



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Chi Corporation

File: B-224019

Date: December 3, 1986

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### DIGEST

1. Protest that design specification for computer terminal keyboard can be met by only one producer and, therefore, unduly restricts competition is without legal merit where the agency establishes that the design specification is necessary to standardize the keyboard configuration so that keyboard operators will not have to learn and adjust to new and different keyboards and the protester has not shown that the agency's justification for the standardization is clearly unreasonable.

2. Where a protest basis is initially not adequately detailed but is subsequently detailed, timeliness of that basis of protest is measured from the date of receipt of the detailed statement. Protest basis is untimely and not for consideration where the detailed statement of the protest basis is filed more than 10 working days after the protester learned of the basis of its protest.

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### DECISION

Chi Corporation protests as unduly restrictive a provision in request for proposals (RFP) No. HC-14704, issued by the Department of Housing and Urban Development (HUD) for the purchase of computer terminals, including multiplexors, printers and interactive CRT terminals. In addition, Chi contends that HUD has not adequately responded to its request that certain specifications be clarified.

We deny the protest in part and dismiss the remainder.

On July 28, 1986, HUD issued the RFP for the equipment to be procured in order to implement Phase II of HUD's Computerized Homes Underwriting Management System (CHUMS). The RFP generally requires offerors to provide terminal equipment "functionally equivalent" to the Sperry equipment purchased

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in 1984 under Phase I of the CHUMS program. Under amendment 3 to the RFP, however, offerors are required to provide a keyboard format on their terminals that is identical to that supplied under Phase I and currently used by HUD personnel.

Chi argues that the requirement in amendment 3 that the terminal keyboard be identical to the Sperry keyboard presently being used by HUD is unduly restrictive. Chi contends that these specifications can only be met by one terminal/keyboard manufacturer's equipment and that it would be economically unfeasible to attach that manufacturer's keyboard to any other terminal manufacturer's equipment. Chi requests that the keyboard requirements be changed to specify "functional equivalency" to that currently used by HUD.

HUD states that the requirement for a keyboard configuration identical to that in use is necessary to satisfy the minimum needs of HUD's CHUMS mission. HUD argues that CHUMS is a system which must be "user friendly" because the HUD employees using the system are generally not familiar with computer systems or software. HUD contends, therefore, that it is important that the keyboard configuration, the main component of the terminal equipment used by the HUD employees, be identical to existing equipment. HUD cites our decision in Ven-Tel, Inc., B-213036, Dec. 16, 1983, 83-2 C.P.D. ¶ 699, as an example of where we have held that the "user friendliness" of a terminal keyboard is a factor that an agency may consider in determining its requirements.

In addition, HUD states that based on past experience it needs terminal equipment which can be moved quickly and easily from one location to another as its changing workload dictates. HUD argues, therefore, that it is important that the terminal equipment purchased under this RFP be compatible with existing equipment as well as familiar to the employees using it.

Finally, HUD states that although it has received only one proposal in response to the RFP (from Sperry, the supplier of the CHUMS Phase I equipment) it "reasonably expected to receive several proposals." HUD contends that the keyboard format requirement does not impose an impossible task on offerors, who could either assemble or configure keyboards in an identical format or, if they chose to so propose, could connect Sperry keyboards to other brands of terminal equipment. HUD states that the latter option is not "virtually impossible" as Chi contends but instead is commonly done.

HUD concludes, therefore, that not only does the keyboard format requirement reflect its minimum needs, but that it also has not been shown by Chi to unduly restrict competition.

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 pursuant to 41 U.S.C. § 253(a) (Supp. III 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. Consequently, once the agency establishes support for the challenged specifications, the burden shifts to the protester to show that the specifications in dispute are clearly unreasonable.

Specifications based upon a particular manufacturer's product are not improper in and of themselves, and a protest alleging that specifications based upon a competitor's product are unduly restrictive is without merit where the agency establishes that the specifications are reasonably related to its minimum needs. Amray, Inc., B-208308, Jan. 17, 1983, 83-1 C.P.D. ¶ 43. One recognized agency need is to standardize the equipment used by the agency. Libby Corp.; Lincoln Electric Co.; Miller Mfg. Co.; Southwest Mobile Systems Corp., B-220392; B-220392.2; B-220392.3, Mar. 7, 1986, 86-1 C.P.D. ¶ 227.

Chi has indicated that supplying a keyboard identical to the Sperry keyboard would raise legal, patent and proprietary information problems, would create engineering difficulties, and would increase Chi's and any other manufacturer's costs by 30 to 50 percent. HUD, however, has demonstrated a reasonable basis for requiring a specific keyboard configuration, namely, to standardize the keyboards used by employees working on the already existing and operating CHUMS program to increase user friendliness and to eliminate the time delays involved when keyboard operators must learn to operate new or different keyboards. HUD also has indicated that based on prior experience it needs terminal equipment which

can be moved as its changing workload requires from one location to another and used quickly and easily by operators trained on existing equipment. Although only one proposal was received under the RFP, Chi has not demonstrated that the protested requirement unduly restricts competition because HUD has shown that the requirement is reasonable and necessary to satisfy a minimum need. See Libby Corp., et al., B-220392 et al., supra.

Finally, in its August 27 protest, Chi states that "there has not been any formal response to questions, explanations and interpretations of the solicitation requested by Chi Corporation in writing on August 7, 1986 and August 15, 1986." However, in its initial protest it did not provide us with its letters of August 7 or August 15 and did not explain exactly to what HUD had failed to respond.

In its report, HUD states that many of the questions raised in Chi's August 7 and 15 letters were addressed directly by amendment 1, dated August 13, 1986. In addition, HUD states that the contracting officer orally denied other requests made by Chi, including that the RFP's keyboard specification be revised and that the deadline for submission of proposals be extended. Finally, HUD states that Chi was instructed to review specific areas of the RFP which addressed Chi's other concerns.

In its comments in response to the agency report, Chi states for the first time specifically what sections of its two letters HUD failed to address and the potential effect of the failure. Chi admits that HUD had responded to many of its questions when it issued amendment 1 to the RFP, and that HUD had given it oral explanations with respect to some of the other issues raised. It is clear from Chi's comments that Chi considered the solicitation to be ambiguous in certain regards. However, these are grounds of protest which it did not raise directly in its initial protest to our Office.

Our Bid Protest Regulations require that protests based upon other than alleged solicitation improprieties be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986); Taft Broadcasting Corp., B-222818, July 29, 1986, 86-2 C.P.D. ¶ 125. In addition, our Regulations do not permit the piecemeal development of protests, and where a protest basis is not adequately stated, detailed or documented initially, we will measure timeliness

from the date that the details are provided. Rochester Instrument Systems, Inc., B-224913.2, Nov. 10, 1986, 86-2 C.P.D. ¶ \_\_\_\_.

Here, although in its protest to our Office Chi provided us with the details of the first protest basis considered above, it did not adequately detail its basis concerning HUD's response to questions that Chi raised until it filed its comments to the agency report on October 16, 1986. Because Chi knew of this basis in August when it filed its protest, but did not adequately explain it until October 16, more than 10 working days later, this basis is untimely presented and therefore will not be considered. Rochester Instrument Systems, Inc., B-224913.2, supra; Ballantine Laboratories, Inc.--Request for Reconsideration, B-224735.2, Oct. 9, 1986, 86-2 C.P.D. ¶ \_\_\_\_.

The protest is denied in part and dismissed in part.

*for* *Seymour E. For*  
Harry R. Van Cleve  
General Counsel