

Spiegel



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** New World Technology

**File:** B-238132

**Date:** March 30, 1990

L. Dean Heard, for the protester.

E. L. Harper, Department of Veterans Affairs, for the agency.

Robert Spiegel, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest by a defaulted contractor that the procuring agency should obtain spare parts from a manufacturer to supply the contractor on an x-ray maintenance and repair contract is denied, where the agency reasonably expects adequate competition based on the contractor obtaining the parts, the protester's performance problems under the current contract do not appear solely attributable to its inability to obtain parts from the manufacturer and the problems of the defaulted contractor with the manufacturer does not establish that this would be the case for other firms.

### DECISION

New World Technology protests, as restrictive, invitation for bids (IFB) No. 509-34-90, issued by the Department of Veterans Affairs (VA) for maintenance and repair of x-ray equipment at the Augusta, Georgia, Medical Center. New World contends that the prescribed original equipment manufacturer, Philips Medical Systems, refuses to provide service firms (such as the protester) with replacement parts. The protester proposes that the solicitation be modified to provide that VA order the parts from Philips and provide them to the maintenance contractor.

We deny the protest.

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New World is the incumbent contractor for the repair and maintenance of Philips' x-ray equipment at Augusta, Georgia. However, VA has defaulted New World on various equipment repairs, because of New World's inability to perform. New World has had similar problems at two other medical centers at which the protester also defaulted on various work items. Consequently, this IFB is the result of a VA decision not to exercise its contract option with New World. The IFB was issued on November 24, 1989, with bid opening scheduled for December 26. Since New World's protest was filed on December 22, the bid opening has been indefinitely postponed.

While New World protests that the specifications will create a sole-source situation, the agency has stated that it has no reason to believe competition will not be achieved. It is generally within the contracting officer's discretion to determine the best means of satisfying an agency's minimum requirements. When a protester alleges that a specification is unduly restrictive of competition, the procuring agency bears the initial burden of establishing a prima facie case that the restriction is necessary to fulfill the government's minimum requirements and is not violative of the agency's obligation to encourage full and open competition. 10 U.S.C. § 2305(a)(1)(A), (B) (1988); Weksler Instruments Corp., B-234001; B-234140, Apr. 18, 1989, 89-1 CPD ¶ 384. Once an agency has made a prima facie case, the burden is on the protester to prove clearly the unreasonableness of the challenged restriction.

New World maintains that it has experienced problems in obtaining replacement parts from Philips. The VA responds that the parts are available and that it expects to achieve adequate competition. VA notes that three bids were received on the previous IFB under which New World received the award, and the agency has issued solicitations to five identified sources for the current work. VA states that it has no reason to believe the necessary parts cannot be obtained or that adequate competition will not be achieved on this IFB. In fact, New World assured VA that it could obtain the parts from a third party source when it bid under the prior IFB. VA states that it has had numerous problems with New World's contract performance at VA medical centers, which do not appear solely attributable to New World's inability to obtain parts from Philips.

In our view, the testimony of one firm that the only source of replacement parts will not sell to it does not establish that this is or would be the case for other firms. Thus, in these circumstances, New World has not carried the burden of proving that the agency's determination of its minimum needs as represented in the subject solicitation is unreasonable.

The protest is denied.



*ja* James F. Hinchman  
General Counsel