



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Daniel F. Young, Inc.

File: B-223905

Date: November 19, 1986

DIGEST

protest that geographic restriction in a solicitation for international ocean freight transportation services to be provided at no cost to the government unduly restricts competition is denied where the procuring agency has shown that the restriction is needed to satisfy its minimum needs, the protester has submitted a proposal which satisfies the requirement and has not shown itself to have been competitively prejudiced, and where substantial competition under the solicitation has been received.

DECISION

Daniel F. Young, Inc. (Young), protests that a provision in request for proposals (RFP) No. AID/MS-86-021 issued by the Agency for International Development (AID) unduly restricts competition. The RFP, for international ocean ship booking and freight forwarding services in connection with AID's responsibilities for the administration and shipment of commodities under certain food donation programs, provides that the required services are to be performed by the selected contractor at no cost to the government and that the services will instead be paid for by commissions directly from the ocean carriers. Young protests the RFP's requirement that the contractor "perform the booking/charterings function in the Washington metropolitan area in order to facilitate an orderly and timely approval of awards and distribution of documentation." Young asserts that this provision prevents certain contractors, including Young, from participating in the procurement.

We deny the protest.

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In its report on the matter to our Office, AID, which has its office in the Washington metropolitan area, states that the requirement that the contractor have a Washington metropolitan area office is considered essential to AID's need to have "physical, face-to-face delivery" of contracting documents involved in the booking and freight forwarding operation. AID states that the delay involved in having the contractor outside of the Washington area would not be acceptable due to the emergency nature of the food assistance which AID provides and the fact that carriers often guarantee their shipping rates and open space for a short period of time.

In its response to AID's report, Young states that it has established a "Washington, D.C. branch office" solely to provide the required services under this RFP. In addition, AID, in its comments on the GAO conference held on the protest, states that Young's proposal meets the requirements of the provision complained of and that AID will not reject Young's proposal on the grounds that it fails to meet the requirements of the challenged RFP provision. AID also advises that a substantial number of firms have submitted offers which satisfy this requirement.

Young contends, however, that although it has offered to satisfy the requirement to provide a Washington, D.C. office, the solicitation provision complained of is nonetheless an unnecessary restriction on competition because, according to Young, AID has "no legitimate actual minimum need" being served by the restriction, and it creates an unsurmountable advantage in favor of those contractors presently located in the Washington, D.C. area. Young argues that "physical, face-to-face delivery" of the contractual documents such as the charter parties "is absurd" and that requiring the contractor to submit these documents for AID's approval and review "merely wastes time," and creates a "wasteful level of bureaucracy." Young contends that time is not of the essence because once a common carrier establishes its shipping tariffs (rates) with the Federal Maritime Commission (FMC), it generally may not increase its rates earlier than 30 days after filing its new tariffs with the FMC.

AID rebuts Young's contention that time is not of the essence by arguing that although quoted rates may be in effect for a reasonable amount of time, they do not guarantee that a carrier will make space available for actual shipments.

When a protester alleges that specifications unduly restrict competition, the procuring agency bears the burden of presenting prima facie support for its position that the restrictions are necessary to meet its actual minimum needs. Ralph Construction, Inc., B-222162, June 25, 1986, 86-1 C.P.D. ¶ 592. This requirement reflects the agency's obligation to create specifications that permit full and open competition to the extent possible, consistent with the agency's actual needs. 41 U.S.C. § 253(a) (1985). The determination of the government's minimum needs, the best method of accommodating those needs, and the technical judgments upon which those determinations are based are primarily matters which are the responsibility of the contracting agency. Ram Enterprises, Inc., B-221924, June 24, 1986, 86-1 C.P.D. 581. A procuring activity may determine that a geographic restriction is required provided the limitation is reasonably necessary for the agency to meet its minimum needs. See Treadway Inn, B-221559, Mar. 10, 1986, 86-1 C.P.D. ¶ 236. Consequently, once the agency establishes support for the challenged geographic restriction the burden shifts to the protester to show that the restriction in dispute is clearly unreasonable.

Here, AID has established a prima facie showing as to why it needs the selected contractor to have a Washington, D.C. office, namely, to provide a rapid turnaround time, to guarantee space availability for its shipments, to create a close liason between contractor and government personnel, and to facilitate its control over the contractual documents for which AID is responsible. We have recognized these needs as providing a legitimate basis for an agency's imposition of a geographic restriction. See Leo Kanner Associates, B-194327, Nov. 5, 1979, 79-2 C.P.D. ¶ 318. Although Young disagrees with AID's stated need to monitor the contractual documents and to have a rapid turnaround time to facilitate the chartering and booking, Young has not shown AID's requirements to be unreasonable. For example, while Young asserts that AID should not require such close administration of the freight forwarding process and detailed review of the contract documents which necessitates a Washington, D.C. office, Young has not shown that AID's responsibilities under the food shipment program do not require such close supervision of the contractor's work.

Moreover, Young has not shown that the challenged RFP provision has prejudiced its ability to compete or has otherwise significantly affected or restricted competition. The record shows and AID has advised that a substantial number of firms, including Young, have submitted offers which satisfy the challenged requirement. Because the solicited services are to be provided

at no cost to the government and therefore price is not an evaluation factor in this procurement, the cost of providing a Washington, D.C., office does not affect the competitive standing of those firms, including Young, which have submitted offers that meet the stated requirement.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel