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**DECISION**



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

*[Protest Against Alleged Improprieties in RFP]*

**FILE:** B-196018

**DATE:** March 25, 1980

**MATTER OF:** Ronald Campbell Company

**DIGEST:**

1. Prior decision, dismissing protest as untimely, is reconsidered on merits where protester presents evidence that protest was sent by registered mail not later than 5 days prior to closing date for receipt of initial proposals.
2. Agency is not required to separately purchase ("break-out") services where agency's overall needs can be satisfied only through "total package" procurement approach involving award for total requirement to one contractor.
3. Agency is not required to cast procurement in form which neutralizes competitive advantages some concerns enjoy over others by virtue of their own particular circumstances.
4. Protester's allegations concerning various solicitation improprieties, without evidence sufficient to affirmatively support its position, are speculative and, therefore, protester has not met burden of proof.

Ronald Campbell Company (Campbell) requests reconsideration of our decision in Ronald Campbell Company, B-196018, September 25, 1979, 79-2 CPD 225, which dismissed, as untimely filed, Campbell's protest against alleged improprieties apparent on the face of request for proposals (RFP) No. 7955-112 issued by the General Accounting Office (GAO). Campbell has now furnished evidence that the protest was sent by registered mail to our Office not later than 5 days prior to the closing date for receipt of initial proposals. Under our Bid Protest Procedures a protest so transmitted

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is eligible for consideration on the merits notwithstanding its arrival at our Office after the closing date. 4 C.F.R. § 20.2(b)(3) (1979). Accordingly, we will consider the merits of Campbell's protest. In this connection we note that although we are reviewing one of our own procurements, the GAO personnel conducting the review were not involved in the procurement.

For the reasons set forth below, we are denying the protest.

Campbell, a wholesale subscription agency, seeks cancellation and resolicitation of the RFP principally on the ground that as currently structured the RFP requires more than Campbell is capable of, or, desirous of offering. The RFP calls for two things: (1) the placement and renewal of magazine subscriptions; and (2) the performance of related administrative functions. The first requirement falls within the traditional domain of the subscription agency. The second requirement is commonly performed by receiving libraries and includes such functions as: notification of special issues; notification of subscription irregularities; provision of forms; and compilation of assorted annual, quarterly and monthly reports. Campbell would prefer that GAO break-out its administrative services requirement and procure it under a separate solicitation. It is Campbell's view that issuance of one solicitation, for two allegedly separable requirements, unduly restricts competition, since:

"Capable subscription agencies are not necessarily in the business of performing administrative functions. They are basically in the business of receiving money and relaying most of it to publishers with delivery instructions."

In addition to its principal argument Campbell protests: (1) the use of an RFP, instead of an IFB, arguing that it discriminates in favor of an incumbent,

and against a low offeror "whose verbiage the contracting officer may not like"; (2) the RFP requirement for telephoning rush orders to publishers, arguing that it subjects the contractor to unlimited long-distance telephone expense liability; (3) the inclusion of options without provision for economic adjustment; (4) the presence of excessive "Red-tape" in the RFP; (5) the requirement for the generation of a renewal order list to be used in placing the following year's subscriptions; and (6) the elimination of various provisions of the solicitation and adoption of the Department of Agriculture's format.

Campbell does not challenge the GAO expression of its minimum requirements; rather, the thrust of the protest is aimed at the impact of the present solicitation on Campbell's competitive position.

Turning to Campbell's principal argument, that GAO should break-out its administrative services requirement, the GAO contracting officer reports that the administrative services are an integral part of its needs in ordering and monitoring its subscriptions. For example, the information furnished under the administrative services requirement (lists of titles ordered, shipping addresses, etc.) is in the possession of whoever performs the subscription placement and renewal requirement. Consequently, breaking-out the administrative services requirement necessitates agency supervision of an information transfer from the subscription contractor to a third party administrative services contractor. This is a burden the agency chooses not to bear. Moreover, the contracting officer believes that the cost of two contracts will in all likelihood exceed the cost of a single contract because the functions performed are so intertwined as to make duplication of effort inevitable. Thus, the agency would be forced to subsidize the development of similar capabilities in two instead of in one contractor.

On this record we have no basis for objecting to the procurement approach. In Capital Recording Company, B-188015, B-188152, July 7, 1977, 77-2 CPD 10, we stated:

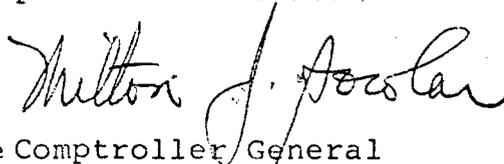
"Generally, it is for the contracting agency to determine whether to procure by means of a total package approach rather than by separate procurements for divisible portions of the total requirement. In the absence of clear evidence that such determinations lack a reasonable basis, they will not be disturbed by this Office. Allen and Vickers, Inc., et al., 54 Comp. Gen. 445, 452 (1974), 74-2 CPD 303; Control Data Corp., 55 Comp. Gen. 1019, 1023 (1976), 76-1 CPD 276."

In our view, Campbell has not provided clear evidence that the determination to utilize a total package approach lacks a reasonable basis. In any event, the Government is not required to cast its procurements so as to neutralize the competitive advantages which some concerns enjoy over others by virtue of their own particular circumstances. See Aerospace Engineering Services Corporation, B-184850, March 9, 1976, 76-1 CPD 164.

Taking Campbell's ancillary arguments in the order presented above, we note: (1) the unsupported allegation, that use of an RFP might inure to the benefit of an incumbent, provides an insufficient basis for us to determine that the use of an RFP is improper, The Public Research Institute of the Center for Naval Analyses of the University of Rochester, B-187639, August 15, 1977, 77-2 CPD 116; (2) Campbell has failed to establish that the requirement for telephoning rush orders is improper and the agency reports that should such orders exceed the approximately 5 percent of total orders estimated in the solicitation the contractor would be able to request an equitable adjustment; (3) there is no merit in Campbell's objection to the inclusion of options in the RFP where Campbell is free to either charge higher prices for succeeding years or to negotiate an economic adjustment formula for the option years and the agency has indicated its willingness to consider such a formula;

(4) the mere allegation that the RFP contains "Red-tape," standing alone, is an insufficient basis of protest; (5) Campbell has failed to show that the requirement for a renewal order list is improper; and (6) Campbell has failed to establish any basis for elimination of various provisions of the solicitation or that the format used by Agriculture would meet the procuring agency's needs. Ronald Campbell Company, B-196935, December 19, 1979, 79-2 CPD 424.

Accordingly, the protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General  
of the United States.