



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alan Scott Industries

File: B-230773

Date: June 10, 1988

DIGEST

1. Allegation that quality assurance testing provision in request for proposals is improper because it is allegedly being used to eliminate unwanted contractors, and to ensure award to a predetermined contractor, is denied where the identical allegation raised by the same protester against the same procuring activity was recently considered and rejected by our Office as unsubstantiated and the protester has not offered any additional evidence.

2. There is no basis for the protester's unsupported allegation that a specification requiring forceps to have box locks "without crevices or sharp edges" is overly restrictive where the agency has previously procured the item without difficulty in this regard from six different contractors.

DECISION

Alan Scott Industries (ASI) protests that certain specifications are unduly restrictive in request for proposals (RFP) No. DLA120-88-R-0459, issued by the Defense Logistics Agency (DLA), for 3,312 Schnidt Hemostatic Forceps. ASI contends that clause E009, "Testing at Government Laboratory," and the requirement that the forceps' box lock be "without crevices or sharp edges" were included in the RFP for the sole purpose of excluding "unwanted contractors" and to ensure award to a predetermined contractor. Further, ASI states that DLA has repeatedly refused to furnish ASI with samples which comply with the box lock requirement.

We deny the protest.

ASI's allegation regarding the testing provision was previously considered and denied in a recent decision also involving a DLA procurement. Our denial was based on the fact that the agency has the responsibility for determining the type and amount of testing necessary to insure product compliance with specifications, and there was no evidence in

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the record to support ASI's allegation that the use of the provision was motivated by DLA's desire to exclude certain firms from competing. Further, there was no evidence that the provision had been applied arbitrarily under prior contracts such that it reasonably might dissuade a firm from competing for the contract. See Alan Scott Industries, B-229663, Feb. 26, 1988, 88-1 CPD ¶ 201. The identical considerations are present here; therefore, we deny this aspect of ASI's protest.

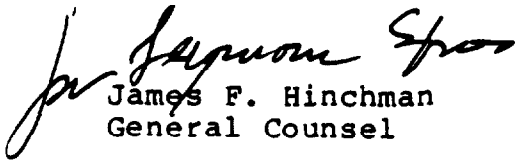
Regarding the box lock requirement, which appears reasonable on its face, DLA reports that the requirement has been a part of the specifications since 1959 and that it has not received complaints from any other contractors about meeting the specifications. Further, it reports that since 1971 six contractors have supplied these particular forceps in accordance with the specifications without problem or customer complaint. Moreover, DLA states that it has no objection to providing samples to ASI, as permitted by applicable DLA regulations.

ASI has not provided any reason why the requirement is unreasonable, nor a legitimate basis for us to question the box lock requirement. While ASI asserts that previously procured forceps did not meet the box lock requirement and therefore DLA cannot provide any conforming samples, DLA has offered to provide samples, in accordance with applicable regulations, and ASI has not offered any evidence to refute the agency's statement that the forceps have been procured in compliance with the specification since 1971. Rather, ASI merely contends that an investigation by our Office would establish that the box lock requirement is a scheme to permit DLA to award to certain contractors. However, it is not our practice to conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative statements. Electra-Motion, Inc., B-229671, Dec. 10, 1987, 87-2 CPD ¶ 581.

The fact that ASI may not be capable of meeting the box lock requirement does not make the provision overly restrictive of competition, since the government is entitled to impose reasonably based conditions that may cause the competition to be somewhat restricted. Dock Express Contractors, Inc., B-227865.2, Nov. 13, 1987, 87-2 CPD ¶ 481. Since several different contractors have previously met the requirement, we find no basis to conclude that the requirement is overly restrictive or that DLA has or will use the box lock requirement to exclude contractors or guarantee award to a particular contractor.

Finally, because DLA has agreed to provide ASI with samples as permitted by its regulations, ASI's complaint in this regard is academic. However, we note that there is no statute or regulation requiring procuring agencies to provide offerors with samples of products that are considered acceptable. United Instrument Corp., B-216740, Apr. 15, 1985, 85-1 CPD ¶ 428.

The protest is denied.


James F. Hinchman
General Counsel