



Comptroller General  
of the United States

Washington, D.C. 20548

141274

## Decision

**Matter of:** Precision Photo Laboratories Inc.

**File:** B-251719

**Date:** April 29, 1993

Melvyn I. Kruger for the protester.  
Deidre A. Lee, National Aeronautics and Space  
Administration, for the agency.  
Barbara C. Coles, Esq., and Christine S. Melody, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Protest that specifications contemplating the award of a contract for photographic materials on an "all or none" package basis are unduly restrictive of competition is denied where the only indication that competition will be restricted is protester's contention that it cannot offer one item in the package because of the terms of its dealership agreement with the brand name source listed in the solicitation, and the agency reasonably concluded that the award of one contract is more cost effective than awarding multiple awards for smaller quantities of supplies.

### DECISION

Precision Photo Laboratories Inc. protests the terms of request for proposals (RFP) No. 2-35224, issued by the National Aeronautics and Space Administration (NASA) for photographic materials. Precision contends that the specifications are unduly restrictive of competition because they require offerors to submit prices on all contract line items and state that a single award will be made under the solicitation.

We deny the protest.

The RFP, issued on November 12, 1992, contemplated the award of a fixed-price requirements contract for aerial film, chemicals, and paper to be used to process and duplicate original flight film from NASA's ER-2 and C-130 aircraft; the RFP specified the Kodak brand or equal for all line items. Of the 50 separate line items in the solicitation, there were 23 types of film; 9 chemicals; 3 types of paper;

and 15 types of filters. The solicitation advised offerors that the agency would award a single contract to the offeror whose proposal is most advantageous to the government, considering price and other factors.

Precision contends that the requirement for a single award for all line items is unduly restrictive of competition and is structured to favor one supplier, Kodak. With respect to one line item, infrared color film, the protester asserts that although the solicitation calls for the Kodak brand or equal, there is no "equal" infrared color film available. The protester contends that it is at a competitive disadvantage with regard to Kodak infrared color film because of a business arrangement it has with Kodak which does not permit Precision to offer Kodak products for resale. As a result, the protester argues that the single award scheme contemplated under the solicitation does not ensure that the lowest price will be obtained because Kodak will be able to "charge the government any price they choose."

NASA believes that procuring the requirements as a package will enhance competition; according to the agency, since firms other than Kodak can compete for the award by providing Kodak or "equal" products, Kodak will be induced to lower its prices for all items rather than risk the entire award by submitting high prices. NASA also reports that it ultimately selected the total package approach because it promotes administrative economy and efficiency. NASA states that a single award for the 50 line items over the 5-year period called for under the RFP is more cost effective than multiple awards in light of the fact that the cost for merely administering one additional contract over a 5-year term exceeds \$11,000. NASA also reports that it is easier for the agency to coordinate required delivery dates for each delivery order with one supplier as opposed to multiple suppliers.

In preparing a solicitation for supplies or services, a contracting agency must specify its minimum needs and solicit offers in a manner designed to achieve full and open competition. 10 U.S.C. § 2305(a)(1)(B)(i) (1988). A solicitation may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1)(B)(ii). Where a protester contends that acquiring certain supplies as part of a total package rather than breaking them out unduly restricts competition, we will object only where the agency's choice of a total package approach to meet its minimum needs is unreasonable. Eastman Kodak Co., 68 Comp. Gen. 57 (1988), 88-2 CPD ¶ 455. Here, after reviewing the record, we conclude that the agency's choice is reasonable.

We are not persuaded by the protester's argument that the total package approach is unduly restrictive simply because of the business arrangement that Precision has with Kodak. An agency is not required to cast its procurements in a manner that neutralizes the competitive advantages some firms may have over others by virtue of their own particular circumstances. Id.; Secure Eng'g Servs., Inc., B-202496, July 1, 1981, 81-2 CPD ¶ 2. In other words, the existence of an agreement between Precision and Kodak which prohibits Precision from acquiring Kodak products for resale does not make unreasonable the agency's decision to procure the requirements from one contractor rather than multiple contractors; requiring an agency to fashion every procurement based on private pacts between prospective offerors would create an overwhelming burden on the agency's ability to procure supplies and services that are necessary to meet its minimum needs.

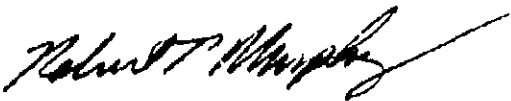
While the protester states that it has an exclusive agreement with Kodak that prohibits the resale of Kodak products, there is no evidence in the record, and the protester has not alleged, that all, or even many, photographic firms have similar agreements with Kodak. Since firms that do not have such agreements may compete under this solicitation by procuring Kodak or "equal" products on the open market and reselling them to the government, it is not evident from this record how the total package approach will restrict competition.

With regard to the cost effectiveness the agency claims is associated with the total package approach here, the protester has not submitted any convincing evidence to rebut the agency's position. As noted above, the agency estimates that one additional contract for one requirement called for under the solicitation would cost the agency more than \$11,000 over a 5-year period. Recognizing that an agency's minimum needs include the need to procure supplies and services on the most cost effective basis, we have held that the possibility of avoiding unnecessary duplication of costs may justify a total package approach. See The Caption Center, B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174; Servicemaster All Cleaning Servs., Inc., B-233355, Aug. 22, 1986, 86-2 CPD ¶ 216. Here, in the absence of any evidence to show otherwise, we have no basis to find that the agency's decision to procure its requirements under a total package approach does not ensure the most cost effective method of procuring the items and that, in doing so, the agency avoided unnecessary administrative costs. See, e.g., Canon U.S.A., Inc., B-232262, Nov. 30, 1988, 88-2 CPD ¶ 538 (agency reasonably contemplated the award of a contract on a package basis, where the cost savings of administering one contract and dealing with one contractor were greater than those resulting from 35 separate contracts and 35 contractors).

Finally, the protester contends that the agency has handled this procurement in a manner that suggests that it has been working with Kodak to "prevent outside bidders." The protester claims that while the agency failed to advise offerors in the RFP that it would provide the special spooling needed to deliver the film for the Itek Iris camera, the agency did in fact plan to provide the spooling. According to the protester, Kodak must have been aware of this and, thus, had "inside information" that its price would not have to include the cost for spooling.

NASA reports that after reviewing this matter, the contracting officer determined that the RFP should have stated that the agency would provide the special spooling for the film as government-furnished property. According to NASA, even though the RFP was silent regarding the agency's intention to furnish the spooling, it would have been impractical for offerors to furnish the spooling given that the spools are a part of the cameras themselves. Since the agency subsequently revised the solicitation to include language that it would in fact supply the spooling, the spooling issue is academic. Steel Circle Bldg. Co., B-233055; B-233056, Feb. 10, 1989, 89-1 CPD ¶ 139. Even if we were to consider this matter, the protester has not provided any evidence, and there is no evidence elsewhere in the record, to support its speculation that NASA afforded Kodak inside information.

The protest is denied.

  
James F. Hinchman  
General Counsel