

1 May 23583

DECISION



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

FILE: B-207655

DATE: November 16, 1982

MATTER OF: S.A.F.E. Export Corporation

DIGEST:

1. Protester is an interested party under GAO protest procedures when it asserts that it would have submitted offer but for alleged defects in the solicitation's requirements.
2. Where agency presents prima facie case justifying use of "brand name only" restriction in RFP, burden is on protester to show that restriction is unreasonable. Protester fails to meet this burden where its only evidence is bare allegation that agency's needs can be met by other equipment.

S.A.F.E. Export Corporation (SAFE) protests the requirement that no substitutes be offered for the brand name electronic equipment solicited by RFP No. DAJA37-82-R-0634 issued by the U.S. Army Contracting Agency, Europe. We find the restriction to be reasonably related to the agency's needs and, thus, deny the protest.

The solicitation sought offers for 30 line items of electrical equipment and specified May 18, 1982 as the closing date for receipt of offers. With the exception of line items 0002, 0004, 0028, and 0029, the solicitation required that all of the equipment be "Type Esser * * *, No Substitute." SAFE originally protested to the agency before the date set for receipt of proposals contending that the "no substitute" provision restricted competition. By letter of May 19, the Army denied SAFE's protest. Thereafter, on May 27, the Army made award to three firms for all the items contained in the solicitation. SAFE OHG, a firm affiliated with the protester, was awarded a contract for equipment under two of the line items which were not restricted to Esser equipment.

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The Army contends that we should dismiss the protest because SAFE is not an interested party. It argues that SAFE has no direct or substantial economic interest in the acquisition because although its affiliate did submit an offer, the protester itself did not. We disagree. Where, as here, a protester contends that it was prevented from submitting an offer because of restrictive specifications, the protester has a substantial enough economic interest at stake to be considered an interested party under our Bid Protest Procedures, 4 C.F.R. Part 21 (1982). See Fred Anderson, B-196025, February 11, 1980, 80-1 CPD 120.

SAFE contends that the solicitation unduly restricted competition by limiting offerors to supplying only equipment made by Esser. It argues that there are a number of brands that are compatible with the Esser system, and therefore, the brand name limitation is in excess of the Army's minimum needs.

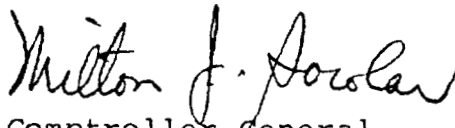
The Army responds that those items required to be made by Esser were sought to expand and supplement existing installed equipment manufactured by that firm. No substitution was permitted, it states, because the equipment was required to be electrically compatible with these existing Esser systems. Finally, the agency notes that seven firms were solicited and five submitted offers.

Government procurement officials, who are familiar with the conditions under which supplies, equipment or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the Government's actual minimum needs and, therefore, are best able to draft appropriate specifications. Interscience Systems, Inc., B-205458, March 9, 1982, 82-1 CPD 220. Generally, when a specification has been challenged as unduly restrictive of competition, it is incumbent upon the procuring agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. But once the agency establishes this support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable. Walter Kidde, Division of Kidde, Inc., B-204734, June 17, 1982, 82-1 CPD 539.

Here, the Army has made a prima facie showing that the need to integrate these items into existing alarm systems required that the components procured be made by Esser. Although SAFE has alleged that the agency's compatibility requirements can be met by other than Esser components, it has not come forward with any evidence to support this position. Specifically, SAFE has not indicated what types of components it would have offered to satisfy the agency's needs. Thus, SAFE has not sustained its burden of proving that the agency's determination was clearly unreasonable.

In its comments on the Army report, SAFE contends that the items contained in the solicitation would be sufficient to make up "two complete Esser systems on a self-standing basis." Assuming for the sake of argument that SAFE's contention is correct, we have no reason to question the agency's statement that these components are intended for use in an existing system.

The protest is denied.

for 
Comptroller General
of the United States