



Comptroller General  
of the United States

1130168

Washington, D.C. 20548

## Decision

**Matter of:** Midwest Dynamometer & Engineering Company

**File:** B-257262

**Date:** August 16, 1994

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### DECISION

Midwest Dynamometer & Engineering Company protests the failure of the Environmental Protection Agency (EPA) to furnish it with the specifications for two dynamometers<sup>1</sup> that the agency is procuring for its National Vehicle and Fuel Emissions Laboratory in Ann Arbor, Michigan. The protester contends that by failing to provide it with the specifications, the agency has prevented it from competing in violation of the requirement for full and open competition.

We dismiss the protest.

The agency reports that sometime around mid-March 1994, the contracting officer determined that the agency's minimum needs could be satisfied through procurement of the type of dynamometer listed under item 253-19 of the Federal Supply Schedule (FSS) for FSC Group 49, Part 1, Section B (Motor Vehicle Miscellaneous Maintenance and Specialized Repair Shop Equipment). The schedule, of which EPA is a mandatory user, listed two contractors as suppliers of approved chassis dynamometers: Kahn Industries and Super Flow Corporation. The contracting officer contacted both contractors, but discovered that dynamometers manufactured by Kahn no longer met the technical specifications set forth in its FSS contract; she therefore requested a price quotation from Super Flow only.

On March 28, Midwest, which had learned from a source within EPA that the agency was seeking to acquire new dynamometers for the National Vehicle and Fuel Emissions Laboratory, contacted the contracting officer and requested a copy of the specifications. The contracting officer responded by telefaxing to Midwest a request for a price quotation on "Special Item 253 19, FSC Group 49, Part 1, Section B; 2 each Dynamometers." Upon receipt of the telefax, Midwest again contacted the contracting officer, by letter dated

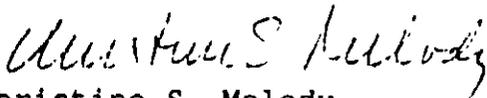
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<sup>1</sup>A dynamometer measures force or power.

March 30, and requested more detailed information as to the characteristics (e.g., size and type of controls) of the dynamometers sought. According to the agency, the contracting officer realized upon receipt of this letter that she had erred in telefaxing a request for a price quotation to Midwest since it was not listed on the FSS; she therefore did not respond to the protester's request for detailed specifications. On April 20, EPA issued Purchase Order No. 4A-0194-NBSA, for two dynamometers, to Super Flow Corp.

The protester contends that the agency's failure to furnish it with the specifications for the dynamometers violates its duty to seek full and open competition for the item. We disagree. FSS contracts are awarded through competitive procedures; thus further competition is not required when the agency issues delivery orders against a schedule. See 41 U.S.C. § 259(b)(3) (1988); Federal Acquisition Regulation (FAR) §§ 6.102(d)(3), 8.404(a); National Mailing Sys., B-250950.2, Feb. 12, 1993, 93-1 CPD ¶ 136. Once the EPA determined that its minimum needs could be satisfied through placement of a purchase order against the FSS, it was not required to seek further competition for the dynamometers. In fact, since it is a mandatory user of the FSS contract at issue, EPA was required to obtain the dynamometers through the FSS contract.<sup>2</sup> Accordingly, the agency properly issued an order under the FSS without considering a price quotation from the protester.

The protest is dismissed.

  
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<sup>2</sup>The protester does not contend and we see no evidence in the record that any of the exceptions to mandatory use of the FSS apply here. See FAR § 8.404-1.