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DECISION



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

FILE: B-202782

DATE: October 8, 1981

MATTER OF: Data Card Corporation, Orbitran Division

DIGEST:

Where agency fails to show that specification restriction requiring that electronic mail systems be manufactured by only one company is prima facie reasonable, solicitation should be canceled and requirement resolicited without restrictive specification.

The Orbitran Division of the Data Card Corporation, through its representative, W.W. Harris & Associates, protests the allegedly restrictive specifications for electronic mailing systems contained in invitation for bids (IFB) No. F44650-81-B0009 issued by Langley Air Force Base. Specifically, Orbitran contends that the requirement that "The Electronic Mail Systems must be manufactured by only one company" is unduly restrictive of competition. We agree, and therefore sustain the protest.

The procurement, which was conducted on a brand name or equal basis, is for eighteen mailing systems each consisting of an electronic scale, automatic mailing machine, semi-automatic mailing machine and an interface device and software to integrate the three pieces of hardware into one complete system. Orbitran does not manufacture mailing machines but does manufacture scales and interface devices. Consequently, the requirement that the system be manufactured by only one company precludes Orbitran from offering its own equipment in conjunction with mailing machines manufactured by another company. Orbitran states that there are only two mailing machine manufacturers, Pitney Bowes Corporation and Friden Mailing Equipment Corporation. Thus competition is effectively restricted to those two companies. Orbitran does not question the brand name or equal requirement in the solicitation.

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In response to the protester's allegation, the Air Force states that the new systems are being purchased to replace stand alone equipment (equipment that is not interfaced). The specifications for the new systems were developed by using information obtained from other Air Force activities and it was "generally found that activities with mixed systems (i.e. systems with equipment manufactured by two or more companies interfaced) encountered difficulty in the repair and maintenance of such systems." According to the Air Force, these activities indicated that repair and maintenance problems would be minimized if one manufacturer furnished the entire system. The Air Force also asserts that the Army, based on its experiences, advised against purchasing mixed systems. The Air Force states that these recommendations, coupled with the importance of the tasks to be performed, impelled it to specify that the systems must be manufactured by only one company.

Orbitran takes issue with the Air Force's position, arguing that the agency has not adequately justified its restriction of equipment manufacturers. The protester states that the Air Force has not indicated the type of equipment from which the alleged negative repair and maintenance experience was gained or the relative service life of that equipment. Further the activities which are said to have advised against purchase of mixed systems are not identified. Orbitran asserts that having offered only generalities with no documentation or specific data relative to service experience, the Air Force has presented no rational basis for its position.

Orbitran also asserts that because electronic scales have only recently been introduced by Pitney Bowes and Friden, any service experience which may have been gained with those companies' systems is only limited in scope. In addition, Orbitran cites several mailing system procurements by various other Government agencies, including the Army, in which there was no requirement that equipment be manufactured by one company.

A solicitation provision which limits potential offerors' freedom to propose products they believe are suitable is an undue restriction on competition unless the contracting activity can establish a prima facie basis for the requirement. Memorex Corporation, B-195053, April 7, 1980, 80-1 CPD 253. Therefore, a contracting agency may impose a restriction on the competition only if it can be shown that after careful consideration of all relevant factors, the restriction is deemed necessary to meet the agency's actual minimum needs, since the benefit of competition, both to the Government and to the public in terms of

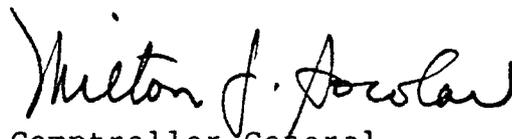
price and other factors is directly proportional to the extent of the competition. Thus this Office has taken the position that restrictions on competition need not be regarded as unduly restrictive when they represent the actual needs of the agency. See Norfolk Shipbuilding and Drydock Corporation, B-200668, January 27, 1981, 60 Comp. Gen. _____, 81-1 CPD 46. The adequacy of the agency's position will be evaluated not simply in regard to the reasonableness of the rationale asserted, but by examining the analysis given in support of those reasons. Constantine N. Polites & Co., B-189214, December 27, 1978, 78-2 CPD 437.

In this case, it is our opinion that the contracting agency has failed to establish that the requirement for a system manufactured by one company is necessary to meet its actual minimum needs. As Orbitran points out, the only support offered by the agency for its position consists of the unsupported assertion that repair and maintenance problems have been experienced by activities with mixed components. Neither the nature nor frequency of these problems is discussed. No specific instances or examples are cited, and the manufacturers whose equipment comprises these mixed systems are not identified. In the latter regard, Orbitran notes that there are five other electronic scale manufacturers besides itself, Pitney Bowes and Friden. Further, there is no indication that the current Air Force requirement is similar to the requirements of those activities which have allegedly experienced repair and maintenance problems.

We conclude, therefore, that the requirement is unduly restrictive of competition. Accordingly, the solicitation should be canceled and the requirement resolicited without the restrictive specification.

The protest is sustained.

Since this decision contains a recommendation for corrective action, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations, as required by 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.



For the Comptroller General
of the United States



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

B-202782

October 8, 1981

The Honorable Verne Orr
The Secretary of the Air Force

Dear Mr. Secretary:

Enclosed is a copy of our decision of today in which we sustain the protest of Data Card Corporation, Orbitran Division and recommend that solicitation No. F44650-81-B-0009 be canceled and the requirement resolicited without the specification requiring that the equipment being procured be manufactured by only one company. We are making this recommendation because we have found that the specification is unduly restrictive of competition.

As the decision contains a recommendation for corrective action to be taken, it has been transmitted by letters of today to the congressional committees named in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires your agency to submit to the named committees within prescribed times written statements on the action taken on the recommendation.

We would appreciate advice of the action taken on the recommendation.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Jordan".

For the Comptroller General
of the United States

Enclosure