DOCUMENT RESUME

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[Allege] Restrictive Nature of Solicitation]. B-188990. September 9, 1977. 6 pp. + enclosure (1 pp.).

Decision to Compu-Serv; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (806).
Organization Concerned: Federal Trade Commission; General Services Administration.
Authority: F.P.R. 1-3.101(d). F.P.R. 1-3.805-1(b). 4 C.F.R. 20.2(b)(1). 55 Comp. Gen. 374. 53 Comp. Gen. 522. 53 Comp. Gen. 528-30. B-178600 (1973). B-187345 (1977). B-186983 (1976).

The protester objected to a request for proposals which specified that a mandatory data base management software package would be furnished by the Government to the successful offeror, contending that this condition improperly restricted competition since only companies with IBM equipment could use the package. The use of the package in this case was not found to be clearly lacking a reasonable basis and, since several offerors were competing for the award, competition was not unduly limited. (Author/SC)

Andrew Gallagher
Proc. I

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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-188990 DATE: September 9, 1977

MATTER OF: CompuServe

DIGEST:

1. Geographical limitation in RFP for teleprocessing services requiring contractor to have central computer processing facility in Washington, D. C., metropolitan area is not objectionable in view of reasons advanced by Federal Trade Commission, i.e., highly confidential business data being processed and need for close liaison between agency personnel and computer facility. Moreover, no grounds are seen to conclude that adequate competition has not been obtained in procurement.

2. Specifying particular data base management software (DBMS) package in teleprocessing services procurement is unobjectionable notwithstanding protester's contentions that (1) selection of DBMS was based on outdated study, (2) DBMS, usable with only one make of computer, improperly restricts competition and (3) functional specifications are needed to insure maximum competition. Best method of acquiring and using DBMS packages has been somewhat controversial subject. After reviewing record, use of package in present case is not found to clearly lack reasonable basis and, since several offerors are competing for award, GAO cannot conclude that competition has been unduly restricted.

3. Protest alleging certain RFP terms unduly restricted competition was timely filed prior to closing date for receipt of initial proposals. However, where RFP described nature of teleprocessing and timesharing services contemplated as well as security requirements, protester's subsequent objections that security of system cannot be maintained--first raised in protester's comments on agency report--are untimely and will not be considered.

This is our decision on a protest by CompuServe (CS) concerning request for proposals (RFP) No. CDPA-77-3. The RFP was issued by the General Services Administration (GSA) on March 2, 1977, and contemplated the award of a 1-year contract, with four 1-year options to furnish teleprocessing services to the Federal Trade Commission (FTC). No award has been made.

CS, which did not submit a proposal, primarily objects to the RFP's specifying that a mandatory data base management software (DBMS) package known as "Inquire" will be furnished by the Government to the successful offeror. CS contends that this improperly restricts competition because only computer service companies with IBM equipment can use the package. The protester alleges that FTC's choice of Inquire is based upon outdated (1975) studies and suggests that in the rapidly developing timesharing industry there may be other functionally acceptable DBMS packages which FTC does not know about. In response to statements by GSA and FTC that the agencies do not want to become locked into the proprietary software of a particular vendor, CS claims that it has a nonproprietary DBMS package. In CS's view, for the FTC to allow its choice of a particular $70,000 DBMS package several years ago to restrict competition for a potential 5-year, multi-million dollar teleprocessing services contract is to let the tail wag the dog. CS contends that GSA and FTC should be required to establish functional specifications only, so that offerors can show through their proposed technical approaches and benchmark demonstrations how they can do the job, and that to let this procurement proceed would set a bad precedent.

Also, the protester maintains that another improper restriction on competition is the RFP's requirement that the contractor have a computer facility in the Washington, D. C., metropolitan area (essentially defined as the District of Columbia; contiguous cities and counties; and also Fairfax City, Virginia; Falls Church, Virginia; Fairfax, Loudoun, and Prince William Counties, Virginia; and Charles County, Maryland). CS challenges FTC's justification for the limitation--which is based on the sensitive data being processed and the need for close liaison between FTC personnel and the computer facility--and contends that it would not be impracticable for FTC personnel to occasionally travel 2 or 3 hours to CS's computer center (in Ohio), which has a Department of Defense secret security clearance.

Federal Procurement Regulations (FPR) § 1-3.101(d) (1964 ed. amend. 153) calls for maximum practical competition in negotiated procurements. However, once an agency adopts any kind of specification or limiting condition--such as the geographical limitation in the present case--competition is automatically restricted to some extent. The vital point is not that competition is restricted due to certain legitimate

needs of an agency, but whether it is unduly restricted. Also, we have often pointed out that the fact that a particular prospective offeror is unable or unwilling to compete--i.e., that the prospective offeror is actually restricted or believes it is restricted from competing--does not establish that the competition as a whole is unduly restricted. See Informatics, Inc. - Reconsideration, B-187345, June 2, 1977, 77-1 CPD 383; Comten, Inc., B-186983, December 8, 1976, 76-2 CPD 468, affirmed, March 9, 1977, 77-1 CPD 173, and decisions cited therein.

FTC established the geographical limitation because of the highly confidential business data involved in the case. The data is furnished by various companies under FTC's "Line of Business" program. The program reportedly has been controversial and several companies have filed lawsuits to try to withhold such data from FTC. FTC states that it would be an unreasonable and expensive burden for its program and management staff to leave the Washington area to process this sensitive data. FTC believes that travel outside the Washington area would require the hiring of additional personnel which is not possible given current personnel and budget ceilings. The agency also points out that there were 333 courier trips between FTC and the computer facility currently being used in Rockville, Maryland, during the period from August 1976 to May 17, 1977.

In B-178600, August 16, 1973, we did not object to a Washington, D.C., metropolitan area geographic limitation in a procurement for automatic data processing services in view of the agency's needs for close liaison with the contractor and adequate control over source documents. See also the discussion of geographic limitations in Descomp, Inc., 53 Comp. Gen. 522, 528-530 (1974), 74-1 CPD 44, where we did not object to a 75-mile limitation for a keypunching services contract in light of, among other factors, the Civil Service Commission's need to maintain adequate control over sensitive personnel records. Also, we noted that an adequate degree of competition was apparently generated.

In view of the points cited by FTC, we see no basis to conclude that the geographic limitation does not represent a legitimate need of the agency. As far as the degree of competition is concerned, the present case involves a negotiated procurement in which no award has yet been made. GSA has furnished to our Office a list of the offerors, but this information has not been publicly disclosed. In this regard, FPR § 1-3.805-1(b) (1964 ed. amend. 153) prohibits the disclosure before award of the number, identity or relative standing of offerors. However, we understand that several proposals submitted by Washington, D. C., area offerors are considered to be within the competitive range, price and other factors considered. Based on the information of record, we see no grounds to conclude that an adequate degree of competition has not been generated. Cf. Comten, Inc., supra, a negotiated procurement involving allegedly restrictive specifications where the agency disclosed that three firm fixed-priced, technically acceptable proposals were received and we denied the protest.

In view of the foregoing, we cannot conclude that FTC's geographic limitation lacks a reasonable basis. Therefore, we do not find it to be legally objectionable.

In its August 2, 1977, letter to our Office, CS states that it would be willing to install one of its computers in Washington in the event the geographic limitation is upheld. Also, CS repeats its objections to the RFP's specifying the Inquire DBMS package.

Our review of the DBMS issue has included examination of the record by GAO staff members with a technical background in automatic data processing. A DBMS package is one type of software (an accumulation of fixed sets of instructions telling computer machinery to react in certain specific ways when processing data) package. It uses a systematic approach to storing/ updating, and retrieval of information stored as data items, usually in the form of records in a file, where many users or even many remote locations will use common data banks. The key concept usually employed in a DBMS package is that data can be tied together so as to allow any application program the ability to access any or all parts of the data, regardless of location, access method, or record makeup.

Some DBMS packages are more "machine independent" than others--i.e. capable of being used with a variety of types of computer equipment without conversion expense. However, there is no DBMS package currently available which is totally machine independent. Thus, by acquiring a DBMS package an inherent decision is also made to use the type or types of equipment which can be operated with the package. DBMS packages can be acquired by in-house development, purchase or lease. While the initial acquisition cost is generally not large (possibly under $100,000), the type of DBMS package acquired can have a sizeable impact on the future costs of data processing operations. This is significant because operating costs associated with software today account for the major portion of the Government's automatic data processing costs. In general, the question of how the Government should best acquire or use DBMS packages has been somewhat controversial.

To use the approach advocated by the protester--functional specifications--in a procurement such as the present one can increase competition, which is desirable. However, using functional specifications is not free from complex, and potentially costly, difficulties. Initially, the Government must expend considerable effort in drafting the specifications. Offerors must then translate the specifications into their own individual equipment and software approaches. This can involve a considerable amount of detail, may result in a variety of solutions to the Government's requirements and may be quite costly. A substantial effort on the part of the Government is then required to evaluate the proposals. Whether an agency conducting a procurement like the present one should be required to take a functional approach, as opposed to specifying a DBMS package, is a question which cannot be answered in the abstract.

FTC has furnished for our consideration several of its internal documents concerning the selection of Inquire. Acquiring a DBMS package was one part of FTC's 5-year plan for obtaining data processing support. FTC--which points out that it does not have the in-house ADP staff resources to evaluate DBMS packages--engaged a contractor to do this work. During the period from late 1975 through about March 1976, the contractor studied several well known DBMS packages, including several "generalized" packages which can be used with more than one make of computer equipment. The generalized packages did not meet all of FTC's specific requirements. Of the DBMS packages considered, Inquire was determined to be the best functionally and the lowest in terms of operating costs. FTC then purchased Inquire under a GSA Schedule contract.

After examining the record, we cannot say that there was any serious, patent deficiency in the evaluation procedures followed in the study. In regard to the protester's contention that the study was conducted several years ago and is now outdated, we note that the study was apparently completed approximately 1 year before the present RFP was issued and that it considered several DBMS packages which are still in use today. Also, it appears that a contributing factor to the hiatus between the selection of Inquire and the initiation of the present procurement was a protest involving an earlier FTC procurement. The protest led to a decision by FTC in April 1976 to ask GSA to conduct a reprocurement on its behalf. The procurement involved in the present case is the reprocurement.

Moreover, in our view, the propriety of FTC's selection and purchase of Inquire, per se, is not the issue here. The issue involves the propriety of including Inquire as Government-furnished software in the present teleprocessing services procurement. Our Office will not object to an agency's determination of its minimum needs unless the determination is clearly shown to have no reasonable basis. While the range of judgment and discretion entrusted to agency officials is broad, such determinations must be the product of "informed and critical" judgments. See Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232, and decisions discussed therein.

After reviewing the record, we believe that FTC's specifying the Inquire DBMS package in the present RFP withstands this test. This is not to say that specifying a DBMS package which restricts competition to offerors possessing a certain type of ADP equipment is wise or desirable as a general policy. In this regard, our function in deciding protests is to determine whether a contracting agency's actions in a particular procurement are subject to legal objection. In the present case, we

cannot conclude that FTC lacked a reasonable basis for specifying Inquire. Neither can we say--in light of the information previously discussed concerning the number of offerors currently competing for the award--that competition was unduly restricted. Also, given the Washington, D. C., area geographic limitation and the fact that several local offerors have submitted proposals, it is somewhat speculative whether resoliciting with functional specifications would result in a significantly increased degree of competition. In this regard, while the protester states it would be willing to install one of its "large-scale" computers in Washington, we note that the RFP requirement is that the contractor have an adequate "central processing facility" in the Washington metropolitan area.

Other matters raised in the protest include certain RFP terms which were later changed by GSA and FTC; also, CS objected to several particular specifications such as the requirement for an input and output queue of 200 jobs. We believe GSA's July 15, 1977, report to our Office adequately responds to these points and that further discussion is unnecessary.

In its August 2, 1977, letter to our Office commenting on GSA's July 15, 1977, report, CS alleges that it will be impossible to maintain security of the system (1) because GSA's report admits that all processing will be done over communications lines (the contracting officer's August 12, 1977, statement denies the accuracy of the alleged admission) and (2) where, as the report admits, other users may be sharing the system (the contracting officer denies that this assertion is demonstrably true).

The RFP describes the types of processing contemplated under the contract (for example, RFP section F.2.2.3) as well as the security requirement. Under our Bid Protest Procedures, protests alleging improprieties which are apparent in an RFP as initially issued must be filed prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 20.2(b)(1) (1977). CS filed its protest on May 2, 1977, prior to the initial closing date. However, in its initial statement of protest CS did not raise any objections that adequate security would not be possible due to the method of teleprocessing or timesharing involved. These objections to the RFP were raised for the first time in CS's August 2, 1977, letter. Therefore, they are untimely and will not be considered.

The protest is denied.

R. F. Keller

Deputy Comptroller General
of the United States

Andrew Gallagher
Proc. I

UNITED STATES GOVERNMENT
Memorandum
GENERAL ACCOUNTING OFFICE

September 9, 1977

TO : Director, Financial and General Management Studies Division - D. L. Scantlebury

FROM : General Counsel - Paul G. Dembling

SUBJECT: B-188990 - Protest of CompuServe

We want to express our appreciation for your memorandum dated August 29, 1977, which furnished technical comments on one of the issues involved in this case. The information furnished through your memorandum and by Mr. Harry J. Mason, Jr., of your staff was of considerable assistance in the resolution of this protest.

A copy of the decision on the protest is enclosed.

Attachment