

DECISION



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

FILE: B-213430

DATE: July 9, 1984

MATTER OF: Memorex Corporation

DIGEST:

Protest is sustained where the agency has not shown that specifications which are restrictive of competition are reasonably related to its minimum needs.

Memorex Corporation protests specifications contained in request for proposals (RFP) No. 6916 issued by the Department of the Interior for data access storage devices. The contract was awarded to Amdahl Corporation.¹ We sustain the protest.

Memorex argues that the following specifications, particularly when taken together, are unduly restrictive of competition: "not more than 317.5 megabytes of storage may be accessed per physical access device"; "all equipment shall be new"; and "the total space for the proposed equipment configuration shall not exceed 845 square feet." The protester contends that only one firm can supply equipment which meets all those requirements. Memorex states that to permit meaningful competition, at a minimum the new equipment requirement and the 317.5 megabyte restriction must be relaxed.

Preliminary Matters

Amdahl argues that we should not have granted Memorex's request for a conference on its protest because that request allegedly was untimely. Our Bid Protest Procedures provide that a request for a conference should be made prior to the expiration of the time period for filing comments on the agency report, 4 C.F.R. § 21.7 (1984), which is 10 working days after receipt of the report. 4 C.F.R. § 21.3(d).

¹The contract was originally awarded to Vion Corporation, but that contract was terminated less than 3 weeks later. The award to Amdahl followed.

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The record shows that Memorex filed its report comments, which also contained the request for a conference, less than 10 working days after the date on which it says it received the report. Amdahl has not shown that Memorex actually received the report at an earlier date; therefore, we have no basis to conclude that the protester's request for a conference was untimely.

Amdahl also contends that Memorex's rebuttal to the agency's comments on the conference is untimely because it was not filed within 5 working days after receipt of the agency's comments. While our Procedures provide that conference comments must be filed within 5 working days after the conference is held, they do not set a deadline for filing a rebuttal to those comments.² See 4 C.F.R. § 21.7. We believe that Memorex's rebuttal was filed within a reasonable time after it received the agency's comments, and we note that those comments contained new information (the benchmark discussed later in this decision) to which Memorex had not previously had an opportunity to respond. Under these circumstances, we will consider the rebuttal in rendering our decision.

New Equipment Requirement

Memorex questions the solicitation requirement for new equipment. The protester asserts that there is no justification for such a restriction, particularly since the RFP solicits both lease and purchase proposals. Memorex argues that it is illogical and unprecedented to require that leased equipment be new.

The agency states that the purpose of the requirement is to assure the availability of spare parts and maintenance services during the anticipated 5 year system life. It contends that allowing offerors to propose products that are not currently in production would greatly increase the risk of severe maintenance problems.

²Amdahl refers to section 21.3(e) of our Procedures in support of its position. That section, however, pertains to the deadline for filing a rebuttal to comments on the agency report.

Significantly, Interior states that by equipment not currently in production it means a manufacturer's discontinued line of products, which has not been produced for 2 years or more.

The protester argues that the availability of maintenance services and spare parts could be assured simply by including a clause in the solicitation that would require each offeror to make spare parts and maintenance services available for the system life. Memorex also states that had it known Interior's true intent was only to preclude the offer of equipment that had been out of production for 2 or more years, it could have met the solicitation requirement. According to the protester, all of the equipment it would offer has been in production within the last 12 months.

Agencies should formulate their needs so as to maximize competition, but requirements which limit competition are not unreasonable as long as they reflect the government's legitimate minimum needs. See Duroyd Manufacturing Company, B-213046, Dec. 27, 1983, 84-1 CPD ¶ 28. Thus, we have upheld requirements for new equipment where the requirements were shown necessary to meet an agency's actual minimum needs. For example, in Arwell Corporation, B-210792, Dec. 14, 1983, 83-2 CPD ¶ 684, and in International Business Machines Corporation, B-198094, B-198094.2, Nov. 18, 1980, 80-2 CPD ¶ 363, we considered new equipment requirements reasonable in light of a critical need for reliability of operation throughout the system life where the equipment would be used to provide field troop support (Arwell) or support for real-time flight testing (IBM).

In this case, however, the record shows that the solicitation did not reflect the agency's actual minimum need. While the RFP required that all equipment be new, the agency indicates that its actual need was not for newly manufactured equipment, but instead for equipment that had been out of production for less than 2 years. It remains unclear whether such equipment would also have to be unused in order to meet the agency's need. Nevertheless, it is clear that the solicitation overstated the agency's true minimum requirements. We therefore conclude that as it was stated in the solicitation, the new equipment requirement unduly restricted competition.

317.5 Megabyte Restriction

Memorex asserts that the restriction to 317.5 megabytes of storage per physical access device is unjustified. This restriction limits the acceptable equipment to what are known as "single density" devices or drives. Memorex argues that "double density" drives (which store 635 megabytes of data per device) will also meet the agency's performance and space requirements, and therefore should not be excluded from the competition.

The agency contends that double density drives are not acceptable because they would cause an intolerable level of "device contention." Device contention occurs when two simultaneous read commands are issued to the same access device. The simultaneous commands cannot both be processed at the same time and, therefore, the one that is processed second will be completed more slowly than if no device contention occurred. Since a double density drive has twice as much storage space per access device as a single density drive, there is a greater probability that two commands will arrive simultaneously at the same access device.

Interior states that the data files to be accessed here are under user rather than operations management center control, and that access patterns to the data are spontaneous and unpredictable. The agency says that under these circumstances, a substantial number of simultaneous read commands will occur. Accordingly, the agency asserts, the use of double density drives would result in intolerable delays for system users.

Memorex acknowledges that double density drives have a greater potential for device contention than single density drives, but disputes the agency's assertion that users will experience significant delays as a result. According to Memorex, double density drives have enhancements that enable them to provide faster user access on the average than single density drives. The protester therefore argues that unless device contention occurs almost constantly, the overall reduction in access time available with double density should offset any delays resulting from device contention. Memorex also asserts that there is no reason why Interior should encounter device contention with any frequency, and calculates that if data is randomly distributed on the drives, the probability of two simultaneous commands arriving at the same access device is only approximately .02 percent.

Interior rebuts Memorex's arguments with a benchmark it says tested a representative sample of the relevant workload. According to Interior, this benchmark demonstrates that where two simultaneous read commands are issued, the Memorex double density drive performs 22.5 percent slower than the tested single density drives. The agency also asserts that where simultaneous commands do not occur, the double density drive does not necessarily perform better. The agency states that in this situation, one single density drive it tested performed 6.6 percent slower, but another performed 9.3 faster than the double density drive. Interior concludes that single density drives perform at least 20 percent faster in processing the agency's actual workload.

Memorex argues that the benchmark does not provide valid support for the agency's position concerning device contention because it is not based on a representative sample of the agency's workload. Memorex asserts that Interior wrote and used a special program for the test which processes data sequentially, an approach that is inconsistent with the agency's position that its user data access patterns are highly random. The protester also contends that the test showing that one of the single density drives is faster than the Memorex double density drive is not evidence of device contention, but only reflects the fact that the tested equipment exceeds the minimum data access time required by the RFP.

Our technical staff has examined the results of the benchmark and concluded that Memorex's contentions are correct. We found that the test program performs sequential input/output operations in which the next operation cannot proceed until the last one is completed. Further, while four read commands were issued at the same time under the test, they were directed to separate access devices. Those conditions made it impossible for device contention to occur because that requires two simultaneous read commands going to the same access device. As a result, the test showed only that one vendor's single density equipment performed faster than Memorex's double density equipment, but not that the double density equipment resulted in an unacceptable degradation of response time due to device contention.

In this regard, Interior's decision to exclude double density equipment is premised not on a deficiency in the operating speed of the equipment, but instead on the alleged presence of an unacceptable level of device contention causing intolerable delays for system users. The agency's only support for that premise are the results of the benchmark, but those results do not in fact support the premise.

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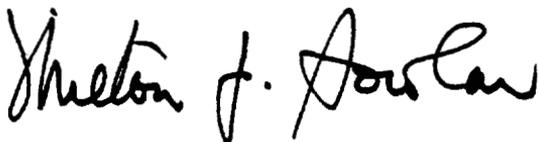
Contracting agencies may impose restrictions on competition only if it can be shown that after careful consideration of all relevant factors, the restrictions are deemed necessary to meet the agency's actual needs, since the benefit of competition in terms of price and other factors is directly proportional to the extent of competition. National Micrographics System, B-211009.2, Nov. 14, 1983, 83-2 CPD ¶ 552. We examine the adequacy of the agency's position not simply with regard to the reasonableness of the rationale asserted, but also by examining the analysis given in support of those reasons. Data Card Corporation, Orbitran Division, B-202782, Oct. 8, 1981, 81-2 CPD ¶ 287.

In this case, the agency's analysis does not support its position that the use of double density drives would result in intolerable levels of device contention and thus user delays. Accordingly, we find that Interior has failed to establish that the restriction to single density drives is necessary to meet its minimum needs. We conclude, therefore, that the requirement is unduly restrictive of competition.

Conclusion and Recommendation

Interior has not supported the restriction to 317.5 megabytes of storage per physical access device, and the record shows that by expressly requiring "new" equipment, the agency was not stating its actual minimum needs. The protest is therefore sustained.

We are unable to recommend termination of the contract, since the award was made more than 5 months ago, and the delivery schedule provided for all equipment to be delivered within 60 days of contract award. We are, however, advising the Secretary of the Interior of our findings and recommending that steps be taken to avoid the repetition of the deficiencies in future procurements.

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Comptroller General
of the United States