

Calhoun



Comptroller General  
of the United States

502197

Washington, D.C. 20548

# Decision

**Matter of:** Fisons Instruments, Inc.

**File:** B-261371

**Date:** July 18, 1995

Mike Colucci for the protester.  
Justin P. Patterson, Esq., and Sherry Kinland Kaswell, Esq.,  
Department of the Interior, for the agency.  
Tania L. Calhoun, Esq., and Ralph O. White, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

## DIGEST

Protest challenging solicitation specifications for a mass spectrometry system as unduly restrictive of competition is denied where the record demonstrates that the specifications are reasonably related to the agency's minimum needs.

## DECISION

Fisons Instruments, Inc. protests the terms of request for proposals (RFP) No. FWS3-95-RFP-07, issued by the Fish and Wildlife Service, Department of the Interior, to purchase an inductively coupled plasma mass spectrometry (ICP-MS) system for the National Biological Service's Midwest Science Center in Columbia, Missouri. Fisons argues that the specifications are unduly restrictive of competition.

We deny the protest.

The solicitation requested proposals for one ICP-MS system, which is used to analyze trace elements in drinking water, ground water, and surface water, as well as trace elements in body fluids of both human and non-human species. The Midwest Science Center plans to use the equipment to investigate environmental contaminants.

The original RFP contained a number of detailed design specifications with which proposed systems were to conform. In response to Fisons' request to make the specifications less restrictive, amendment No. 03 replaced the original specifications with completely revised design specifications

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and performance requirements.<sup>1</sup> Fisons subsequently filed this protest, alleging that the specifications were unduly restrictive of competition and were written to favor one vendor's system. The agency received proposals as scheduled, but intends to withhold an award decision pending the resolution of this protest. Fisons did not submit a proposal.

Fisons' protest listed a number of the specifications and explained why, in the protester's view, each was unduly restrictive of competition.<sup>2</sup>

The Competition in Contracting Act of 1984 requires that agencies specify their needs and solicit offers in a manner designed to achieve full and open competition, 41 U.S.C. § 253a(a)(1)(A) (1988), and include restrictive solicitation provisions only to the extent necessary. 41 U.S.C. § 253(a)(2)(B). Where a protester challenges a specification as unduly restrictive of competition, we will review the record to determine whether the restrictions imposed are reasonably related to the agency's minimum needs. NITCO, B-246185.3, Sept. 17, 1992, 92-2 CPD ¶ 183; RMS Indus., B-247233; B-247234, May 1, 1992, 92-1 CPD ¶ 412. Specifications that are based upon a particular product are not necessarily improper in and of themselves; an assertion that a specification was "written around" design features of a particular product will not provide a basis for sustaining a protest if the record establishes that the specification is reasonably related to the agency's minimum needs. Infection Control and Prevention Analysts, Inc., B-238964, July 3, 1990, 90-2 CPD ¶ 7.

In response to the protest, the agency's technical expert provided a rebuttal to the protester's specific objections to each challenged specification, as well as a detailed explanation for the agency's inclusion of the specification. Instead of answering the agency's justifications, Fisons merely reiterates its contention that the specifications are written to eliminate all but one vendor from the competition

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<sup>1</sup>As discussed further below, amendment No. 01 incorporated a trade-in allowance for specified existing used equipment. Amendment No. 02 extended the closing date for receipt of proposals.

<sup>2</sup>Fisons' protest also challenged a number of specifications found in the original solicitation but deleted by amendment No. 03. We need not address the deleted requirements here as the General Accounting Office will not consider issues with no practical consequences, and thus of purely academic interest. See East West Research, Inc.--Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379.

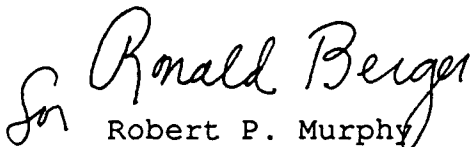
and "do nothing to enhance the agency's minimum needs of instrument performance."

For example, the amended solicitation requires that the offered ICP-MS system have a 40-MegaHerz (MHz) generator with software "on-the-fly" autotuning.<sup>3</sup> Fisons argued that its 27-MHz generator is superior to the 40-MHz generator because it minimizes the formation of doubly-charged ions in the plasma. However, the agency contends that this requirement was included in the specification because a 40-MHz generator does not need "a mechanical impedance matching network which enables it to be automatically tuned on-the-fly through the instrument software to accommodate rapidly changing matrix conditions." The agency also points to the specification's associated performance requirement, which requires the generator to handle rapidly changing matrix conditions. According to the agency, the 40-MHz generator is also required for research applications involving transient signal techniques. Fisons provides no response to the agency's explanation.

Since the protester has not refuted any portion of the agency's rationale for the specifications at issue, and since the agency has provided a reasonable, well-documented explanation of the specifications, we have no basis to object to the challenged requirements. See CardioMetrix, B-257408, Aug. 3, 1994, 94-2 CPD ¶ 57.

In its protest, Fisons also requested a "clarification of the legality" of the amended solicitation's provision for a trade-in allowance for specified existing used equipment. The agency's report specifically responded to that aspect of the protest and pointed out that the trade-in allowance was not a requirement. Fisons' comments did not address the agency's response. As a result, we consider this aspect of the protest to be abandoned and will not consider it. Datum Timing, Div. of Datum Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328.

The protest is denied.

  
 Robert P. Murphy  
 General Counsel

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<sup>3</sup>"On-the-fly" autotuning allows the system to automatically adjust, on a continuous and real-time basis, during the analysis process, and to offer more sensitive readings with reduced interferences.