

DECISION

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

Konavik
PL-I
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FILE: B-218437.2 **DATE:** June 24, 1985
MATTER OF: East Bay Auto Supply, Inc.

DIGEST:

1. Protest that period allowed for demonstrating electronic ordering capacity for parts under contract unduly restricts competition because more firms, including the protester, could compete if period was extended is denied where protester has not shown that period for demonstrating capability is unreasonable and agency has received proposals from four different firms for services requested which state that they can meet this requirement.
2. Agency decision not to include in present solicitation for contractor operated parts depot delivery data from current contractor operated parts depot contract is legally unobjectionable since such information would not necessarily provide a more accurate basis for offerors to prepare their proposals.

East Bay Auto Supply, Inc. (East Bay), protests various defects in request for proposals (RFP) No. DLA700-85-R-1480 issued by the Defense Logistics Agency (DLA) for a contractor operated parts depot (COPAD) at Mechanicsburg, Pennsylvania.

We deny the protest.

The RFP contemplates the award of an initial 13 month (plus four option years) indefinite quantity type contract for supplying the parts. East Bay states that it was unable to submit an offer because of an unduly restrictive solicitation requirement that the successful contractor be able to demonstrate its capacity to electronically process part orders not later than 20 days following the effective contract date. East Bay maintains that the computer equipment necessary to perform this function "takes three to six weeks to order from the factory," and, therefore, only

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the incumbent contractor or "another offeror that just happens to have a computer that will interface with DLA's" can fulfill this requirement.^{1/}

DLA states that, in response to the RFP, it has received four proposals, including a proposal from the incumbent contractor, and that all of the proposals appear to meet the 20-day demonstration requirement. As a consequence, DLA contends that there is no need to extend the time for offerors to demonstrate their electronic ordering capacity since adequate competition is presently available.

Further, DLA explains that the solicitation allows the successful contractor a total of 30 days for contract "phase-in" during which part orders are placed. DLA explains that the requirement that the successful contractor be able to demonstrate its capability to electronically process orders within the first 20 days of the "phase-in" month is necessary to provide the agency with assurance prior to the termination of the incumbent contract at the end of the 30-day "phase-in" period that services will not be interrupted when the new contractor assumes responsibilities for ordering parts. Accordingly, the 20-day demonstration requirement is crucial to the agency's overall need for an orderly transition to the successor contract and the need for uninterrupted service.

A contracting agency has the primary responsibility for determining its minimum needs and drafting requirements that

^{1/} DLA initially believed that award would be made in late April 1985 and, thus, the solicitation initially contemplated an effective contract date of May 2, 1985. However, the agency has postponed award in the face of the protest filed by East Bay and a protest filed by another offeror concerning other alleged defects in the subject solicitation. Under these circumstances, DLA has amended the solicitation to provide that the effective contract date will be the first day of the month following award. Thus, under the amended solicitation, if award were made early in the month, the successful contractor would have additional time to purchase and implement its computer system.

reflect these needs. Analytics Inc., B-215092, Dec. 31, 1984, 85-1 C.P.D. ¶ 3; Memorex Corp., B-212660, Feb. 7, 1984, 84-1 C.P.D. ¶ 153. Although an agency should strive to maximize competition, burdensome requirements that may limit competition are not objectionable provided they reflect the government's legitimate minimum needs. Analytics Inc., B-215092, supra. This Office will not question an agency's assessment of its needs unless a protester shows that the determination is clearly unreasonable. Analytics Inc., B-215092, supra.

We find that East Bay has not sustained this burden. DLA has explained that the basis for the demonstration requirement is the need to insure that contract services will continue uninterrupted when the prior contract is terminated and the successor contractor assumes ordering responsibilities. Thus, the solicitation provides for a 30-day "phase-in" period. During the first 20 days of this period the successor contractor must demonstrate that it can provide electronic ordering capacity. While East Bay alleges that the firm cannot meet the 20-day demonstration requirement because it is unable to obtain certain computer equipment in time, it is well settled that the inability of one potential offeror to meet a solicitation requirement does not establish the unreasonableness of that requirement. See Ray Services Co., B-217218, May 22, 1985, 64 Comp. Gen. ____, 85-1 C.P.D. ¶ ____. Rather, we have held that the propriety of a particular procurement should be judged not on whether every potential offeror was included, but from the perspective of the government's interest in obtaining reasonable prices through adequate competition. Memorex Corp., B-212660, supra. The fact that three proposals in addition to the incumbent contractor's proposal have been received and not one of these offerors has objected to the 20-day demonstration requirement indicates that DLA is obtaining adequate competition and that the 20-day demonstration requirement is not unduly restrictive of competition.^{2/} Memorex, Corp., B-212660, supra. Since the agency has obtained competition and since the protester has not shown that the requirement is unreasonable we have no basis upon which to object to the requirement.

^{2/} We note that one offeror in commenting on East Bay's response to the agency report agrees that the contract start up time is somewhat compressed. The offeror, nonetheless, states that while it presently does not have computer equipment, it would be able to meet the demonstration requirement as specified in the original solicitation.

East Bay also complains that DLA improperly failed to provide the firm with information from the current contract needed to prepare an offer. Specifically, East Bay claims it needs to know a breakdown of the number of parts ordered under three delivery schedules called "issue priority groups" and the average delivery time for these parts. Issue priority group I has the shortest delivery schedule of 5 working days following receipt of the order, while the required delivery times under issue priority groups II and III are 8 and 10 working days following receipt of the order.

East Bay contends that this information is vital to calculating contract costs. For instance, East Bay states that, if most orders require 5-day delivery, the firm would require more equipment and personnel to meet that schedule than if most orders fall under the 10-day delivery schedule.

DLA responds that orders under the current contract may not necessarily bear any relationship to future orders. The record shows that the solicitation does not specify delivery requirements for particular parts; instead delivery terms are based upon the agency's needs at the time the orders are placed. DLA thus asserts that it would be "very questionable" whether such information would be helpful to offerors in preparing their proposals, and, in fact, could possibly be misleading.

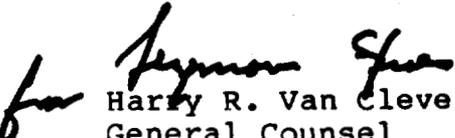
Further, DLA points out that the solicitation indicates the parts which could be ordered for this procurement, provides price list references for these parts, and established a minimum and maximum ordering requirement. DLA thus concludes that while ordering requirements for this type of (indefinite quantity) contract cannot be predicted precisely it has provided offerors with sufficient information for proposal preparation.

We agree. While a solicitation must contain sufficient information to allow offerors to compete intelligently and on an equal basis, some risk (such as the risk here as to exactly which parts will be ordered under the various delivery schedules) is inherent in this type of procurement and offerors are expected to allow for it in their proposals.

See Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 C.P.D. ¶ 687; see also, Saxon Corp., B-214977, Aug. 21, 1984, 84-2 CPD ¶ 205.

Further, while East Bay may believe that it would be helpful if DLA furnished offerors with delivery data from the current COPAD contract, DLA has explained that such information does not provide a basis by which to predict delivery requirements for parts that will be ordered under this procurement. Simply, last year's needs do not provide a basis to predict this year's needs. Since such data would not necessarily provide a more accurate basis for offerors to prepare their proposals, we do not find DLA's decision not to include it in the solicitation legally objectionable. See Hero, Inc., 63 Comp. Gen. 117, supra.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel