



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

Decision

Matter of: Pynco, Inc.
File: B-257853
Date: November 16, 1994

Dennis J. Riley, Esq., and Andrew B. Katz, Esq., Riley & Artabane, for the protester.
Robert P. Knowles and Peter J. Moores, for Druck, Incorporated, an interested party.
William R. Medsger, Esq., and Dalford R. V. Widner, Esq., Department of the Army, for the agency.
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency decision to require bid samples in lieu of technical proposals in procurement for test sets is reasonable where the agency did not have adequate specifications to describe the facility of use characteristics it required in the test sets.

DECISION

Pynco, Inc. protests the requirement for bid samples in solicitation No. DAAH01-94-R-S032, issued by the Department of the Army for pitot-static test sets.

We deny the protest.

Pitot-static test sets are used to perform serviceability and leak checks on aircraft barometric pressure gauges to ensure the accuracy of those instruments. The current procurement is being conducted as part of the Army's Test Equipment Modernization (TEMOD) Program managed by the U.S. Army Test, Measurement, and Diagnostic Equipment Activity. The modernization program is intended to acquire general purpose test equipment and to reduce the proliferation of different makes and models of such equipment.

The Army initially developed and published a draft purchase description, TEMOD-95-01, for a pitot-static test set that would meet the needs of the various Army agencies. Subsequently, after issuing a questionnaire seeking industry comments, and convening a joint working group to permit manufacturers to demonstrate their products, the Army modified the draft specification. On April 8, 1994, the

Army published a notice in the Commerce Business Daily of its intent to procure pitot-static test sets using two-step sealed bidding procedures with step one consisting of a letter request for bid samples in lieu of technical proposals. That request was released as a 100-percent small business set-aside on April 25. Bid samples were initially due on June 26, but the due date was changed to July 18 at the request of a potential offeror. By letter dated May 19, Pynco protested to the contracting officer, complaining about the requirement for bid samples, among other things. After the protest was denied, Pynco submitted its protest against the bid sample requirement to our Office.

Pynco argues that the Army has improperly required bid samples rather than technical proposals in conducting the procurement. Pynco asserts that the requirement for bid samples places an undue financial burden on potential offerors because they cannot produce the bid samples without making significant costly changes to their existing equipment. According to Pynco, under the Federal Acquisition Regulation (FAR), a procuring agency may only require bid samples when the government desires design characteristics that cannot adequately be described in the specifications. Pynco asserts that since the Army could have used a specification developed by the Navy to procure its test sets, the Army cannot argue that it does not have adequate specifications to describe the test sets. Although the Army asserts that it cannot use the Navy's specification because it overstates its needs, Pynco asserts that the Army could simply delete requirements it deems unnecessary.

In response, the Army asserts that it required bid samples because there are several facility-of-use factors that cannot be adequately described in the specifications. These factors include workmanship, ease of calibration, maintainability,¹ application compatibility, and human factors characteristics. The Army asserts that these factors require a visual inspection to determine the presence of characteristics that might impair serviceability, durability, and/or safety. Thus, for example, the Army states there is a need to determine if the design; location and layout of controls; displays; and maintenance accesses are compatible with the clothing and personal equipment, such as heavy gloves, worn by personnel using and maintaining the test sets. The Army argues that it can only ensure that it will purchase test sets meeting these standards by inspecting bid samples. Similarly, the Army states that it must test the samples to determine

¹Maintainability concerns the arrangement and accessibility of components and printed circuit boards for ease of maintenance.

whether components and printed circuit boards are arranged and are accessible so that they can be easily maintained; and to assure that there are no features that might impair safety, such as the routing of wires near rough surfaces or sharp corners; or characteristics that might detract from the test set's intended operation, function, or appearance--such as loose, spattered or excess solder, or other foreign material.

The Army further asserts that it cannot use the Navy specification to procure its test sets because that specification overstates the Army's needs. The Army explains that the Navy's specification is a detailed specification calling for a test set that is designed specifically for military use while a commercial test set modified to meet the Army's needs would be acceptable to the Army. The Army further explains that the Navy specification calls for a test set that is designed for continuous operation aboard Navy ships and must be capable of testing Navy aircraft which fly at higher speeds and altitudes than Army aircraft--which are typically helicopters.

Under FAR § 14.202-4(b)(1), procuring agencies are precluded from requiring bidders to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specification or purchase description. FAR § 14.202-4(c) indicates that it is appropriate to request bid samples for products that must be suitable from the standpoint of balance, facility of use, general feel, color, pattern, or other characteristics that cannot be described adequately in the specifications.

As explained, Pynco argues that bid samples should not have been required because an adequate specification--the Navy's existing specification for the test sets--is available. Pynco, however, does not otherwise argue that the Army's specification adequately described the human factors/facility of use characteristics sought by the agency. In addition, Pynco does not assert that the facility of use/human factors characteristics in the Navy's specification were sufficient for the Army's use even though Pynco was provided the Navy specification; and the Army specifically explained during the protest why the Navy specification does not meet its needs. Nor has Pynco attempted to dispute the Army's position that it could not simply relax the Navy's specification to meet its needs since its needs are very different from and less stringent than those of the Navy. Under these circumstances, the record adequately demonstrates that a visual inspection was required in order to determine whether the offered test sets meet the Army's requirements. See Magnaco Indus., B-216211, Jan. 31, 1985, 85-1 CPD ¶ 122.

Pynco also protests that, as evidenced by the fact that only one offeror submitted a bid sample, the time allowed for submission of bid samples unduly restricts competition. Our review of the record does not support Pynco's contention. Before the Army released the solicitation, at least four potential offerors, including two small businesses--Druck, Incorporated and Laversab, Inc.--indicated that they could comply with the agency's requirements. None indicated that they would need any specific time period to do so. After issuing the solicitation, the Army extended the time period for the submission of bid samples from 60 to 82 days. Subsequently, a few days before the bid samples were due, Laversab requested an extension of the due date for bid samples because its sheet metal contractor failed to supply material needed to assemble the samples. Another potential offeror--Command Electronics Company--informed the agency that it was currently producing the test set and was filling orders on a first come/first served basis, and therefore it did not have samples available for submission. Command Electronics requested the Army to consider its test set based on its literature. Thus, until the protest was filed, no potential offeror complained that the bid sample could not be produced in the required time period.² Further, the individual business circumstances of the various potential offerors appear to be the reason why only one firm submitted a bid sample. Based on these factors, we disagree that the time period permitted for the submission of bid samples improperly restricted competition.

In any case, in denying Laversab's request for an extension of time in which to submit its bid samples, the Army explained that it could not further delay the procurement because it needed to procure a modern test set to ensure flight safety. The protester has not challenged the Army's explanation of its needs. Thus, even if the 82-day period

²After the protest was filed, a representative of Laversab submitted an affidavit stating that Laversab would not have been able to submit bid samples because of the time, money, and effort involved in doing so. However, Laversab had never expressed this concern to the Army, and as late as July 1994, Laversab requested an extension of time to supply its bid samples due to delays caused by its sheet metal supplier. We thus question Laversab's current statement and in reaching our decision, we have not credited it with any weight.

did restrict competition, it would not be improper. See Swanson Gen. Contractors, Inc., B-253741, Oct. 13, 1993, 93-2 CPD ¶ 222.

The protest is denied.

For 
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