

*J. Carter  
Proc I*

**DECISION**



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

8798

FILE ~~B~~-192384

DATE: January 8, 1979

MATTER OF: Harris Data Communications, Inc.

DIGEST:

*[Protest Concerning a Request for Proposals by General Services Administration]*

1. Protester first raised question of requirement for vendors to propose to furnish all types of data terminals in letter to contracting officer on May 2, to which contracting officer responded negatively on June 9. Proposals were received on June 30. Protest against requirement made to GAO on July 14 is untimely because (1) not made before date for receipt of proposals; or, alternatively (2) if letter of May 2 is construed as protest, then because not protested within 10 days of initial adverse agency action of June 9.
  
2. Protest against cost evaluation criteria contained in RFP first raised in protest to our Office after date set for receipt of proposals is untimely and will not be considered.
  
3. GAO considers unpersuasive assertion that technical specification changes were made to accommodate particular vendor where there is no direct evidence to that effect, it is at least equally likely that some of the changes merely reflect recognition of alternative technical approaches to single objectives, and vendor manufactures equipment capable of meeting at least some of initial specifications.

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4. Protester has not met burden of proof that specifications for complex equipment configuration are based on another vendor's computer system and contain direct quotes from literature on that system where protester fails to identify alleged quotes and perusal of system literature fails to provide readily apparent evidence of such quotes or concrete basis for conclusion that specifications are based on vendor's equipment.
5. Inclusion of one complex configuration exceeding usual concept of data terminal in procurement of four configurations of terminals does not unduly restrict competition where solicitation does not prohibit subcontracting for types of equipment not offered by particular vendor.

The Harris Corporation (Harris) has protested against a request for proposals (RFP) issued by the General Services Administration (GSA) on behalf of the Department of the Navy Data Processing Service Centers and the Naval Air Systems Command for the acquisition of remote computer terminals and related software and services.

The procurement was initially described in a pre-solicitation document issued on November 2, 1977, concerning the procurement generally and requesting comment from the business community. This document described the four types of terminals to be procured as follows:

- "a. Type A - Typewriter Data Communications Terminal
- "b. Type B - Remote Printer Terminal
- "c. Type C - Cathode Ray Tube (CRT) Terminal
- "d. Type D - Remote Batch Terminal (RBT)."

The terminals were further classified into groups 1, 2, and 3 of type "A," type "B" and "C," and type "D," respectively, and prospective contractors were advised that they would be able to submit proposals on any group or combination of groups of terminals. The RBT was described as encompassing a central processor, a printer, a card reader, a card punch, two disc drives, a CRT or operator's console, and a communications interface to be used for batch data transfer between the RBT and a mainframe computer and also for stand-alone

processing. The RBT was expected to have a minimum memory capacity of 24,000 characters above that required for its operating system and utility programs.

The RFP issued on April 13, 1978, incorporated certain changes to the terminal configurations and proposal requirements from those contained in the presolicitation document. The RFP required that a prospective contractor offer all of the terminals, including related software and services, and redefined the RBT requirement to include a minimum configuration, analogous to that described in the presolicitation document, expandable to a maximum configuration incorporating an expanded memory, large disc storage, and an enhanced data communications capability. Prospective contractors were permitted to subcontract any portion of the requirements, but were specifically required to retain responsibility for the entire system, including maintenance.

Harris contends that the specifications incorporated in the RFP are unduly restrictive resulting in what is essentially a noncompetitive sole-source award to Univac, the mainframe contractor. In support of its contention that the specifications are unduly restrictive, Harris argues that:

- (1) The maximum RBT is not a terminal but an independent computer system, the specifications for which are based on the Univac 90/30 system and which contain direct quotes from the literature on that system.
- (2) The failure to allow prospective contractors to propose to furnish one or a combination of the types of terminals eliminates terminal vendors from the competition.
- (3) The Government will not obtain the most competitive pricing because the inclusion of the maximum RBT configuration will result in a situation where the minimum quantity of only 11 RBT terminals will determine the

total cost of the procurement. Harris also objects to the RFP's cost evaluation scheme and the exclusion of quantity discounts from consideration.

In further support of its allegation that the specifications favor Univac, Harris contends that certain of the specifications contained in the original RFP with which Univac could not comply were changed by amendment and that Univac could comply with the specifications as amended.

The threshold question for our consideration is whether Harris' protest to our Office is timely under our Bid Protest Procedures, 4 C.F.R. part 20 (1978). In its report the GSA notes that each element of Harris' protest is directed to some aspect of the specifications and that Harris' protest was not filed with our Office until July 14, 14 days after the June 30 closing date for receipt of proposals. The GSA contends that Harris' protest is therefore untimely under section 20.2(b)(1) of our procedures, which requires that protests against alleged ambiguities apparent on the face of a solicitation be filed prior to the date established for receipt of proposals, and should be dismissed without consideration on the merits. For the reasons discussed below, we agree only in part.

The record before us shows that Harris first objected to the requirement for a single prime supplier in a letter dated May 2 in which Harris expressed its "opinion that the interest of the Government will be best upheld by allowing the bidding of separate and/or combinations of the terminal groups" and requested a 45-day extension of the original May 22 date for submission of proposals because of delays in subcontractor negotiations and proposal preparation. By letter dated June 9, the GSA advised Harris that this requirement would not be changed but that Harris could either be a subcontractor or subcontract to others those types of terminals outside Harris' product line. Amendment No. 3 to the RFP issued on May 10 extended the date for receipt of proposals to June 19, subsequently extended by another amendment to June 30.

On June 28, Harris delivered a letter to the GSA in which Harris argued that the requirement for the "maximum RBT" within the specified time was unduly restrictive, but advising that Harris could meet the requirements if certain additional changes were incorporated into the solicitation and additional time granted for the preparation of proposals. By telephone on June 29 the GSA denied Harris' request for amendment of the specifications and an extension of the time for the presentation of proposals. Harris' objections to the cost evaluation scheme were first raised in Harris' protest to our Office filed on July 14. Harris contends that it was not until receipt of GSA's advice on June 29 that no further changes or extensions would be permitted that it was aware that it had a basis for protest.

The appropriate time to protest a defective solicitation provision under our Bid Protest Procedures is prior to bid opening or the date set for receipt of proposals. 4 C.F.R. § 20.2(b)(1) (1978). If a protest is initially timely filed with the procuring agency, any subsequent protest to this Office will be considered provided, inter alia, that the protest is filed with GAO within 10 working days of formal notification or actual or constructive knowledge of initial adverse agency action. We have viewed the question of the timeliness of specific bases of protest raised after the filing of a timely initial protest to revolve around the relationship the later-raised bases bear to the initial protest. See Kappa Systems, Inc., 56 Comp. Gen. 675 (1977), 77-1 CPD 412. Where the later bases have presented new and independent grounds for protest, we have considered that they must independently satisfy the timeliness criteria of our Bid Protest Procedures. See State Equipment Division of Secorp National Inc., B-186404, September 22, 1976, 76-2 CPD 270; conversely, where the later bases have merely provided additional support for earlier timely raised objections, we have considered these additional arguments in our evaluation of the protest. Kappa Systems, Inc., *supra*. No particular form is required to file a protest; all that is required is that a protester state its objections in sufficient detail in writing in a timely manner.

Harris' objection to the requirement for a single prime contractor is untimely under our Bid Protest Procedures, supra. If we view Harris' letter of May 2 as a protest of this requirement, then GSA's response of June 9 stating that the requirement "must stand" constitutes a denial of Harris' protest. Under our procedures, Harris would have had to file its protest with our Office within 10 working days of this initial adverse agency action in order to be timely. 4 C.F.R. § 20.2(a) (1978). Alternatively, if we do not view Harris' letter of May 2 as a protest, then Harris' protest of this requirement is untimely because it was not made until Harris' protest to our Office on July 14, after the date set for receipt of initial proposals. 4 C.F.R. § 20.2(b)(1) (1978). It is therefore untimely under either interpretation. Harris' objection to the cost evaluation criteria was not raised until Harris protested to our Office. It also is untimely because not protested until after the closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1), supra.

The protest is dismissed as to these two questions.

On the other hand, we view as timely Harris' protest that the technical specifications are unduly restrictive of competition and favor one or a few vendors. This objection was clearly stated in Harris' letter to GSA of June 28, prior to the closing date for receipt of proposals, and was protested to our Office within 10 working days of GSA's denial on June 29. We regard Harris' contention that certain specification changes were incorporated into the solicitation to favor Univac to be additional support for this central argument rather than an independent basis for protest. We will consider these questions below.

We do not agree with Harris' assertion that the changes to the specifications imply an effort to insure that Univac or any other individual vendor could meet the requirements of the solicitation. After examination of these changes, we are not persuaded that they reflect favoritism, but are of the view that they were incorporated into the solicitation

in order to more accurately reflect the minimum needs of the procuring activity. In this regard, we note that the first two changes to which Harris refers both pertain to the specifications for the CRT (cathode ray tube) data display terminals. In the case of the first change, the original requirement that the CRT control key "CLEAR" set all memory locations from the cursor to the end of the screen to nulls was amended to permit the insertion of either nulls or spaces. The second change altered the original requirement for the terminal to provide a field of zero brightness under host program control for the purpose of masking a password to permit a field of either zero or full brightness. The question of nulls versus spaces is irrelevant to a CRT console operator, either option resulting in the presentation of a blank screen, and it makes little, if any, difference how a password is masked so long as its security is preserved. We think that these changes amount to little more than recognition of alternative technical approaches to single objectives. We note also that, contrary to Harris' assertion, Univac manufactures equipment capable of meeting the original version of at least some of the specifications, e.g., the Sperry-Univac model 0786 Printer subsystem offers as an option a vertical line spacing switch for operator selection of 6 or 8 lines per inch, the original requirement which was subsequently changed, which leads us to believe that this specification probably was not changed to accommodate Univac. We have examined the other changes which Harris has cited in support of its allegation of favoritism and find them unpersuasive.

Harris' contention that the maximum RBT configuration is not a typical terminal device, but is in reality an independent computer system, the specifications for which are based on the Univac 90/30 system and which contain direct quotes from the literature on that system, involves two separate elements pertaining first to the complexity of the system and secondly to Harris' allegation of favoritism to Univac. In this latter regard, Harris has failed to point out any specific portion of text on the RBT which is quoted from literature on the System 90/30 and our own perusal

of System 90/30 documents furnished to us in connection with another matter produced no readily apparent evidence of any such direct quotation. We note also that our examination of these documents did not afford us a concrete basis upon which we could conclude that the maximum RBT was System 90/30 based and Harris has suggested no such basis. In these circumstances, we must regard Harris' allegations as mere speculation and conclude that Harris has failed to meet its burden of proof on this question. See Dependable Janitorial Service and Supply, B-190231, January 3, 1978, 78-1 CPD 1; Fire and Technical Equipment Corp., B-191766, June 6, 1978, 78-1 CPD 415.

Although we are prone to agree with Harris' assessment of the maximum RBT as exceeding the usual concept of a data terminal, we do not believe that Harris' objection to the complexity of the maximum RBT configuration provides a basis upon which we might question this solicitation. It is well settled that the determination of the minimum needs of an agency and the methods of accommodating them are properly the responsibility of the contracting agency which is best able to ascertain its own needs and to draft appropriate specifications. Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. Though the specifications must be drawn so as to maximize competition, the adoption of any specification or requirement necessarily limits competition to some extent. The question is not whether competition has been restricted, but whether it has been unduly restricted. See CompuServe, B-188990, September 9, 1977, 77-2 CPD 182, and cases cited therein. In this regard, this Office will not substitute its judgment for that of the contracting agency absent clear and convincing evidence that the agency's judgment is in error and that a contract awarded on the basis of the specifications would unduly restrict competition. Bowne Time Sharing, Inc., B-190038, May 9, 1978, 78-1 CPD 347; Keystone Diesel Engine Company, Inc., B-187338, February 23, 1977, 77-1 CPD 128. The fact that a particular competitor is unable or unwilling to compete does not establish that competition as a whole is unduly restricted. See CompuServe, supra.

We do not think that the inclusion of the maximum RBT requirement was unduly restrictive of competition. The RFP contained no prohibition against subcontracting and we note that the contracting officer's letter to Harris of June 9, to which we referred earlier, advised Harris that it was precluded neither from subcontracting for those terminals outside its product line nor from participating as a subcontractor to another vendor. We treated an analogous question in Burroughs Corporation, B-189752, B-190222, November 29, 1977, 77-2 CPD 421, in which we held not unduly restrictive a requirement for hardware vendors to offer software conversion services because the RFP did not limit subcontracting. We think this holding applicable here.

The protest is denied.

  
Deputy Comptroller General  
of the United States