

DOCUMENT RESUME

03014 - [A2093184]

[Protests to Restrictive Specifications, Proposal Submission Time, and Conflict of Interest]. B-186966. July 26, 1977. 6 pp.

Decision re: Denelcor, Inc.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Computer Systems Support and Evaluation Agency; Electronic Associates, Inc.

Authority: 53 Comp. Gen. 771. 53 Comp. Gen. 773. 54 Comp. Gen.

1021. B-183849 (1975). B-181227 (1974). B-162059 (1967).

B-158329 (1966). B-176278 (1972). B-185544 (1977). 4 C.F.R.

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Protester alleged that request for proposal specifications were drafted to preselect a firm, precluded small business participation, and required an unreasonable proposal due date. Specifications that reflect agency's minimum needs are not unduly restrictive of competition merely because particular bidder cannot meet them. Submission time for proposals was not unreasonably short. Alleged conflict of interest in preparing specifications was untimely and was denied by agency. The protest was denied. (Author/DJM)

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**DECISION**



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

FILE: B-106966

DATE: July 26, 1977

MATTER OF: Denelcor, Inc.

**DIGEST:**

1. Protest that specifications were drafted so as to preselect particular firm and otherwise are unduly restrictive of competition because they preclude participation by small business concerns is denied where record shows only that specifications reflect agency's minimum needs. Specification requirements are not unduly restrictive because particular bidder may be unable to meet them.
2. Record does not establish that period for submission of proposals was unreasonably short.
3. Allegation regarding conflict of interest in preparation of specifications which is raised more than 10 days after protester knew of this basis for protest is untimely and not for consideration on the merits. However, agency reports that alleged conflict did not exist.

Denelcor, Inc. (Denelcor) protests allegedly restrictive provisions under request for proposals (RFP) DAHC 26-77-R-0012, issued February 1, 1977, by the U.S. Army Computer Systems Support and Evaluation Agency, for an Integrated Hybrid Computing System. The protest alleges preselection of Electronic Associates, Inc. (EAI) and unreasonable exclusion of small business from the competition.

Specifically, the protester charges that the RFP was drafted to specify EAI equipment. Denelcor also contends that a solicitation requirement for a benchmark demonstration before award is expensive, without technical justification, and at variance with solicitation Clause C.48, System Demonstration.

The protester further alleges that the proposal due date of April 4, 1977, and the ADP Software Release requirements delivery date of April 24, 1977, unreasonably excluded small businesses from competing since only a large business concern could prepare

several alternate proposals within such a short time period and since software for a special purpose hybrid computer system could be released only by a large business within the specified time restraints. The protester also contends that the "desired" delivery date of November 16, 1977, unreasonably excluded small businesses since such a major special purpose hybrid computer system could not be developed by a small business within 7 months. Moreover, Denelcor states that since the system is not required until January 16, 1978, the RFP should have that latter date as the required delivery date.

Accordingly, the protester requests that the proposal due date be extended; that the benchmark demonstration test be deleted; and that a "reasonable" required delivery date be established for the equipment.

Our Office has consistently taken the position that the preparation and promulgation of specifications to reflect the minimum needs of the Government are matters primarily within the jurisdiction of the procuring activity, to be questioned by our Office only when not supported by substantial evidence. East Bay Auto Supply, Inc.; Sam's Auto Supply, 53 Comp. Gen. 771, 773 (1974), 74-1 CPD 193. While specifications are to be drawn to permit the greatest amount of competition consistent with the needs of the procuring activity, the procurement statutes are not violated merely because a particular bidder or offeror is unable or unwilling to meet the Government's requirements, providing the specifications are reasonable and necessary to meet the agency's actual needs. See Schreck Industries, Inc.; Potomac Industrial Trucks, Inc., B-183849, October 9, 1975, 75-2 CPL 221; Galion Manufacturing Company, et al., B-181227, December 10, 1974, 74-2 CPD 319.

For the reasons which follow, we believe the Army has adequately justified its requirements.

Concerning the allegation that the specifications were drafted so as to preselect EAI, the contracting officer reports:

"\* + \* The Army requires that the equipment acquired under this solicitation interface with an existing government-owned EAI 8800 analog computer. This approach is considered to be the most cost-effective means of satisfying the total analog requirements which were totally re-analyzed prior to re-release of the RFP. This analysis resulted in specifications which emphasize performance characteristics and reflect only the Army's minimum

essential requirements. \* / \* To enhance competition, the solicitation permits a potential supplier to develop the capability to interface his proposed configuration with the existing government-owned EAI 8800 analog subsystem. The interfacing of subsystems is common practice within the hybrid industry; therefore, in our judgment this requirement should not impose undue hardship upon a potential supplier."

From the foregoing, it appears that a potential competitor was permitted to propose its own configuration as long as it had the requisite interface capability. Accordingly, we cannot object to this particular requirement. Our decision B-162059, September 5, 1967, which Denelcor contends requires cancellation of any contract to be awarded, involved a specification which was determined to be inadequate because the item being procured could not be identified from the purchase description. We do not believe that the prior case has relevance to the instant situation.

With regard to the benchmark requirement, the contracting officer reports:

"(a) There are no feasible alternatives to benchmarking that will insure that the digital and analog subsystems will perform as required upon delivery of the system. Should the delivered system fail to perform, the consequence would be extremely serious both from a time and cost perspective. The procurement and installation of this hybrid system and also the accomplishment of the WSMR missile test and evaluation programs are interdependent conditions. Any risk of late delivery or failure to perform after delivery will have a corresponding direct adverse effect on the missile program.

"(b) The benchmark is designed to impose minimum hardship upon potential suppliers. The rationale to support this is as follows:

1. Only subsystems of the hybrid configuration are to be benchmarked prior to contract award, e.g., analog subsystem, digital subsystems. Proposed interfacing capabilities are excluded from this requirement.

2. The digital portion of the benchmark consists of a simulation model that was programmed by the Army in a 'high-level' language (FORTRAN). Denelcor did not request these programs.

3. The analog portion of the benchmark consists of the supplier using a model, in mathematical form, to 'set-up' the associated logic in the analog subsystem. Basically, this requires the potential supplier to hardwire the logic into the analog control units. This requirement is very elementary for suppliers in the analog market.

"(2) With respect to clause C.48, it is recognized that the benchmark demonstration may not exercise each component of a proposed configuration. Therefore, the requirement for additional demonstrations are included in the RFP. Essentially, clause C.48 reserves the right of the Government to require a demonstration of proposed equipment/components to verify equipment characteristics and capabilities. The intent of this clause is to allow for demonstration of those components not fully exercised by the benchmark. Thus, the requirements for benchmark and systems demonstrations are not in conflict but are complementary."

Denelcor contends that the benchmark requirement operates to exclude small businesses and that our Office sustained a protest under similar circumstances in our decision B-158329, March 31, 1966. However, that decision did not involve a protest concerning a benchmark demonstration requirement and, unlike in this case, the record showed that a restrictive specification was neither intended nor necessary to fulfill the needs of the procuring activity.

In the instant case, the record indicates that there are no feasible alternatives to benchmarking, and a waiver of the requirement would pose risks of an unacceptable nature. This Office has upheld the propriety of a benchmark requirement for computer technology, over objections similar to those raised by Denelcor, so that offerors could demonstrate that they possess the requisite technical capabilities. B-176276, October 25, 1972. Moreover, we see no conflict between the benchmark requirement and the requirement for additional system demonstrations contained in RFP clause C.48.

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Further, the protester states that "the procuring activity would be properly held liable for such extravagant proposal costs [associated with benchmarking] to unsuccessful bidders under the rules expressed" in T & H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345, and William F. Wilke, Inc., B-185544, March 18, 1977, 56 Comp. Gen. \_\_\_\_, 77-1 CPD 197. We have held in the cited cases that a bidder is entitled to its bid preparation costs under certain circumstances. However, we are not prepared to agree with the protester's suggestion that benchmark testing should be eliminated merely because the costs of such testing may be included in claims by unsuccessful bidders for bid preparation costs.

As for the contention that the proposal due date was not set sufficiently in advance to permit the preparation of alternate proposals by a small business, the Army points out that offerors are not required to submit more than one proposal, and that based on its prior experience with procurements of similar items, the time permitted was considered reasonable. Under the circumstances, we cannot conclude that the due date was either unreasonable or legally objectionable.

With regard to the ADP Software Release requirements, the contracting officer reports, and the solicitation corroborates:

"The software encompassed under the scope of this requirement is in support of only the proposed digital hardware subsystems. This includes operating systems, language compilers, arithmetic/scientific libraries, and utilities that are already developed and available commercially from the ADP industry for use on standard digital computers. \* \* \* Special purpose hybrid software, (e.g., hybrid interfacing software) is not subject to the requirements of \* \* \* SOFTWARE RELEASE. \* \* \* Potential suppliers have until date of delivery to develop, test and install the hybrid special purpose software, therefore allowing any potential supplier (small or large business) time to develop the required hybrid software."

As indicated by the contracting officer, the software release requirement is limited to commercially available software and not applicable to special purpose hybrid software. Under the circumstances, we do not consider the requirement to be unreasonable.

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As for Denelcor's contention that the desired delivery date of November 16, 1977, is unreasonably restrictive, and that since delivery is not required until January 16, 1978, the latter should constitute the required delivery date, section H2 of the solicitation establishes a required installation date of January 16, 1978. The section further states that notwithstanding a "desired" installation date of November 16, 1977, if a bidder is unable to meet that schedule he may, "without prejudice to the evaluation of his bid," set forth a proposed installation schedule not to exceed the time specified as the "required" installation date (January 16, 1978). It is clear that a responsible conforming offeror could receive an award proposing a delivery date of January 16, 1978. In view thereof, the provision is actually in accord with Denelcor's request.

Finally, in its May 24, 1977, rebuttal to the agency's comments, Denelcor has raised an issue involving an alleged conflict of interest. Initially this procurement was issued on June 18, 1976, under a prior RFP (RFP DAHC26-76-R-0037), at which time Denelcor protested to this Office alleging in part a conflict of interest in that the RFP technical specifications were written by a consultant who was a former employee of EAI. The protest was withdrawn, however, when that solicitation was canceled. While Denelcor has made the same allegation in connection with the new RFP, the allegation was not raised until 2 months after the instant protest was filed, even though Denelcor obviously was aware of this basis for protest well prior to that time. Thus, the issue is untimely under our Bid Protest Procedures, 4 C.F.R. Part 20 (1977). We have been advised by the Army, however, that the individual with the alleged conflict of interest was not consulted during development of the revised specification included in the RFP and did not provide any input to the specification.

The protest is denied.

  
Deputy Comptroller General  
of the United States