

Proc. I

DECISION



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

9617

FILE: B-193501

DATE: March 27, 1979

MATTER OF: Educational Media Division, Inc.

DIGEST:

[Allegation that Specifications in RFP were Unduly Restrictive]

Protest that specifications for language laboratory tape deck requiring three motor solenoid operated reel-to-reel tape transport, independent power supplies in each deck, recording level controls, and tape threading outline are unduly restrictive of competition is denied, because agency provided reasonable basis for determination that requirements reflected its minimum needs.

Educational Media Division, Inc. (EMD), has protested request for proposals (RFP) No. DAAG0879-R-0015 for a language laboratory system for the United States Military Academy (West Point), issued by the Sacramento Army Depot, California.

EMD alleges that the specifications for the tape decks are obsolete, are written around design characteristics of tape decks manufactured by GEL Systems, Inc. (GEL), do not describe the Government's minimum needs, describe equipment not commercially available, and are therefore unduly restrictive of competition. EMD argues that the following aspects of the specifications are restrictive:

1. The tape deck will be a three motor reel-to-reel solenoid operated deck.
2. Each deck will have its own power supply.
3. The deck will have an outline of the tape threading path with arrows indicating the proper tape direction.

~~564766~~

4. All recording machines will have recording level indicators with operator adjusted level controls.

EMD argues that cassette tape decks are now the accepted state-of-the-art in language laboratory systems and that reel-to-reel decks are obsolete. According to EMD, cassette decks are the equal of reel-to-reel decks in performance and are easier to use. EMD's opinion is that the specifications should describe performance requirements and that if cassette decks can meet the requirements they should be acceptable.

EMD contends that the functions served by the required recording level controls can be performed equally by automatic circuitry. According to EMD, automatic circuitry is preferable because recording level adjustments are too critical to be made properly by the average language laboratory user. EMD has not specified beyond its bare allegation why an internal power supply and tape threading outline are unnecessary or restrictive of competition.

Government procurement officials who are familiar with the conditions under which supplies, equipment or services have been used, and are to be used, are generally in the best position to know the Government's actual needs. Consequently, we will not question an agency's determination of what its minimum needs are, or what will satisfy those needs, unless there is a clear showing that the determination has no reasonable basis. Herley Industries, Inc., B-186947, September 30, 1977, 77-2 CPD 247; Jarrell-Ash Division of the Fisher Scientific Company, B-185582, January 12, 1977, 77-1 CPD 19; Johnson Controls, Inc., B-184416, January 2, 1976, 76-1 CPD 4. Also, though needs should be determined so as to maximize competition, we will not interpose our judgment for that of the agency unless the protester shows by clear and convincing evidence that the agency's judgment is in error and that a contract awarded on the basis of those needs would be unduly restricting competition be a violation of law. See, e.g., Joe R. Stafford, B-184822, November 18, 1975, 75-2 CPD 324.

Additionally, even though performance specifications generally may be less likely to place undue restrictions on competition there is no legal proscription

on the use of design specifications, provided that the requirements as stated are not unduly restrictive and accurately reflect an agency's minimum needs. G. A. Braun, Inc., B-189563, February 1, 1978, 78-1 CPD 89.

The United States Army Materiel Development and Readiness Command (DARCOM) has provided its justifications for the protested specifications. Regarding the requirements for three motors and solenoid controls, DARCOM states, generally, that these features are necessary due to the constant "forward-back-forward" movements involved in effectively teaching foreign languages and the heavy use of the West Point facility. According to DARCOM, the three motor solenoid control deck offers the following advantages over similar tape decks with fewer motors and other types of controls:

1. Elimination of complex clutch and belt drive and mechanical control linkage.
2. Uniform tape tension in all modes.
3. Minimization of number of controls.
4. Superior braking capabilities.
5. Reduction of tape stretching, tape breakage and tape loop formation when there is a change in mode (e.g., forward to rewind).
6. Reduction of flutter-and-wow.
7. Permits use of remote control.
8. Extends the life of the drive motor.
9. Reduction of lubrication points and thus simplifies lubrication maintenance.
10. Reduction of the number of replaceable parts in the drive train and tape transports, thus simplifying and reducing repairs.
11. Elimination of mechanical alignment of the drive train.

DARCOM contends that experience has established that tape decks with these characteristics present fewer use and maintenance problems, have less "down time," and are more cost effective than are tape decks without these features.

Concerning its preference for reel-to-reel tape transports rather than cassette, DARCOM states that its language laboratory software is currently produced only in the reel-to-reel format, and that it presently does not have the capacity to produce materials in cassette form. Additionally, DARCOM says that it has a large backlog of reel-to-reel material that must be used.

Regarding the requirement for recording level controls, DARCOM states that because normal speaking voice level varies between individuals, a manual adjustment is necessary to preset the levels even before the signal reaches the automatic gain control. According to DARCOM, its experience with systems with only automatic gain control has been unsatisfactory because the recorded voice has often been either too loud or inaudible.

DARCOM requires independent power sources in each deck to insure adequate power levels and to prevent all student positions from being rendered inoperable because of the failure of one power source. DARCOM states that it has experienced inadequate power levels in language laboratories with a single central power supply.

Finally, DARCOM states that the tape threading outline is necessary for speed and ease of tape threading and may be accomplished simply by applying a decal to any tape deck that does not have such an outline.

In commenting on these justifications, EMD argues that cassette materials can easily be duplicated from reel-to-reel sources and that the use of decals for the tape threading outline is prohibited by another specification. Neither of these allegations is supported by any evidence. Moreover, even if EMD is correct in these allegations, DARCOM has provided a rational basis for the reel-to-reel and tape threading requirements.

While EMD alleges that only GEL can provide a tape deck that complies with these specifications, the record shows that such decks are commercially available from a number of manufacturers. In fact, EMD has recently installed a language laboratory meeting these requirements at a major university.

In response to a congressional request in 1976, GAO's Procurement and Systems Acquisition Division issued a letter report concerning the restrictiveness of these specifications. B-188636, April 28, 1977. That report concluded that the specifications were not unduly restrictive of competition, but also concluded that DARCOM had not supported its preference for reel-to-reel tape decks with documentary evidence. GAO recommended that the Department of the Army (Army) conduct a study comparing reel-to-reel and cassette tape decks. This study is presently nearing its conclusion, but an official report has not yet been released.

It is our opinion that for this procurement DARCOM has sufficiently justified the protested specifications and EMD has not shown that the determination lacks a reasonable basis. We assume, however, that the Army report will provide sufficient data to be used as guidelines for the use of cassette versus reel-to-reel decks in future language laboratory procurements and that future decisions will be based on that data.

In its comments on the DARCOM report, EMD first alleged that several other specifications were restrictive of competition. We will not consider these allegations. Section 20.2 (b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978), requires all protests of patent solicitation defects to be filed prior to the date for receipt of initial proposals. EMD was aware of these specifications prior to that time and should have raised these allegations in its initial timely protest. Our procedures do not contemplate piecemeal development of protest issues. AIL West, B-190239, January 17, 1978, 78-1 CPD 38; Radix II, Inc., B-186999, February 8, 1977, 77-1 CPD 94.

Accordingly, EMD's protest is denied.


Deputy Comptroller General
of the United States