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Mr. Lebow

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-192773.2

February 7, 1980

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Eastern Cyclone Industries, Inc.
15 Daniel Road
Fairfield, New Jersey 07006

Attention: Robert A. Gessner
Manager, Proposal Engineering

Gentlemen:

We refer to your letter dated December 3, 1979, asking us to reopen your protest of the award of a subcontract by Turner Construction Corporation (Turner), the prime contractor under contract No. 100-76-0500 with the Department of Health, Education, and Welfare (HEW) for construction of an ambulatory care research facility. We closed the protest file on November 1 because you did not send a timely reply to our request of September 8 for a statement of your continued interest in the protest.

You have stated that your firm has no record of receiving our letter of September 28, and therefore did not respond. You have asked us to review your position that the specifications contained in a solicitation issued by Turner for an automatic/manual cart system unreasonably restrict competition. Since our files indicate that the September 28 letter was mailed to you, we will not reopen the protest, but we will, as you requested, review your allegations based on the existing record.

You indicate that your firm did not submit a bid on this project primarily because the specifications call for five features which your system does not possess. You object to these portions of the specifications as restrictive of competition. First, you state that the specifications call for the module, a component of the system, to be lifted off the floor and carried by the



B-192773.2

transporter to its destination. You object to the requirement that the module be lifted off the floor, as your equipment pushes the module to its destination. Your position is that whether the module is lifted or pushed has no effect on the performance of the system.

Second, you object to the requirement that the body of the transporter be made either of molded fiberglass or stainless steel. Your transporter is cast aluminum, but you state the composition of the transporter has no bearing on performance.

Third, you object to the requirement for a manual tiller to be mounted on the transporter. This, you contend, describes one manufacturer's standard product, and limits the transporter to one direction of travel. While you indicate that you can comply with this specification, you have suggested an alternate method which you state would allow both forward and backward movement and also reduce costs.

Fourth, you object to the requirement for a wire guidepath installed in a groove in the floor and energized by an oscillator. You allege that your tape method has several advantages over a wire guidepath.

Lastly, you object to the requirement that the system operate on wet cell batteries. You state that the power available from any battery is rated in ampere hours, and whether the power derived is from a wet or dry cell battery does not change the operation of the transporter. Further, you state, use of dry cell batteries can result in considerable savings in battery charging equipment.

The determination of the needs of the Government and the methods of accommodating such needs are primarily the responsibility of the contracting agencies of the Government. Manufacturing Data Systems Incorporated, B-180608, June 28, 1974, 74-1 CPD 348. We recognize that Government procurement officials who are familiar with the conditions under which supplies, equipment and services have been used in the past, and how they are to be used in the future, are in the best position to know the

B-192773.2

Government's actual needs, and, therefore, are best able to draft appropriate specifications. Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. Thus, we recognize the broad discretion of agencies in drafting specifications reflective of their minimum needs, and we will not disturb an agency's determination of its needs unless it is clearly shown to be without a reasonable basis. Science Spectrum, B-189886, January 9, 1978, 78-1 CPD 15.

HEW has advised us that the ambulatory care research facility project is a major undertaking that requires close coordination of all its segments in order to provide a usable facility and to avoid delays. The agency states that variations in the hardware requirements can influence the entire project, and indicates that it is impractical to design the building to accommodate all potential variations in the automatic/manual cart system.

In response to your specific allegations, HEW has indicated that the requirement that the module be lifted off the floor, rather than pushed, greatly reduces the possibility of cross contamination which could result if the module were pushed along the floor. The agency states that avoiding contamination is particularly important in transportation between the surgery areas and sterile areas of the building. These building function areas are about 925 feet apart, and the space over which the module will travel is not designed to be clean and, in many instances, subject to foot traffic. The agency also states that pushing the module would require it to have four rather than two swivel wheels which would make the module more difficult to move manually.

As to your objection to the requirement that transporter be made of fiberglass or stainless steel, HEW states its material selection was based upon the reliable performance characteristics of those materials. The agency states that if it had changed this aspect of the specifications, there would be a risk that the end product would be unacceptable, even if there were actual compliance with the modified specifications.

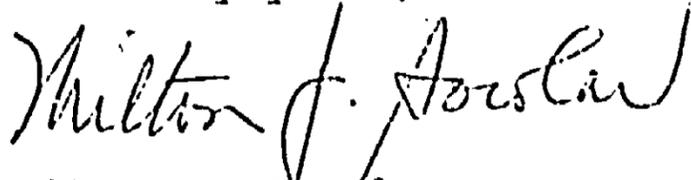
HEW believes the major factor which makes a tiller control superior to a remote control unit is the ability to physically move the unit if the transporter malfunctions. While both units could be pushed, because of the need for power to operate the remote control unit, the agency regards it as less desirable than manual steering. Lack of control with a malfunctioning transporter, HEW indicates, would create a potential safety hazard, back-up of the units, and would be detrimental to the system.

With respect to the guidepath requirement, HEW states that the recessed guidepath would last longer than a surface guidepath. The agency indicates that the surface guidepath will be subject to traffic wear. The agency also states that an energized guidepath is necessary for "queuing capability of transporters at multiple locations," and to the best of the agency's knowledge, a passive guidepath will neither allow this capability nor provide some of the control functions necessary for performance of the system.

Finally, HEW states that wet cell batteries are preferable to dry cell batteries because they can be removed from the transporter for recharge. Your system, using dry cell batteries, requires that the batteries be recharged while in place in the transporter. This would require the transporter to be taken out of service while being recharged. In turn, this would result in a need for more transporters. Further, the agency states while wet cell batteries are readily available, dry cell batteries are more difficult to replace. HEW also indicates dry cell batteries cost significantly more than wet cell batteries.

In light of the agency's explanations, and the absence of any evidence on the record which negates HEW's position, we cannot conclude the specifications exceed the Government's actual requirements or otherwise unreasonably restrict competition.

Sincerely yours,



Milton J. Socolar
General Counsel