

DECISION

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

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FILE: B-209610**DATE:** April 5, 1983**MATTER OF:** Office Products International, Inc.**DIGEST:**

1. Federal Procurement Regulations allow an agency to change from multiple-award procurement to single-award procurement when the agency is able to develop standards and specifications for the item and agency finds that single-award solicitations would be in the best interest of the Government.
2. Drafting specifications to meet the Government's minimum needs and determination of whether items offered meet specifications are functions of procuring agency.

Office Products International, Inc. (OPI), protests award made to any other firm under solicitation No. 2YC-EAW-A-15425, issued by the General Services Administration (GSA). OPI asserts that the use of single-award contracts rather than multiple-award contracts for word processing ribbons is not in the best interests of the Government. In addition, OPI argues that several of the bid specifications were defective and that the required synopsis of the solicitation was not in the Commerce Business Daily for the required time prior to bid opening.

We deny the protest in part and dismiss it in part.

The solicitation was issued by GSA on October 8, 1982, with the bid opening date October 29, 1982. On October 20, 1982, OPI sent a letter of protest to the GAO, and it was forwarded to GSA. Upon receipt of the letter, GSA evaluated the specifications. Amendment No. 2 was issued on October 28, 1982, changing some defective specifications and extending the bid opening date to November 18, 1982.

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GSA contends that OPI's letter of October 20, 1982, was merely notification of an intent to protest and, therefore, the protest after bid opening was untimely. We disagree. While OPI's letter used the words it "intends to protest any awards made," the bases of its protest were all evident prior to bid opening and the meaning of the above-quoted phrase is that, if OPI's concerns are not corrected, a post-award protest would follow. We find the October 20 letter to have been a timely protest before bid opening under our Bid Protest Procedures, 4 C.F.R. part 21 (1982).

OPI asserts that use of single-award solicitations by GSA has been costly and wasteful in previous GSA procurements. GSA states that this solicitation is the first competitive procurement of word processing ribbons and is part of an ongoing effort to convert the acquisition of office supplies from multiple-award schedule procedures to competitive single-award methods. GSA points out that several types of office supplies have been successfully converted to the single-award method and in some cases have resulted in as much as 50 percent in savings to the Government.

GSA found that word processing ribbons were particularly suitable for competitive procurement because under previous multiple-award solicitations, offerors, including OPI, certified that their products were equivalent to specifically identified name brand products of the leading manufacturers. GSA was able to develop commercial item descriptions (CID's) based upon a "brand name or equal" concept to allow competitive solicitation.

GSA points out that the Federal Procurement Regulations (FPR) require that all purchases and contracts, whether formally advertised or negotiated, be made on a competitive basis to the maximum practicable extent (see FPR § 1-1.301 (1964 ed., amend. 83)), and sections 1-4.1100, et seq. (1964 ed., amend. 211), of the FPR's, which specifically address procurement and contracting for Government-wide automatic

data processing equipment (ADPE). The regulations are applicable to ADPE commercially available software and related supplies, including ribbons. See FPR §§ 1-4.1101 and 1-4.1102-5.

Both the protester and GSA rely on title 41 of the Code of Federal Regulations (C.F.R.), § 101-26.408(1)(b) (1982), which states:

"Federal Supply Schedule contracts are made on a multiple-award basis when doing so is to the advantage of the Government in providing effective utilization of industry production and distribution facilities or in providing selectivity from among comparable items when there are no prescribed standards or specifications."

OPI asserts that this regulation supports its argument in favor of multiple-award contracts. GSA, however, points out that it has found single-award solicitations more favorable to the Government since standards and specifications for word processing ribbons have been developed.

OPI also asserts that needs of individual agencies which will be using the ribbons will not be met and that GSA did not solicit comments from suppliers and manufacturers in the private sector. GSA submitted evidence that it had in fact solicited opinions and comments from the private sector by requesting comments on the proposed CID's. The request stated that the CID's would be used in future procurements.

OPI alleges, but offers no proof, that agency needs will not be met. GSA asserts that needs will be met and the single-award solicitation is in the best interest of the Government. Drafting specifications to meet the Government's minimum needs and determination whether items offered meet specifications are functions of the procuring agency and not for the protester to determine. See Honeywell Information Systems, Inc., B-191212, July 14, 1978, 78-2 CPD 39. We find reasonable GSA's decision to change the method of procurement to single-award solicitation.

OPI's second argument is that several specifications were defective. OPI filed a timely protest as to several

defective specifications. GSA amended most of those specifications in amendment No. 2, issued October 28, 1982, and therefore, the argument becomes moot as to those specifications. American Marine Decking Systems, Inc., B-197987, September 22, 1980, 80-2 CPD 217. Three of the specifications which OPI alleges were defective remained unchanged.

OPI alleged defective specifications for; (1) the Xerox Model 8R413, (2) the Diablo Hytype I Model 38000 and (3) the Diablo Model 24170. OPI asserted that the Xerox Model 8R413 specification was incorrect because the length measurement given was wrong. GSA has advised our Office that OPI is correct. Since the specification is defective, no award will be made for this item.

OPI also alleges that the Diablo Models 38000 and 24170 have been discontinued and, therefore, the specifications are defective. In its report, GSA states that it investigated the matter and found that the 24170 Model had not been discontinued and is currently commercially available. GSA also has advised that its investigation has established that the 38000 Model is also commercially available and is still being manufactured. The protester has the burden of proving its case and when the only evidence on an issue is conflicting statements by the protester and contracting officials, that burden is not met. International Automated Systems, Inc., B-205278, February 8, 1982, 82-1 CPD 110.

OPI originally argued that a "30-day synopsis" was required. It concedes now that the C.F.R. does not require a 30 day synopsis in the Commerce Business Daily, but asserts that GSA did not allow for the required standard bidding time under GSA Procurement Regulation § 5-2.202-1 (1982) and 41 C.F.R. § 1-202-1 (1982). OPI asserts that the standard bidding time requires 30 days for bidding.

We note that GSA initially failed to provide the required 30-day period. However, by extending the opening date to November 18, 1982, the period between issuance of the solicitation and bid opening was almost 6 weeks. Since the requirement was met, the issue becomes moot.

OPI raised additional issues in its response to GSA's report on the protest that GSA failed to adhere to regulations concerning descriptions for "brand name or equal"

products. Since these issues were not raised in the original protest and were evident prior to bid opening, they are untimely and will not be considered. See Amray, Inc., B-205037, February 9, 1982, 82-1 CPD 116.

The protest is dismissed in part and denied in part.

for *Milton J. Aocolan*
Comptroller General
of the United States