



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20546

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B-178138

May 23, 1973

Eoged Incorporated
1525 Elwyn Avenue
Crofton, Maryland 21113

Attention: Mr. R. D. Bonney
President

Gentlemen:

We are in receipt of your letter of April 9, 1973, and prior correspondence, protesting against any award of a contract under Government Printing Office (GPO) solicitation No. 14533 being made prior to a complete revision of the specifications.

The solicitation in question is for the procurement of two battery operated narrow aisle reach fork trucks. You contend that (1) the specifications are restrictive to the product of one manufacturer; (2) if the specified 42-inch length of the forks, which you believe serves no useful purpose, was reduced to 40 inches, two additional bidders would be able to meet the 85-inch overall length specifications; and (3) another method of increasing competition would be to use a more compact battery.

You contend further that the specifications contain numerous conflicts and contradictions. Specifically, you assert that the requirement stated on page 6, paragraph 2, of the schedule, that the trucks are to be furnished without overhead guards, is in conflict with the provisions of the Occupational Health and Safety Act (OHSA) with which the invitation for bids (IFB) states the equipment furnished must comply. Also, you allege that certain dimensions and requirements stated in the schedule conflict with standards contained in the incorporated military specifications. These conflicts purportedly exist as to: (a) load back rest height; (b) coaster wheel height; (c) load wheel size; (d) battery compartment; (e) the requirement for power steering; (f) position of controls; and (g) position of steering wheel.

However, any conflicts between the dimensions and standards in the schedule and the incorporated military specifications are resolved by paragraph 19 of standard form 33A which states:

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19. ORDER OF PRECEDENCE. In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order; (a) the schedule; (b) Solicitation Instructions and Conditions; (c) General Provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and (e) the specifications. (Emphasis added.)

See B-161930, September 25, 1967. Therefore, the sizes and requirements in the schedule prevail.

Further, an ambiguity does not exist in connection with the solicitation's request for a truck without an overhead guard in seeming disregard of the OSHA. 29 CFR 1910.178(e)(1) allows for the deletion of the guard where operating conditions do not permit. Since the agency has obviously made this determination, the IFB contains no conflicting provisions on this point.

The dimensions of the trucks sought were dictated by the physical limitations of the GPO building. Although the specifications provided for an 85-inch maximum overall length and a 42-inch length for the fork, it was equally critical that the truck body length not exceed 43 inches.

If the specifications were amended per your request and the fork shortened (to 40 inches), thereby allowing the truck body to be lengthened (to 45 inches) while maintaining the overall 85-inch maximum length, the agency's needs would not be met. Such a truck when carrying a standard 48-inch pallet would have a loaded length of 93 inches--thereby providing a mere 2-inch clearance on the GPO's 95-inch elevators. The agency has determined, with justification, that this close tolerance is inadequate. On the other hand, a 43-inch truck body, similarly equipped and loaded, will only have an overall length of 91 inches. Such a vehicle will have the 4-inch elevator clearance which the agency deems essential.

The agency admits that a 40-inch fork could be substituted for a 42-inch fork with no loss of efficiency in carrying 43-inch pallets. However, such a substitute would not in and of itself have any effect in increasing competition without a change in the maximum truck body length of 43 inches; and, as previously shown, such an increase in size has been determined to be impractical.

While our Office has consistently stated that specifications should be drawn to maximize competition, B-172006, June 30, 1972, we will not interpose our judgment for that of the agency's even when competition is reduced " * * * unless there is clear and convincing evidence that the agency opinion is in error and that a contract awarded on the basis of such specifications would, by unduly restricting competition * * * be a

violation of law." (Emphasis added.) 40 Comp. Gen. 294, 297 (1960); see 49 id. 156 (1969) and 17 id. 554 (1933). Under the circumstances, these specifications are not unduly restrictive for they do not appear to have been unreasonably derived. See M. Steinthal & Co. v. Searns, 455 F. 2d 1289 (1971).

You also contend that the length of the truck body could have been shortened by reducing the size of the battery compartment except that the schedule provided that the truck shall accommodate an Exide MSC-11 battery. In that regard, the specification in the schedule provided for the truck accommodating an "Exide MSC-11 (or equal)" battery. It is our understanding that the Exide battery can be produced in any one of a number of different size configurations. Therefore, the reference did not fix any specific size dimensions and you were not precluded by the reference from offering a truck whose battery compartment could accommodate an equal yet differently dimensioned battery than the Exide.

In view of the foregoing, the protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
 of the United States