DECISION

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

FILE: B-219669 DATE: October 25, 1985

MATTER OF: Physio-Control Corporation

DIGEST:

1. When a protester challenges certain specifications as being unduly restrictive of the competition, it is incumbent upon the agency to establish prima facie support for the reasonableness of the specifications by demonstrating that the requirements are necessary to meet its actual minimum needs. But once the agency establishes this support, the burden is then clearly on the protester to show that the requirements are arbitrary or otherwise unreasonable, a burden not met here.

2. A protester's argument that only one bid will be found to be responsive to an IFB so as to require its cancellation is purely speculative when the bids have yet to be opened, and GAO notes that there is no requirement in the Federal Acquisition Regulation than an IFB be canceled even if only one bid is found to be responsive. Cancellation is only warranted where no responsive bid has been received from a responsible bidder.

Physio-Control Corporation protests that certain specifications in invitation for bids (IFB) No. F11623-85-B-0020, issued by the Department of the Air Force, are unduly restrictive of the competition. The procurement is for the acquisition of 59 cardiac monitor/defibrillators to be used aboard aircraft. Physio-Control complains that the specifications in issue are unduly restrictive because they are written as design, rather than as performance, requirements. We deny the protest.

Background

The IFB, originally issued as a small business set-aside on Feburary 28, 1985, solicited bids on a brand name or equal basis, with units manufactured by Medical Research Laboratories, Inc. (MRL) specified as the brand name. Bid opening was originally scheduled for April 1. However, in response to a protest filed at the agency level by Physio-Control, the Air Force subsequently issued Amendment 0003 which removed both the small business restriction and the brand name or equal requirement. Bid opening was rescheduled for August 14. However, Physio-Control protested to this Office on August 12, complaining that even though the brand name or equal requirement had been removed, four of the specifications for the cardiac monitor/defibrillators were unduly restrictive of the competition because they were based upon the design features of the MRL product. The protested specifications are: (1) the requirement that the equipment have a "durable metal exterior case"; (2) the requirement for visual and audible "hi/low rate" alarms with automatic chart recorder activation; (3) the requirement for a minimum 4 second delay between display of heart rhythm wave lengths on the monitor screen and the actual physical imprint of those rhythms on the chart recorder; and (4) the requirement that the defibrillator paddle sets have "removable adult/pediatric/neonatal surfaces."

Physio-Control contends that the requirement for a metal exterior case is in excess of the Air Force's actual minimum needs because the agency's concerns regarding protection of the equipment from impact and shock can be met just as easily through use of a non-metal case.

Physio-Control asserts that the requirement for both visual and audible alarms is unnecessary if not actually dangerous because aircraft or patient motion can cause false alarms, and there is no provision in the specifications to compensate for this. The firm insists that the Air Force's actual minimum need is only for a reliable heart rate indicator.

With regard to the requirement for a minimum 4 second delay between the monitor display and the chart recorder, Physio-Control contends that the requirement only reflects a particular design feature of the MRL product. The firm believes that the agency's actual minimum need is that the equipment provide the equipment operator with the

ability to see the monitor display from a given distance and capture any abnormal heart rhythms on the recorder.

Physio-Control also urges that the requirement that the defibrillator paddle sets have removable surfaces is improper because of the great risk that these surfaces will be lost or misplaced during actual operations. Physio-Control contends that the requirement should be rewritten to allow for defibrillator paddle sets with permanently attached adult surfaces over which the less frequently used pediatric and neonatal surfaces can be attached.

Physio-Control did not submit a bid, and the firm contends that any bids from firms other than MRL will be nonresponsive. Physio-Control requests that the IFB be canceled and reissued as a negotiated procurement, and that the Air Force revise the challenged specifications to reflect its actual minimum needs. The Air Force informs us that bid opening has been postponed indefinitely pending our resolution of the matter.

Analysis

The determination of the government's minimum needs, the method of accommodating them, and the technical judgments upon which those determinations are based, are primarily the responsibility of the procuring agency. The agency is most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. Accordingly, we will not question an agency's determination of its minimum needs unless there is a clear showing that the determination has no reasonable basis. Eaton Leonard Corp., B-215593, Jan. 17, 1985, 85-1 CPD ¶ 47.

However, when a protester challenges a specification as being unduly restrictive of the competition, it is incumbent upon the agency to establish prima facie support for the reasonableness of the specification. Wiltron Co., B-213135, Sept. 14, 1984, 84-2 CPD ¶ 293. Such prima facie support should consist of an explanation establishing a reasonable basis for the agency's determination that the restrictive specification is needed to meet the agency's minimum needs. Lista International Corp., 63 Comp. Gen. 447 (1984), 84-1 CPD ¶ 665. But once the agency establishes this support, the burden is then clearly on the protester to show that the requirements complained of are arbitrary or otherwise unreasonable. Eaton Leonard Corp., B-215593, supra.

Here, the record demonstrates that the four specifications challenged by Physio-Control are based upon particular design features of the MRL cardiac monitor/ defibrillator. MRL developed its product as the result of a series of contacts with the Air Force beginning in 1983. The product was tested and evaluated by the Air Force's School of Aerospace Medicine and was found to possess certain features which were viewed favorably. The evaluation report shows that the Air Force was impressed with the product's carrying case since it was "made of rugged stressed aircraft aluminum . . . and ideally suited for transport." The Air Force's report noted that MRL provided optional features such as a 4 second delay between the display monitor and chart recorder; a high/low heart rate alarm which automatically activated the chart recorder and gave off an auditory tone when the heart rate deviated from the set heart rate; and both neonatal and pediatric disposable electrodes.

Although there seems to be no dispute that the Air Force considered these design features to be desirable and, therefore, incorporated them into the IFB, the principal question to be resolved is whether these features are essential to meet the Air Force's actual minimum needs. See Fleetwood Electronics, Inc., B-216947.2, June 11, 1985, 85-1 CPD ¶ 664.

In this regard, we cannot consider the requirement that the external carrying case be made of durable metal to be unreasonable. We believe the Air Force has met its prima facie burden as it states that although the specification speaks only of the obvious necessity for protection from environmental changes and damage afforded by the case, the agency required that the case be made of metal because it would be more likely to provide visual evidence of damage from impact or shock than a non-metal case. In the Air Force's view, a metal case reduces the likelihood that a unit which has been internally damaged will be selected for operational use.

Although it may be true that Physio-Control's non-metal case, made of the same composite material as used in football helmets, may afford an equivalent level of protection, the firm has not established that this material provides the same degree of visual evidence of damage than a metal case. That is, it appears that a metal case would show dents from dropping or misuse whereas the composite material would not necessarily indicate such potentially harmful impact. Moreover, Physio-Control has not demonstrated that it is unable in competitive terms to furnish a

metal exterior case. See Julie Research Laboratories, Inc., B-218598, Aug. 20, 1985, 85-2 CPD ¶ 194. In fact, the firm admits that providing the case is not a handicap. Hence, we do not find that the requirement is unduly restrictive of the competition.

We also cannot object to the requirement that the cardiac monitor/defibrillator have both visual and audible alarms. The Air Force states that this is necessary given the conditions of use aboard aircraft. Although the Air Force recognizes Physio-Control's position that the nature of the system design may, at times, produce false alarms due to aircraft and patient motion, the Air Force asserts this is preferable to a situation where the unit operator may overlook the visual warning of a potential problem provided by the heart rate indicator.

We believe the Air Force has clearly established prima facie support for the necessity of this restriction, which is not overcome by Physio Control's concern regarding the possibility of false alarms. In fact, Physio-Control's position is not relevant to the issue of whether the requirement for both types of alarms is unduly restrictive, since the firm is really attempting to argue that the two-fold system may prove to be unreliable in actual use, not that the specification exceeds the Air Force's actual needs. Since the Air Force has obviously considered and discounted the potential for risk occasioned by false alarms, we find no basis to question the agency's technical judgment that the two-fold system is necessary for operational use aboard aircraft.

We reach a similar conclusion with respect to the requirement that there be a minimum 4 second delay between display of the heart rhythm wave lengths on the monitor screen and the actual physical imprint of these rhythms on the chart recorder. It is apparent that the Air Force does not want the chart recorder to be recording the entire time the monitor is in use, but rather that there be a sufficient delay period so that if the unit operator notices abnormal heart rhythms, he can get to the equipment and activate the "freeze/record function" so as to capture the abnormal rhythms on paper.

Although Physio-Control essentially argues that the Air Force's actual need is for the operator to be able to see the monitor from a given distance, rather than for a precise delay period between monitor display and chart

recordation, the firm's position, again, does not overcome the Air Force's prima facie showing as to the reasonableness of the restriction.

We note that the specification does not require that the delay feature be exactly 4 seconds in length, but only that it be at least that long in duration. Physio-Control has never asserted that it is competivitely unable to meet the specification because it cannot provide a delay feature of 4 seconds or longer for its offered unit. Julie Research Laboratories, Inc., B-218598, supra. Hence, because it appears that the Air Force's actual minimum need is for the unit operator to be able to utilize the freeze/record function in order to capture abnormal heart rhythms on paper without the necessity for full-time operation of the chart recorder, we do not find that the minimum 4 second delay requirement is unduly restrictive.

Finally, we cannot object to the requirement that the defibrillator paddles have removable adult, pediatric, and neonatal surfaces. The Air Force states that the requirement is necessary because if the unit is provided with hardwired adult paddles (most commonly used), which then prove to be defective, the entire unit is inoperative for pediatric or neonatal cases. Also, the Air Force states that removable surfaces simplify the periodic maintenance checks on the units, as opposed to hardwired paddle sets which are more difficult to diagnose for defects or broken wiring. Although Physio-Control argues that this requirement increases the risk that the adult surfaces, in critical use, will be lost or misplaced, the Air force states that the units and their accessories will be transported in complete sets aboard the aircraft to minimize the risk of loss. We find nothing in Physio-Control's submissions to establish that the requirement exceeds the Air Force's actual minimum needs. Instead, the firm's position on this issue merely reflects a difference of technical opinion, and does not serve to overcome the Air Force's prima facie showing of reasonableness.

Accordingly, we conclude that the four challenged specifications, although derived from particular design features of the MRL product, are not inappropriate in this instance since they are reasonably shown as necessary to satisfy the agency's actual minimum needs. Cf. Fleetwood Electronics, Inc., B-216947.2, supra (absence of prima facie support for specific design requirements).

To the extent Physio-Control argues that the IFB should be canceled and reissued as a negotiated procurement because only MRL's bid will be responsive, the argument is purely speculative. Bids have yet to be opened, and there is nothing in the record to establish that bids from other than MRL will be found to be nonresponsive.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel