

18651

DECISION



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

FILE: B-201890

DATE: June 30, 1981

MATTER OF: Interscience Systems, Inc.

DIGEST:

Agency decision to procure ADP equipment on specific "make or model" and total system basis will not be disturbed where, as here, there is no clear evidence that such decision lacked reasonable basis.

Interscience Systems, Inc. protests award of a contract pursuant to RFP No. DAAH03-81-R-0028, issued on December 24, 1980, by the U.S. Army Missile Command. The RFP sought offers to supply a Sperry Univac 1100/81 Computer System for the Missile System Software Center (Software Center), Redstone Arsenal, Alabama, for use in its mission as the PATRIOT Air Defense System Verification and Validation (V&V) Facility. Eight firms received copies of the RFP, two of which submitted proposals prior to the January 27, 1981 closing date.

Interscience, a manufacturer of disk and tape subsystems, contends that the solicitation is unduly restrictive of competition since it requests specific "make and model" equipment and thereby "unfairly and unnecessarily prevents manufacturers of 'brand name or equal' peripheral equipment from bidding." The protester first raised this contention in a December 8, 1980 letter to the General Services Administration (GSA) requesting modification of the Delegation of Procurement Authority granted the Army to require solicitation of the disk and tape subsystem portions of this requirement on a "brand name or equal" basis. In support of its request, Interscience cited Defense Acquisition Regulation (DAR) § 1-1206.2(a) (1976 ed.) which requires that "equal" products be solicited where sufficient to satisfy the Government's minimum needs, and also noted that our

[Protest Alleging That Solicitation Is Unduly Restrictive of Competition]

~~017426~~ **115660**

Office upheld the use of a "brand name or equal" purchase description in an earlier procurement for peripheral V&V equipment. See Interscience Systems, Inc., B-197000, August 8, 1980, 80-2 CPD 103, affirmed, October 27, 1980, 80-2 CPD 320. Interscience reasoned that if "equal" equipment was acceptable to the Software Center in the prior procurement, it should also be acceptable here. The requested modification was denied by GSA.

By letter of January 14, 1981, Interscience presented these arguments to the Army. The Army refused to amend the solicitation on the ground that only the Univac 1100/81 system could fully satisfy its needs. Interscience filed the current protest in our Office on January 26, requesting that we direct the Army to amend the solicitation to permit proposals for "equal" peripheral equipment. We have been advised, however, that the Army has made an award to Sperry Univac notwithstanding the instant protest, based on its determination that such an award would be advantageous to the Government. See DAR § 2-407.8(b)(3)(iii).

It is the Army's position that due to the nature of the Software Center's software support function, only the complete Univac 1100/81 system meets its minimum needs. The Army submits that Interscience failed to establish that these needs are unreasonable or that its decision to proceed on a "make and model" basis was otherwise improper. It concludes that the protest should be denied. We agree.

It has long been the view of our Office that contracting agencies are primarily responsible for determining their minimum needs and the methods of best accommodating them. Manufacturing Data Systems, Incorporated, B-180608, June 28, 1974, 74-1 CPD 348. Such agencies are in the best position to set forth their needs since they are most familiar with their requirements and the environment in which the products being procured will be used. Our Office thus will not question an agency's determination of its minimum needs, or the technical

judgment forming the basis for that determination unless it is clearly shown to be unreasonable. Security Assistance Forces & Equipment International, B-199757, November 19, 1980, 80-2 CPD 383. Once an agency has established an apparently sufficient and rational basis supporting the requirement challenged by the protester, the burden of proof then lies with the protester to show that the Government's use of that requirement is clearly unreasonable. Alan Scott Industries, B-193530, April 27, 1979, 79-1 CPD 294.

In a similar vein, we have held that although "make and model" procurements are subject to the same close scrutiny as are sole-source procurements, the standard of review in such cases is one of reasonableness: the procuring agency's actions will not be disturbed if supported by a reasonable justification. Ampex Corporation, B-191132, June 16, 1978, 78-1 CPD 439; Winslow Associates, 53 Comp. Gen. 478 (1974), 74-1 CPD 14. This same standard of review also applies with regard to a contracting agency's determination to procure on a total system basis rather than by separate procurements for divisible portions of the system. Ampex Corporation, supra.

The Army justifies this "make and model" acquisition of a complete Univac 1100/81 computer system on the ground that only hardware which is operationally and functionally identical to the total system employed by the prime contractor (Raytheon) can adequately perform the PATRIOT software support function. This function will entail the testing and evaluation of PATRIOT software processed by Raytheon using the Univac 1100/81 system. The agency indicates that use of an identically configured system for this task "provides the Government with a test bed for independent visibility into the contractor developed

software and assurance that the software meets its requirements." These test results reportedly become suspect if the software and hardware used in the testing are different in any significant respect from that used by the prime contractor, since it could not be readily determined whether discrepancies in the test results were attributable to the software or to differences in the hardware. The Army explains further that:

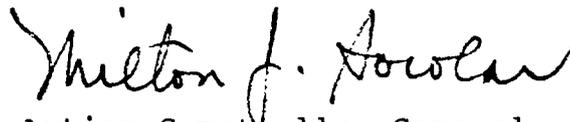
" * * * Incompatibilities and differences resulting from the maintenance and development of (PATRIOT) software on different computer systems would be prohibitive. The critical nature of providing duplicate baseline test results of PATRIOT real time simulations would be adversely affected by different hardware and resulting software. The MSSC [Software Center] must continuously establish and maintain functional duplicity in software development, test, and V&V tools. This can only be accomplished * * * by using functionally identical hardware. * * *"

Were nonidentical "equivalent" equipment to be used by the Software Center here, the Army continues, any discrepancy in the testing results would necessitate first pinpointing the functional differences between Raytheon's and the Software Center's equipment, and then a reverification and revalidation of the software to determine whether those equipment differences caused the discrepancy. In the earlier "brand name or equal" procurement cited by Interscience, the time and costs involved in this process were considered to be outweighed by "the potential savings associated with procurement of used, excess, or brand name equivalent equipment." However, the peripheral equipment acquired in that instance was intended for testing a limited quantity of PATRIOT software. Since the time of that acquisition the volume

of Patriot software tested by the Software Center has reportedly increased drastically and the agency anticipates that the present volume will increase as much as eighteen fold by 1985. Since the delays and other costs involved in reverifying and revalidating the prime contractor software have apparently increased in a corresponding amount, the Software Center determined that nonidentical, "equivalent" equipment could no longer meet its needs; the costs and delays attending use of nonidentical equipment would be prohibitive and, indeed, would make it impossible for the Software Center to continue its mission as the V&V facility.

Interscience has not attempted to rebut the Army's justification concerning the manner in which the procurement was conducted, and considering that justification, we are unable to conclude that the Army's needs could have been met by any means other than the complete Univac 1100/81 system. Consequently, we cannot find that acquisition of this computer equipment on a total system and "make or model" basis was unreasonable or otherwise legally objectionable. We note that DAR § 1-1206.2(a), cited by the protester, requires that "brand name or equal" product descriptions be used only where "equal" products would satisfy the Government's minimum needs. Such was not the case in the instant procurement.

The protest is denied.



Acting Comptroller General
of the United States