



Comptroller General
of the United States

21169

Washington, D.C. 20548

Decision

Matter of: Coastal Computer Consultants Corporation

File: B-253359

Date: September 7, 1993

Patrick E. Collins for the protester.
Douglas R. Duberstein, Esq., for International Business Machines; and Joe Haardt, for Integrated Systems Group, Inc., interested parties.
Donald E. Weight, Esq., Department of the Air Force, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Specification requiring new computer equipment is not unduly restrictive where the equipment is part of a continuously operated critical military weapons system, and new equipment was reasonably found to be more reliable over the expected 20 year usage of the equipment.

DECISION

Coastal Computer Consultants Corporation protests the terms of request for proposals (RFP) No. F04606-93-R-0050, issued by the Department of the Air Force, McClellan Air Force Base, California, for computer hardware. Coastal asserts that the RFP's requirement for new equipment unduly restricts competition.

We deny the protest.

The Air Force issued this RFP on March 25, 1993, to purchase various computer hardware for the AN/FPS-85 phased array radar system. The FPS-85 radar system is utilized to detect, track, and identify space objects, and to provide positional data on known and unknown objects in support of the Air Force space surveillance network. International Business Machines (IBM) is the sole manufacturer of the requested items. The RFP required new equipment.

Coastal, a supplier of used/reconditioned computer equipment, filed this protest on May 7, prior to the RFP's closing date, objecting to the requirement for new equipment. Coastal asserts that the requirement for new equipment is unduly restrictive, asserting that used/refurbished IBM equipment will satisfy the Air Force's minimum needs.¹

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieved 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 its minimum needs. 10 U.S.C. § 2305(a)(1)(B)(ii). The determination of the government's minimum needs and the best method of accommodating those needs are primarily within the contracting agency's discretion. CAD/CAM On-Line, Inc., B-226103, Mar. 31, 1987, 87-1 CPD ¶ 366. Where a protester challenges a solicitation provision as unduly restrictive, we will review the record to determine whether the restriction imposed is reasonably related to the agency's minimum needs. See Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79. Federal Acquisition Regulation (FAR) § 10.010(a) provides that generally all supplies should be new unless the agency determines that used equipment is acceptable. This determination is to be based upon, among other things, "safety of persons or property," "total cost to the government (including maintenance, inspection, testing, and useful life)" and "performance requirements." FAR § 10.010(b).

The Air Force reports that new equipment is necessary because of the specific demands to be placed upon the computer hardware items that require optimum reliability. The Air Force reports that the information to be gathered by the FPS-85 radar system will be used by various intelligence agencies, and will support all manned and unmanned space launches by providing launch windows. The Air Force reports that the system is expected to run continuously, 24 hours a day, 7 days a week, and that equipment making up the radar system has an anticipated life expectancy of well over 20 years, which exceeds normal commercial use. Additionally, the Air Force reports that the new equipment will be delivered at the latest IBM engineering change levels and that the government's requirement is to replicate the existing equipment in which the new equipment will later become the operational computer system. In light of the FPS-85's uses, the Air Force reports that all the computer equipment comprising the FPS-85 is considered a "Mission Critical Computer Resource" (MCCR), and that the equipment

¹Coastal does not protest the requirement that the equipment be IBM models.

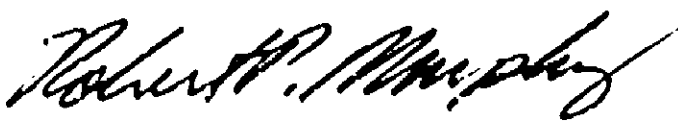
installed in the system should, therefore, possess optimum reliability and life expectancy. The Air Force also reports that new equipment assures the latest revision of hardware, longest life span, exact configuration with no risk, compatibility with existing hardware and software, and no impact to the existing rehost contract. The Air Force finally states that new equipment will provide a longer life expectancy and be logistically supportable for a longer period with lower maintenance costs than those of used, surplus, or reconditioned hardware.

Based upon our review of the record, we find the Air Force's justification for new equipment to be reasonable,² because it is considered more reliable than used equipment and optimum reliability is a requirement in view of the criticalness of the FPS-85 radar system, the extended system life expectancy of the system, the continuous operation of the system, and the potentially lower maintenance costs associated with new equipment. See CAD/CAM On-Line, Inc., supra (reliability over system life of critical computer system is a reasonable justification to restrict procurement to new equipment); Arwell Corp., B-210792, Dec. 14, 1983, 83-2 CPD ¶ 684; International Bus. Machs. Corp., B-198984, et al., Nov. 18, 1980, 80-2 CPD ¶ 363; compare Computer Mktg. Research Corp., GSBICA No. 8131-P, Oct. 31, 1985, 86-1 BCA ¶ 18,528, 1985 BPD ¶ 119, where the General Services Board of Contract Appeals granted a protest of a specification requiring new equipment because the record was devoid of any justification for the requirement. Coastal does not dispute that the computer items to be purchased are an MCCR, nor does it question the Air Force's description of the manner in which the items will be used or the critical function of the FPS-85 radar system. While Coastal argues that the Air Force has failed to present any data establishing new equipment to be less costly to maintain and more reliable than used equipment, Coastal has produced no evidence refuting the agency's determination that new

²Although Coastal argues that the specifications can only be met by IBM, we will not object to a specification that favors a particular item or vendor if the agency adequately explains why those specifications are necessary to meet its minimum needs. See American Material Handling, Inc., B-250936, Mar. 1, 1993, 93-1 CPD ¶ 183.

equipment will be more reliable and less expensive to maintain over the anticipated extended system life of the equipment on this continuously operated critical system.³

The protest is denied.


for James F. Hinchman
General Counsel

³IBM has confirmed that for the principal equipment involved--"Direct Access Storage Devices and Magnetic Tape Subsystems"--IBM confidential data shows that new equipment is more reliable with less frequent repair rates.