The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Savin Corporation

File: B-232560

Date: December 5, 1988

DIGEST

1. An agency decision to procure photocopies and related services on a total package basis was legally unobjectionable where the agency reasonably believed that this method of contracting would allow greater flexibility in redistributing copiers to meet changing agency needs, increase competition for certain categories of copiers, result in savings (administrative costs and managerial time) related to dealing with more than one contractor at each using facility and improve copier operations by unifying all responsibility in a single contractor at each facility.

2. Requirements contracts to obtain all of various Army installations' photocopier needs are valid contractual arrangements even though there is no maximum limit on the number of copiers the agency may require, because the request for proposals contains the Army's best estimates of the number of copies needed and current monthly usage figures for each installation.

3. A Department of the Army directive implementing a congressional request that the Army temporarily refrain from awarding photocopy contracts on a cost-per-copy basis does not have the force and effect of law and, therefore, provides no basis to question the validity of an award on a cost-per-copy basis.

DECISION

Savin Corporation protests award of a contract to Pitney Bowes, Inc., pursuant to request for proposals (RFP) No. DAKF12-88-R-0102, issued by the Department of the Army to fulfill all of the Army's requirements for photocopies at 13 separate Army installations. Savin contends that the solicitation unduly restricts competition by requiring one contract to be awarded at each location for all four different categories of copiers, instead of allowing

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separate contracts to be awarded for each separate category of copier. Savin argues that the RFP was also deficient because it did not limit the number of photocopiers that a user installation could order under the contract. Furthermore, Savin contends that the Army violated its own directive implementing a congressional request that the Army refrain from issuing any more photocopy solicitations until our Office completes a review of the cost-per-copy concept.

We deny the protest.

The RFP was issued on June 21, 1988, with a closing date of August 12. Offers were solicited to fulfill all of the Army's copying needs at 13 separate locations for a 1-year period with options for 2 additional years. The offers were to be made on a fixed-price per copy basis and the Army was to pay based upon the number of copies it made. The solicitation described four different categories of copiers--designated as "volume bands"--that would be needed at each location. For example, the RFP described volume band I as requiring a copier that could produce 60 copies per minute and 50,000 to 100,000 copies per month; volume bands II, III, and IV described increasingly slower copier machines and lower monthly volumes. The number of copiers in each volume band and the number of copies currently being produced by each type of copier at each installation were also included in the RFP.

Under the terms of the RFP, the offers were to include in the price per copy all of the related services to be provided, including installation, relocation when necessary, repairs and routine maintenance, training for key operators, and all consumable supplies (toner, developer, etc.) except paper. The RFP stated that separate awards might be made for each location, but that only one contract would be awarded for all four volume bands at any particular location. The RFP further indicated that award would be made on the basis of the total price for the base and option periods at each location, and that technical proposals would be evaluated on the basis of technical acceptability.

The Army received from three to seven offers for each of the installations. The Army determined that Pitney Bowes' offer was most advantageous to the government at every installation, and awarded a contact to Pitney Bowes for all volume bands at all 13 locations on September 1. Savin initially protested to the contracting agency by letter of August 11. After the Army denied the agency-level protest on August 30, Savin protested to our Office on the same bases on September 9.

Savin's first complaint is that the RFP improperly restricted competition because it contemplated award of a single contract at each installation for all four bands. The protester argues that the RFP properly should have allowed separate awards for each volume band. According to the protester, many firms in the photocopy field manufacture copiers that are only appropriate for one or two volume bands; therefore, those firms cannot compete on an equal basis with firms that manufacture copiers in every volume band. Thus, the protester contends that the Army has not achieved the full degree of competition that could have been attained if offers for less than all volume bands had been allowed.

The Army reports that it chose to have just one contractor at each location for several reasons. First, the Army believes that awarding one photocopier contract at each installation will allow the Army greater flexibility to meet its changing copier needs during the potential 3-year term of the contract. The Army asserts that it would be impracticable to have to deal with several different contractors when trying to realign copiers among different volume bands.

Second, the Army believes that the total package approach will increase competition in the lower volume bands. The Army reports that the high volume bands are generally more profitable because the fixed costs of providing and servicing the copiers are comparable regardless of the volume of copies ordered; therefore, the more copies ordered in a volume band, the larger the amount of profit that can be made by a contractor. On the other hand, the Army believes that the less profitable, lower volume copiers will attract fewer offers if they are solicited separately.

The Army also contends that the consolidated contract will save administrative costs and managers' time spent in having to deal with more than one contractor at each location; the Army points out that, as there are 13 separate locations and 4 different volume bands, this reduction in staff hours can amount to substantial savings. Further, the Army believes that copier operations will be improved by unifying the responsibilities in a single contractor at each installation. Finally, the Army asserts that the consolidated contract may result in some economies of scale because the contractor will be able to provide supplies and services in bulk and pass some of the cost savings on to the Army.

Under the Competition in Contracting Act of 1984, a contracting agency must specify its needs in a manner

designed to achieve full and open competition, 10 U.S.C. § 2305(a)(1)(A)(i) (Supp. IV 1986), and include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs, 10 U.S.C. § 2305(a)(1)(B)(ii). 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 only object 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.

The reasons asserted by the Army to justify use of the single contractor approach in this case are similar to those raised by the General Services Administration (GSA) in a recent protest in which we held that GSA reasonably determined that a total package approach was an appropriate method of meeting the copy needs of several user activities. Eastman Kokak Co., B-231952, et al., Nov. 8, 1988, 88-2 CPD ¶ ___. While, as in Eastman Kodak, the protester here disagrees with the agency's analysis, we find that, on balance, 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. Specifically, we find persuasive the Army's arguments that award on a total package basis will allow greater flexibility in redistributing copiers among volume bands; will result in savings in administrative costs and staff time related to dealing with more than one contractor at each location; will generally improve copier operations by unifying responsibilities in one contractor; and 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 more lucrative bands and not competing for the less profitable bands. As a result, we see no basis to object to the Army's use of the total package approach. See Eastman Kodak Co., B-231952, et al., supra.

Savin next argues that the solicitation was defective because it did not contain any limitation on the number of copiers that could be ordered by the user installation. According to Savin, the RFP reserved to the Army the right to order copiers in addition to those that were initially installed at a user installation. As there is no limit on the total number of copiers that can be ordered, Savin charges that a contractor risks losing money if too many machines are placed at an installation, causing the machines to be underutilized. Therefore, Savin contends that

offerors were not given enough information to prepare their offers.

The use of requirements contracts is authorized by Federal Acquisition Regulation § 16.503(b), which states that such contracts may be used when an agency anticipates recurring requirements but cannot predetermine the precise quantity of supplies or services that will be needed during a definite period. Jewett-Cameron Lumber Corp. et al., B-229582, et al., Mar. 15, 1988, 88-1 CPD ¶ 265. While it may reduce a contractor's risk and be appropriate in the proper circumstances, it is not necessary that a requirements contract place a maximum or minimum limitation upon the estimated requirements. Robertson and Penn, Inc., B-226992.2, July 13, 1987, 87-2 CPD ¶ 39.

In this case, the solicitation contained an estimate of the number of copies that were expected to be ordered at each Army installation during the base and option periods. The estimates were broken out by installation and further broken out by volume band at each installation. The estimates were based upon current usage data for each installation (showing the number of copiers in each volume band and the quantity of copies produced per month in each volume band); this usage data was included in the solicitation for offerors to use in preparing their offers. Moreover, under the contract, the Army is obligated to ensure that orders for copiers are directly related to the average number of copies produced at a given location.

In our view, offerors were adequately informed of the best data available concerning the number of copies and copiers that would be needed by the Army. As there is no indication in the record, and Savin does not argue, that the Army's estimates and usage figures were not as accurate as they could be in these circumstances, we see no basis to object to the solicitation in this regard. See American Contract Services, Inc., B-225182, Feb. 24, 1987, 87-1 CPD ¶ 203.

Finally, the protester alleges that the Army awarded the contract in contravention of both a congressional request and an Army directive that Army contracting activities temporarily refrain from contracting for copier requirements on a cost-per-copy basis. The congressional request to which the protester refers is a letter dated June 1, 1988, from the Chairman, Readiness Subcommittee, House Committee on Armed Services, to the Secretary of Defense asking that the Department of Defense not solicit or award contracts for photocopies on a cost-per-copy basis until our Office completes an evaluation of the cost-per-copy concept. The Army directive implementing that request specifies that no

new solicitations are to be issued or contract awards made on a cost-per-copy basis; however, ongoing solicitations are excepted from the moratorium.

As a preliminary matter, the Army reports that the directive in question was not issued until after the present solicitation and, therefore, by its own terms, the directive did not preclude award under this procurement. In any event, even if the solicitation had been issued after the effective date, the Army directive represents executive policy only and does not have the force and effect of law. Moore Service, Inc. et al., B-204704.2, et al., June 4, 1982, 82-1 CPD ¶ 532. Moreover, the Chairman's request to the Secretary of Defense does not have the effect of legislation prohibiting the Army from awarding cost-per-copy contracts as the protester suggests. Accordingly, this allegation provides no basis to upset the award to Pitney Bowes.

The protest is denied.

Seymour Efros

for James F. Hinchman
General Counsel