



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: CairnsAir, Inc.

File: B-278141

Date: January 2, 1998

Christopher E. Coombs for the protester.
Col. Nicolas P. Retson, Capt. Thomas C. Modeszto, and Mike Lonsberry, Esq.,
Department of the Army, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Solicitation requirement for brand name equipment and parts is not unduly restrictive of competition where record establishes that the requirement reasonably reflects the need for compatibility of the various components with each other and with the existing inventory.

DECISION

CairnsAir, Inc. protests the terms of request for quotations (RFQ) No. DABT01-97-T-0325, issued by the Department of the Army for self-contained breathing apparatus (SCBA), face pieces and haz-mat uniforms. The protester asserts that the RFQ's requirement for a brand name SCBA is unduly restrictive of competition.

We deny the protest.

The RFQ required that the equipment be manufactured by Survivair, Inc. and provided that no substitution would be accepted. The requirement was for 70 SCBAs (consisting of both the air pack and face piece), 70 additional face pieces and 6 haz-mat uniforms. The procurement was announced in the Commerce Business Daily and also advertised on the Electronic Data Interchange. A total of 22 vendors offering the required model responded by the original September 17 due date.

In a written "justification for other than full and open competition" issued by the agency in support of requiring the Survivair SCBA,¹ and in the agency report

¹In its comments to the agency report submitted in response to the protest, the protester contends that the agency failed to properly execute approval of the justification at a level above the contracting officer. However, Federal Acquisition
(continued...)

responding to the protest, the Army states that the fire protection division currently has over 40 of the Survivair SCBA units and that the SCBAs, which are critical life-saving equipment, must be of one brand because all air bottles, masks, regulators and back pack attachments must be compatible at a fire/emergency scene. The agency maintains that, if they are not, then during the stress of an emergency, a firefighter could pick up one manufacturer's tank assembly and another manufacturer's face assembly, which are not compatible. According to the agency, this may delay response and could lead to serious injury or fatality. Additionally, the agency determined that the equipment must also be compatible with its substantial current inventory to avoid the necessity of training emergency personnel in the use of several different systems and maintaining stocks of repair parts of several systems. The agency also states that it is prohibitively costly to maintain repair parts for several different noncompatible brands of SCBAs.

The protester maintains that it manufactures an SCBA that can fully and completely satisfy the agency's requirement and that the agency's needs do not require restricting the acquisition to only Survivair equipment. The protester maintains that, as long as the air bottles are of the same capacity and pressure rating, SCBAs by different manufacturers may be used interchangeably without endangering the life or safety of any firefighters.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition and to include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. Acoustic Sys., B-256590, June 29, 1994, 94-1 CPD ¶ 393 at 3. The contracting agency, which is most familiar with its needs and how best to fulfill them, must make the determination as to what its needs are in the first instance, and we will not question that determination unless it has no reasonable basis. Id.; Corbin Superior Composites, Inc., B-242394, Apr. 19, 1991, 91-1 CPD ¶ 389 at 5. Specifications based upon a particular manufacturer's product are not improper in and of themselves, and may be warranted where the agency establishes that the requirements are reasonably related to its needs. Lenderking Metal Prods., B-252035, B-252036, May 18, 1993, 93-1 CPD ¶ 393 at 2; Chi Corp., B-224019, Dec. 3, 1986, 86-2 CPD ¶ 634 at 3. Our Office will afford particular deference to the technical expertise of agency personnel in defining the government's needs in cases involving safety equipment. Kings Point Mfg. Co., Inc., B-210757, Sept. 19, 1983, 83-2 CPD ¶ 342 at 3.

¹(...continued)

Regulation § 6.304(a)(1) provides that for proposed contracts not exceeding \$500,000, such as the one at issue here, the contracting officer's certification will serve as approval.

Here, we find reasonable the agency's explanation of its need for the SCBA to be fully compatible with current equipment. The agency has a legitimate need to ensure that their firefighters perform their mission with safe and appropriate equipment and to minimize as much as possible the risk of delay in response to the emergency or of harm to the firefighters. Moreover, while the protester argues that in some sense equipment from the various manufacturers are compatible, it conceded, during a telephone hearing held by our Office in connection with this protest, that, while the air bottles of different manufacturers may be interchangeable, its air pack from one manufacturer will not work with a Survivair face piece.

In addition, the record shows that, while the Occupational Safety and Health Administration (OSHA)² permits the interchangeability of air bottles with air bottles whose manufacturer is not the same as the manufacturer of the SCBA, it allows the interchangeability of air bottles only during emergency responses that involve several different emergency response organizations where the SCBAs used by these organizations may be different. OSHA has stated that its intent is not to permit the interchangeability of air bottles as part of a replacement program and that it expects that, after the emergency, the air bottles will be refilled and placed back with the SCBA of the same manufacturer. On the other hand, the National Institute of Occupational Safety & Health's (NIOSH)³ approval is voided if the air bottles from one manufacturer are used with a SCBA of a different manufacturer. This is so because it is believed that even minor modifications to respirators may cause significant changes in their performance. Consequently, NIOSH cautions users against interchanging subassemblies or making unapproved modifications to their respiratory protective devices. In our view, these limitations by cognizant regulatory entities substantiate the agency's position with respect to its requirements here.

In sum, in view of the health and safety concerns associated with the need to have compatible equipment during emergency situations, we have no basis to conclude that the requirement for a particular brand of equipment is unduly restrictive of competition.

In its December 3 post-hearing comments, the protester for the first time argues that the Survivair model that is specified by the current solicitation is a new model that is not compatible with the agency's current inventory model or parts. This allegation is untimely. The protester knew from the solicitation what Survivair

²OSHA issues regulations governing respiratory protection devices for workers.

³NIOSH certifies a manufacturer's respiratory protection device through NIOSH's internal testing of these devices and the listing of the tested devices in its "Certified Equipment List."

SCBA model was being purchased and knew when it received the agency report on October 27, 1997, that the agency's justification for a brand name SCBA related to compatibility concerns. If the protester wished to raise a protest ground based on its belief that the Survivair model being procured now is not compatible with the model in the agency's inventory, it was required to raise any such concern within 10 days of receipt of the agency report. 4 C.F.R. § 21.2(a)(2) (1997). In this regard, we do note that the record shows that the agency does have, within its current inventory, parts for the Survivair model specified in the RFQ.

The protest is denied.

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