DOCUMENT RESUME

02643 - [A1652626]

[Loader Requirement Is Unduly Restrictive]. B-188277. June 2, 1977. 3 pp.

Decision re: Drexel Dynamics Corp.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).
Organization Concerned: Department of the Air Force.
Authority: 55 Comp. Gen. 1362. 32 Comp. Gen. 384. 54 Comp. Gen. 1114. B-180586 (1975). B-180608 (1975). B-185582 (1977). B-186765 (1976). B-182340 (1975). B-184416 (1976).

Award of an Air Force contract for a materials handling system was protested because of alleged restrictive specifications in the request for proposals. The contract requirement was found to be unduly restrictive, and cancellation of the solicitation was recommended. (RRS)

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DECISION

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

FILE: B-188277 DATE: June 2, 1977

MATTER OF: Drexel Dynamics Corporation

DIGEST:

Where protester offers unrefuted data showing that in normal operating conditions front-to-side loaders are more productive than side-to-side loaders and where agency contends, based on "worst case" example, that only side-to-side loaders will satisfy Government's need to increase productivity, side-to-side loader requirement is unduly restrictive and recommendation is made that RFP be cancelled.

Drexel Dynamics Corporation (Drexel) protests any award under request for proposals (RFP) No. F34650-77-00010 issued by the Air Force for a mechanized materials handling system consisting primarily of five side-to-side (180 degree loading and unloading), wire guided loaders and 14,000 feet of buried wire.

Drexel essentially contends that the Air Force has no reasonable basis to restrict the specifications to side-to-side loaders when a front-to-side (90 degree loading and unloading) Drexel model will meet the Air Force's performance requirements as stated in sections 1.0, 2.0, 3.0, and 4.0 of the RFP. Drexel further contends that because side-to-side loaders were specified the Air Force was forced to require wire guidance, an automatic height selection feature, and a pallet positioning indicator, and also to reduce the loader's maximum speed in rack aisles to 1.5 miles per hour. Drexel concludes that the Air Force could save $154,000 by revising the specifications to permit the offer of front-to-side loaders.

The Air Force reports that its minimum needs require side-to-side loaders in order to increase productivity in the materials handling operation. In support of that conclusion, the Air Force offers a statement of its engineers--that the requirement is firm and will not be changed--and the contracting officer's explanation--that the objective is to select "pick order runs" to maximize the occurrence of more than one operation sequence in the same rack aisle.

(An operation sequence or cycle includes withdrawal of the forks, travel to the next storage point, and insertion of the forks. Unlike a front-to-side loader, a side-to-side loader does not have to turn around when the next storage point is on the opposite side of the aisle. However, a front-to-side loader can operate anywhere in the warehouse as a front loader and does not require feeder vehicles whereas the side-to-side loader cannot operate as a front loader.) The record also contains discussion concerning a "worst case" situation showing that a side-to-side loader could perform one cycle in about half the time required for a front-to-side loader. The exact time per cycle for each model and the frequency of occurrence of such a situation are disputed and not clear from the record. However, Drexel also provides unrefuted information on calculated cycle time during normal operating conditions, which shows that front-to-side loaders are more productive than side-to-side loaders. Drexel also states that the Army tested both type loaders and test results show that the front-to-side loader was more desirable.

We have recognized that Government procurement officials, who are familiar with the conditions under which supplies, equipment or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the Government's actual needs, and, therefore, are best able to draft appropriate specifications. Manufacturing Data Systems Incorporated, B-180586, B-180608, January 6, 1975, 75-1 CPD 6; Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. Consequently, we will not question an agency's determination of what its actual minimum needs are unless there is a clear showing that the determination has no reasonable basis. Maremont Corporation, supra; Jarrell-Ash Division of the Fisher Scientific Company, B-185582, January 12, 1977, 77-1 CPD 19; Johnson Controls, Inc., B-184416, January 2, 1976, 76-1 CPD 4; Newton Private Security Guard and Patrol Service, Inc., B-186756, November 30, 1976, 76-2 CPD 457.

On the other hand, we have recognized that procurement agencies are required to state specifications in terms that will permit the broadest field of competition within the minimum needs required and not the maximum desires. 32 Comp. Gen. 384 (1953). Specifications based only on personal preference or on a finding that a particular item has superior or more desirable characteristics in excess of the Government's actual needs are generally considered overly restrictive. 32 Comp. Gen. 384, supra; Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. Cf. Leo Kanner Associates, B-182340, April 4, 1975, 75-1 CPD 205.

With these principles in mind, our review of the record discloses no information on productivity under normal operating conditions except unrefuted Drexel data and statements that both types of loaders were tested by the Army and test results show that the front-to-side loader was more desirable. While the Army's determination of its minimum needs is not determinative of the Air Force's minimum needs, absent any information concerning normal operating condition productivity from the Air Force other than unsupported conclusions, we find Drexel's data to be persuasive. The only rationale advanced by the Air Force is an allegation that side-to-side loaders are required to increase productivity. The only support in the record for such increased productivity is the Air Force's disagreement with Drexel over how the side-to-side loader can complete a "worst case" cycle much faster than the front-to-side model. The Air Force has failed to show (1) that the advantages of side-to-side loaders are greater than the advantages of front-to-side loaders, or (2) that front-to-side loaders will not satisfy the Government's minimum needs.

Since the Air Force has not provided a reasonable basis for the side-to-side loader requirement and on the basis of the current record we can perceive none, we must agree with Drexel and conclude that the RFP's side-to-side loader requirement is unduly restrictive. Accordingly, we recommend that the solicitation be cancelled.

Protest sustained.

In the event of resolicitation, based on (1) substantially similar detailed design and performance specifications, (2) using low total price as the sole evaluation criterion other than basic technical acceptability; and (3) foreseeing no intent or purpose to be served by negotiation--an advertised procurement rather than a negotiated procurement would seem to be appropriate.

As the decision contains a recommendation for corrective action to be taken, it is being transmitted by letters of today to the congressional committees named in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970).

R. F. Keller

Deputy Comptroller General
of the United States