



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Microwave Radio Corporation

File: B-227962

Date: September 21, 1987

DIGEST

Solicitation's short delivery schedule for surveillance equipment is not unduly restrictive of competition where the agency shows that the equipment is urgently needed to maintain the continuity of its undercover operations and is directly related to the safety of agency personnel, and where the protester fails to show that the delivery terms are clearly unreasonable or that they do not represent the agency's minimum needs.

DECISION

Microwave Radio Corporation protests as unduly restrictive the delivery terms of request for quotations (RFQ) No. DEA-87-07967, issued by the Drug Enforcement Administration (DEA), Department of Justice, for high frequency video transmitters and receivers. Microwave complains that the RFQ's delivery terms are unreasonably short and can be met by only one firm, and that the items therefore are improperly being acquired on a de facto sole-source basis contrary to the requirements of competitive procurement.

We deny the protest.

The high frequency video transmitters and receivers being acquired by DEA are for use in monitoring DEA undercover activities, including covert surveillance of suspected drug traffickers. DEA has discovered that its current microwave systems, operating in the 900 megahertz (MHz) range, could be intercepted by ordinary television sets in the area of operation. DEA's Investigative Equipment Section therefore requested equipment capable of operating in the 1800 MHz range (which are less susceptible to interception), to replace the older systems and also to equip new surveillance operations. The request was made on May 4, 1987. Because the requirement was considered urgent, delivery was requested by September 15.

040006

On May 15, the agency sent a notice to be published in the Commerce Business Daily stating that DEA would order the equipment from Broadcast Microwave Services, Inc. (BMS, a General Services Administration schedule contractor), without competition, unless other firms responded within 15 working days, indicating their interest in competing for the award. Five firms responded, and the RFQ was issued to them on June 19. The deadline for receipt of quotations was July 20, and delivery was to be made by September 15.

Three firms submitted timely offers, but two of these took exception to the delivery date. Only BMS' offer was fully responsive to the RFQ's terms. Microwave did not submit an offer but filed its protest with our Office. DEA has since awarded the contract to BMS notwithstanding Microwave's protest because of its urgent and compelling need for the items.

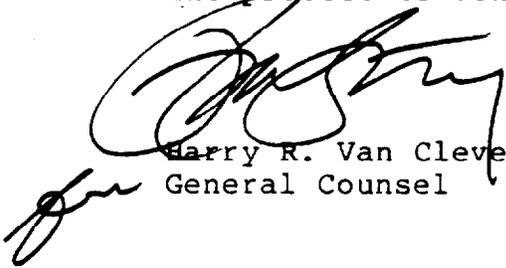
When a protester challenges a solicitation's delivery schedule as unduly restrictive of competition, the procuring agency bears the burden of presenting prima facie support for its position that the restrictions it imposes are reasonably related to its minimum needs. Environmental Tectonics Corp., B-222568, Sept. 5, 1986, 86-2 CPD ¶ 267. This requirement reflects the agency's obligation to permit full and open competition to the extent consistent with the agency's actual needs. See DSP Technology, Inc., B-220593, Jan. 28, 1986, 86-1 CPD ¶ 96. 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 Industries, Inc., B-212847, Feb. 13, 1984, 84-1 CPD ¶ 179. Consequently, once the agency establishes support for the challenged solicitation terms, the burden shifts to the protester to show that they are clearly unreasonable. Environmental Tectonics Corp., B-222568, supra.

Here, DEA asserts that the urgency of the agency's requirement justifies the short delivery schedule. The agency contends that the older equipment currently in use has already compromised some surveillance operations and placed DEA personnel in danger. According to DEA, the continued use of the older, easily discovered surveillance equipment exposes DEA agents and undercover informants to obvious danger. Thus, the old equipment must be replaced immediately in order to maintain ongoing surveillance operations. In addition, the agency states that a number of its field divisions require surveillance systems for new investigations, and the newer, 1800 MHz equipment must be obtained to also fill these requirements.

In our view, DEA's assertions provide prima facie support for requiring the earliest practicable delivery schedule, especially since DEA states that the safety of human lives is at issue.

In response to the agency report, the protester has not even attempted to show why the solicitation's delivery schedule does not represent the minimum needs of the agency.^{1/} Rather, the crux of the protester's argument in its submissions is that the delivery schedule is per se unreasonable because only one firm can meet them. The number of possible sources for an item or service, however, does not determine the restrictiveness of solicitation provisions. See Mid-Atlantic Serv. & Supply Co., B-218416, July 25, 1985, 85-2 CPD ¶ 86. Consequently, even if only one firm can meet the delivery requirements, there is nothing in the record to show that the agency's delivery schedule is not reasonably related to its minimum needs. See, generally, Gerber Scientific Instrument Co., B-197265, Apr. 8, 1980, 80-1 CPD ¶ 263.

The protest is denied.



Harry R. Van Cleve
General Counsel

^{1/} The protester does imply that the critical urgency of this requirement may have arisen from poor advance procurement planning by DEA. We simply note that there is nothing in the record to support this view.