



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Eastman Kodak Company
File: B-231952, B-232018, B-232142, B-232159
B-232160, B-232167, B-232168, B-232169
Date: November 8, 1988

DIGEST

1. An agency decision to procure photocopier machines and related services on a total package basis was legally unobjectionable where the agency reasonably believed that this method of contracting would: (1) increase competition for certain categories of copiers; (2) facilitate maintenance and servicing of machines; (3) reduce the user activity's costs (related to storage space, dealing with the contractor, and performance of routine functions); and (4) allow greater flexibility in redistributing copiers to meet changing user needs.
2. An agency is not required to cast its procurement in a manner that neutralizes the competitive advantages some firms may have over the protester by virtue of their own particular circumstances.

DECISION

Eastman Kodak Company has filed eight protests under solicitations issued by the General Services Administration (GSA) for cost-per-copy services for various federal user activities pursuant to GSA's cost-per-copy program.^{1/} Under

^{1/} The request for proposals (RFP), the user agency, and the total number of copiers upon which offers were to be based were: (1) RFP No. FCGE-A4-75450-N, National Aeronautics and Space Administration, 131 copiers; (2) RFP No. FCGE-MV-75464-N, Navy (Charleston, South Carolina), 183 copiers; (3) RFP No. FCGE-A1-75453-N, GSA, 292 copiers; (4) RFP No. FCGE-JN1-75465-N, Navy (Hawaii), 145 copiers; (5) RFP No. FCGE-JN1-75466-N, Navy (Guam), 90 copiers; (6) RFP No. FCGE-A4-75461-N, Navy (New Jersey), 58 copiers; (7) RFP No. FCGE-A2-75454-N, Navy (Pensacola, Florida),

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the contracts the contractor is to furnish copier machines and all necessary supplies except paper. The solicitations were for fixed-price, requirements contracts (the user activity will pay a fixed-price for each copy it makes) for up to a 3-year period (including the basic 1-year period and two 1-year option periods). Kodak contends that the RFPs were overly restrictive of competition, because they required offers for all of a user activity's copier needs and stated that a single award would be made under each solicitation for the entire requirement.

We deny the protests.

Each solicitation specified the number of copiers that the user activity anticipated needing over the entire contract term; the copiers were separated into either four or five categories--designated as "volume bands"--corresponding to expected monthly production. For example, RFP No. FCGE-A2-75455-N stated that the Navy would need 28 volume band I copiers (producing up to 5,000 copies per month), 8 volume band II copiers (producing 5,001-15,000 copies per month), 9 volume band III copiers (producing 15,001-30,000 copies per month), and 1 volume band IV copier (producing 30,001-50,000 copies per month). The RFPs also set out certain performance requirements that copiers had to meet to be acceptable within each volume band; for example, volume band I copiers had to be able to produce at least 12 copies per minute while volume band V copiers had to make at least 55 copies per minute.

Among other things, contractors must install copying machines, relocate machines if necessary, train agency "key" operators, and provide all consumable supplies (except paper). Contractors also are required to maintain the machines, to repair copiers within a 4-hour response time (2 hours for certain critical copiers), and to provide substitute units where repairs cannot be made within 24 hours.

Each solicitation stated that the government would award a single contract for all requirements and directed that, in order to be considered for award, a proposal must offer to provide and state a price for all volume bands. Kodak argues that this provision for a single award for all volume

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126 copiers; (8) RFP No. FCGE-A2-75455-N, Navy (Panama City, Florida), 46 copiers.

bands is overly restrictive of competition in contravention of the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253a(a)(2)(B) (Supp. IV 1986), which requires that solicitations "include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law."

Kodak explains that it primarily offers larger machines appropriate for volume bands III, IV and V, but does not manufacture photocopy machines that produce copies at the slower rates allowed for volume bands I and II. Thus, Kodak contends that it and other firms that do not manufacture a number of different types of copiers designed to meet the various performance requirements of every volume band are effectively precluded from competing on an equal basis with firms that do supply many different copier models. The protester points out that, while it could arrange to supply smaller, slower, lower-volume machines in conformance with the requirements for volume bands I and II by subcontracting with a manufacturer of small copiers, it would be at a competitive disadvantage as it would have to pass the costs of subcontracting on to the government in its proposal. Kodak requests that our Office recommend that GSA terminate the contracts awarded under these solicitations and amend the RFPs to allow offers and awards to be made separately for each volume band contained in each RFP.

Under CICA, a contracting agency must specify its needs in a manner designed to achieve full and open competition, 41 U.S.C. § 253(a)(1)(A), and include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 41 U.S.C. § 253a(a)(2)(B). Thus, where, as here, the protester contends that acquiring certain services as part of a total package rather than breaking them out unduly restricts competition, we will object only where the agency's choice of a total package approach as necessary to meet its minimum needs lacks a reasonable basis. See The Caption Center, B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174.

GSA reports that it had a number of reasons for using the total package approach in each of these procurements. In our view, the most significant considerations are as follows:

1. GSA believes that awarding one contract for all copiers at a user facility encourages competition because it eliminates the possibility that an offeror might receive an award for only a low number of machines. GSA also believes that awarding contracts on a band-by-band basis as the protester suggests might have the effect of reducing competition for many of the bands that require very low

numbers of copiers. GSA contends that many potential offerors might decline to make offers on bands which contain as few as one copier because it would be very costly to maintain and service only one machine. In this regard, GSA points out that there are at least 11 major copier suppliers that are capable of supplying copiers meeting the performance requirements of all four or five volume bands.

2. GSA maintains that the total package approach greatly facilitates servicing of machines, because an offeror can dedicate one or more repair persons to the particular user's site if there are enough copiers to justify it. GSA believes that the total package approach increases the likelihood that the service response time requirements will be met, and thus reduces the amount of time that machines will be out of service; moreover, the use of a technician dedicated to a user's location should result in lower maintenance costs.

Kodak disputes GSA's contention regarding the benefits of a dedicated technician. Kodak maintains that it and other offerors will be able to meet the service response times even if they choose to use service personnel that are not at the using activity's location. Furthermore, the protester argues that if a service person who is dedicated to a particular site is used, service might be impeded when multiple service calls tax that particular technician's resources.

3. GSA believes that it will be able to reduce user activity costs significantly in several different ways by allowing only one contractor to be responsible for all of the user activity's copier needs. For example, GSA reports that the contractor is required to provide all consumable supplies (toners, developers, fuser oil, etc.) other than paper, and the using activity must provide adequate storage space to the contractor. Therefore, if awards were made on a band-by-band basis, as many as five storage areas would have to be offered and maintained. GSA charges that this additional storage space would result in duplication of costs to the government. Another example GSA offers is that having a single contractor provide the equipment will make it easier for government personnel to perform routine maintenance (such as clearing paper jams and adding toner) because it is likely, though not required under the contract, that only one manufacturer's equipment will be involved. Also, GSA believes it will be less costly to train government operators if, as is likely, only one type of copier is used throughout a using activity. Moreover, administrative time and effort will be saved by the user activity because contracting personnel will only have to

deal with, make calls to, and meet with one contractor where problems arise, or whenever else necessary.

Kodak counters that a total package approach does not assure that all equipment supplied will be of the same brand. Moreover, the protester points out that even equipment from the same manufacturer may vary considerably from one volume band to the next, and, thus, there is no guarantee that it will be easier for government employees to perform routine functions where one contract is awarded.

4. Finally, GSA asserts that awarding only one contract for all copier services will allow the user activity greater flexibility to meet its changing copier needs over the potential 3-year period of the contract. GSA points out that an agency's needs may change over time or may have been incorrectly estimated initially. In such cases, where certain copiers are over/underutilized it is quite simple to redistribute existing machines among various volume bands if all volume bands are supplied by the same contractor rather than by several different contractors. Furthermore, GSA believes that contractors would be unlikely to report that a copier was over/underused, if it might result in a switch to a different machine from a volume band for which a competitor was the contractor.

Essentially, Kodak argues that the personnel of the user activity will have sufficient incentive to report overuse of a copier because such a machine will be subject to more downtime and will need more repairs. On the other hand, according to Kodak, underused copiers will give the government a bargain. In any event, Kodak states that the government retains the right to reassign machines whether there are five contractors (in a band-by-band award situation) or only one contractor (as in the total package approach used by GSA in these procurements).

ANALYSIS

Under CICA, 41 U.S.C. § 253(a)(1)(A), a contracting agency is required to specify its needs in a manner designed to achieve full and open competition. An agency's use of a total package approach is consistent with this statutory mandate where the agency reasonably shows that one, integrated contract is necessary to meet its needs. Here, while the protester disagrees with GSA's analysis and has refuted some of GSA's arguments, the protester has not shown that GSA's decision to use a total package approach was

unreasonable. See DePaul Hospital and The Catholic Health Association of the United States, B-227160, Aug. 18, 1987, 87-2 CPD ¶ 173.

We find persuasive GSA's argument that a single contractor approach will lead to better, quicker maintenance at reduced cost to the user activity. We recognize that repair times are set forth in the contract; nevertheless, we also recognize that, in reality, a contractor that is responsible for all of the user activity's copiers might have more incentive to respond quickly than a contractor that is responsible for only a small number of machines. In addition, we are persuaded that a total package contract will increase the likelihood that the contractor will provide one or more technicians who are dedicated to the site. We have previously held that the benefit of dealing with only one contractor that is accountable for all repairs/maintenance is a rational basis for using the total package approach. See Southwestern Bell Telephone Co., B-231822, Sept. 29, 1988, 88-2 CPD ¶ 300. Moreover, we believe that GSA's argument concerning greater flexibility in redistributing machines provides yet another reasonable basis for procuring on a total package basis. See The Caption Center, B-220659, supra.

We also find that GSA's attempt to avoid duplication of administrative costs by reducing training costs and storage space and facilitating routine maintenance by government workers are all valid reasons for the single contractor approach used in these procurements. Id.; Servicemaster All Cleaning Services, Inc., B-223355, Aug. 22, 1986, 86-2 CPD ¶ 216. In this connection, we note that the record contains a Navy report that supports GSA's view that considerable administrative time and expense can be saved by having to deal with only one contractor at a using activity.

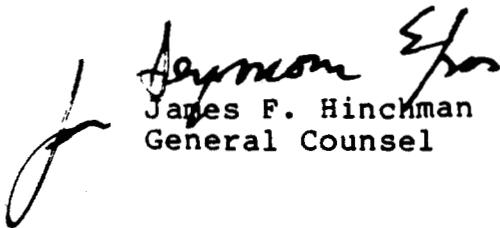
Finally, while Kodak argues that it is prevented from competing because it offers only larger machines and is reluctant to enter into subcontracts to provide the smaller machines, GSA reasonably concluded that overall the total package approach may in fact enhance competition by attracting more offerors than individual awards on a band-by-band basis because of the greater number of copiers involved, and by preventing offerors from limiting their offers to the larger, more lucrative bands and not competing for the smaller, less profitable bands. In this regard, the record shows that, with the sole exception of the Guam procurement, all procurements received at least three proposals, an indication that the single award requirement was not overly restrictive and that adequate competition was

achieved. See Jazco Corp., B-193993, June 12, 1979, 79-1 CPD ¶ 411 at 7.

The protester's argument that as a supplier of only high-speed, high-volume copiers, it cannot compete on an equal basis with firms that can supply machines for all volume bands, provides no basis to object to GSA's well-supported decision to use a single contractor at each user activity. An agency is not required to cast its procurements in a manner that neutralizes the competitive advantages some firms may have over others by virtue of their own particular circumstances. Secure Engineering Services, Inc., B-202496, July 1, 1981, 81-2 CPD ¶ 2.

The protester also suggests that GSA has acted improperly in these procurements because GSA did not allow offerors to submit alternative proposals for individual awards for each volume band. Kodak argues that GSA should have evaluated multiple awards for individual volume bands against a single award for all volume bands to determine the method of contracting that would be most favorable to each user activity. We need not evaluate the merits of the protester's suggested procurement methodology. What is before us is not a question of what GSA could have done, but instead, whether the procurement method actually chosen by GSA was legally supportable. As we have found that GSA's decision to procure on a total package basis was reasonable, the procurement method was clearly legally unobjectionable. See International Business Services, Inc., B-209279.2, Feb. 8, 1983, 83-1 CPD ¶ 142 at 5-6.

The protests are denied.


James F. Hinchman
General Counsel