

# DECISION



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

FILE: B-216038 DATE: May 10, 1985  
MATTER OF: Lanier GmbH

## DIGEST:

1. Specifications establishing mandatory technical requirements are not vendor-specific where five offerors other than the allegedly favored vendor submitted proposals which complied with them and were for other than that firm's equipment.
2. Protest that agency has not adequately stated its needs is denied where protester merely states its technical disagreement with the agency's determination of its needs.
3. Protest that RFP, which provided that award would go to the low conforming offeror, does not contain definitive evaluation criteria is dismissed as untimely where it was filed after the closing date for the receipt of proposals. Further, GAO will not consider protest under the exception to the timeliness rules for significant issues, since the matter is not of widespread interest or importance to the procurement community.

Lanier GmbH protests the specifications in request for proposals (RFP) No. F61547-84-R-0406, issued by the Department of the Air Force to obtain word processing equipment for the Department of the Army, 1st Armored Division, in Germany. Lanier complains that the specifications favor Wang equipment; otherwise are unduly restrictive; and are slanted toward the purchase of a shared logic word processing system, even though they ostensibly permit the offer of a distributed logic word processing system.<sup>1/</sup>

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<sup>1/</sup> A shared logic system is one in which a number of computers share information contained in common storage. A distributed logic system is one in which a number of interconnected computers share the tasks assigned to the entire system.

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The protest is denied in part and dismissed in part.

Lanier first alleges that the specifications are anticompetitive because they favor Wang equipment. In this connection, Lanier asserts that in certain instances the Air Force understated its needs in order to accommodate Wang equipment. In response, the Air Force reports that five offerors other than Wang were able to submit technically acceptable offers, for other than Wang equipment, and two remained in the competitive range after the submission of best and final offers.

In view of the fact that five other offerors submitted proposals that complied with mandatory requirements listed in the specifications, we cannot conclude that the specifications were vendor-specific. Our conclusion in this regard is bolstered by the conspicuous absence of support for Lanier's position among the five offerors other than Wang who were notified of the protest.

Because we have reached this conclusion, we need not examine the particular specifications Lanier contends define equipment features that are peculiar to Wang. We also will not consider Lanier's argument that the Air Force understated its needs to accommodate Wang equipment. The failure to use more restrictive specifications is not legally objectionable since it fulfills the agency's statutory duty to broaden competition by including additional firms in the procurement process. Gentex Corp., B-209083, Apr. 13, 1983, 83-1 C.P.D. ¶ 394. Consequently, this aspect of Lanier's protest is dismissed.

Lanier next alleges that the specifications unnecessarily restrict competition by precluding offerors, as a practical matter, from offering to supply a distributed logic system. Lanier complains that the specifications contain design rather than functional requirements; the firm argues that the specifications should be rewritten by the Air Force to set forth the functions that must be performed by the word processing equipment, thus enabling offerors to determine the type of system needed to perform the required functions. Lanier further argues that some of the specifications overstate the needs of the government.

Lanier also argues that the specifications are unduly restrictive in that they require the following: (a) each user/master workstation must have 64 kilobytes (KB) of memory; (b) the system must provide "memory parity checking"<sup>2/</sup>; (c) the operating system software must support sequential data files, key sequenced data and multiple unique keys (Lanier contends that the required data base management system supplies these functions)<sup>3/</sup>; (d) the system must report utilization by operator and workstation; and (e) the vendor must furnish two high-density matrix printers and a letter quality printer of specified capabilities, attached to the central processing unit (CPU), and an 8-inch removable diskette drive for off-line document storage. Lanier also argues that the requirements for resource utilization reporting and a system clock are unclear.

The Air Force has responded to each of these allegations. The Air Force reports that (a) 64 KB of memory at each user/master workstation is necessary to permit local word processing of large documents in a short time and is based on the recommendation of military technical experts; (b) memory parity checking is needed to insure that the information files are accurate and precise; (c) the operating system software functions provide a level of control different than that provided by the data base management function and are required to support extensive, interdependent employment of the system; and (d) Army regulations require, for management purposes, resource utilization, which involves the documenting of word processing equipment use by operator and workstation, including the name, subject and author. The Air Force further asserts that (e) the speed and quality specifications for the printers provide

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<sup>2/</sup> Parity checking is a technique used to detect errors in the code representing the information stored in the computer.

<sup>3/</sup> This means the data in the computer will be ordered and stored by keys.

the minimal production rates for printing large documents of readable quality, and the 8-inch removable diskette drive for off-line storage is needed to provide media transfer between certain military stations that use specialized standard systems, without requiring special communications circuits that are not always available during field deployment. Finally, the Air Force explained to offerors early in the procurement that the mandatory specification for a system clock requires the CPU to have a clock which records hours, minutes and seconds and permits the operator to "interrogate" the clock and generate processor interrupts at preset time intervals and is needed to support resource utilization reporting and for future system expansion.

We have recognized that contracting agencies have broad discretion in identifying their needs and determining what characteristics will satisfy those needs. We therefore will not question an agency's determination of its needs unless the protester affirmatively proves that the agency determination is unreasonable. Philips Information Systems, Inc., B-208066, Dec. 6, 1982, 82-2 C.P.D. ¶ 506. An agency's use of design specifications thus provides a basis for determining that a solicitation restricts competition only where those specifications exceed the government's minimum needs. Autologic, Inc., B-199015, Jan. 7, 1981, 81-1 C.P.D. ¶ 141.

We have thoroughly reviewed, in conjunction with our technical staff, Lanier's position and the Air Force's statement of its needs and the reasons for them. We find that in each case, Lanier has done no more than state its technical disagreement with the particular requirement and offer an alternative it believes would be acceptable. For example, Lanier suggests that the 8-inch diskette drive is not needed because data transfer between battalions can be accomplished in whatever media format the vendor supplies, and that resource utilization reporting is not required in a distributed logic system because in this type system each facility in effect manages itself. As stated above, however, the contracting agency is in the best position to judge what it needs, and we will not object to the agency's decisions in that respect unless the protester proves that the agency is acting unreasonably. Lanier's alternatives basically reflect no more than that firm's technical judgment--they do not demonstrate that the Army's statement

of its needs is unreasonable. Radix II, Incorporated; Northwest Electric Company, B-212267 et al., Jan. 24, 1984, 84-1 C.P.D. ¶ 113. Consequently, this basis of Lanier's protest is denied.

Lanier also questions the requirement that there be 512 KB of real or virtual memory in the central processor of a shared logic system or in each primary processor of a distributed processing system. Lanier asserts that the Air Force has provided no reason for requiring 512 KB of memory in either system, and that 256 KB of memory in each primary processor of a distributed processing system would provide the same amount of memory as 512 KB in the central processor of a shared logic system. Lanier argues that requiring it to provide 512 KB of memory in each primary processor of the distributed processing system is cost prohibitive and suggests that even though the specifications ostensibly do not preclude such a system, they thus really contemplate only a shared logic system.

In response to questions raised by Lanier and other vendors, the contracting officer explained that 512 KB of real or virtual memory was required for either system and that in a distributed system each terminal acts as a CPU so each terminal must meet the specification requirements. In response to Lanier's protest, the Air Force simply insists that 512 KB is the minimum requirement for either system, as explained earlier to the vendors.

The Air Force's bare statement that 512 KB is the minimum requirement for either system, however, does not give this Office any indication why this requirement exists or why the aggregate total amount of memory in a distributed system must exceed the total memory required in a centralized system. Thus, we cannot ascertain if the requirement is reasonable. We therefore believe the Air Force should reevaluate whether 512 KB of memory really is required for either system, and whether it is required for each primary processor of a distributed logic system. If the Air Force decides such memory is necessary, no action need be taken since the competition was conducted on that basis. Even if the requirement overstated the Army's needs, however, we believe the agency need only take that into consideration in connection with any future related procurements, assuming the requirement as stated in fact will meet the government's needs at a reasonable price. The reason for our view in

that respect is that, given the plethora of objections Lanier posed to the specifications and our findings on them, we have no reason to believe that it was the 512 KB requirement that prevented the firm from competing. Consequently, we cannot say that Lanier was prejudiced by the requirement so that conducting a new competition to include the firm would be warranted.

Finally, in an August 29 supplemental protest letter, Lanier alleged that the RFP is defective because it does not contain definitive evaluation criteria. The Air Force reports that no evaluation criteria were specified in the RFP because each of the listed requirements is mandatory and a system thus had to comply with each requirement to be acceptable.

The RFP provides only that the contract will be awarded to the responsible offeror whose proposal conforms to the solicitation and is most advantageous to the government, price and other factors considered. To the extent Lanier believes additional criteria should have been provided, its protest is untimely. Under our Bid Protest Procedures, a protest concerning an impropriety in the solicitation, such as an RFP's failure to contain definitive evaluation criteria, must be filed with this Office before the closing date for the receipt of proposals. 4 C.F.R. § 21.2(b)(1) (1984). Where, as here, a protester initially files a timely protest and later supplements it with a new and independent protest ground, the later-raised allegation must independently satisfy our timeliness requirements. Container Service, Inc., B-214697, Aug. 13, 1984, 84-2 C.P.D. ¶ 165.

Lanier argues that even though this basis of its protest was not filed until after the closing date for the receipt of proposals, it should not be dismissed as untimely because it is inextricably intertwined with the issues raised in Lanier's initial protest against the vague and inadequately stated specifications. We do not agree, however, that an allegation that an RFP does not contain evaluation criteria is the same as or further support for an allegation that the RFP specifications are vague and restrictive. Rather, we view the allegation as an independent protest basis which must satisfy our timeliness requirements.

Lanier also argues that we should review this issue pursuant to the exception to our timeliness rules for an untimely protest that raises a significant issue. See 4 C.F.R. § 21.2(c). This exception to our timeliness rules is strictly construed and sparingly used to prevent the rules from being rendered meaningless. We will invoke it only if the subject of the protest concerns a matter of widespread interest or importance to the procurement community and involves a matter that has not been considered on the merits in prior decisions of this Office. Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 C.P.D. ¶ 55. In our view, the issue of whether a particular RFP fails to contain definitive evaluation criteria in addition to a list of mandatory requirements and a provision that an award will be made based on cost is not of sufficient interest to the procurement community to invoke this exception. Accordingly, this basis of Lanier's protest is dismissed as untimely.

The protest is denied in part and dismissed in part.

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