

4/24

03922

in Seclusion
Page II



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: D-289763

DATE: October 12, 1977

MATTER OF: Eric P. Schellin

DIGEST:

1. Agency's determination to procure foreign and domestic patent services under single solicitation rather than break out domestic services for separate procurement will not be disturbed absent clear showing of unreasonableness.
2. Preclusion of particular offeror from procurement does not render specifications unduly restrictive where specifications reflect legitimate agency needs.

Eric P. Schellin protests as unduly restrictive of competition request for proposals (RFP) No. W-10-19561-JHC-3, issued July 1, 1977, by the National Aeronautics and Space Administration Headquarters Contracts Division (NASA), Washington, D. C.

The RFP contemplates award of three or more identical indefinite quantity type contracts for the performance of professional patent services concerning NASA's foreign and domestic patent dockets and requires offerors to submit offers to provide all of the services specified in the statement of work. These services include novelty searches, infringement studies, validity studies, title searches, preparation and prosecution of U.S. patent applications, preparation of foreign applications, foreign translations, filing of patent applications in countries other than the United States, foreign patent prosecution, and payment of annuities.

The protester contends that the grouping of foreign patent work with domestic patent searches and prosecution under a single RFP precludes firms which have an expertise in only one of these areas from submitting offers and, therefore, eliminates smaller businesses from competing. The protester believes the RFP should be withdrawn and two new RFPs,

B-189763

one for foreign patent prosecution and one for patent searches and domestic patent prosecution, should be issued.

NASA concedes that the various interrelated services could be logically arranged in different combinations. However, the agency believes there is no merit in procuring the services separately since it has been NASA's experience that most firms are capable of performing all of the services required and because separating out the domestic patent searches and prosecutions for the protester, who specializes in that area, would lead to similar requests from other firms which might wish to compete for similarly discrete areas of the work.

The record indicates that prior to 1974, NASA did break out the work into several combinations of functional areas for separate procurement as now suggested by the protester. This procedure was discontinued, however, because of the expense and administrative burden of coordinating the overlapping services. NASA describes the difficulties in separately procuring segments of the work as follows:

"The problem arises in that the contractors bill us on an hourly basis and that a considerable amount of this time is spent by the contractor in familiarizing himself with the specific technology involved in the case. If one contractor completes all the work on a case, he only has to spend this time once, but when a multitude of contractors are working on a case, each one has to spend time learning the technology and what services have already been performed on the case, thus duplicating the work and substantially increasing the cost to the Government. This is in addition to the time and costs that will be necessary to transfer these cases from firm to firm as each one performs its piecemeal service on the case."

Two additional benefits in having one firm perform all the work required on a particular case are reported to be a better work product from a firm knowledgeable in the entire history of the case due to the interrelation of all of the work entailed and the availability of at least one of the four anticipated contractors to perform work on a rush basis or in a unique technical discipline when NASA requires it.

B-189763

The preparation and establishment of specifications to reflect the minimum needs of the Government are matters primarily within the jurisdiction of the procuring agency, since it is Government procurement officials who are familiar with the conditions under which similar services have been procured in the past and are generally in the best position to know the Government's needs and best able to draft appropriate specifications. 38 Comp. Gen. 190 (1958); B-176420, January 4, 1973; Paul R. Jackson Construction Company, Inc., et al., 55 Comp. Gen. 366 (1975), 75-2 CPD 220. Accordingly, we have recognized that the determination to procure by means of an overall package approach rather than by separate procurements for divisible portions of the total requirement is within the discretion of the contracting agency and will not be disturbed by our Office in the absence of a clear showing that it lacked a reasonable basis. Allen and Vickers, Inc.; American Laundry Machinery, 54 Comp. Gen. 445, 452 (1974), 74-2 CPD 303; Control Data Corp., 55 Comp. Gen. 1019, 1024 (1976), 76-1 CFD 276; Memorex Corporation, B-187497, March 14, 1977, 77-1 CPD 187; Capital Recording Company, B-188015, B-188152, July 7, 1977, 77-2 CPD 10; Burton K. Myers and Company, B-187960, September 14, 1977, 77-2 CPD _____. In view of NASA's statements and the overall record in this case, we cannot conclude that a clear showing of unreasonableness has been made by the protester.

Furthermore, we note that this is not a case involving a sole-source situation. Eleven proposals were received from the twenty-seven firms solicited; nine of the eleven proposals are reported to be from small businesses. In this regard we have often stated that the preclusion of one or more potential offerors from a particular competition does not render a specification unduly restrictive if, in fact, the specification represents the legitimate needs of the Government. Memorex Corporation, B-187497, *supra*. Since it appears that NASA's specifications are reasonably related to its minimum needs, the de facto exclusion of Eric P. Schellin from this competition because the protester does not or will not offer all of the services specified in the RFP is not improper.

B-189763

The protest is denied.

Paul G. Luskling
Acting Comptroller General
of the United States