

DECISION

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

FILE:

B-207177

DATE: January 17, 1983**MATTER OF:**

Cincinnati Bell Telephone Company

DIGEST:

1. Procuring agency generally must give offerors sufficient details in request for proposals to enable them to compete intelligently and on relatively equal basis. Where the solicitation sets out estimates as to the extent of the number of services required for evaluation purposes, establishes a minimum ordering requirement, and identifies the types and levels of services required, the solicitation is sufficient for the preparation of proposals.
2. Protest urging that performance type specification be revised to require certain elements of protester's equipment configuration is in effect an allegation that a more restrictive specification should be used. Agency determination that performance type specification is adequate and that conforming equipment will meet Government's needs will not be questioned.
3. Where agency specifies additional features of a system to assure their availability in the future and requires offerors to state prices for those additional features, but agency has no known requirement for those features at the time of procurement, the solicitation need not contain estimates of the usage of those features and they need not be included in the overall price evaluation.

Cincinnati Bell Telephone Company protests that request for proposals No. 5FCC-TC-81-137, issued by the General Services Administration to obtain a telephone system for the Cincinnati, Ohio area, should be revised to clarify the Government's requirement and to provide a common basis for evaluation. We deny the protest.

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The solicitation calls for an indefinite quantity, indefinite delivery, fixed price contract, with minimum ordering requirements, covering 10 years, including option periods. The selected contractor will engineer, install and maintain a complete system with 4,500 to 6,000 telephones, including necessary lines, switching gear and related equipment needed to serve some 150 Federal agencies located throughout the Cincinnati area. Offerors are to propose the types of equipment that they believe will satisfy the Government's specified technical requirements and service levels, together with unit prices for that equipment, on the basis of lease, purchase, or combinations thereof. Award is to be made on the basis of the technically conforming proposal that offers the lowest evaluated life cycle cost.

GSA originally issued the solicitation on April 20, 1981 but due to numerous questions raised by offerors, GSA canceled, then revised and reissued the solicitation on November 11, 1981. Since that time Bell has raised additional objections to the terms of the solicitation in a series of letters to GSA, many of which GSA resolved to Bell's satisfaction. The remaining issues were timely protested to this Office by Bell's letter of April 19, 1982, the day before proposals were due. A number of these issues have also been resolved; only those discussed below remain open. GSA advises that it is continuing to negotiate with the offerors pending our decision on the protest.

Bell first contends that the solicitation is defective because it fails to adequately describe how the six-button telephones specified in clause T-550 will be used. Bell argues that these six-button telephones are only one portion of a key telephone system and that additional information, particularly the number of key units and key line units, the number of telephones associated with each key line unit, and the number of lines connected to each telephone must be provided to enable offerors to estimate costs. In the absence of such information, Bell argues, the specification is indefinite and ambiguous, so that offerors are not competing on a common basis. In support of its position, Bell has submitted examples of typical key telephone systems showing widely varying cost differences. Bell urges that GSA should revise the solicitation to define typical key telephone system configuration in order to assure equality in the bidding process.

Bell further contends that clause T-550 of the solicitation fails to properly define expansion requirements for the key telephone systems. According to Bell, although the clause shows anticipated growth in the number of six-button telephones, it does not show anticipated growth in the number of key telephone units. Moreover, Bell argues, GSA's projections for the number of six-button telephones needed in the 96th month of the contract is not consistent with the number of key telephone units specified in Attachment 2, clause T-554. Bell therefore concludes that the future requirements are also ambiguous.

GSA contends that offerors have all the information needed to prepare adequate proposals. GSA points out that its requirements are stated in terms of number of telephones, numbers of lines, types of services provided, levels of service, and building locations, but no equipment configuration is specified; offerors are to propose that combination of equipment they believe best serves the Government's needs. Since each offeror is required to propose the same quantity of telephones, the same equipment capacity, and the same service levels and since as many other costs to the Government as are identifiable, quantifiable and reasonably certain to be incurred are taken into account in the price evaluation, GSA argues that the relative standing of the offerors' price proposals is reflective of their ultimate probable cost to the Government.

GSA asserts that Bell's key station equipment which operates the six-button telephones is not configured the same as its competitors. Under the Bell system, it is necessary to install a key telephone unit on a common control unit to control each six-button telephone. Each common control unit may control one or more key systems and is separate from the system's main switching gear. Other vendors, however, offer main switching gear which control key systems directly, without the need for an intervening common control unit.

GSA also argues that Bell's examples of different, but typical, key system arrangements reflecting widely varying costs are misleading since the arrangements differ primarily in the number of six-button telephones installed, which presumably will be priced separately by Bell. As to any alleged inconsistency between the stated future requirements and Attachment 2, Clause T-554, GSA points out that the latter is simply a listing of equipment now installed, provided for reference purposes only, and that

the projected contract requirements will vary over time as indicated in the tables at clause T-550.

The determination of the Government's minimum needs and the method of accommodating them are properly the responsibility of the contracting agency. Maremont Corporation, 55 Comp. Gen. 1362, (1976), 76-2 CPD 181. However, the solicitation requirements must be free from ambiguity and describe the minimum needs of the procuring activity. Klein-Sieb Advertising and Public Relations, Inc., B-200399, September 28, 1981, 81-2 CPD 251. This does not mean that all elements of the requirement must be so precisely specified that the contract is free from risk; rather some risk is inherent in most contracts and offerors are expected to allow for risks in their offers. See Klein-Sieb Advertising and Public Relations, Inc., supra.

We believe that the Government's minimum needs have been specified with the requisite degree of specificity here, given the nature of the procurement, contemplating a changing level of performance over a 10-year period.

Knowledgeable offerors can adequately protect themselves in these circumstances, through their proposed pricing structure. Bell is free to estimate the cost of the equipment needed to support a key telephone system and include those costs in its price for individual six-button telephones, or it may choose to avoid the risk of estimating costs on that basis and separately price each component of its key telephone system. In any event, given GSA's uncontradicted assertion that Bell's competitors offer alternative configurations for supporting key telephone systems that also satisfy the Government's minimum needs, GSA has no basis for restricting competition to Bell's type of equipment, which specifying key units and key line units would necessarily do. See Ultraviolet Purification Systems, Inc., B-192783, August 20, 1979, 79-2 CPD 132. Consequently, we cannot agree with the assertion that the components of Bell's key line system should be specified.

Originally Bell argued that clause T-413, which requires that replacement parts be available for the system life, was ambiguous because it could refer to either the 10-year contract life or the 18-1/2-year system life assumed in clause T-419 for cost evaluation purposes. In response, GSA stated the contractor will not be required to make replacement parts available beyond the life of the contract since 40 U.S.C. 481(a)(3)

(1976) establishes a maximum period of 10 years for telecommunications contracts. Bell now contends that there is a material contradiction between clauses T-413 and T-419 because they contemplate differing periods of time. However, Bell has not explained why the two differing periods create a contradiction and therefore we deny Bell's protest in this respect.

Bell also contends that GSA should provide offerors with additional information for estimating the cost of providing radio paging, dial dictation and centralized attendant services. Clause T-540 identifies these as additional features which the offered equipment must be capable of providing should the Government, in its discretion, decide to procure them. Offerors are required to price these features, although that price will not be included in the Government's cost evaluation.

Bell argues that it cannot prepare prices for these features without an estimate of their usage during the life of the contract and an indication where GSA intends to locate its attendant services. Further, Bell emphasizes that centralized attendant services are required to operate the system in any event, pointing out that GSA now employs five attendants in Cincinnati.

GSA replies that these additional features have been identified as future potential requirements of the Government that must be included in the solicitation to assure their availability should they be needed at a later date. However, since there is no present or defined future requirement for these features, their anticipated usage has been described with the greatest degree of specificity possible, i.e., none, and they are therefore not included in the cost evaluation. As to the necessity for centralized attendant services, GSA recognizes that it presently employs people in Cincinnati for this purpose, but consistent with its policy of reducing the number of attended locations nationwide, GSA does not intend to provide this service with the new telephone system. As a consequence, GSA concludes that it has no definite requirement for any of the questioned additional features.

Where appropriate, an agency's minimum needs may properly include consideration of system capabilities that will permit the Government to satisfy potential requirements that may arise in the future. See California Computer Products, Inc., B-193329, July 3, 1979, 79-2 CPD 1. However, the agency's cost evaluation need not include

prices for items where the agency lacks the data on which it believes a reasonably accurate estimate can be based. See Tex-La Cable T.V., Inc., B-201558, April 5, 1982, 82-1 CPD 300. We believe that GSA has reasonably demonstrated that although it has a potential requirement for these additional services, it does not have sufficient information on which to base a reasonably accurate estimate.

Bell also argues that GSA has failed to adequately define its requirements for maintenance and associated services specified in clause T-507 and for engineering and consulting services specified in clause T-505. Bell argues that offerors need additional information on the anticipated amount of these services to prepare their proposals and asks that GSA provide estimates in the same manner that it did under clause T-419 concerning the anticipated number of telephone installations, removals, and rearrangements that will occur during contract performance.

GSA replies that offerors normally include the cost of maintenance service in their price for the equipment proposed, but that offerors are free to propose separate maintenance prices based upon their knowledge of their own equipment. GSA further states that it has not included engineering and consulting services in its price evaluation because it anticipates only a negligible amount will be required. GSA explains that most of these services are provided incident to system design and included in the price of the equipment; that GSA maintains its own professional staff for any additional work; but that it is desirable to obtain a price for these services in case of unforeseen events, such as disasters. As a consequence, GSA contends that it has provided offerors with all the information required to calculate costs and prepare proposals and that all costs reasonably certain to be incurred will be taken in to account in the Government's price evaluation.

We believe that GSA's explanation is persuasive. Given the circumstance that maintenance service is customarily included in the price of equipment and the fact that maintenance will vary with the type of equipment proposed, GSA's treatment of maintenance prices is unobjectionable. Further, because the requirement for maintenance service is dependent upon the type of equipment proposed, this requirement is distinguishable from such follow-on services as telephone relocations, which

are dependent upon Government action. Further, GSA's assertion that, although the amount of engineering and consulting services to be ordered cannot be predicted with a reasonable degree of accuracy, only a negligible amount is anticipated, is uncontradicted by the record. Consequently, the price of such services does not appear to be necessary for price evaluation. See Tex-La Cable T.V., Inc., supra.

The protest is denied.

for Milton J. Aroian
Comptroller General
of the United States