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**DECISION**



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

**FILE:** B-217255 **DATE:** August 7, 1985  
**MATTER OF:** UNICO, Inc.

**DIGEST:**

"Brand name or equal" procurement whose specifications approximate some of the characteristics of the brand name is not unduly restrictive of competition where agency has made prima facie case to show that the specifications will meet its minimum needs and protester has not shown that the agency's technical determination of its needs is unreasonable.

UNICO, Inc. protests the award of any contract under request for proposals (RFP) No. DAKF49-85-R-0001, issued by the Department of the Army on a "brand name or equal" basis for an automated legal office support system at the Staff Judge Advocate Office, U.S. Army Health Services Command, Fort Sam Houston, Texas. Essentially, UNICO alleges that the RFP requirements were designed for a specific vendor--Barrister--the brand name manufacturer, and, therefore, are unduly restrictive of competition.

We deny the protest.

The RFP contained the standard "brand name or equal" clause which advised offerors that products "equal" to the specified Barrister system would be considered for award if such products were clearly identified in the offers and were determined by the government to meet the salient characteristics specified in the RFP. Offerors were further advised that award would be made on a fixed-price basis.

In its challenge to certain salient characteristics set forth in the RFP, UNICO contends that the specifications are restrictive because they were allegedly written to meet only Barrister's capabilities. Consequently, UNICO contends that itself and other vendors were prevented from participating in the procurement. In its report to our Office, the Army states that of the eight salient characteristics that UNICO questions, one was deleted and two were changed per amendment 5 to the RFP as a result of a second preproposal

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conference held January 7, 1985, which UNICO did not attend. The Army made no further revisions to the RFP on the basis that the other contested requirements were necessary to fulfill its minimum needs.

In its comments on the agency report, UNICO did not address these revisions; consequently, we assume UNICO no longer objects to them as revised. We note that Barrister had similar objections to these requirements, contradicting UNICO's claim that the specifications were tailored to meet only Barrister's capabilities.

UNICO continues to object to the requirement in paragraph C.3.2.2.3 which requires a removable hard disk for back-up and archiving of data that will not be kept continuously on-line. UNICO asserts that the use of a hard disk for these purposes is not as efficient or economical as other methodologies such as streaming tape or cartridge. The Army contends that a removable disk is better suited to its actual needs for two reasons. First, this methodology provides direct access (versus sequential access on any tape device) for the retrieval of a document or file almost instantaneously. Second, because certain types of information would not be continuously required nor continuously updated, storage on a removable disk would provide ready access to data only when required. The agency reports that storage on a streaming tape would require the user to retrieve the information from tape and to rearchive the information after use, a more time consuming methodology because it usually requires a spin-through to retrieve a particular file.

Another UNICO objection is that paragraph C.3.3.2 requires terminal shut down and systems manager alert after a certain number of unsuccessful attempts to sign on to the system. The protester alleges that its system, which does not contain an alert and terminal shutdown feature, provides four levels of restricted access which would insure systems and data security. However, the Army justifies this requirement on the basis that the sensitivity of the stored information, for example, information concerning pending malpractice litigation, requires an extraordinary degree of security. Because of the sensitivity of the stored information, the Army believes that it must maintain data on attempted/accomplished access, restricting access after a certain number of unsuccessful attempts. Also, the Army considers it to be a mandatory security requirement for the systems manager to intervene before access to the system can be regained.

UNICO also objects that paragraph C.3.3.3.1 was written to reflect how a specific system accomplishes the task of establishing a hierarchy of files within a data base and that system's ability to link these files as needed. However, the contracting agency indicates that the requirement is to provide a system that can take a component of the hierarchy of files (the master data file) and link it to another file, a feature it believes necessary to meet the government's needs. The Army reports that it is not concerned with how the vendor establishes linkages so long as the system has the ability to link a file with a master data file.

Additionally, UNICO objects to the requirement for a proximity search in paragraph C.3.3.3.2 of the RFP since UNICO contends that the intent of a search can be realized through other means. The Army justifies the need for this requirement on the basis that this function will allow the principal user of the system to rapidly search through text data files and find occurrences of certain key words in close proximity to each other. The Army reports that the specification as written will, for example, allow an attorney using the computer system to locate information without first making a determination as to the sequence in which certain key words are likely to be found.

The last salient characteristic that UNICO challenges is the requirement for index specifications as per paragraph C.3.3.6.2. UNICO objects to the requirement that the system be capable of producing an index/table of contents which will show, in some numerical order, how often a file/data has been revised. The contracting agency justifies this requirement on the basis that it meets the agency's need to maintain and catalog production data and points out that this feature is common on most shared logic systems.

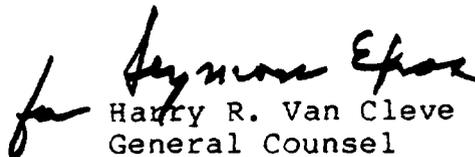
The determination of an agency's minimum needs and how best to meet them consistent with the requirement for the broadest practicable competition is primarily the using agency's responsibility, in part, because the user is the one most familiar with the particular conditions under which the product is to be used and is in the best position to draft appropriate specifications. J.J. Broderick Co., 62 Comp. Gen. 503 (1983) 83-2 C.P.D. ¶ 55. Our Office will not object to an agency's determination of its minimum needs unless the determination is clearly shown to have no reasonable basis. Contract Services Co., Inc., B-211450, et al., July 7, 1983, 83-2 C.P.D. ¶ 67. Moreover, we have consistently held that in technical disputes a protester's

disagreement with the agency's opinion, even where the protester's position is supported by expert technical advice, does not invalidate the agency's opinion. Polymembrane Systems, Inc.--Reconsideration, B-213060.2, July 23, 1984, 84-2 C.P.D. ¶ 81; Stryker Corp., B-208504, Apr. 14, 1983, 83-1 C.P.D. ¶ 404 at 5.

In our opinion, the Army has made a prima facie showing that the protested specifications are reasonably related to the Health Services Commands' needs. Once the agency has established this prima facie support for its determination of its minimum needs, the burden is on the protester to show that the requirements are clearly unreasonable. Stryker Corp., B-208504, supra, at 5. Here UNICO has not carried the burden of proving its case. While UNICO disagrees with the agency's determinations, it has not shown the technical opinion of the agency to be unreasonable. Therefore, on the record before us, we have no basis for objecting to the agency's determination. See DANTEC Electronics, Inc., B-213247, Aug. 27, 1984, 84-2 C.P.D. ¶ 224; Inventive Packaging Corp., B-214578, Aug. 10, 1984, 84-2 C.P.D. ¶ 160.

Finally, in its comments on the Army report, UNICO reiterates its concerns that the RFP was issued with proprietary Barrister system features and that Barrister was the only vendor to respond to the RFP. From this, UNICO wants us to conclude that this procurement is an improper sole-source procurement. We decline to do so. We have held that, even if only one company can meet the specification requirements, the government does not violate either the letter or spirit of competitive bidding statutes so long as the specifications are reasonable and necessary for the purpose intended. Williams Electric Co., Inc., B-212987, et al., Feb. 27, 1984, 84-1 C.P.D. ¶ 236, citing Radix II Inc., B-209476, Mar. 1, 1983, 83-1 C.P.D. ¶ 213. Thus, in view of our finding above that the protester has failed to show that the Army's determination of its minimum needs is unreasonable, this allegation provides no basis to sustain UNICO's protest. Inventive Packaging Corp., B-214578, supra; Small Business Systems, Inc., B-213009, July 26, 1984, 84-2 C.P.D. ¶ 114.

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel