



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** John F. Kenefick Photogrammetric Consultant,  
Inc.

**File:** B-238384

**Date:** May 4, 1990

---

John F. Kenefick, for the protester.  
Duane C. Brown, for Geodetic Services, Inc., an interested party.  
Douglas P. Larsen, Jr., Esq., Office of the General Counsel, Department of the Navy, for the agency.  
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

---

## DIGEST

1. Solicitation's specifications are not unduly restrictive of competition where the procuring agency establishes that requirements for certain film and automatic processing features represent agency's minimum needs and protester, though disagreeing with agency's analysis, fails to show that the restriction is clearly unreasonable.
2. General Accounting Office does not consider protest issues which are essentially made on behalf of other potential competitors who themselves may properly protest as interested parties.

---

## DECISION

John F. Kenefick Photogrammetric Consultant, Inc. (JFK), protests the award of a contract to Geodetic Services, Inc., under request for proposals (RFP) No. N00612-90-R-EE23, issued by the Naval Supply Center, Charleston, South Carolina, for lease, with an option to purchase, of a photogrammetry system. JFK contends that the RFP's specifications for the system are unduly restrictive of competition.

We deny the protest.

048459/141323

A photogrammetry system involves the use of a camera, computer, and "reader" for making precise measurements and representations of a given area. The area to be analyzed is photographed after it has been marked with "positional dots" placed at set distances. When the photographs have been made, the negative or picture is placed in the reader and measurement of the area is made based on the dots. The reader then converts the measurements into computer usable data which can be used to view the area or item three-dimensionally or to create blueprints. The data generated by the process allows precise measurements to facilitate the fabrication of items with exact tolerances for placement into the area measured.

The original RFP for the system was issued on October 2, 1989, and in addition to being synopsisized in the Commerce Business Daily was furnished to seven potential offerors, including JFK, Wild Leitz USA, Inc., and Geodetic. JFK and Wild Leitz protested to the agency that the specifications were unduly restrictive while Geodetic submitted an offer which met them. As a result of the protests, the solicitation was canceled and the specifications were rewritten to reflect other than name brand products and to more accurately reflect the Navy's needs.

The current RFP was issued January 12, 1990, under the authority of 10 U.S.C. § 2304(c)(2) (1988) due to an urgent need to acquire the system. According to a Justification and Approval (J&A), prompt acquisition of the system was vital to ensure timely completion of work on a moored training ship. The J&A further noted that the work had to be completed within a narrow "window of opportunity" due to scheduling and operations of other training sites used by the Navy. Consequently, the closing date for the RFP was January 24, 1990.

The solicitation was provided to all offerors which had responded to the original RFP. Shortly after release of the RFP, JFK and Wild Leitz contacted the Navy and requested changes in the specifications as well as an extension of the closing date. In response, the Navy issued an amendment addressing one concern of Wild Leitz, but otherwise refused the requested changes. Prior to the time set for receipt of proposals, instead of submitting proposals, JFK and Wild Leitz filed protests with our Office alleging that several of the specifications were unduly restrictive of competition. Geodetic submitted the only proposal which was evaluated as compliant with the RFP. Based upon findings of urgent and compelling circumstances which significantly affect the interests of the United States, the head of the contracting activity determined to award the contract

notwithstanding the protest. A contract was awarded to Geodetic on February 2, 1990.<sup>1/</sup>

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, 10 U.S.C. § 2305(a)(1)(A)(i) (1988), 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). When a protester challenges the specifications 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 unreasonable. Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ 267; Monitor Security & Control Sys., Inc., B-227643.2, Sept. 15, 1987, 87-2 CPD ¶ 253.

JFK complains that the Navy's requirement that data collection be by automatic means, and that the camera use roll film, produce a 4- by 5-inch negative, and be equipped with a vacuum platen (which holds the film flat), are unduly restrictive of competition and effectively result in a sole-source procurement. According to JFK, only one vendor, Geodetic, offers a system meeting the specifications. JFK contends that its system, featuring a non-automatic reader and a camera using individual 4- by 5-inch glass plates, instead of roll film (making the vacuum platen unnecessary), is sufficient for the Navy's requirements.

According to the Navy, its minimum needs require the use of an automatic reader and roll film. First, use of an automatic reader will result in a decrease in personnel hours required to operate the system, which in turn will result in payroll savings. The Navy explains that in performing a photogrammetrical analysis of an area, each picture or negative must be separately placed in the reader and the computer's cursor positioned on each dot. With a manual or semi-automatic reader, like that to be offered by JFK, the cursor must be manually moved from positioning dot to dot to collect the data. With an automatic system, the cursor is manually positioned only on the first dot; the reader then moves from dot to dot automatically. Where

---

<sup>1/</sup> The Wild Leitz protest, B-238384.2, which essentially raised the same issues as JFK, was subsequently dismissed for failure to comment on the agency report. Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1989).

reading entails hundreds of dots and some projects involve hundreds of pictures, the personnel hours and labor costs for a manual or semi-automatic reader are estimated as "staggering" by the Navy. In addition to accomplishing the same task in far less time, the automatic system reduces the opportunity for human error inherent in multiple, manual placements of the cursor. In the Navy's view, the automatic reader will produce a better overall product by reducing the potential for error.

Second, the Navy states that the use of roll film also will result in lower labor hours and personnel costs. The camera which JFK would propose uses glass plates which must be individually inserted in the camera for each exposure and removed prior to insertion of the next plate. The Navy explains that since a given job often involves hundreds of photographs, the constant loading and unloading of plates wastes production time. On the other hand, the use of film in rolls on which a number of exposures can be made would save considerable operator time and expense.

JFK disagrees with the Navy's position. Relying upon the successful operation of its system with the Navy and other users, as well as statements by a Navy employee that its and Geodetic's systems could both be used, JFK maintains that its system will meet the Navy's end product requirements. However, that JFK's system might produce the same end product--an analyzed area--does not mean it meets the Navy's minimum needs for reduction of labor hours and costs, and increases accuracy. Nor does it establish that the Navy's minimum requirements are unreasonable. We find that the Navy has established prima facie support for its minimum needs of labor hours and cost savings, as well as increased accuracy potential. As we recognized in Canon U.S.A., Inc., B-232262, Nov. 30, 1988, 88-2 CPD ¶ 538, a specified copier feature which reduces labor delays, waste of resources, and loss of productivity expresses a valid and reasonable minimum need. Accordingly, we find nothing objectionable in the Navy's specifications. Canon U.S.A., Inc., B-232262, supra; Reach All, Inc., B-229772, supra.

We also do not agree that the procurement is essentially a sole-source acquisition because Geodetic submitted the only compliant offer.<sup>2/</sup> According to Geodetic, there are three

---

<sup>2/</sup> In a related argument, JFK notes that the solicitation sought "state-of-the-art" equipment, yet the state-of-the-art in photogrammetry systems includes the capacity for stereo photogrammetry, which, according to JFK, Geodetic

(continued...)

firms which can meet the roll film, negative size, and vacuum platen requirements and three other manufacturers which can meet the automatic reader requirement. Thus, there is no evidence that only Geodetic can meet the requirements. Further, we are aware of nothing that would prevent JFK from attempting to team with another manufacturer to meet the requirements. In fact, one of JFK's own submissions states that with its system, "[c]ameras from other manufacturers may be employed too." Moreover, where a specification reflects the agency's minimum needs, the fact that not every potential competitor is able to meet that specification, does not demonstrate an impropriety. See Reach All, Inc., B-229772, supra.

JFK also contends that the Navy's claim of competition is illusory. It observes that only one of the potential offerors identified by Geodetic was aware of the Navy's requirement, and none of them was furnished a copy of the solicitation. In addition, according to JFK, three of the seven firms furnished the original solicitation do not offer photogrammetric systems. Thus, JFK argues that if the Navy had used procedures and specifications to foster competition, more firms would have submitted proposals. The Navy explains that it was unaware of the offerors identified by Geodetic until after it awarded the contract. According to its J&A, the Navy solicited all firms which responded to the original solicitation.<sup>3/</sup> Nothing in the record indicates that the Navy deliberately excluded any potential offeror from the competition. Furthermore, we find that JFK

---

2/(...continued)

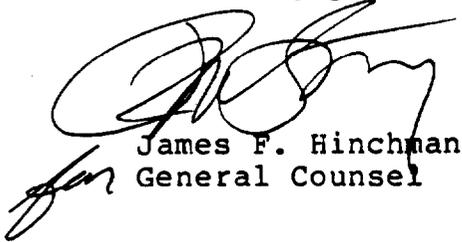
cannot meet. JFK also notes that earlier versions of the specifications included a stereo capability and that many photogrammetric projects are "best solved" at less cost using the stereo method. The determination of an agency's minimum needs and the best method of accommodating those needs are primarily matters within the agency's discretion. CAD/CAM On Line, Inc., B-226103, Mar. 31, 1987, 87-1 CPD ¶ 366. The protester has not established that the addition of the stereo capability, which may or may not restrict competition, is representative of the Navy's minimum needs. Thus, we will not second-guess the Navy decision not to include this or any other capability in its final specifications.

3/ JFK has also questioned the sufficiency of the J&A, in various aspects, including the estimated cost of the procurement and cost saving. We have reviewed the J&A and find no substantive basis for determining that it was improperly issued or otherwise insufficient.

is not an interested party to raise the issue of the exclusion of other offerors. JFK was not prevented from competing apart from its inability to meet the Navy's reasonable minimum requirements, and other potential competitors with a more direct relationship with the issue may properly protest it themselves. See Cloud 9 Limos, B-234572, Mar. 20, 1989, 89-1 CPD ¶ 287.

The Navy also has advised our Office that it intends to evaluate the Geodetic system during the base year and will contact the sources disclosed in the course of the protest to conduct a market survey of their interest in and ability to provide automatic photogrammetry equipment. If interested and qualified offerors exist, offers will be requested and a review conducted to determine whether to exercise the options under the current contract or conduct a new competition.

Accordingly, the protest is denied.



James F. Hinchman  
General Counsel