



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: General Electric Company, Mobile
Communications Business

File: B-225381

Date: February 6, 1987

DIGEST

Allegation that agency requirement that radio equipment be compatible with its current equipment is unduly restrictive of competition and results in a sole-source award is denied where agency requires compatibility in order to permit voice secure transmissions between various agency offices and other federal agencies and protester has not established that this requirement is unreasonable.

DECISION

General Electric Company, Mobile Communications Business (GE) protests the specifications in request for proposals (RFP) No. CS-86-058 issued by the U.S. Customs Service, Department of the Treasury, for Data Encryption Standard (DES) VHF Radio Equipment. The radios, which have a scrambling capability that allows voice secure transmission, are used by the Customs Service for intra-agency communication as well as communication with other law enforcement agencies. GE argues that the RFP's requirement for compatibility with existing equipment is unduly restrictive of competition and results in a sole-source procurement.

We deny the protest.

The RFP was issued on June 25, 1986 and specified a closing date of July 29, 1986. Award of a requirements type contract with option quantities for a 5-year period was contemplated. The RFP advised potential offerors that the equipment procured under the RFP must be compatible with existing voice privacy equipment currently being used in the Customs Service's Nation-Wide Two-Way Radio Network. That equipment is manufactured by Motorola, Inc. and uses the DES algorithm and the one-bit cipher feedback mode of operation.

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On July 25, GE requested an extension of the RFP's closing date and advised the Customs Service that the RFP's compatibility requirement was preventing GE from competing. The agency denied the request for additional time and on July 28 GE filed a protest with the Customs Service alleging that the procurement was effectively a sole-source one since only Motorola could supply equipment fully compatible with its own. Nonetheless, GE submitted a proposal to the Customs Service for evaluation on July 29. By letter dated September 22, the Customs Service denied GE's protest. The Customs Service advised GE that compatibility is necessary and that GE's equipment does not meet this requirement. GE protested this decision to our Office on October 15, 1986.

The Customs Service indicates that the radios using the DES algorithm and the one-bit cipher feedback mode of operation have been utilized by the agency and the law enforcement community since 1981. Solicitations were issued and advertised in the Commerce Business Daily for the past 3 years and the Customs Service argues that GE could have participated in those procurements but chose not to do so. The Customs Service contends that there is nothing which precludes GE from designing a radio which would be fully compatible with its current equipment and points out that a current contractor for the agency's Air Support Program is currently providing compatible equipment. --

Further, the Customs Service argues that compatibility is essential to the agency's needs. The Customs Service indicates that various law enforcement agencies have in the past acquired radios compatible with its own and that interoperability between the components is necessary to ensure secure voice transmissions with these agencies. The Customs Service notes that law enforcement agencies have already invested more than \$120,000,000 in equipment meeting these requirements and that Customs Service officers must have the capability to talk in the secure mode with officers from other agencies as well as Customs Service officers in other regions. The RFP did not specify Motorola's equipment, only that the DES algorithm and the one-bit cipher feedback mode of operation be implemented and the Customs Service argues that this requirement is essential to the agency's minimum needs.

GE argues that its equipment is superior to that offered by Motorola and that the agency's need for compatibility is exaggerated. Although GE states that it could manufacture a radio using a one-bit cipher feedback mode of operation, GE asserts that no manufacturer can produce a fully compatible radio without Motorola's consent. GE also indicates that the transmission range of the radios in the secure mode is

limited and this would generally preclude the need for compatibility since the range of the radios does not permit transmission over great distances. Further, GE asserts ~~that~~ since, for the purpose of inter-agency communication, individual agencies have different codes and both Motorola's and GE's radios must be reloaded with the code of the agency to be contacted, there is no support for the Customs Service's claim that only Motorola radios are compatible with the equipment of other agencies. GE also argues that a substantial investment in existing equipment does not automatically justify a sole-source award and, if allowed to continue, this will effectively exclude GE from the market. GE contends that the agency's actions are improper and contrary to its obligation to promote full and open competition through the use of competitive procedures.

When a protester challenges specifications as unduly restrictive of competition, the procuring agency bears the burden of presenting prima facie support for its position that the restrictions are necessary to meet its actual minimum needs. This requirement reflects the agency's obligation to create specifications that permit full and open competition to the extent consistent with the agency's actual needs. 10 U.S.C. § 2305(a)(1) (Supp. III 1985). The determination of the government's minimum needs and the best method of accommodating those needs are primarily matters within the contracting agency's discretion. Bataco Indus., Inc., B-212847, Feb. 13, 1984, 84-1 CPD ¶ 179. Consequently, once the agency establishes support for the challenged specifications, the burden shifts to the protester to show that the specifications in dispute are clearly unreasonable. Sunbelt Indus., Inc., B-214414.2, Jan. 29, 1985, 85-1 CPD ¶ 113.

Specifications based upon a particular product are not improper in and of themselves, and an argument that a specification was "written around" design features of a competitor's product is not itself a valid basis for protest where the agency establishes that the specification is reasonably related to its minimum needs. Amray, Inc., B-208308, Jan. 17, 1983, 83-1 CPD ¶ 43. Nor is a specification improper merely because a potential offeror cannot meet its requirements. Agencies may restrict competition where it can be shown that compatibility with existing government equipment is required. DSP Technology, Inc., B-220593, Jan. 28, 1986, 86-1 CPD ¶ 96; Sperry Univac, B-212914, Sept. 5, 1984, 84-2 CPD ¶ 255.

In our view, the Customs Service has presented prima facie support for its position and GE has not demonstrated that the agency's compatibility requirement is unreasonable. Although the radios have limited range when sending voice secure transmissions, the Customs Service indicates that repeater stations are placed at critical locations to retransmit the signal. Consequently, the record does not support GE's assertion that different Customs Service locations cannot even communicate with each other. As a result, compatibility with other Customs Service offices throughout the country is not an unreasonable requirement.

Further, we find no merit to GE's assertion that the Customs Service has presented no support for its claim that compatibility is required for inter-agency communication. The need for intra-agency and inter-agency encrypted communications is supported by documentation the Customs Service has submitted and is the subject of FED-STD-1027, concerning DES, with which the Customs Service is attempting, through this requirement, to comply. Moreover, while the code of the agency that is to be contacted must be reloaded for either GE's or Motorola's radios, there is no evidence that GE's radios, unlike Motorola's, would be able to communicate with those of other agencies using DES conforming equipment even with the agency's code. We also note that the Customs Service has not restricted the RFP to only Motorola's radios and that the Customs Service has purchased compatible equipment from one other supplier. We think the agency has established that its minimum needs require equipment that is compatible with its current equipment and that of other federal law enforcement agencies and the fact that there may only be one available source does not make that requirement unduly restrictive. The Trane Co., B-216449, Mar. 13, 1985, 85-1 CPD ¶ 306.

Accordingly, the protest is denied.


Harry R. Van Cleve
General Counsel