory for use by all agencies acquiring supplies or services covered by such specifications and standards"; however, FAR § 10.006(a)(2) specifically exempts small purchases from such specifications.

⁴For example, as evidence of this, DLA states that when it decided to issue the 1990 RFP for its lock requirement, agency personnel also decided to use the small purchase procedures to make emergency filler buys on an as-needed basis until an award could be made under the full and open procurement. Subsequently, at DLA staff meetings held on January 3, 1991 and January 22, 1992--which the record shows were immediately convened after NCEL informed DLA of various MIL-L-15596G lock sample testing failures--the DLA staff discussed and decided to continue making small purchase buys for urgent customer orders as necessary.

⁵On this date, DLA procurement, inventory, and technical personnel began planning the 1990 RFP.

In our view, the record shows that when each of these small purchase buys was made, DLA was unable to proceed with a fully competitive award since the agency was waiting for NCEL to finish the MIL-L-15596G lock sample testing.⁶ Likewise, with respect to the current small purchase RFQ, the agency again explains that it needed locks to satisfy an immediate shortage until the agency could proceed with a fully competitive award under the RFP issued to replace the canceled 1990 RFP. Given the administrative delays encountered in moving forward with a new, unrestricted procurement, as well as the time involved in waiting for the lock sample testing to be completed, we find this explanation persuasive.⁷

When an agency is faced with an urgent need while being simultaneously unable to proceed with a fully competitive award for that item, it may properly use the small purchase procedures as an interim means to procure its needs until a fully competitive award is possible. See Computer Resource Tech. Corp., B-218292, May 16, 1985, 85-1 CPD ¶ 557 (use of small purchase procedures proper where record shows that agency was not in a position to issue a fully competitive solicitation for its critical requirements.)⁸ Here, where the agency is using the small purchase procedures to make short-term, filler buys until a fully competitive award can be completed--and has since issued an unrestricted and fully competitive RFP to procure the remainder of its needs--we

⁶Although the sixth small purchase award was made after the unrestricted RFP was canceled, the record shows that the agency issued this RFQ on March 21--prior to the cancellation of the RFP.

⁷The record also shows that for the current RFQ, a larger critical need for 369 locks was reduced to a quantity of 337 in order to meet the \$25,000 small purchase limitation. DLA explains that it believed that procuring a smaller quantity would preserve the largest maximum quantity for a fully competitive award. As stated above, since DLA was stymied in its ability to procure these locks competitively because locks were failing to meet the applicable specifications, and since there appears to be no intent to circumvent full and open competition, we will not object to DLA's actions.

⁸There is no evidence--nor does the protester assert--that the agency's urgent need for these locks resulted from any lack of advance planning on the agency's part.

find the interim use of the small purchase procedures found in FAR Part 13 to be appropriate.' Id.

Since we find DLA's use of the small purchase procedures appropriate here, we need not consider Mas-Hamilton's contention that DLA was required to use the federal specification as Mas-Hamilton suggests. FAR § 10.006(a)(2) specifically exempts small purchases from the other requirements in the regulation mandating the use of certain federal specifications.¹⁰

In its comments on the agency report, Mas-Hamilton argues that notwithstanding the small purchase exemption rule found in FAR § 10.006(a)(2), DLA was nonetheless required to include FF-L-2740 in this solicitation since the agency's security concerns--as well as 32 C.F.R. § 159a (1991), "Information Security Program Regulation" demand such a result. Although 32 C.F.R. § 159a provides that GSA will establish and publish minimum standards, specifications, and supply schedules for security equipment, nothing in these provisions authorizes overriding the FAR § 10.006(a)(2) exemption for small purchase procurements. Accordingly, since we conclude that this RFQ was properly issued under

⁹In addition, Mas-Hamilton makes no claim that the agency has improperly used the applicable small purchase procedures. Under these procedures, an agency is only required to solicit quotations from a reasonable number of qualified sources to promote competition to the maximum extent practicable. 10 U.S.C. § 2304(g)(4) (1988); FAR § 13.106(b). Generally, a solicitation of three vendors is sufficient. See J. Sledge Janitorial Serv., 70 Comp. Gen. 307 (1991), 91-1 CPD ¶ 225. According to DLA, for each of the above referenced small purchases, at least three vendors were solicited.

¹⁰As for the protester's argument that DLA's failure to include FF-L-2740 in this RFQ is contrary to the policy set forth in the 1992 DOD directives discussed above, we dismiss this ground of protest. Under CICA, see 31 U.S.C. § 3551 (1988), our Office will not consider protests that an agency failed to follow internally generated rules intended to define or help in defining the agency's needs, and which merely implement executive branch policy rather than any specific statutory authority. See Loral Fairchild Corp.--Recon., B-242957.3, Dec. 9, 1991, 91-2 CPD ¶ 524.

the small purchase rules, the agency's failure to include FF-L-2740 in this procurement is unobjectionable.¹¹

The RFQ's Purchase Item Description

With respect to Mas-Hamilton's second contention--that the RFQ here improperly restricts competition to the S&G mechanical combination lock by not providing offerors with a list of salient characteristics and by specifying a mechanical rather than electrical lock design--we note that the current small purchase RFQ requests quotations for an S&G lock identified as NSN 5340-00-264-7592, and described as:

"Lock, Rim
(S&G) ([Cage Code Number] 53085)
Nicholsville, KY
P/N [Part Number] 8560D54DR1E2"

The solicitation also included a "Products Offered" clause which permits firms to offer alternate products. The clause states in relevant part:

"[A]ny product offered must be either identical to or physically, mechanically, electrically and functionally interchangeable with the product cited in the [item description]."

In its protest, Mas-Hamilton argues that the RFQ's purchase item description is unduly restrictive since it does not describe the essential characteristics of the S&G lock; without such details, Mas-Hamilton--as a prospective offeror of an alternate, electrical combination security lock--contends that it is improperly prevented from competing.

As noted above, the purpose of the small purchase procedures is to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors. See East West Research, Inc., B-239620, Aug. 28, 1990, 90-2 CPD ¶ 169. Accordingly, in using these procedures, a contracting agency is only required to obtain competition to the maximum extent practicable. 10 U.S.C. § 2304(g)(4) (1988); FAR § 13.106(b). In light of this goal, a contracting agency is generally not required to draft a special narrative purchase description setting forth the physical and

¹¹As noted above, Mas-Hamilton has filed a protest against the replacement unrestricted RFP raising the issue of whether DLA properly excluded FF-L-2740 from that solicitation.

functional characteristics of relatively simple and common items being acquired through small purchase procedures provided that there is no indication that the use of NSNs and manufacturer's part numbers fails to adequately convey the agency's needs, and that the agency permits offers for alternate products.¹² See East West Research, Inc., B-238234.2; B-239682, Sept. 17, 1990, 90-2 CPD ¶ 218. Under such circumstances, the use of a manufacturer's part number and NSN as an item description is unobjectionable. East West Research, B-243623, Apr. 29, 1991, 91-1 CPD ¶ 421; East West Research, Inc., B-240360, Oct. 18, 1990, 90-2 CPD ¶ 314.

We think the RFQ's purchase description here is adequate. Mas-Hamilton does not argue that vendors are unable to determine the type of lock which the agency is seeking--in fact, the item being procured is a recognized commercial item.¹³ Since Mas-Hamilton, as well as any other offeror of an alternate product, could have readily obtained any additional details regarding the government's lock requirement using either the specified manufacturer's part number or the lock's NSN, we find that this purchase description is unobjectionable. See The ARO Corp.--Recon., B-225645.2, June 1, 1987, 87-1 CPD ¶ 548.

Mas-Hamilton also argues that because the RFQ's purchase item description specifies a mechanical combination security lock, the solicitation improperly restricts competition

¹²For the same reasons, a contracting agency is also not required to use military and federal specifications in its small purchase procurements. FAR § 10.006(a)(2); RMS Indus., B-247394, May 19, 1992, 92-1 CPD ¶ 452.

¹³The solicitation's identified manufacturer's part number specifically refers to detailed specifications set forth in the S&G catalog where this item is listed. The item description in the solicitation also identifies the lock by its NSN, which corresponds to a publicly available, national catalog system maintained by the General Services Administration and DOD. See 40 U.S.C. § 487(a) (1988). If Mas-Hamilton were truly unable to determine the government's requirements for this lock based on the RFQ's item description or the S&G catalog, it could easily acquire this information by requesting a copy of the lock's NSN item description from the agency. During the course of this protest, our Office contacted the agency's NSN supply center and found that for this lock, the NSN item description sets forth the detailed specifications of MIL-L-15596G.

under this RFQ to a mechanical lock design.¹⁴ We find this argument without merit.

Where, as here, an agency conducting small purchase procurements determines that a particular manufacturer's part number will meet its minimum needs, the agency need only indicate to offerors that alternate items will be reviewed for technical acceptability, Helitune, Inc., B-243617, July 19, 1991, 91-2 CPD ¶ 77. This is precisely what the agency did here. By including an alternate products clause, the agency permitted offers for products which perform the same functional requirements but are based on a different technical design.

In this regard, the record shows--and the agency admits--that while the actual locking mechanism of the protester's lock operates electrically rather mechanically, the Mas-Hamilton lock may be functionally interchangeable with the specified S&G lock since it operates using the same combination dial process, and since its physical dimensions are

¹⁴Mas-Hamilton also contends that the specified S&G lock does not meet the agency's minimum security needs since it is a mechanical, rather than electrical lock. Since a procuring agency is in the best position to know how a solicited item is to be used by the agency, and the agency has primary responsibility for ascertaining its needs and specifying its requirements, our Office will not disturb an agency determination as to the best method for satisfying those needs, absent a showing that this judgment was unreasonable. East West Research, Inc., B-238633, June 13, 1990, 90-1 CPD ¶ 555. Here, Mas-Hamilton has failed to provide any evidence indicating that the selected mechanical lock is inappropriate, and its disagreement with the agency judgment does not constitute such evidence. Further, in arguing that an electrical--rather than mechanical lock--should be procured because of the electrical lock's superior security capabilities, Mas-Hamilton is essentially arguing for the use of more restrictive specifications that reflect the electrical lock's higher standard of performance. For example, Mas-Hamilton contends that the agency's minimum needs for an electrical rather than mechanical lock require this solicitation to include FF-L-2740. Our Office will not consider a protest that the procuring agency should use more restrictive specifications to meet its minimum needs. See Trimble Navigation, Ltd., B-247913, July 13, 1992, 92-2 CPD ¶ 17; Cooper Ingus., Inc., Crouse-Hinds Molded Prods. Div., B-247909, Mar. 18, 1992, 92-1 CPD ¶ 292. Accordingly, we dismiss this ground of protest.

identical to those of the S&G lock, thereby allowing for the same replacement mounting and installation.¹⁵ Under these circumstances, we find that the RFQ's item description and alternate products clause does not exclude Mas-Hamilton or any other offerors of electrical locks from the competition.

The protest is denied.


for James F. Hinchman
General Counsel

¹⁵In a supplemental submission for the record--dated September 16--the agency specifically asserted that "an electromechanical lock does meet and in fact exceeds the agency's needs" for this procurement.