



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Target Financial Corporation

File: B-228131

Date: November 23, 1987

DIGEST

1. Where agency amends solicitation provisions to satisfy the protester's concerns, a protest based on those provisions is academic.
2. A solicitation provision seeking software which is proprietary to an incumbent contractor is not unduly restrictive of competition where the agency presents a reasonable explanation of why the provision is necessary to meet its minimum needs and the protester fails to show that the restriction is clearly unreasonable.
3. An agency has no obligation to equalize a competitive advantage that a potential offeror may enjoy as the result of a prior government contract unless the advantage resulted from unfair motives or action by the contracting agency.
4. An agency determination to award a single contract for hardware, software, maintenance and training under a total package approach is reasonable where such an approach was necessary to meet the agency's minimum needs.
5. Recovery of proposal preparation costs is not allowed where a protest is found not to have merit.

DECISION

Target Financial Corporation (TFC) protests the specifications in request for proposals (RFP) No. DEA 86-R-0022, issued by the Drug Enforcement Administration (DEA) for the lease of word processing equipment. TFC protests that the solicitation is incomplete and unduly restrictive of competition.

We dismiss the protest in part and deny it in part.

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The RFP was issued on July 31, 1987, seeking proposals for the lease of a minimum of 400 Exxon word processors on a month-to-month basis through September 30, 1988. The RFP required the contractor to provide hardware, software, and on-site and on-call maintenance and training.

TFC first argues that the RFP is incomplete and contains contradictory provisions. By amendment to the RFP, DEA corrected the errors and omissions identified by TFC. In addition, the amendment removed several specifications requesting data which TFC believed to be unnecessary. Since DEA's amendment corrects these matters, we dismiss this aspect of the protest as academic. See Areawide Services, Inc., B-225253, Feb. 9, 1987, 87-1 C.P.D. ¶ 138.

TFC also contends that the specifications are tailored for the benefit of the incumbent contractor, Harris Corporation, Lanier Business Products (Harris-Lanier), and are unduly restrictive of competition. Specifically, TFC objects to specification provisions that require a version of word processing software, Version 2.5.0., which is proprietary to Harris-Lanier, and delivery on an F.O.B. destination basis. TFC also objects to the procurement of the hardware, software, maintenance and training under a single RFP.

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. 41 U.S.C. § 253(a)(1)(A) (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 Industries, Inc., B-212847, Feb. 13, 1984, 84-1 C.P.D. ¶ 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 Industries, Inc., B-214414.2, Jan. 29, 1985, 85-1 C.P.D. ¶ 113.

Specifications based upon a particular product are not improper in and of themselves, and a specification that is "written around" design features of a competitor's product is not necessarily improper where the agency establishes that the specification is reasonably related to its minimum needs. Amray, Inc., B-208308, Jan. 17, 1983, 83-1 C.P.D. ¶ 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 C.P.D. ¶ 96; Sperry Univac, B-212914, Sept. 5, 1984, 84-2 C.P.D. ¶ 255.

DEA states that it will be obtaining a new office automation system to handle its long-term information processing needs. Pending the acquisition of this system, DEA is conducting the current procurement to lease Exxon 520 word processors for its domestic offices. The Exxon 520 word processor is an "off-the-shelf", commercially available word processor, which DEA began acquiring on a lease basis in 1984.

In its initial protest submission TFC argued that the solicitation requirement for Version 2.5.0 software unduly restricted competition. DEA states that it found that commercially available software would not satisfy its needs because completion of its standard forms required a monitor display of 25 vertical lines by 80 horizontal characters. Such a display on the Exxon 520 is only possible through the use of the Version 2.5.0. software, which was created specifically for DEA and is proprietary to Harris-Lanier.

DEA also states that its minimum needs require compatibility with its existing system and its large inventory of data disks which require Version 2.5.0. to be read, edited and printed. In addition, DEA's employees have been trained on the Exxon 520 system, including the Version 2.5.0. software, which enables DEA to reassign employees without retraining to various offices as its investigative needs dictate.

In its response to the agency report, TFC does not argue that the requirement for Version 2.5.0. software overstates DEA's minimum needs. In fact, TFC's revised proposal currently offers the Version 2.5.0. software.^{1/} Consequently, we do not think that the protester has shown that the agency's software requirement is unreasonable.

TFC also contends that the specification provision requiring delivery on an F.O.B. Destination basis is unduly restrictive because it gives Harris-Lanier, whose equipment is already at the sites, an unfair competitive advantage. It is certainly reasonable for the agency to require that the contractor bear the burden of delivering the machines to the sites. Moreover, the government has no obligation to equalize a competitive advantage that a potential offeror

^{1/} On October 8, 1987, DEA received TFC's revised proposal in which TFC offered to provide the Version 2.5.0. software. DEA states that the revised proposal was untimely.

may enjoy as a result of a prior government contract unless the advantage resulted from unfair motives or action by the contracting agency. T-L-C Systems, B-223136, Sept. 15, 1986, 86-2 C.P.D. ¶ 298. TFC has not alleged that any advantage that Harris-Lanier may have as an incumbent is the result of improper action.

TFC contends that it is disadvantaged by solicitation criteria which are to be used to evaluate the offerors' ability to provide the required software, training and maintenance. TFC states that DEA, in order to conduct a truly competitive procurement, should acquire the hardware apart from the software, maintenance and training rather than on a total package basis. Thus, TFC concludes that the RFP, by contemplating award of a single contract for hardware, software, maintenance and training, is unduly restrictive of competition and benefits Harris-Lanier as the incumbent.

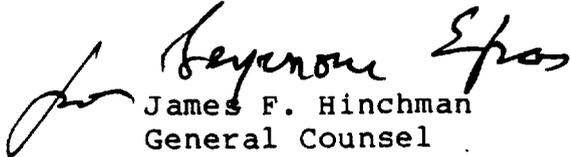
We have recognized that procurements by an agency on a total package basis can restrict competition. The Caption Center, B-220659, Feb. 19, 1986, 86-1 C.P.D. ¶ 174. However, we have upheld an agency's procurement on the basis of a total package approach where the agency has reasonably concluded that such an approach was necessary to meet the agency's minimum needs. MASSTOR Systems Corp., B-211240, Dec. 27, 1983, 84-1 C.P.D. ¶ 23.

DEA states that leasing of the hardware alone is worthless to it without the associated software, maintenance and training. The agency asserts that acquiring the equipment apart from the maintenance presents a risk that maintenance could not be acquired as the industry practice is to lease word processing equipment with maintenance included. Further, the record shows that DEA requires specific proprietary software so that the machines will process DEA's standard forms. Under the circumstances, we cannot conclude that the agency decision to make a single award for hardware, software, maintenance and training lacks a rational basis. Accordingly, we will not question the agency's total package approach.

Finally, TFC requests its proposal preparation costs pursuant to this protest and an earlier protest which we denied in part and dismissed in part. See Target Financial Corp., B-226683, June 29, 1987, 87-1 C.P.D. ¶ 641. We deny

both requests since we have dismissed or denied both protests. Daylight Plastics, Inc., B-225057, Mar. 10, 1987, 87-1 C.P.D. ¶ 269.

The protest is dismissed in part and denied in part.

James F. Hinchman
General Counsel