

DECISION

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

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FILE: B-219886 **DATE:** December 23, 1985

MATTER OF: Malco Plastics

DIGEST:

1. Geographic restriction that contractor issuing credit cards and operating a automated ordering system for such cards must be located in the Washington, D.C. metropolitan area, unduly restricts competition where there is only one known firm within the area and the contracting agency does not show that an award to the protester, located within an additional hour of driving, is not practicable.
2. Recovery of the costs of filing and pursuing a protest is allowed where the protester unreasonably lost the opportunity to compete because of an improper geographic restriction. Where it is clear that protester's proposal would not be considered because of the geographic restriction but the protester nevertheless submitted a proposal, the recovery of proposal preparation costs is not allowed.

Malco Plastics (Malco) protests that request for proposals (RFP) No. FTMP-P1-00001-V, issued by the General Services Administration (GSA) for the operation and maintenance of the United States Government National Credit Card Program (Program), unduly restricts competition.

We sustain the protest.

The RFP requires that all operations must be located within the Washington, D.C. metropolitan area, and was issued on a sole-source basis because GSA determined that there was only one potential source, the incumbent contractor, in that area. Malco contends that the geographic restriction unreasonably precludes Malco from competing even though it previously had provided the Program's credit card services from a location in Baltimore County, Maryland. The protester also complains that the contract commencement date favors the incumbent contractor, Faraday National Corp. (Faraday). Notwithstanding the RFP's

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alleged deficiencies, Malco submitted an offer. GSA has awarded a contract to Faraday based on a determination that the services were urgently needed.

The RFP requires the contractor to issue credit cards upon receipt of orders from federal agencies. These credit cards are used by GSA and other federal agencies to acquire fuel and services from authorized vendors for government owned or leased vehicles, boats and airplanes. Orders for credit cards submitted by 9 agencies, accounting for approximately 80 percent of the total cards issued, are initially telephoned to GSA which enters them into a computerized system, maintained by the contractor, for processing and card production. The remaining orders are processed by the contractor. The RFP requires the contractor to maintain the existing computer programs and to develop new programs to enable other agencies to use automated ordering systems.

In its report on the protest, GSA posits several reasons it needs the geographic restriction, first of which is the need for frequent on-site "management control and oversight" by GSA. According to GSA, it is in the process of establishing automated ordering systems for those agencies not already using them, and a GSA management employee is responsible for developing procedures that permit additional agencies to be included in such systems. After the procedures are developed, the employee must direct the contractor and another permanent on-site GSA clerical employee (responsible for reviewing and excepting orders from federal agencies and for mailing credit cards) how to implement the additional management controls and reporting requirements. In addition, it is sometimes necessary to implement changes in the computer programs to reflect a particular agency's unique requirements, and such changes also require GSA's involvement.

Since the Program credit cards are not issued to specific individuals and have unlimited usage, GSA explains that its management employee must maintain direct controls over the issuance. These include reviews of the contractor's operations and the work performed by GSA's on-site employee. Over the past contract, the responsible GSA management employee has reportedly been on-site at the contractor facility for a part of the day over 80 percent of the time.

GSA's National Fleet Management Division is responsible for the Program and, according to GSA, has a uniquely qualified staff to perform the management control and oversight functions. That division is located within

the Washington, D. C. metropolitan area. GSA argues that if the contractor were not located in the Washington, D.C. metropolitan area, the GSA management official would spend excessive amounts of time in unproductive travel between GSA, the contractor's site, and the ordering agencies (mostly located in the Washington, D.C. area) with which the staff sometimes must meet to discuss ordering procedures and requirements. GSA states that Malco's place of operations is approximately 1-1/2 hours of driving time from the Fleet Management Division whereas Faraday is approximately 30 minutes away, and that GSA would incur additional traveling cost and lose considerable productivity from its management staff if an employee had to travel the additional time. GSA further states that, although Malco under its prior contract had established the basic credit card program and an automated ordering system for GSA only, Faraday has more rapidly progressed towards automating the entire Program in part because of Faraday's greater accessibility to GSA's management staff. The automated ordering systems have resulted in substantial cost savings to the government.

Federal agencies are required to develop specifications in such a manner as to obtain full and open competition, and may include restrictive provisions only to the extent necessary to satisfy the agencies' needs. 41 U.S.C.A. § 253a(a)(1) (West Supp. 1985). We have recognized that geographic restrictions need not be regarded as being unduly restrictive where they represent the agencies' actual needs, rather than merely to provide ease of administration. Joint Committee on Printing of the Cong.-Request for Advance Decision, 64 Comp. Gen. 160 (1984), 85-1 CPD ¶ 17, aff'd, Fry Communications, Inc.--Reconsideration, B-212859.3, Feb. 5, 1985, 85-1 CPD ¶ 138. In this regard, we have upheld such restrictions based on the demonstrated need for close liaison between agency personnel and the contractor, and for control over the documents or data involved in the contract. Leo Kanner Assoc., B-194327, Nov. 5, 1979, 79-2 CPD ¶ 318; CompuServe, B-188990, Sept. 9, 1977, 77-2 CPD ¶ 182.

The determination of the proper scope of a geographical restriction is a matter of judgment and discretion, involving consideration of the services being procured, past experience, market conditions and other factors, including the adequacy of competition. See Descomp, Inc., 53 Comp. Gen. 522 (1974), 74-1 CPD ¶ 446; CompuServe, supra. We do not question an agency's determination of its needs if it is supported by a reasonable basis. See Joint Committee on Printing, supra.

The scope of the geographic restriction resulted in only one source and the negotiation of a sole-source award. We point out that a sole-source procurement is authorized only if the services needed by the agency are available from just one responsible source. 41 U.S.C.A. § 253(c)(1). Otherwise, the agency must "request offers from as many potential sources as is practicable under the circumstances." 41 U.S.C.A. § 253(e). Because of the requirement for competition as is practicable under the circumstances, agency determinations to conduct a sole-source procurement are subject to close scrutiny. See Jervis B. Webb Co. et al., B-211724 et al., Jan. 14, 1985, 85-1 CPD ¶ 35. We therefore will closely scrutinize a geographic restriction that results in a sole-source procurement.

We believe that GSA has not shown that the scope of its geographic restriction reasonably reflects the agency's actual needs as opposed to administrative convenience, particularly in light of the effect on competition.

In justifying the restriction, GSA relies heavily on its assertion of a need for close liaison between the contractor, GSA management, and ordering agencies in developing, implementing and reviewing new automated procedures to allow additional agencies to order credit cards by telephone. Initially, we point out that there is nothing that would limit GSA's consultations with ordering agencies regardless of where the contractor was located.

Furthermore, the RFP indicates that four computer programs are required for each agency to support data entry. Two of the programs appear to be standardized, inasmuch as they are virtually the same length for each of the agencies currently supported, while the remaining two, one of which is an edit program, are very small, generally comprising fewer than 500 lines of program code. In addition, the system produces a number of inventory reports, some of which are broken out by individual agencies. Thus, it appears that most of the software is already developed and that any necessary programming involves only the two small data entry programs and the development of inventory reports.

Regarding GSA's contention that Faraday achieved more automation than Malco because of Faraday's location in the Washington D.C. area, GSA has not presented any facts, aside from Faraday's reported progress, to show that the contractors' locations significantly affected their

relative accomplishments. In the absence of anything directly relating Faraday's successful performance to its location, we do not find, as GSA does, that such success justifies the geographic restriction.

To the extent that a GSA management employee is required at the contractor's site of operations, GSA does not show that it cannot provide such an employee at the contractor's site, but only that the extra traveling time to Baltimore County is inconvenient. While we have upheld geographic restrictions where an agency requires rapid turnaround and has demonstrated a need for close liaison with the contractor, see, Leo Kanner Assoc., supra, GSA has not shown that its needs require that contractor personnel be available to GSA on short notice, and mere administrative convenience, does not, by itself, provide a legitimate basis for imposing a restriction which leads to a sole-source award. See Kent Watkins & Assocs., Inc., B-191078, May 17, 1978, 78-1 CPD ¶ 377. We cannot conclude that the additional travel costs in this case are so great as to justify a geographic limitation which result in a sole-source contract with a nearby firm. See Techniarts, B-193263, Apr. 9, 1979, 79-1 CPD ¶ 246.

Because we find that the RFP's geographic restriction unduly restricts competition, we need not consider the protester's allegation that GSA delayed issuing the solicitation.

The protest is sustained.

GSA determined that urgent and compelling circumstances required that this contract be awarded despite Malco's protest. Because of this determination, and in view of the start-up period required by a new contractor, we do not recommend terminating Faraday's contract for convenience and resoliciting offers. Bid Protest Regulations, 4 C.F.R. § 21.6(b) (1985). Therefore, we will not disrupt the basic contract. We recommend that at the end of the basic term, GSA not award any options but conduct a new competition on a basis that removes the current geographic restriction. In this regard, GSA's report states that, notwithstanding the RFP language that GSA cannot predict the establishment of new automated ordering systems, GSA is actively engaged in developing such systems for all agencies. GSA assures us that when the systems are fully developed it will be able to contract for the Program using a less restrictive geographic limitation or none at all. With adequate planning, GSA should be able to obtain competition even if the development of new automated ordering systems is not completed.

The protester requests reimbursement of its costs of filing and pursuing the protest, and also the costs of preparing its proposal. Since GSA unreasonably excluded Malco from the procurement and Malco was denied the opportunity to compete for the basic term, we allow the recovery of Malco's costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d)(1); see EHE National Health Services Inc., B-219361.2, Oct. 1, 1985, 65 Comp. Gen. , 85-2 CPD ¶ 362. However, we find that the protester is not entitled to the recovery of its proposal preparation costs. Its offer was not solicited by the agency and in light of the RFP's stated geographic limitation it was clear that GSA would not consider the proposal. See Dillingham Ship Repair, B-218653, Aug. 14, 1985, 85-2 CPD ¶ 167. Malco was not required to submit a proposal in order to challenge GSA's geographic limitation and we do not think that GSA should be required to reimburse the protester's proposal preparation costs because the protester chose to submit a proposal in spite of the fact that it would not be considered for award.

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