

**DECISION**

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

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**FILE:** B-214670

**DATE:** July 30, 1984

**MATTER OF:** Avitech Inc.

**DIGEST:**

1. Government is not obligated to equalize the competitive advantage that accrues to one competitor by virtue of its own efforts under a prior contract.
2. Mere presence of financial risk in competing for a contract does not render the procurement improper since offerors are expected to take risk into account in formulating their offers.

Avitech Inc. protests alleged specification deficiencies in request for proposals (RFP) No. N00189-84-R-0015 issued by the Department of the Navy for the modification of test stands to incorporate a computerized system for testing of gas turbine engine fuel control units. Avitech contends that the RFP unduly restricts competition in that the specifications enable one contractor, Bendix Corporation, to gain a competitive advantage for the award, and that the same specifications impose unacceptable risks on offerors. We deny the protest.

The solicitation required that the diagnostic software of the computer system contain a mathematical model based on data developed by the original manufacturer of the testing equipment, Bendix. In specifying the requirement for data Bendix developed under a prior government contract, the Navy assumed that Bendix would be willing to sell the data to other offerors. However, Bendix considered the data proprietary and refused to make it available to its competitors. Four offerors, including the protester, thereupon objected to the Navy about the specifications, which were thereafter amended to permit a firm to propose a mathematical model other than the Bendix model, so long as the offered model met the listed requirements. The amended RFP further stated that

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"The contractor may be required to demonstrate and prove the accuracy of the proposed . . . model . . . prior to award of the contract."

The Navy received four proposals in response to the amended RFP. The protester, not satisfied with the corrective action taken by the Navy, did not submit a proposal.

Our Office has consistently held that the contracting agency has the primary responsibility for drafting specifications that reflect its minimum needs, and we will not question its determination absent evidence that the determination lacks a reasonable basis. Informatics, Inc., B-190203, March 20, 1978, 78-1 CPD ¶ 215. Avitech does not allege that the amended specifications exceed the Navy's minimum requirements, or that the amended specifications are so restrictive that no firm except Bendix could have participated in the procurement. Instead, Avitech complains that even under the amended specifications Bendix has a definite competitive advantage through possession of its proprietary data.

We have consistently recognized, however, that a particular offeror, like Bendix, indeed may possess unique advantages and capabilities by virtue of its prior experience. Absent preferential treatment of that firm, or other unfair action by the government, we have held that any advantage thus obtained is not unfair and that the government is not required to try to equalize competition to compensate for it. See Boston Pneumatics, Inc., 56 Comp. Gen. 689 (1977), 77-1 CPD ¶ 416. We see no evidence of unfair action here.

Avitech further alleges that submission of an offer based on other than the Bendix data, with a requirement for pre-award qualification, places an undue financial risk on the offerors in that the apparently successful one may have to go through the pre-award procedure but still not receive the contract. However, we have no legal basis to question the agency's expressed need, in connection with its attempt to expand competition by permitting offers of other models, to be sure a proposed model is accurate before the offer is accepted. Concerning the financial risk of submitting an offer under those conditions without a guarantee of reimbursement for the

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pre-award test, offerors are expected to take the uncertainties inherent in any competition into account in the computation of their offers, and the risk that money spent to compete may be lost does not affect the propriety of an otherwise proper solicitation.

The protest is denied.

*for* *Milton J. Fowler*  
Comptroller General  
of the United States