

**DECISION**

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

**FILE:** B-218433, B-218434 **DATE:** August 6, 1985

**MATTER OF:** Chicago City Wide College

**DIGEST:**

1. Protest that specification precluding 2-year educational institutions from offering general education courses restricts competition on a procurement for postsecondary education programs is denied where protester has not demonstrated that the Army had no reasonable basis for this restriction.
2. Protest that RFP contained inadequate information for offerors to submit responsive proposals is denied where protester does not demonstrate (1) that the requested information was available to the agency before the closing date for the receipt of proposals; or (2) that the information was necessary for preparing an acceptable proposal.
3. Protest that incumbent had a competitive advantage is denied where the record does not demonstrate that the alleged competitive advantage resulted from unfair action or preference by the procuring agency.

Chicago City-Wide College (CCW) protests as restrictive of competition the provisions of request for proposals (RFP) Nos. DAJA37-85-R-0054 and DAJA37-85-R-0055, issued by the Department of the Army, Europe, to procure postsecondary education programs for 114 Army Education Centers in Europe. CCW also alleges that the RFP's did not contain sufficient information for offerors to submit responsive proposals.

We deny the protest in part and dismiss it in part.

RFP No. DAJA37-85-R-0054 requested proposals from 4-year educational institutions or consortia of institutions

capable of awarding baccalaureate degrees in the fields of liberal arts, sciences and humanities (the liberal arts RFP). RFP No. DAJA37-85-R-0055 requested proposals from academic institutions or consortia authorized to award certificates and associate degrees in vocational and technical programs. The Army intends to enter into a basic agreement with one offeror under each RFP. The agreements will authorize each contractor to provide courses at the various education centers throughout Europe at a fixed tuition charge. Both RFP's specified that the successful offeror under the liberal arts RFP will provide all general education courses (i.e., courses transferable to a 4-year degree program) in those locations where that offeror chooses to provide general education courses. The successful offeror under the vocational/technical RFP was permitted to offer general education courses only in those locations where the liberal arts educational institution chooses not to offer general education courses.

This procurement represents a departure from the format used to procure postsecondary education programs for Army personnel for the past 10 years. Currently, eight institutions have agreements to provide postsecondary education programs pursuant to the Contractual Educational Services List (CESPRO), which dictates the allocation and location of course offerings among the eight institutions. Under this format, 2-year schools are permitted to offer both vocational/technical and general education courses.

CCW principally argues that the RFP's unduly restrict competition because: (1) only one institution under each RFP will be awarded a contract to provide programs (in contrast to the present eight institutions); and (2) 2-year schools are precluded from competing under the liberal arts RFP to offer general education courses. CCW believes the Army should continue using the CESPRO system of contracting with 2- and 4-year institutions, so that 2-year colleges can compete to offer these courses. CCW also argues that certain course enrollment data, absent from the RFP's, is necessary to prepare a comprehensive proposal.

#### I. Single Award Under Each RFP

We find no merit in CCW's view that the RFP's unduly restrict competition by providing that the Army will enter

into a basic agreement with only one institution under each RFP. We are aware of no requirement, and CCW has cited none, that a contracting agency contract with more than one entity--such as the Army has done ~~under~~ CESPRO--in ~~procuring~~ services. Insofar as CCW believes the Army should continue using the CESPRO approach based on a single RFP for both liberal arts and vocational/technical courses, we point out that contracting agencies are not required to conduct present procurements in a certain manner simply because they conducted past procurements in that manner. Central Certificate Registry, Inc., et al., B-209089, et al., Mar. 28, 1983, 83-1 C.P.D. ¶ 314.

## II. Two-Year Institutions Precluded from Offering General Education Courses

Concerning CCW's contention that precluding 2-year institutions from competing to offer general education courses is an undue restriction on competition, while procuring agencies are required to formulate their needs so as to obtain maximum competition, requirements which limit competition are not unreasonable as long as they reflect the government's minimum needs. Memorex Corp., B-213430, July 9, 1984, 84-2 C.P.D. ¶ 22. It is primarily the province of the contracting agency to determine whether to procure goods or services as a total package or break out divisible portions of the total requirement. Although we will review such agency determinations for reasonableness, we will sustain a determination to procure by means of a total package approach if it reflects the reasoned judgment of the contracting agency based on investigation and evaluation of the evidence reasonably available at the time the decision was made. See Chicago City-Wide College, B-212274, Jan. 4, 1984, 84-1 C.P.D. ¶ 51. Applying this standard, we find the Army's approach here--procuring all general education courses in a total package from a single 4-year institution--unobjectionable.

The Army adopted this approach primarily in response to a 1981 study conducted by the Department of Defense (DOD) ("European Command Off-Duty Post-Secondary Education Review"), which reported that many courses were being offered by more than one educational institution. The study concluded that this duplication of courses was costly, and also contributed to a high class cancellation rate, causing

inconvenience to students. The study also found that the educational institutions were unwilling, for economic reasons, to provide upper level courses in remote areas where there were few students. If course duplication could be eliminated, the study suggested, the increased enrollment and resulting increased revenues from lower level courses could help subsidize upper level courses in remote locations and thus make it more economically feasible for institutions to provide such courses.

The Army, concerned that students have the opportunity to receive baccalaureate degrees, determined that the problems cited in the study would be alleviated if it entered into agreements with one liberal arts institution and one vocational/technical institution, and gave the liberal arts institution primary responsibility to provide general education courses. Under such a single institution, total package arrangement, the Army concluded, lower-level courses would not be duplicative, class cancellation thus would be minimized, and the liberal arts institution would be more willing to offer low-enrollment, high-level courses due to the increased revenues from the high-enrollment, low-level courses.

CCW challenges the Army's justifications for precluding 2-year colleges from competing to offer general education courses. CCW first argues that while the Army claims that duplication of classes results in a class cancellation rate of 29 percent, class cancellation in fact is not a significant problem. CCW cites two statistical studies it conducted which indicate that the class cancellation rate is less than one percent. CCW asserts that, in any event, the Army should not be permitted to rely on the class cancellation rate to justify the restriction because the Army could eliminate course duplication by more effective management.

Based on the Army's explanation, we believe limiting competition for general education courses to 4-year institutions, and thereby precluding 2-year institutions from offering those courses, is a reasonable means of addressing the problems noted in the DOD study.

CCW's arguments essentially dispute the conclusions contained in the DOD study. The study specifically states

(p. 11, Appendix 6), for example, that "it was readily apparent that there was duplication at the lower division level," and that "this situation created a higher class cancellation rate and contributed directly to the financial stability of the affected schools." The study further noted (p. 7) that "the savings [to the institution] that would ensue from elimination of duplication could very well fund the expansion of upper level courses which are in perennially short supply." As already indicated, we believe the Army properly relied on the DOD study. The study was produced specifically to make the provision of education services more efficient, and whether or not CCW agrees that the information contained in the study was entirely accurate, it has not clearly shown otherwise. In any event, the study apparently contained the best information available to the agency at the time it was determining how to procure education services.

The fact that CCW believes the Army could achieve its aims by improved contract management is not determinative here. As the DOD study indicates, under the CESPRO system the Army obviously has been unable to control the course duplication problem satisfactorily or assure that a sufficient number of upper level courses will be offered. The total package approach--i.e., procuring all general education courses from a single liberal arts institution--appears to be a viable alternative means of dealing with these problems.

In a previous protest by CCW, we held that the Air Force could restrict competition to offer general education courses to only 4-year educational institutions using a total package procurement approach similar to the one in question. Our conclusion in that case, Chicago City Wide College, B-212274, supra, was based on the Air Force's need to ensure a sufficient number of students to support a complete baccalaureate program. The Air Force explained that the baccalaureate institution required the participation of all students in its program to offset the overhead costs of courses requiring special equipment against other, less expensive courses. The situation here is similar, the Army having determined that a total package approach is necessary to eliminate course duplication and to assure high enough enrollment in an institution's lower level courses to offset the cost of low enrollment, higher level courses. We

consider the Army's restriction of general education courses to 4-year liberal arts colleges reasonable, therefore, for reasons similar to those supporting our prior decision.<sup>1/</sup>

### III. Sufficiency of RFP Information

CCW alleges that neither RFP contained sufficient information to permit offerors to submit competitive proposals. CCW's position is based on the Army's failure to provide offerors with information related to the anticipated number of students and types of courses as well as past enrollment figures by program, and the number of installations at which certain programs were conducted. CCW claims that without this data it is unable to prepare an adequate proposal.

A solicitation must contain information sufficient to enable offerors to compete intelligently and on equal terms. Specifications must be free from ambiguity and describe the agency's minimum needs accurately. There is no legal requirement, however, that a solicitation be drafted in such detail as to eliminate all risk to the contractor and remove every uncertainty from the mind of every prospective offeror. Analytics Inc., B-215092, Dec. 31, 1984, 85-1 C.P.D. ¶ 3. Where a protester alleges that specifications do not contain sufficient information, the protester must demonstrate that the information was both necessary to submit a competitive proposal and available to the agency before the date proposals were due. John J. Moss, B-201753, Mar. 31, 1981, 81-1 C.P.D. ¶ 242.

CCW has not established that the desired information was available to the Army. The Army indicates that it never collected course data from each separate installation, and

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<sup>1/</sup> There currently is pending in Congress legislation which would prohibit the Department of Defense from contracting with a single educational institution to provide postsecondary education courses, and from precluding 2-year institutions from competing to offer liberal arts general education courses. This legislation has not been enacted into law, however, and our decision here is based on current law and regulations.

states that it was unable to predict the number of enrollees for each course because the courses are attended on an entirely voluntary basis. The Army informed offerors at the preproposal conference that it did not have these figures and that it instead would furnish a needs assessment to the institution with which the Army ultimately contracted. CCW has provided no evidence that the desired information was available to the Army by the closing date for the receipt of proposals, and we thus cannot conclude that the solicitation was deficient in this regard.

We also do not believe CCW has established that the RFP did not contain information sufficient to enable offerors to submit competitive proposals. The Army points out that the RFP set forth population data at Army Education Center locations; the number of course enrollments by location for 1983-1984; and information concerning government-furnished office facilities and equipment, materials, personnel, publications, library support, and logistical support. In addition, the Army answered questions presented at a preproposal conference, and invited potential offerors to visit any and all installations to gather additional information.

While CCW may have found the enrollment data provided more useful had it been broken down by course, division, subject area and needs of the individual bases, it has not shown that this information was necessary to prepare a competitive proposal. The possibility that the absence of the information will make it difficult for CCW and other offerors to prepare comprehensive proposals must, we believe, be considered part of the risk and uncertainty inherent in any procurement.

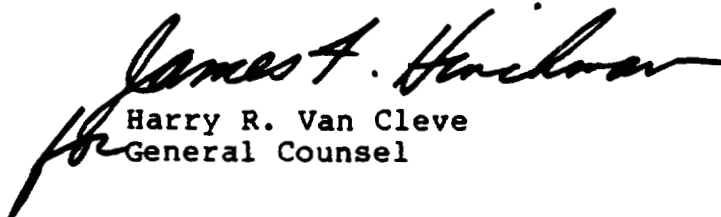
CCW argues that the failure to provide the requested information gave a competitive advantage to the only incumbent offering courses on all bases. This is not a basis for sustaining the protest. An incumbent's competitive advantage provides a basis for legal objection only where that advantage results from unfair action or preference by the government. Carl Goldberg Models, Inc., B-213046.4, May 22, 1984, 84-1 C.P.D. ¶ 539. As discussed above, there is no indication that the Army was in possession of the desired information, and there is no evidence that the Army's actions were motivated by an improper preference for the incumbent.

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The protest is denied in part and dismissed in part.

  
for Harry R. Van Cleve  
General Counsel