

DECISION

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

FILE: B-210029; B-210447 **DATE:** September 2, 1983

MATTER OF: Med-E-Jet Corp.

DIGEST:

1. Rejection of mass immunization injector that is powered by compressed gas offered as an alternative to the specified foot-powered injector is proper since procurement is for units to be used in the field and compressed gas, although generally available, may not be readily available in combat.
2. Specification limiting purchase of hypodermic injectors to those electrically powered is unduly restrictive of competition since injectors are intended primarily for use in fixed facilities where other power sources, such as compressed gas, also can be utilized. Need for spare parts stocking and additional training do not themselves justify the restriction.

Med-E-Jet Corp. protests the specifications of two requests for proposals (RFP) issued by the Defense Personnel Support Center (DPSC) for hypodermic injector devices used for mass inoculations. RFP No. DLA120-83-R-0285 (RFP-0285) specified a foot-operated hydraulic pump as the power source for the injector and RFP No. DLA120-83-R-0419 (RFP 0419) specified an electrically powered injector. Both types are manufactured by Ped-O-Jet International. Med-E-Jet contends that by specifying the power sources, rather than using performance specifications, the RFPs were unduly restrictive and effectively eliminated from the competition its more versatile and less expensive injector which uses compressed carbon dioxide (CO₂) as its power source. Med-E-Jet submitted proposals in response to both RFP 0285 and RFP 0419, offering its unit as an alternative to those specified, but its proposals were rejected. Awards to Ped-O-Jet are being withheld pending this decision.

026566
122264

We deny one protest and sustain the other.

As a preliminary matter, we point out that the determination of the Government's minimum needs and the best method of accommodating them is primarily the responsibility of the procuring agencies and our Office will not question an agency's determination in this regard unless there is a clear showing that the determination has no reasonable basis. Frequency Electronics, Inc., B-204483, April 5, 1982, 82-1 CPD 303. In this connection, the Defense Medical Materiel Board (DMMB) is the activity that is responsible for approving or disapproving requests for deviations from the essential characteristics it has established for medical items, for determining those items for which the sources of supply must be limited and for designating the acceptable sources of supply. No items which deviate from the essential characteristics may be procured without the prior approval of DMMB. Thus, with respect to medical materiel, a DMMB determination concerning a professional end item constitutes a technical or scientific decision as to the minimum needs of the Government and DPSC has no option other than to adhere to the determinations of the DMMB. 50 Comp. Gen. 209 (1970).

The primary justification for the procurement of the foot-operated unit is the need to have apparatus in the field that is independent of any outside power source. Additional justifications include the potential need for additional training if Med-E-Jet apparatus is acquired, the fact that there is an existing inventory of spare parts which are not interchangeable with the Med-E-Jet equipment and the reliability of the Ped-O-Jet equipment. The agency also asserts that the CO₂ required to operate the Med-E-Jet equipment would require a secondary supply system which may not be available in combat situations, despite the general world-wide availability of CO₂ in the normal civilian market place.

Although Med-E-Jet remains adamant in its contention that the availability of CO₂ is so widespread as to preclude any difficulty in obtaining it, we are not persuaded that the agency's position and concerns relative to the need for self-contained equipment in combat situations is unreasonable. We think that even the potential lack of CO₂ availability in combat is sufficient to justify the procurement of self-contained devices for field use. We

therefore believe that the specifications for self-contained units under RFP 0285 are not unduly restrictive. The protest over this procurement is denied.

Except for the need to avoid an outside power source, the agency offers the same justifications for specifying the Ped-O-Jet injectors powered by electricity. These injectors are apparently identical except for the power source and their parts are interchangeable with the foot-operated units. It appears that the electric units are stocked primarily for use in "fixed facilities," that is, hospitals, clinics and the like, and that some of the units in these fixed facilities may be required in the field.

We find these justifications to be inadequate. Although we have recognized that restrictive procurements are justified in circumstances where interchangeability of parts, compatibility with existing equipment and the existing military supply systems require it, see Jazco Corporation, B-193993, June 12, 1979, 79-1 CPD 411, neither the complexity of this equipment, the limited nature of the parts in inventory nor the facts as they appear on this record, appear to justify the restriction to Ped-O-Jet's electric units.

We first note that the individual military departments, in response to an inquiry from the DMMB, indicated at least the potential acceptability of the Med-E-Jet unit for use in fixed facilities. The Army noted that the Med-E-Jet unit "appears to be equivalent in performance" to the electrically powered Ped-O-Jet injector. The Navy reported the "the power source is immaterial" and that it currently uses the Med-E-Jet product. The Air Force indicated that it was considering procuring the Med-E-Jet unit but would want separate stock numbers for each unit.

We also note that the agency admits that the fixed facilities may freely purchase the Med-E-Jet equipment from the Federal Supply Catalog which lists the Med-E-Jet Equipment by National Stock number and a Federal Supply Code manufacturer's number. Presumably spare parts will be required for equipment purchased in this manner. The existing parts inventory is valued at about \$200,000 and there is nothing on the record to suggest that additional parts for competing equipment could not be readily stocked. We also do not agree that additional training requirements

B-210029; B-210447

justify a restrictive procurement or that proven reliability is adequate justification, since the reliability of competing equipment can be determined by other means. In short, the justifications would effectively preclude competition in perpetuity, since no firms, no matter how capable, could overcome them. Since the Med-E-Jet equipment has been used by the military and found to be satisfactory, we are recommending that RFP 0419 be canceled and that the requirement for the injectors which require an outside power supply that are to be stocked for fixed facilities be procured on a more competitive basis.

The protest on RFP 0419 is sustained.

Harry R. Van Cleave
for Comptroller General
of the United States