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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Milcare, Inc.

File: B-230876

Date: July 8, 1988

DIGEST

1. Where the estimated dollar amount of a procurement exceeds the maximum order limitation stipulated in a mandatory Federal Supply Schedule, the procuring agency's issuance of solicitations for the purpose of price comparisons is proper.

2. Specification requiring that cabinet flipper doors retract toward the inside is not unduly restrictive where the agency explains that the specification is necessary to meet the minimum needs of the agency, and the protester does not show it to be unreasonable.

3. Where the protester has not submitted virtually irrefutable proof of bias, there is no basis for finding that contracting officials showed favoritism toward the protester's competitor in defining the requirement.

4. Cancellation of a request for quotations does not result in an improper auction upon resolicitation where the cancellation was in accord with the governing legal requirements.

DECISION

Milcare, Inc. protests the award of any contract under Department of the Air Force request for quotations (RFQ) No. 8082-S2N, issued by the Wilford Hall Medical Center at Lackland Air Force Base for systems furniture.

We deny the protest.

The Air Force issued its initial RFQ, No. F41800-88-Q1510, under mandatory Federal Supply Schedule (FSS), Group 71 (system furniture), on November 19, 1987. The Air Force states that it canceled the RFQ without awarding a contract due to vendors' complaints of restrictive and ambiguous specifications. In an attempt to resolve vendors'

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complaints, a second RFQ, No. F41800-88-Q7056/Q7057, then was issued for the same requirement on January 12, 1988, under FSS, Group 66 (laboratory and pharmacy furniture). After the Air Force announced that Milcare was the low offeror, two vendors entered agency-level protests that Milcare improperly had quoted under FSS, Group 71. The contracting officer agreed, and after canceling this second RFQ and seeking further GSA and Air Force guidance on the appropriate FSS for furniture for a hospital administrative area, the Air Force issued the RFQ in question here, on March 23, under FSS, Group 71. This RFQ modified the specifications of the prior two; it included a requirement that flipper doors on shelf cabinets retract toward the inside, i.e., recede under the top of the cabinet when opened.

Milcare contends that the Air Force violated the Federal Acquisition Regulation (FAR) by issuing RFQs to FSS contractors, and that the present solicitation contains restrictive specifications. These arguments are without merit.

The FAR does provide that where required products are available from an FSS, agencies generally shall not request formal or informal quotations from FSS contractors for the purpose of price comparisons. FAR § 8.404 (FAC 84-16). However, the FAR also states that where the FSS stipulates a dollar amount or unit quantity above which agencies shall not submit orders, and a procurement exceeds that limit, the prohibition on requesting quotations does not apply. FAR § 8.404-1(c) (FAC 84-16). The purpose of placing an order limitation clause in requirements contracts is to enable the government to explore the possibilities of securing lower prices for larger quantities exceeding the limitation. Each contract under FSS, Group 71 contains a basic order limitation of $75,000. As the estimated price of the Air Force's requirement here was $150,000, above the limitation, the Air Force could not place an order against the FSS, and instead was required to issue an RFQ. See Kavouras, Inc., B-220058.2, et al., Feb. 11, 1986, 86-1 CPD ¶ 148. Accordingly, Milcare's contention that the Air Force's requesting quotes was improper is without merit.

Milcare's argument that the specification for retractable flipper doors unduly restricted competition also lacks merit. When a protester challenges a specification as being unduly restrictive of competition, the agency bears the burden of presenting prima facie support for its position that the challenged specification is necessary to meet its actual minimum needs. Once the agency establishes support for the challenged specification, the burden shifts to the protester to show that the specification is clearly

unreasonable. Joerns Healthcare, Inc., B-227697, Sept. 18, 1987, 87-2 CPD ¶ 276.

The Air Force states that the allegedly restrictive specification is necessary to meet its minimum needs because the cabinets will be located in an area with limited storage space and cabinets with flipper doors that retract inside the cabinet leave storage space on the top. In contrast, cabinets with doors that open outside and rest on top of the cabinet restrict the available storage space.

Milcare disagrees with the Air Force's claim that doors that retract inside the cabinet are necessary for storage reasons, arguing that cabinets with flipper doors are generally stacked such that storage space on the top of the cabinets is minimal and that there are disadvantages to storing materials on top of a cabinet. Milcare also argues that a cabinet with a flipper door that retracts on the outside allows for more storage space inside the cabinet and, therefore, is preferable to a cabinet that meets the Air Force's specifications.

We will find that an agency has established prima facie support for its allegedly restrictive specification if its explanation can withstand logical scrutiny. Worldwide Primates, Inc., B-227146, July 7, 1987, 87-2 CPD ¶ 21. The Air Force's rationale for requiring flipper doors that retract on the inside clearly meets this test. While Milcare disagrees with the Air Force's position, the firm has not demonstrated that the requirement is clearly unreasonable. The Air Force, aware of its own space limitations and storage requirements, has considered the alternatives and determined that the intended use of the cabinets makes cabinet-top storage preferable to more space inside the cabinets. Milcare's mere disagreement with the Air Force's informed determination does not invalidate it. See Skyland Scientific Services, Inc., B-229700, Feb. 9, 1988, 88-1 CPD ¶ 129.

Milcare also alleges that the Air Force has shown favoritism toward one of Milcare's competitors in adding the retractable flipper door requirement. When a protester contends that contracting officials were motivated by bias or bad faith, we require it to submit virtually irrefutable proof, since contracting officials are presumed to act in good faith. Mictronics, Inc., B-228404, Feb. 23, 1988, 88-1 CPD ¶ 185. Milcare has not irrefutably established that favoritism prompted the Air Force to conduct the procurement as it did. Rather, Milcare merely notes the successive RFQs and concludes, with no further proof, that favoritism motivated the Air Force to cancel and resolicit twice. Milcare ignores the Air Force's explanation for the

resolicitations, which we find is reasonable. We conclude that Milcare has presented no evidence of favoritism or bad faith by the Air Force; the firm's unsupported speculative allegations do not constitute the irrefutable proof required. See Louisiana Department of Education, B-222591.2, Oct. 9, 1986, 86-2 CPD ¶ 412.

Finally, Milcare alleges that the Air Force created an impermissible auction condition by repeatedly issuing and canceling RFQs, and that the Air Force's disclosure of vendors' prices contributed to this auction atmosphere. Milcare has failed to show that the Air Force conducted an improper auction. When the cancellation of a solicitation is in accord with the governing legal requirements, the agency does not create an impermissible auction when it resolicits. Emerson Electric Co., B-221827.2, June 4, 1986, 86-1 CPD ¶ 521. Milcare did not challenge the cancellations and resolicitations when they occurred and, as indicated above, we find the Air Force's explanation as to the necessity for those actions to be reasonable; Milcare has not shown otherwise.

Milcare also has not shown that the Air Force disclosed Milcare's prices to other firms prior to the resolicitations. The Air Force specifically denies divulging any quotes, and the only evidence presented by Milcare is its statement that it was given other firms' prices. Thus, even accepting Milcare's statement as correct, the only evidence in the record shows that Milcare may have gained some advantage through knowledge of other firms' earlier prices, not that other firms were given Milcare's prices. This does not establish that the resolicitations created an impermissible auction situation.

The protest is denied.

James F. Hinchman
General Counsel