



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Shred Pax Corporation

**File:** B-253729

**Date:** October 19, 1993

John T. Mack, Shred Pax Corporation, for the protester.  
Deborah M. Yoon, Esq., Defense Logistics Agency, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest is sustained where agency excluded protester's equipment from solicitation based on that equipment's need for external grounding, but protester represents that its equipment is integrally (i.e., internally) grounded, and record shows agency never evaluated protester's equipment.

### DECISION

Shred Pax Corporation protests the terms of request for proposals (RFP) No. DLA730-93-R-7056, issued by the Defense Logistics Agency (DLA) to acquire a shredding machine. Shred Pax contends that the RFP improperly excludes consideration of its electromechanical shredding machine.

We sustain the protest.

The RFP, issued on a brand name or equal basis, calls for fixed-price offers to furnish one portable SSI Shredding Systems Model 3400-H shredding machine, or equal. The device is essentially a large shredding machine mounted on a lowboy truck with a crane and a conveyer system (to be used to move materials into and out of the shredder), and will be used at Tooele Army Depot to shred various wood products and tires. For purposes of this protest, only one of the RFP's salient characteristics is relevant--the device is to be driven by a hydraulic power system; electromechanically driven systems (such as the one offered by Shred Pax) are excluded.

DLA argues that electromechanical systems such as Shred Pax's are unacceptable because they use electrical generators which must be grounded using a grounding rod, i.e., a metal rod which is driven into the ground and connected to the device's electrical generator. DLA states that Army regulations require that the grounding rod be driven to a minimum depth of eight feet. According to the agency, Tooele Army Depot is located primarily on bedrock, thus making the placement of the grounding rod a labor-intensive task; the agency contends that the shredder will be moved frequently and that it does not have the personnel necessary to install the grounding rod every time the machine is relocated.

Shred Pax responds that it is unnecessary to externally ground its system due to its design.

Agencies are required to specify their needs in a manner designed to promote full and open competition, and may only include restrictive provisions in a solicitation to the extent that they are necessary to meet the agency's minimum needs. Federal Acquisition Regulation (FAR) § 10.002; Moore Heating and Plumbing, Inc., B-247417, June 2, 1992, 92-1 CPD ¶ 483. Where a protester challenges the requirements of a brand name or equal specification, we review the matter to ensure that the restrictions are reasonably related to the agency's minimum needs. Hewlett-Packard Co., 69 Comp. Gen. 750 (1990), 90-2 CPD ¶ 258.

The restriction to hydraulic shredders under the RFP here is not reasonable because it appears from the record that the generator sets used on the protester's device are "marine type" devices that do not require external grounding. These generators are designed for use in marine environments where the placement of a grounding rod is not possible (for example, where the generator is used on a ship); because of this, the generators are integrally (i.e., internally) grounded and do not require the use of an external grounding rod. In this regard, the protester's engineer testified during a telephone hearing on this matter that, instead of an external ground, the device is grounded by means of a

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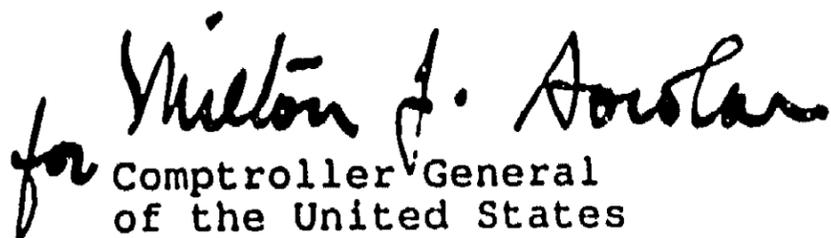
<sup>1</sup>DLA also initially maintained that the Shred Pax shredder was unacceptable because it did not provide adequate shock protection. During a hearing in this case, a Shred Pax representative outlined in detail the shock protection features of the Shred Pax system. DLA's technical representative stated, after hearing Shred Pax's information, that he was satisfied that his concern relating to the Shred Pax shock protection system had been addressed.

ground cable affixed to two points inside the generator, Transcript (Tr.) p. 13. Another Shred Pax representative pointed out that marine quality generators are used in several applications (e.g., at sea and in flood zones) where grounding simply is not possible. The agency has not refuted--either in the written record or during the hearing --Shred Pax's position regarding marine quality generators or, more specifically, Shred Pax's representation that the generator on its shredder is marine quality.

While the exclusion of electromechanically driven shredders appears to have been based on DLA's legitimate conclusion that such shredders generally need external grounding, the record shows that the agency never considered the acceptability of shredders--such as Shred Pax's--with integral grounding. In light of the hearing testimony and the other evidence presented, had DLA done so, it may well have concluded that Shred Pax's shredder is acceptable. See Bardex Corp., B-252208, June 14, 1993, 93-1 CPD ¶ 461.

In view of the foregoing, we sustain Shred Pax's protest. Accordingly, by separate letter of today to the Director of the Defense Logistics Agency, we are recommending that the agency reevaluate whether Shred Pax's (and similar) electromechanical shredder systems may meet its actual minimum needs and, if so, amend the RFP to permit offers of such electromechanical (as well as hydraulic) shredder systems. We also find Shred Pax entitled to the costs of filing and pursuing its bid protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1993). In accordance with 4 C.F.R. § 21.6(f)(1), Shred Pax's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted to DLA within 60 days after receipt of this decision.

The protest is sustained.

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