

27345

DECISION



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

FILE: B-212660

DATE: February 7, 1984

MATTER OF: Memorex Corporation

DIGEST:

1. Allegation that specification requiring "disc drive" to be supplied with "cache" feature unduly restricts competition is denied since agency has primary responsibility for drafting specifications reflecting minimum needs of the government and GAO will not object in the absence of evidence of a lack of reasonable basis for the questioned specification.
2. Protest that delivery schedule unduly restricts competition because more firms could compete at a later date is denied since propriety of particular procurement is judged on whether government is obtaining reasonable prices through adequate competition and agency has received five proposals for equipment manufactured by four firms which indicates that adequate competition is available.
3. Allegation that specifications and evaluation criteria are excessively general and vague and prevent the submission of intelligent proposals is denied since specifications adequately detailed agency's requirements and evaluation factors stated with sufficient clarity basis upon which proposals would be evaluated. Mere presence of risk or uncertainty does not make solicitation improper.
4. RFP provision allowing functional demonstration of tentatively selected equipment after receipt of best and final offers is not objectionable.

Memorex Corporation (Memorex) protests request for proposals (RFP) No. 83-00-R-61 issued by the United States Department of Agriculture (USDA). The solicitation was for the acquisition of six controllers, 12 storage heads of string units and 24 storage units to augment the computer

system at the Washington Computer Center. Memorex contends that the specifications unduly restrict competition and lack sufficient detail to permit a reasonable offeror to determine with certainty what the agency requires. Memorex also argues that the evaluation criteria are excessively general and vague and preclude the submission of an intelligent offer. Finally, Memorex contends that the functional demonstration provision of the RFP does not specify the test procedures which will be required and that the functional demonstration after the receipt of best and final offers is improper.

We deny the protest.

Originally, the solicitation called for an IBM-Compatible 3380 Type Direct Access Storage or equal. Memorex protested to USDA that because the 3380-type disc drive is a new product, only IBM would be able to deliver the equipment within the specified timeframe. In addition, Memorex questioned several other allegedly defective provisions in the RFP.

USDA attempted to resolve Memorex's concern, and several RFP amendments were issued. Amendment 0004 deleted the brand name or equal provision. The agency indicates that any equipment which meets the functional performance requirements outlined in section "F" of the solicitation will be considered technically acceptable. Amendment 0007 revised the evaluation criteria and USDA states that all ambiguities were removed. Also, other provisions identified by Memorex as defective were either clarified or corrected.

Memorex argues that although USDA made some corrections, the more serious defects remain. Memorex argues that no suppliers other than IBM will be able to deliver a 3380-type disc drive within the specified delivery schedule. Memorex states that 3380-type equipment will be readily available in the near future; however, due to the delivery schedule specified in the RFP and the agency's requirement that the disc drive be supplied with a "cache" feature (a high-speed buffer memory used between the central processor and main memory), no manufacturer is capable of competing with IBM at the present time. Memorex contends that USDA is required to obtain the "maximum feasible competition" so that, even if "ample" competition exists, USDA should delay the procurement if more firms could compete at a later date.

USDA indicates that in response to the RFP, it has received five proposals for equipment manufactured by four firms, and that all of the proposals appear to meet the minimum mandatory requirements of the RFP. As a consequence, USDA contends that there is no need to extend the delivery schedule or modify the agency's requirements, since adequate competition is presently available with the capacity to provide the equipment the agency has requested.

Regarding restrictions on competition, we have held that requirements which limit competition are acceptable so long as they are legitimate agency needs and a contract awarded on the basis of those needs would not violate law by unduly restricting competition. Educational Media Division, Inc., B-193501, March 27, 1979, 79-1 CPD 204. The determination of the government's minimum needs and the methods of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of contracting officials who are most familiar with the conditions under which supplies and services have been used in the past and will be used in the future. On-Line Systems, Inc., B-193126, March 28, 1979, 79-1 CPD 208. This is particularly the case where highly technical supplies or services are involved. Our Office will not question agency decisions concerning these matters unless they are shown to be clearly unreasonable. Particle Data, Inc.; Coulter Electronics, Inc., B-179762; B-178718, May 15, 1974, 74-1 CPD 257.

We find that Memorex has not sustained this burden. USDA states that the cache feature is justified by the workload and configuration at the Washington Computer Center and Memorex has not shown that this requirement is not reasonably related to the agency's minimum needs. Also, the fact that five proposals have been received and not one offeror has objected to the delivery schedule demonstrates that the delivery schedule specified by USDA is not unreasonable. Although Memorex contends that greater competition will be available at a later date, we have held that the propriety of a particular procurement should be judged not on whether every potential contractor was included, but from the perspective of the government's interest in obtaining reasonable prices through adequate competition. Granite Diagnostics, Inc. B-211711, June 7, 1983, 83-1 CPD 620. Based on the record, we conclude that USDA is obtaining adequate competition and that the RFP requirements are not unduly restrictive of competition. Accordingly, this protest ground is denied.

Memorex also contends that the specifications contain far too little detail to fully and unambiguously define the agency's needs. Memorex argues that the type of caching control unit to be provided should be indicated, that the environmental conditions that the agency will guarantee for the equipment should be specified and that provisions for major field modifications have been omitted. Further, Memorex contends that there is no justification for the complete absence of any contractually enforceable commitments of reliability and availability.

Our decisions have recognized that solicitation requirements must be free from ambiguity and describe the minimum needs of the procuring activity. However, this does not mean that all elements of the requirement must be so precisely specified that the contract is free from risk; rather, some risk is inherent in most contracts and offerors are expected to allow for risk in their offers. Klein-Seib Advertising and Public Relations, Inc., B-200399, September 28, 1981, 81-2 CPD 251.

USDA indicates that the specifications are performance requirements and that any offer which meets those requirements will be considered technically acceptable. Performance-based specifications differ from design specifications in that they provide greater latitude in the manner in which offerors may perform the required tasks. Solarwest Electric--Reconsideration, B-207573.3, April 13, 1983, 83-1 CPD 390. Where specifications are performance oriented, the government is inviting innovative and independent approaches to the performance requested. Griggs and Associates, Inc., B-205266, May 12, 1982, 82-1 CPD 458.

In our view, the performance specifications adequately state the agency's needs. The mandatory requirements set forth in the solicitation clearly state the required capability and characteristics of the requested equipment. Although Memorex may prefer additional information and added detail prior to submitting any proposal, the fact that some uncertainty and risk exist does not automatically render the competition improper. Industrial Maintenance Services, Inc., B-207949, September 29, 1982, 82-2 CPD 296. Furthermore, the fact that five proposals have been

received in response to the RFP leads us to believe that the level of uncertainty and risk in the present case is acceptable.

Memorex also argues that the evaluation criteria are excessively general and vague. For example, in the technical response area, USDA required that a statement be made on "head and media technology." Memorex contends that this requirement gives almost no guidance as to what the agency seeks. Memorex states that the absence of additional information impairs the ability of offerors to prepare intelligent proposals.

USDA weighted technical factors and cost equally. Technical factors were further divided into two categories--technical response and vendor support--with the former assigned a score of up to 15 points and the latter assigned a score of up to 35 points. Vendor support was further divided into nine subcategories and points were assigned to each.

While agencies are required to identify major evaluation factors, they are not required to identify explicitly the various aspects of each which might be taken into account. Credit Bureau Reports, Inc., B-209780, June 20, 1983, 83-1 CPD 670. The selection of evaluation factors and the relative weight assigned to them are primarily for consideration by the contracting agency and our Office will not substitute its judgment for that of the agency unless a protester can clearly show that the agency's actions in establishing such factors and weights are arbitrary or not reasonably supported by the facts. Southwest Marine, Inc., B-204136, July 20, 1982, 82-2 CPD 60.

We see nothing improper in the evaluation factors as issued. We disagree with Memorex's contention that the criteria are insufficient to inform offerors of the basis upon which proposals are to be evaluated. The relative importance of cost and technical was specified and points were assigned to various technical factors to delineate the relative importance of each. Furthermore, we find no legal basis to require the agency to specifically define the information an offeror should submit with its proposal. Offerors were informed of the basis on which proposals would be evaluated and the fact that there may be some uncertainty and risk in preparing a proposal does not render the competition improper. Industrial Maintenance Services, Inc., supra.

Finally, Memorex protests the functional demonstration provision of the RFP. Paragraph E.8.2.3 states that:

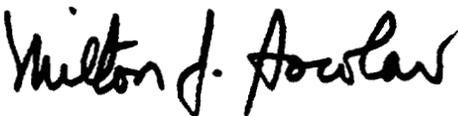
"The Government may at its option elect to verify the performance of proposed equipment by running a prepared functional demonstration on offered equipment. This determination will be made only after the Government has determined that the offered equipment meets all other technical requirements and if, during the technical evaluation, questions arise by the Government as to performance capabilities. If exercised, this functional demonstration will only be required of the apparent winning vendor."

Memorex argues that the test procedures to be utilized by USDA should be specifically stated since potential offerors may be deterred from submitting a proposal due to uncertainty concerning the test procedures to be employed and how the results will be weighed. In addition, Memorex contends that requiring a test to be performed using specific equipment is unduly restrictive since not all vendors may have access to the required equipment. Also, Memorex argues that the functional demonstration cannot be conducted after the receipt of best and final offers.

We do not agree with Memorex that a functional demonstration may not be conducted after receipt of best and final offers. To the extent that agencies could reduce the cost other vendors would otherwise incur by limiting testing to firms tentatively selected for award, we see no basis for objection to such a procedure. Control Data Corporation and KET, Incorporated, 60 Comp. Gen. 548 (1981) 81-1 CPD 531. Regarding Memorex's contention that the functional demonstration requirement was not adequately defined, we know of no legal basis for requiring the specific content of a demonstration requirement for the benefit of offerors which may not participate in it. Further, we do not believe that USDA could have rejected equipment because it did not accomplish a task requested during the functional demonstration, unless the ability to do that task was identified as a salient characteristic in the RFP. Also, we find that Memorex cannot complain of USDA's requirement that vendors make their own arrangements for a functional demonstration absent a showing that the specified equipment is not readily available. Memorex has not shown that vendors would have difficulty obtaining

access to the equipment specified by USDA and, accordingly, we cannot find this requirement to be unduly restrictive of competition.

The protest is denied.

for 
Comptroller General
of the United States