

Proc. - I

**DECISION**



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

9710

FILE: B-193693

DATE: April 3, 1979

MATTER OF: Lanier Business Products, Inc.

CNO 01045

DIGEST:

Where contracting agency has failed to show that several specifications of advertised procurement for lease of text editing equipment are such that needs of agency cannot be satisfied without them, specifications are determined to be unduly restrictive and recommendation is made that procurement be resolicited based on actual agency requirements.

Lanier Business Products, Inc. (Lanier), protests the award of any contract for the lease of text editing equipment under Interstate Commerce Commission (ICC) solicitation No. ICC-79-B-0001. The essence of Lanier's protest is that the specifications issued by ICC for 91 text processor units and 44 high-speed printers are unduly restrictive, imposing requirements for features that are not generally available in the marketplace, except from one manufacturer. The protester also disputes ICC's determination that the specifications reflect ICC's minimum needs.

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The protest, filed on December 5, 1978, sought to have the bid opening scheduled for December 6, 1978, postponed. Attorney for the protester notified the contracting officer of the protest on December 5. Notwithstanding, the contracting officer opened the bids on December 6 as scheduled. ICC awarded the contract to Micom Data Systems, Inc., on December 19.

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Two specifications specifically protested by Lanier are:

"6. Dual media system shall be capable of duplicating information from one medium to the other in background

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mode with the display and printer being simultaneously available for other purposes.

\* \* \* \* \*

"12. Subscripts and superscripts shall be displayed on screen with use of codes in their respective elevated and/or depressed position(s) in proper proportions and shall be printed out without codes."

Lanier contends that these requirements are beyond the minimum needs of the ICC. Moreover, Lanier claims, the requirement for duplicating capacity in the background mode can be met by only one manufacturer--Micom. As such, the requirements are alleged to be unduly restrictive of competition.

A protester who objects to the specifications in an invitation for bids bears a heavy burden. This is because we have recognized that Government procurement officials, who are familiar with the conditions under which supplies, equipment or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the Government's actual needs and, therefore, are best able to draft appropriate specifications. Manufacturing Data Systems Incorporated, B-180586, B-180608, January 6, 1975, 75-1 CPD 6; Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. Consequently, we will not question an agency's determination of what its minimum needs are unless there is a clear showing that the determination has no reasonable basis. Maremont Corporation, supra; Johnson Controls, Inc., B-184416, January 2, 1976, 76-1 CPD 4. Furthermore, it is well established that the Government does not violate either the letter or the spirit of the competitive bidding statutes merely because only one firm can supply its needs, provided the specifications are reasonable and necessary for the purpose intended. 45 Comp. Gen. 365 (1965).

On the other hand, although the law does not require that the Government's legitimate needs be compromised to obtain competition where these needs can only be satisfied by a single source, we will closely scrutinize minimum needs determinations which effectively limit competition

to a single source. See Jarrell-Ash Division of the Fisher Scientific Company, B-185582, January 12, 1977, 77-1 CPD 19; Winslow Associates, 53 Comp. Gen. 478 (1974), 74-1 CPD 14.

With these principles in mind, our review of the record indicates that the ICC has failed to refute satisfactorily Lanier's contention that the specifications unduly restrict competition. In its report, the ICC states that the specifications reflect its minimum needs. In support of that conclusion, the ICC contends that several impartial experts on Government procurement reviewed and approved the specifications for equipment as being fair, adequate and appropriate. As Lanier points out, however, ICC appears to have ignored the experts' recommendations to revise certain restrictive specifications. For example, the specifications for the text editing equipment submitted by the ICC's Word Processing Center Supervisor required neither duplication capability in the background mode nor on screen display of subscripts and superscripts in their respective positions. Another expert reported to ICC that a few specifications, including the display requirement, were too restrictive in nature. The expert explained that although the restrictive "features would be nice to have, \* \* \* [they] probably [are] not really essential to ICC user requirements."

We have recognized that procurement agencies are required to state specifications in terms that will permit the broadest field of competition within the minimum needs required and not the maximum desires. 32 Comp. Gen. 384 (1953). Specifications based only on personal preference or on a finding that a particular item has superior or more desirable characteristics in excess of the Government's actual needs are generally considered overly restrictive. 32 Comp. Gen. 384, supra; Precision Dynamics Corp., 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. ICC has failed to show that the advantages of background mode duplication and the display of subscripts and superscripts in their depressed and elevated positions are such that the Government's needs cannot be satisfied without these features.

ICC attempts to rebut Lanier's contention that the IFB unduly restricts competition by alleging that more than one manufacturer submitted a responsive bid. However, the fact that more than one offeror was able to

meet the restrictive specifications does not per se provide a reasonable basis for the restriction. The Raymond Corporation; Air Force--requests for reconsideration, B-188277, September 16, 1977, 77-2 CPD 197.

While the specifications complained of by Lanier may have a reasonable basis, absent any substantiation from ICC other than unsupported conclusions, we find Lanier's arguments persuasive. See Drexel Dynamics Corporation, B-188277, June 2, 1977, 77-1 CPD 385 (reversed on new facts in the Raymond Corporation, supra). Since the ICC has not provided a reasonable basis for the background mode, subscript and superscript display and other specifications, and on the basis of the current record we can perceive none, we must agree with Lanier and conclude that these requirements are unduly restrictive.

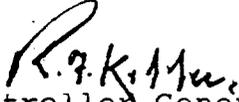
In view of the foregoing, we find it unnecessary to address Lanier's additional argument that the award to Micom was made in violation of the Buy American Act, 41 U.S.C. § 10a-d (1976).

Protest sustained.

The decision as to whether corrective action should be recommended depends on what, under all the circumstances, would be in the best interest of the Government. In this regard, we note that Special Provision J.3 of the IFB reserves to the Government the right to cancel the contract at any time upon 30 days' written notice. Under this provision, the ICC will be liable "only for payment in accordance with the Pricing Schedule for services provided prior to the date of termination." We therefore recommend that the procurement be resolicited on the basis of revised specifications clearly reflecting ICC's actual needs. If, after resolicitation, it is determined that it would be advantageous to the Government to accept one of the bids received, then the contract with Micom should be terminated for the convenience of the Government.

As this decision contains a recommendation for corrective action to be taken, it is being transmitted by letters of today to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of

1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

  
Deputy Comptroller General  
of the United States