



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Computer Tomography Repair Service, Inc.
File: B-228050
Date: November 2, 1987

DIGEST

1. Contracting officer did not abuse his discretion in deciding not to set aside a particular procurement for small business concerns, even though the service previously was acquired by set-aside, where the record shows that he reasonably did not expect a sufficient number of offers from responsible small business concerns and award at a reasonable price.
2. Absent preferential treatment or unfair action by the procuring agency, the agency is not required to equalize the competitive advantage enjoyed by the original manufacturer.
3. Where protester failed to rebut reasons offered by agency for determining that its minimum needs could only be met by brand name X-ray tubes, protest is denied.
4. GAO will not consider protests regarding the propriety of a manufacturer's alleged limitation on the availability of its products.

DECISION

Computer Tomography Repair Service, Inc. (CTRS), protests any award under request for proposals (RFP) No. 600-005-88 issued by the Veterans Administration (VA) to obtain all necessary labor, materials, parts and transportation for normal service requirements, including preventive maintenance inspections and repair, of government-owned General Electric (GE) Model 8800 computerized axial tomography (CAT) scanner equipment and array processor located at the VA Medical Center in Long Beach, CA.

CTRS objects to the VA's decision not to set aside the RFP for small business, to the requirement for offerors to provide a warranty on the array processor and to the requirement that the contractor use GE Model D1191GR 8800 graphic core X-ray tubes, warranted for 40,000 slices for maintenance of the machine. ("Slice" is the technical term

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describing a flash exposure by a CAT scanner.) CTRS asserts that the warranty requirement and the required use of GE X-ray tubes provided GE an advantage that, coupled with GE's refusal to deal with CTRS, keeps the protester from competing.

We deny the protest.

Regarding the contracting officer's decision to issue this requirement on an unrestricted basis, the VA reports that CTRS had been awarded a contract to maintain the CAT Scanner at Long Beach from October 1, 1984, through September 30, 1985, and that the contract was extended on a monthly basis from October 1985 and continuing until June 1986. The initial contract had been awarded as a small business set-aside.

Pursuant to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.501(g) (1986), once a service has been acquired successfully through a small business set-aside, procurements for future requirements for the service also should be set aside. The VA did not set the protested solicitation aside, however, pursuant to an exception in the regulation for the situation where the contracting officer determines that there is not a reasonable expectation that offers will be obtained from at least two responsible small business concerns, and an award will be made at a reasonable price.

The VA issued an RFP substantially similar to the instant RFP on an unrestricted basis, synopsisizing the requirement in the Commerce Business Daily. Copies of that solicitation were sent to eight firms, both large and small, including CTRS. On June 3, 1987, the VA received five proposals, all from large businesses. Although this solicitation subsequently was canceled on June 16, 1987, for other reasons, the contracting officer relied upon this information in concluding that there was no reasonable expectation that two responsible small businesses would submit offers.

CTRS, which did not respond to the solicitation, or to subsequent requests for quotation issued for monthly maintenance pending the competitive procurement, contests the VA's conclusion that a set-aside is not warranted. Specifically, CTRS asserts that the VA bidders' mailing list contains the names of three small businesses capable of competing for this procurement. However, the judgment as to whether there is a reasonable expectation that offers will be received from at least two responsible small business concerns basically involves a business decision within the discretion of contracting officials, and our review generally is limited to ascertaining whether those officials

have abused that discretion. J.M. Cashman, Inc., B-220560, Nov. 13, 1985, 85-2 CPD ¶ 554. Clearly, consideration of the responses to a recently issued (albeit canceled) solicitation for the same work is a proper means by which an agency can identify the availability of firms qualified to meet its needs, and determine if there is a sufficient number of qualified small businesses to warrant setting aside a later procurement. We think the VA's reliance on that factor in deciding not to set aside the current procurement for small business concerns was reasonable.

CTRS also protests the solicitation requirement that during the contract period the successful offeror guarantee the array processor against defective materials, workmanship and performance. The VA reports that having purchased a new array processor in April, warranted for 1-year by GE, the VA expected GE to service the array processor in accordance with the warranty obligation. The array processor attaches to the CAT scanner and combines data received from the scanner into an image reflected on a screen. Because of the close interface between the scanner and array processor, VA wanted the same contractor to service both and awarded a noncompetitive contract to GE for servicing the equipment. However, R Squared Scan System, Inc. (R Squared), protested the award, alleging that other firms could support and warrant the entire system as well as GE could. Accordingly, the VA decided to issue the subject competitive RFP.

CTRS argues that, as the incumbent contractor and original equipment manufacturer, GE has a competitive and economic advantage in guaranteeing the array processor against defective material, workmanship and performance. In initiating a noncompetitive procurement, the VA recognized this fact; however, based on the representation of R Squared and because other firms expressed an interest in competing, the VA determined that competition was possible notwithstanding such advantage. We do not find this decision unreasonable. Moreover, our office has not required agencies to equalize a competitive advantage enjoyed by an offeror unless that advantage results from preferential treatment or other unfair action by the government. Halifax Engineering, Inc., B-219178.2, Sept. 30, 1985, 85-2 CPD ¶ 559. We deny this aspect of the protest.

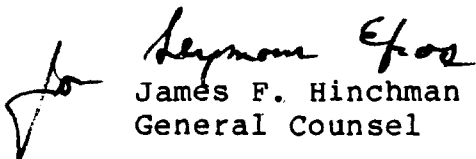
Finally, CTRS alleges that the RFP requirement that the contractor supply GE tubes is unreasonable. The RFP requires bidders to furnish long-life, 40,000 slice GE model D1191GR 8800 graphic core tubes. According to the VA, only GE manufactures the long-life tubes. The VA states that prior solicitations had allowed short-life (20,000 slice) tubes, but that a VA cost comparison determined that longer life tubes would save over \$13,000 a year. The VA explains

that as tubes wear out, imaging decreases so that with short life tubes, a greater number of tubes are suffering quality problems at any one time. The VA states that the use of long life tubes reduces down-time for tube replacement which minimizes delay in the critical diagnosis and treatment of cancer patients.

As a general rule, we have recognized that government procurement officials, since they are the ones most familiar with the conditions under which the agency has used and will use equipment, are generally in the best position to know the government's actual needs. Consequently, since the VA's determination of its minimum needs appears reasonable in this instance, and CTRS does not rebut the VA's reasons for requiring the long-life tube, we will not question that determination. Cardion Electronics, B-218566, Aug. 15, 1985, 85-2 CPD ¶ 172. Furthermore, we have held that if a specification requirement is reasonable and necessary, then the fact that only one firm can comply with it does not indicate that a violation of the competitive procurement regulations has occurred. See Rolm Corp., B-214052, Sept. 11, 1984, 84-2 CPD ¶ 280.

CTRS also advises that it may be excluded from competing because GE has refused to supply the tubes to CTRS. We generally decline to consider protests regarding the propriety of a manufacturer's alleged limitation on the availability of its products. Halifax Engineering, Inc., B-219178.2, supra. However, the VA advises that it discussed the availability of the tubes with GE and GE does sell the tubes to other companies.

The protest is denied.


James F. Hinchman
General Counsel