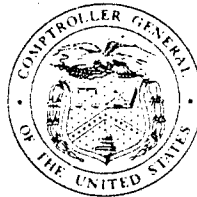


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**DECISION**



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

FILE: B-198911.2

DATE: March 27, 1981

MATTER OF: Amdahl Corporation

DIGEST:

AGC 000008  
NIF

1. GAO will consider protester to be interested party where protester contends improprieties in solicitation prevented its participation in procurement and solicitation did not otherwise preclude protester's participation as prime offeror.
2. Allegation that various solicitation requirements are unduly restrictive and unreasonably favorable to incumbent are not persuasive in procurement of complex computer system requiring strict compatibility and interchangeability where requirements are reasonably related to this need.
3. Options for years 5 through 10 of computer system upgrade which are neither definite as to price nor requirements should be removed from solicitation prior to award of contract.

DLG06374

(Amdahl Corporation has filed a protest against a request for proposals (RFP) issued by the National Institute of Health (NIH) for the replacement of a major computer system in NIH's Division of Computer Research and Technology (DCRT). Amdahl contends that the solicitation is unduly restrictive and is, in effect, an unjustified sole-source to International Business Machines Corporation (IBM). We find the protest to be without merit.)

THAT WAS  
[PROTEST ALLEGING RESTRICTIVE  
SOLICITATION]

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NIH is seeking through this procurement to accomplish the evolutionary upgrade of the existing DCRT system which includes three computers--an IBM 370/168 MP (Multi-Processor - a single computer with two central processing units (CPU's) sharing a common memory), an IBM 3033 MP and an IBM 370/145, for a total of five CPU's--all linked together and tied to hundreds of input/output and peripheral devices in a complex configuration to serve 6,000 users. (The IBM 3033 MP recently replaced a 370/168 MP to provide an interim increase in system capability while this procurement is pending; this interim acquisition is the subject of another protest, Amdahl Corporation, B-198911, also decided today.) The RFP contemplates a single contract for a 10-year period; offerors are required to propose fixed prices for each of the first 5 years; option prices for each of the second 5 years are negotiable subject to certain cost ceilings.

The RFP describes NIH's needs for the new system in terms of mandatory minimum requirements for hardware (equipment), support (maintenance and services), and "desirable factors." The mandatory hardware requirements for the initial configuration are stated in terms of the existing system, NIH's projection of user growth over the first 5 years, and a requirement for compatibility with existing programs and DCRT-modified IBM operating systems. (An operating system, oversimplified, is the software in a computer which manages and allocates the computer resources needed to run users' programs.) The "desirable factors" section of the RFP describes in some detail those aspects of the mandatory requirements and additional features in excess of the minimum requirements which NIH considers important and relates to each the point scores it will be worth in the evaluation of technical proposals. Offerors may propose system configurations different from DCRT's existing system which are capable of meeting NIH's computing and growth requirements. Generally, all components of the same type must be produced by the same vendor; e.g., all tape drives must be produced by one vendor and all disk memory must be from one vendor--but not necessarily the same vendor which produces the tape drives. A single prime contractor

must be responsible for all aspects of the system-- hardware, software and maintenance--but is "encouraged" to subcontract.

As a threshold matter, NIH has questioned Amdahl's status as an "interested party," as required under our Bid Protest Procedures, 4 C.F.R. part 20 (1980), to bring this protest. In this regard, NIH asserts that Amdahl intended to participate as a subcontractor and that since no potential prime offeror has acquiesced in Amdahl's protest, Amdahl lacks the interest in the procurement required to file a viable protest of its own, citing American Satellite Corporation (Reconsideration), B-189551, April 17, 1978, 78-1 CPD 289. Amdahl, on the other hand, states that it did not submit a proposal because of the alleged improprieties in the procurement, from which we infer "a proposal as a prime offeror." We note also that the RFP did not preclude Amdahl's participation as a prime offeror, unlike the situation in American Satellite Corporation (Reconsideration), supra. Absent objective evidence clearly establishing Amdahl's status, we will consider Amdahl an interested party. WASSKA Technical Systems and Research Company, B-189573, August 10, 1979, 79-2 CPD 110.

Generally, where a protester challenges a specification as unduly restrictive of competition, the procuring agency must establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. The burden of proof remains on the protester to show that the requirements complained of are clearly unreasonable. Constantine N. Polites & Co., B-189214, December 27, 1978, 78-2 CPD 437. This is so because the Government's contracting agencies primarily are responsible for determining the needs of the Government and the methods of accommodating such needs. 38 Comp. Gen. 190 (1958); Manufacturing Data Systems Incorporated, B-180608, June 28, 1974, 74-1 CPD 348; Particle Data, Inc.; Coulter Electronics, Inc., B-179762, B-178718, May 15, 1974, 74-1 CPD 257.

Amdahl cites several provisions of the RFP in support of its assertion that the procurement is

unduly restrictive and/or unreasonably favorable to IBM. Amdahl argues, for instance, that the RFP's requirement that all CPU's be manufactured by one vendor has no rational basis in a procurement which already requires that all CPU's be IBM-compatible. Amdahl also suggests that the RFP's growth requirements for the system over the initial 5-year period parallel IBM's product line. NIH responds that the RFP's growth requirements are an accurate reflection of its projected user growth and states that the purpose of the single-vendor requirement is to ensure continued compatibility of all of the components of the system throughout the system's 10-year projected life. We are not persuaded that NIH's rationale for these requirements is unreasonable.

Amdahl also questions NIH's requirement that a single prime contractor be responsible for all aspects of the system. We have held, however, that it is permissible for agencies to procure by means of a total package approach rather than by separate procurements for divisible portions of a total requirement where the latter course might involve undue technical risk or defeat a requirement for interchangeability and compatibility. We will not question such a determination unless it is shown clearly to be unreasonable. Control Data Corporation, 55 Comp. Gen. 1019 (1976), 76-1 CPD 276; Allen & Vickers, Inc., et al., 54 Comp. Gen. 445 (1974), 74-2 CPD 303. Given that the DCRT system is complex and requires strict compatibility among its components both initially and throughout the system's life, we conclude that NIH's requirement for a single prime offeror is reasonable.

Amdahl also charges that the RFP's evaluation criteria are subjective and that the "desirable factors" are both tailored to IBM's equipment and are likely to be dispositive of award. Amdahl argues that NIH is treating these desirable features as if they were mandatory requirements rather than treating them as options or desirable features in excess of the Government's needs. NIH responds that the use of the term "desirable factors" in the RFP was perhaps misleading and that these items are not optional requirements but are an exposition of the things NIH

will be looking for in its evaluation of proposals with respect to both mandatory requirements and features above and beyond the minimum essentials.

Our reading of the RFP supports NIH's view. In this respect, we note particularly that the desirable factors include such traditional evaluation criteria as an offeror's experience and the quality of personnel and resources committed to the contract and identify the specific evaluation point totals associated with each subcriterion. We also find unobjectionable NIH's use of added evaluation points for features in excess of the mandatory minimum.

We note, however, that NIH's system specifications do in some particulars come perilously close to echoing IBM's product line, as Amdahl suggests. For example, we note that the RFP's mandatory communication channel configuration for the major processors in the system corresponds exactly to the channel configuration available on the IBM 3033 computer of 3 byte and 13 block multiplex channels. (EDP Buyers Guide; Data Pro Reports, p. 70C-491-06e.) However, Amdahl's own 470-series processors provide both a greater number of channels and more flexibility in selection of channel type which leads us to believe that Amdahl could meet this requirement. Amdahl has, in fact, identified no allegedly IBM-specific requirement in the solicitation which Amdahl could not satisfy and which might have precluded Amdahl's participation in the procurement.

Amdahl raises several other questions concerning the RFP, including a challenge to the evaluation formula. We have examined each of these charges carefully and remain unpersuaded that any of NIH's requirements are unreasonable.

We are convinced that Amdahl's real complaint is that IBM enjoys an unfair competitive advantage in this procurement. However, although we agree with Amdahl that IBM has a significant edge, we consider it to be a natural incident of the market rather than the product of any effort by NIH to exclude all other offerors. In this procurement, NIH is seeking the evolutionary upgrade of what is, as we noted above,

a large and complex IBM-based system. IBM is the only single vendor in the market which either manufactures, produces, or provides all of the hardware, software, and maintenance services needed for the complete system. Any non-IBM offeror has the substantial burdens, not facing IBM, of satisfying the IBM compatibility requirements, integrating the products of diverse manufacturers into a total system, and either providing or obtaining commitments for the maintenance of these products. While these additional burdens may place non-IBM offerors at a disadvantage, it is not the type of disadvantage that requires equalization by the Government. ENSEC Service Corp., 55 Comp. Gen. 656 (1976), 76-1 CPD 34; Western Design Corporation, B-194561, August 17, 1979, 79-2 CPD 130.

The protest is denied. *without merit*

(Amdahl has also challenged the propriety of the unpriced options for the second 5 years of this contract. Because these options were unpriced and were not evaluated by NIH, we do not believe that Amdahl was prejudiced by their inclusion in the RFP. We have, therefore, not considered these questions in our review of Amdahl's protest. We agree with Amdahl, however, that these option provisions are improper in their present guise.)

NIH's attempted use of negotiable options is not unique to this procurement. See, e.g., Pacificon Productions, Inc., B-196371, July 22, 1980, 80-2 CPD 58, at p. 6. As we noted in that decision, 41 C.F.R. § 3-1.5401 requires that option clauses establish a price which the Government may unilaterally elect to accept. These options not only fall short of this requirement, but also fail to define the specific services or components which NIH might require because NIH has not defined its system needs beyond the initial 5-year period. In these circumstances, these option provisions should be deleted from the solicitation prior to award.

*Milton J. Aroba*

Acting Comptroller General  
of the United States