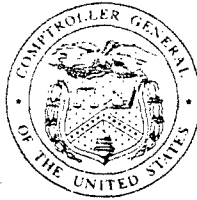


DECISION



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

10,525

FILE: B-194247

DATE: June 25, 1979

MATTER OF: D&S Word Processing Systems

DLG01911

DIGEST:

1. Procuring activity is accorded broad range of judgment and discretion in making determination of legitimate needs and such determination is not subject to question unless there is clear showing that determination has no reasonable basis. Protested specifications are not found to be unduly restrictive where protest consists essentially of bare allegation without specific rebuttal to agency position.
2. Question of whether agency determination to install dictating and transcribing system in-house rather than by contract is matter of Executive policy for consideration under OMB Circular A-76, and is not within GAO's decision function. Consequently, matter will not be considered on merits.
3. Where procurement under Federal Supply Schedule (FSS) contracts is mandated by regulation and terms, conditions, and prices of FSS contracts are considered appropriate for use by agency, there appears to be no reason to apply for exemption to procure by competitive bids.
4. GAO Bid Protest Procedures, 4 C.F.R. § 20.3 (1978), which allow protester 10 days to submit comments on agency report is adequate. In instant case, protester has failed to show why 10-day time limit is unreasonable.

[ALLEGATIONS THAT Bid Specifications
Were Restrictive]

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In the matter of National Office Equipment Company, B-191003, June 6, 1978, 78-1 CPD 413, we recommended (1) that the Department of the Army (Army) terminate for convenience its 3-year lease with Dictaphone Corporation for a dictating and transcribing (D/T) system at the Walson Army Hospital when an adequate substitute system had been provided for; and (2) that the Army should procure a D/T system in a manner which assures the least cost to the Government, consideration of all eligible firms, and continuity of service. We affirmed our recommendation in the matter of The Department of the Army, Request for Modification of GAO Recommendation, B-191003, January 9, 1979, 79-1 CPD 9. *AGC00020*

In response to our recommendation, the Army prepared a list of specifications which allegedly represented its legitimate needs. The Army also identified D/T equipment available under Federal Supply Schedule (FSS) contracts which would satisfy these needs or which would come closest to satisfying these needs. A list of the specifications and equipment was sent by the Army to each of the four FSS D/T vendors, including the protester, for comments followed by meetings with representatives of the four firms and price evaluations based on the FSS contracts. No award has been made.

D&S Processing Systems (D&S) filed a protest with our Office. The bases of protest follow:

1. The specifications are unduly restrictive to the extent that they require digital counters, variable speed and direction foot control, and rechargeable batteries for portable units.

2. D&S equipment less expensive than that suggested by the Army will satisfy the Army's legitimate needs.

3. The installation of the D/T system by Army personnel will result in hidden expenses, and

installation difficulties. It will create confusion regarding the applicability of manufacturers' warranties, and favor one vendor over another.

4. The D/T system should be procured by competitive bids. The procurement of the D/T system under an FSS contract will neither result in the lowest cost to the Government nor continuity of service.

5. GAO Bid Protest Procedures, 4 C.F.R. § 20.3(d) (1978), which provide that a protester shall file comments with GAO within 10 days of receipt of an agency report, do not allow a reasonable time to submit a reply.

With regard to the allegedly unduly restrictive specifications, the Army states that digital counters are necessary to locate reference points for dictation and transcription. A variable speed and direction foot control is required for transcription where the typist cannot use her hands and may have to stop, rewind, and go forward. Rechargeable batteries are necessary for portable recorders to allow utilization of portable units without the necessity of carrying extra batteries.

Procuring agencies are required to state specifications in terms which will permit the broadest field of competition and which will still satisfy the agency's legitimate needs. We have consistently stated that a procuring activity is to be accorded a broad range of judgment and discretion in making determinations of its legitimate needs and that an agency's determination is not subject to question unless there is a clear showing that the determination has no reasonable basis. Galion Manufacturing Company; Koehring Road Division; Dynapac Manufacturing, Inc., B-181227, December 10, 1974, 74-2 CPD 319; American Telephone and Telegraph, B-186300, September 7, 1976, 76-2 CPD 221; Lanier Business Products, Inc., B-193693, April 3, 1979, 79-1 CPD 232.

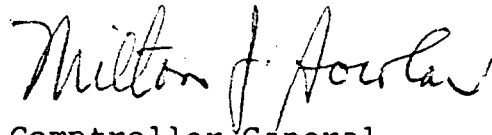
In our view, there is no clear showing in the record before us that the protested specifications are unduly restrictive. The protest on this point consists essentially of a bare allegation that certain specifications are unduly restrictive. Rather than providing any specific rebuttal to the agency position, D&S merely makes general allusions to impropriety, as for example, "There appears to be other requirements that seems to favor some vendors over others." Also, there is no showing in the record that D&S can supply D/T equipment, regardless of price, which will satisfy the Army's legitimate needs, as D&S's manufacturer apparently acknowledged at one of the above meetings.

With regard to the in-house installation of the D/T system, we have held that the question of whether an agency should perform services in-house rather than by contract is a matter of Executive policy which is for consideration under Office of Management and Budget Circular A-76, which expresses a general preference for contracting with commercial enterprises. Consequently, the matter is not within GAO's decision function and will not be considered on the merits. What-Mac Contractors Inc., B-193155, November 3, 1978, 78-2 CPD 327.

While D&S objects to the proposed procurement method, we note that the procurement of the D/T system under FSS contract is mandated by section 5-102.3 of the Defense Acquisition Regulation (DAR) (1976 ed.). Apparently, the Army considers the terms, conditions, and prices of the FSS contracts to be appropriate for use. Accordingly, there appears to be no reason why the Army should apply for an exemption to DAR § 5-102.3 (1976 ed.) and procure the D/T system by competitive bids.

Finally, based upon our experience, the 10-day time frame allowed protesters to respond to an agency report is adequate, and D&S has not shown why it is unreasonable in the instant case.

To the extent that the protest has been considered on the merits, it is denied.

A handwritten signature in cursive script, reading "Milton F. Fowler".

Comptroller General
of the United States