



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Canon U.S.A., Inc.
File: B-232262
Date: November 30, 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 contracting method would reduce administrative costs attributable to duplicate efforts; allow greater flexibility in redistributing copiers to meet changing needs; and increase competition for certain categories of copiers.
2. Protest that specifications unduly restrict competition is denied where the agency presents reasonable explanations in support of the specifications as necessary to meet its minimum needs and protester fails to show that the restrictions are clearly unreasonable.

DECISION

Canon U.S.A., Inc., protests request for proposals (RFP) No. DAKF48-88-R-0171, issued by the Directorate of Contracting, Fort Hood, Texas, for photocopiers and related services. Canon contends that the procurement lacked proper planning and is unduly restrictive of competition.

We deny the protest.

The RFP is for a fixed price requirements contract on a cost-per-copy basis (i.e., a fixed price for each copy made) for a base year and up to 4 option years. Offerors were advised of an anticipated need for 319 copiers, separated into four categories--designated as "volume bands"--corresponding to the expected monthly production. Specifically, the RFP called for 149 volume band I copiers (producing at least 5,000 copies per month), 108 volume band

044006/137421

II copiers (producing at least 15,000 copies per month), 44 volume band III copiers (producing at least 39,000 copies per month), and 18 volume band IV copiers (producing at least 50,000 copies per month). Among other features, the RFP specified that volume bands III and IV copiers have a job interrupt feature and that volume band III copiers be capable of copying to and from 110 pound card stock. The successful contractor will be required to install the copiers, relocate them if necessary, train agency "key" operators, and provide all consumable supplies (except paper). The contractor also will be required to maintain, repair, and provide substitute units where repairs cannot be timely made.

The RFP 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. Canon argues that this provision for a single award for all volume bands as well as certain performance features of volume bands III and IV copiers are unduly 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).

Canon explains that since it does not manufacture or sell copiers whose specifications meet all of the requirements of volume bands III and IV^{1/} it is effectively precluded from competing on an equal basis with firms that do supply such copiers. In particular, Canon claims that the single award restriction can be met by only three manufacturers and that the 4 option years will intensify the effect of the restriction. Canon also asserts that the Army did not properly plan its procurement and requests that our Office recommend amendment of the solicitation to eliminate the single award restriction and other restrictive requirements.

As a preliminary matter, we find Canon's claim that the Army failed to properly plan this procurement to be without merit. Agencies must use advance procurement planning and market research to open the procurement process to all capable contractors. See Federal Acquisition Regulation (FAR) §§ 7.102 (FAC 84-39), 11.003, and 11.004 (FAC 84-5). Market research can include obtaining information from sources such as the Federal Supply Schedules (FSS) (FAR § 11.004(d)) and market surveys may range from written or telephonic contact with knowledgeable federal and nonfederal

^{1/} Although Canon submitted a proposal offering machines for all volume bands, it admits that it cannot meet all the requirements of volume bands III and IV.

experts to more formal "sources sought" notices (FAR § 7.101 (FAC 84-39)). Here, the Army prepared a matrix of those features representing its minimum needs for the various volume bands and determined that three manufacturers' copiers, currently in use at Fort Hood, could meet the requirements of all four volume bands. Based on an FSS features matrix for various copiers, the Army determined that five manufacturers could meet all four volume bands' requirements.^{2/} In addition the record reflects that single vendor, cost-per-copy services contracts were successfully tested at two other Army installations. Under the circumstances, we find that the Army conducted sufficient planning before issuing this RFP.

Single award restriction

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 Eastman Kodak Company, B-231952 et al., Nov. 8, 1988, 88-2 CPD ¶ _____; The Caption Center, B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174.

The Army relies on several bases to support its use of the total package approach, three of which we consider to be the most significant: administrative cost savings, greater flexibility concerning changed needs, and increased competition.

First, the Army believes that a single award will result in a more cost effective and efficient copier operation by eliminating duplicate administrative efforts. Currently, Fort Hood has 35 separate procurement actions to cover its copier needs and seven different functional activities which handle the various aspects of copier service--defining user requirements, approval, acquisition, installation, supplies

^{2/} At a conference on the merits, the Army agreed with Canon's assessment that there were only three potential offerors. However, the matrices which reflect those three also reflect two other offerors able to meet all requirements and the Army has informally verified this interpretation.

control, maintenance, and payment. The Army states that a single point of contact for repairs, delivery of supplies, and coordination of delivery and installation of copiers will provide a significant reduction in duplicate administrative manpower, paperwork, and cost attributable to the current number of contractors. The Army also expects that it will experience a cost savings for supplies since a single offeror will be able to provide them in bulk at a more advantageous price. In support of its expectation of savings, the Army has submitted memoranda reporting that Forts Polk and Sheridan enjoyed savings of 41 and 29 percent, respectively, when they converted to single vendor, cost-per-copy contracts.

Second, the Army contends that awarding one contract for all copier services will allow Fort Hood greater flexibility during the potential 5-year period of the contract to meet its changing copier needs, due to underuse or overuse of machines or changes in mission requirements. In anticipation of such changes, the statement of work provides that the contractor is responsible for determining underuse or overuse and making recommendations to correct the situation through substitution of a machine from a more appropriate volume band. The Army anticipates that the redistribution of copiers among various volume bands will be more effective if all volume bands are supplied by the same contractor rather than multiple contractors. The Army believes that contractors would be less likely to report that a copier was underused or overused, if it might result in a switch to a different machine from a volume band for which a competitor was the contractor. Further, with a single contractor, the Army anticipates that it will realize cost savings by eliminating termination notice and change order costs.

Third, the Army maintains that awarding one contract for all copiers and service at Fort Hood will encourage competition due to the large quantity of copiers (319) potentially required. In particular, the Army asserts that on a band-by-band basis, competition would be reduced for the less profitable volume bands. As evidence of adequate competition, the Army has furnished a matrix showing five copier manufacturers who are able to meet all volume band requirements.

Canon responds that the Army's claims of cost savings are unfounded and unsupported. While acknowledging that the administration of 35 separate copier contracts is costly, Canon asserts that reduction to a maximum of four contracts (one for each volume band) would realize substantial enough savings. Canon also argues that a contractor would have sufficient incentive to report underuse or overuse of its

copiers since overused machines will likely require more repairs and maintenance and underused machines will not support their share of overhead. Canon also notes that the Army would receive a bargain for underused machines and that the Army has the duty to monitor copier use and the contractual right to reassign machines regardless of contractor input or the number of contractors involved. Finally, Canon argues that "adequate" competition is insufficient and that the number of potential offerors is too small to represent full and open competition.

Use of a total package approach is consistent with the CICA requirement that specifications of an agency's needs achieve full and open competition, where the agency reasonably shows that one, integrated contract is necessary to meet its needs. Eastman Kodak Company, B-231952 et al., supra. Here, while the protester disagrees with the Army's analysis and has refuted some of the Army's arguments, the protester has not shown that the Army'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 the Army's attempt to avoid duplication of administrative costs by reducing the number of separate actions to be handled by the various activities overseeing copier services to be a valid reason for the single contractor approach. Eastman Kodak Company, B-231952 et al., supra; Servicemaster All Cleaning Services, Inc., B-233355, Aug. 22, 1986, 86-2 CPD ¶ 216. This is especially so with regard to cost reductions expected through use of a single maintenance and repair contractor. See Southwestern Bell Telephone Co., B-231822, Sept. 29, 1988, 88-2 CPD ¶ 300 (benefit of dealing with only one contractor accountable for all repairs and maintenance is a rational basis for using the total package approach).

Although Canon disputes these savings and argues that the cost savings at Forts Sheridan and Polk are attributable to the cost per copy rather than the single contractor aspect of the contract, we find that the cost-savings experience of those installations supports the Army's view. Further, while significant cost reductions would likely result with a reduction from 35 contracts to a maximum of 4, it is reasonable to infer that the savings will be greater if there is only one contractor with which to deal.

We also believe that the Army's argument concerning greater flexibility in redistributing machines provides a reasonable

basis for procuring on a total package basis. See Eastman Kodak Company, B-231952 et al.; The Caption Center, B-220659, both supra. While Canon is correct that the Army will retain the right to reassign machines regardless of the number of contractors, it has not shown that the Army was unreasonable in concluding that flexibility will be enhanced through the use of a single contractor.

We also find that the Army reasonably concluded that overall, the total package approach may enhance competition by attracting more offerors than individual awards on a band-by-band basis because of the greater number of copiers and by preventing offerors from limiting their offers to the more profitable volume bands. See Eastman Kodak Company, B-231952 et al., supra. In this regard, the record shows that at least three proposals were received in addition to Canon's, an indication that the single award requirement was not overly restrictive and that adequate competition was achieved. Id.; See Jazco Corp., B-193993, June 12, 1979, 79-1 CPD ¶ 411 at 7.

We disagree with Canon's conclusion that the potential of 4 option years in addition to the base year, intensifies the effect of the single award restriction. Canon claims that though it cannot meet all the requirements now, copier technology changes so rapidly, it believes it could compete sooner than after 5 years. We note that a contracting officer may include options in a contract when it is in the government's best interest (FAR § 17.202(a) (FAC 84-3)) and the Army has set forth several reasons why it believed that option years are appropriate: a continuing need for copier services; alleviation of downtime and costs incurred in changing contracts; encouraging competition by providing a potential for offerors to completely amortize their costs over the contract's life; and the government's benefit from the possibility of lower costs in option years. We find these bases support a reasonable belief that option years are in the government's best interests.

Restrictive performance specifications

In addition to challenging the total package basis of the solicitation, Canon maintains that two^{3/} of the performance

^{3/} In its original protest, Canon objected to two other features as unduly restrictive: a sorter feature and a requirement for two 500 sheet paper trays. The sorter feature has been deleted and the paper tray requirement has been amended to a configuration Canon has stated it can

(continued...)

specifications--a job interrupt feature in Bands III and IV and the capacity to copy to and from 110 pound card stock in Band III--are unduly restrictive of competition.

The determination of an agency's minimum needs and the best method of accommodating those needs are primarily matters within the agency's discretion. CAD/CAM On-Line, Inc., B-226103, Mar. 31, 1987, 87-1 CPD ¶ 366. When a protester challenges a specification as being unduly restrictive of competition, the burden initially is on the procuring agency to establish prima facie support for its contention that the restriction is needed to meet its minimum needs. Once the agency establishes this prima facie support, the burden shifts to the protester to show that the requirement complained of is clearly unreasonable. Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ 267.

The Army explains that the job interrupt feature allows a copying job to be discontinued to allow other copies to be made and then allows the original job to be resumed at the point of interruption. The feature is a minimum need because many of the large jobs performed with these machines are interrupted several times before completion due to the copier sharing arrangements among offices and units. Without this feature, the person performing the larger job would have to count and reassemble the original documents and manually collate the copies already completed, resulting in an excessive use of manpower, waste of resources, and loss of productivity.

Canon argues that users performing small copying jobs should not be interrupting users of the higher volume band machines, and suggests that since use of machines for the size of the job involved is the purpose behind the volume bands, a low volume machine should be used for small jobs. Canon notes that it discontinued the job interrupt feature because of lack of demand and that the General Services Administration (GSA), Fort Polk, and the Defense Intelligence Agency deleted the feature in other similar procurements.

We find that the Army has established the required prima facie support for the job interrupt feature and that Canon has failed to demonstrate that this specification is clearly unreasonable. We agree with the Army's position

3/(...continued)
meet. Accordingly, these issues are academic and not for consideration. See American Overseas Book Co., Inc., B-227835, July 17, 1987, 87-2 CPD ¶ 60.

that placement of lower volume machines in the areas served by the higher volume machines would not be an economical or efficient use of its resources. Further, Canon's business judgment to discontinue this feature does not make it unreasonable for the Army to require it. 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. See Eastman Kodak Company, B-231952 et al., supra. Moreover, the fact that GSA and two military installations have deleted the job interrupt feature is immaterial where, as here, the procuring agency has established the feature to be a minimum need.

With regard to the 110 pound card stock capability, the Army states that the feature is currently used frequently by the Directorate of Information Management reproduction center and within every major subordinate command at Fort Hood. These Fort Hood activities produce a high volume of training materials, messages, inventory listings and other documents which require card stock covers to provide protection, durability, and a longer life.

Canon disputes that the feature would be used frequently since it is anticipated that only 18 of the 319 machines to be procured will have the feature. Canon also argues that since these covers can be printed by offset press at the Fort Hood printing facility, the feature is per se unnecessary. The Army responds that printing the covers separately and manually collating them with the documents would not be economical.

Again, we find that the Army has established a prima facie case that the card stock feature is a minimum need and that Canon has not shown that the specification of the feature is clearly unreasonable. We have no reason to doubt the Army's statement that the feature is frequently used and we note that the ability to meet the card stock requirement from a separate printing facility is insufficient to establish the specification as unreasonable. In view of the limited number of copiers with this feature it is apparent that the Army has already attempted to restrict the feature only to those activities actually requiring it. Likewise, in view of the size of Fort Hood, over 200,000 acres, it is reasonable to assume that with a large volume of material requiring covers, it would be more economical to have covers duplicated with the material instead of at a single central location.

Canon also suggests that the Army should have allowed offerors to submit alternate proposals for individual awards for each volume band. Canon argues that the Army then could evaluate 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 Fort Hood. We need not evaluate the merits of the protester's suggested procurement methodology. What is before us is not a question of what the Army could have done, but instead, whether the procurement method actually chosen by the Army was legally supportable. As we have found the Army's decision to procure on a total package basis was reasonable, the procurement method was clearly unobjectionable. See Eastman Kodak Company, B-231952 et al., supra, 88-2 CPD ¶ 142 at 7; International Business Services, Inc., B-209279.2, Feb. 8, 1983, 83-1 CPD ¶ 142 at 5, 6.

As to protester's request for its costs of pursuing the protest, we permit the recovery of such costs only where it is shown that an agency's action is contrary to law or regulation. 4 C.F.R. § 21.6(d) (1988). Since we find the Army's actions unobjectionable, there exists no basis for an award of costs.

The protest is denied.

John F. Mitchell
for James F. Hinchman
General Counsel