



2-207 (c),<sup>1/</sup> and is a serious limitation of competition.

ICT also alleges that the answers to Amendment A03 indicates "the lack of serious intent on the part of the USPS to conduct a fair and open competition." Among the deficiencies cited by ICT in the answers are unduly subjective evaluation factors, insufficient detail, huge changes in processing, cost model and test design approaches, omissions and failures of responsiveness to the questions. ICT claims that these deficiencies make the submission of a technically acceptable proposal all but impossible.

ICT considers the change in scope of the effort as well as the incomplete and ambiguous answers received to be sufficient grounds to cancel the solicitation. Citing PCM 2-408, which states that "[i]nvitations for bids should not be canceled unless cancellation is clearly in the best interest of the Postal Service, such as where...amendments to the invitations would be of such magnitude that a new invitation is desirable," ICT alleges that the only conclusion to be drawn from the massive and ambiguous change in scope that Amendment A03 effected was that the solicitation is now so hopelessly confused that it should be canceled and "readvertised" once postal requirements become clear enough to prepare a response.

ICT also alleges that the contracting officer has incorrectly chosen a fixed-price contract rather than a cost-reimbursable contract. Citing PCM 3-403 (b) and 3-404.2 (b),<sup>1/</sup> ICT asserts that the contracting officer's determination to force offerors to propose

<sup>2/</sup>PCM 2-201(c) provides, in pertinent part, that:

No award shall be made on the invitation [for bids] unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

<sup>3/</sup>PCM 3-403(b) provides, in pertinent part:

**(b) Research and Development (R&D)** Because of the importance of technical considerations at the R&D stage, the choice of contract type shall not be made without obtaining the recommendations of cognizant technical personnel and should also be discussed with prospective contractors. Where appropriate, R&D solicitations should permit prospective contractors to propose and alternative contract type. Any counter-proposal must be supported by the contractor's rationale for his choice. Price is not necessarily the primary factor in determining the contract type. While no restriction exists on the type of contract which may be used, the nature of R&D work frequently necessitates the negotiation of a [cost plus fixed fee] CPFF term, cost-no-fee, or cost-sharing contract.

PCM 3-404.2(b) provides, in pertinent part:

**(b) Application.** The firm fixed-price contract is suitable for use in contracts when reasonably definite design or performance specifications are available and whenever fair and reasonable prices can be established at the outset, such as where:

a fixed price for requirements which were recently changed and are still very uncertain is unreasonable. ICT objects to assuming the risk of future changes in the scope and direction of the work and having to shoulder additional costs because of the poorly defined specifications and requirements.

Finally, ICT alleges that allowing the incumbent contractor in the input/output subsystem, AEG Aktiengesellschaft (AEG) and its alleged partially owned subsidiary (ElectroCom Automation), to bid on this procurement is unfair and prejudicial to the competition. ICT contends that AEG has an unfair competitive advantage because of its work on the input/output subsystem. ICT implies that the Postal Service has already chosen AEG as the contractor it wishes to perform this contract, and that the structure of the procurement procedure reflects this prejudice.

The contracting officer responds that the solicitation process has afforded all offerors sufficient time to address the required specifications. He notes that all offerors were advised on October 9 that the offer due date would be extended so that at least 45 days would elapse between the receipt of the interface specifications (which were issued on November 10) and the offer due date. The contracting officer strongly urges that the 34 calendar days between the issuance of Amendment A03 and the offer due date, as well as the total of 144 calendar days between the issuance of the solicitation and the offer due date are reasonable time frames for the preparation of proposals. He cites the receipt of several proposals as evidence that these time frames were not too tight.

The contracting officer disputes ICT's assertions that the amendments are fatally flawed and require cancellation of the solicitation. He states that ICT is the only party to have made such allegations, that these allegations are unfounded and unsupported, and that the existence of several offers also indicates that the requirements could be met.

(i) Adequate competition has made initial proposals effective;

(ii) Prior purchases of the same or similar supplies or services under competitive conditions or supported by valid cost or pricing data provide reasonable price comparisons;

(iii) Cost or pricing information is available permitting the development of realistic estimates of the probable costs of performance;

(iv) The uncertainties involved in contract performance can be identified and reasonable estimates of their possible impact on costs made, and the contractor is willing to accept a firm fixed price at a level which represents assumption of a reasonable proportion of the risks involved; or

(v) Any other reasonable basis for pricing can be used consistent with the purpose of this type of contract.

The contracting officer concedes that AEG is the current contractor for the modification of the input/output subsystems. However, he notes that all offerors have the same information as AEG upon which to submit a proposal on the present solicitation, and that the fact that AEG has worked on related procurements will not unfairly advantage it or its licensee, ElectroCom Automation.<sup>1/</sup> He asserts that all offerors will be evaluated "on an equal footing," based on their proposals and the solicitation's evaluation factor.

As to whether insufficient time was provided for preparation of its proposal, the decision as to the appropriate proposal preparation time lies within the discretion of the contracting officer. Uniserv, Inc., et al., Comp. Gen. Decs. B-228530, B-228530.2, December 23, 1987, 87-2 CPD & 621, accord Graphnet Systems, Inc., P.S. Protest No. 75-48, September 4, 1975.

[T]he regulations do not specify a definite time period to be allowed for preparation of proposals and the date set for receipt of proposals is a matter of judgment for the contracting officer. We will not question that judgment unless the record shows that the date was arbitrarily or capriciously selected or that it unduly restricted competition.

Drexel Heritage Furnishings, Inc., Comp. Gen. Dec. B-213169, December 14, 1983, 83-1 CPD & 686. The contracting officer's decision as to the date that proposals would be due was not arbitrary or capricious. The record does not indicate that the contracting officer tried to limit or reduce unreasonably the time necessary for preparation of proposals. The protest file also indicates that competition was received on this solicitation. Therefore, there is no ground on which to overturn the contracting officer's determination.<sup>1/</sup>

ICT's allegation that Amendment A03 is so vague and ambiguous that the solicitation must be cancelled must be reviewed under the rule that the contracting officer has broad discretion to amend the terms of a negotiated procurement. See Singer Company, Librascope Division, Comp. Gen. Dec. B-227140, September 8, 1987, 87-2 CPD & 225. Review of the questions and answers contained in Amendment A03 establishes that the contracting officer has not abused that discretion. Neither the scope of the amendment nor the specific answers provided requires this solicitation to be canceled.

ICT's allegation that AEG and ElectroCom will have an unfair advantage in the competition under this solicitation does not provide adequate grounds for relief.

<sup>4/</sup>Both the contracting officer and ElectroCom point out that ICT has incorrectly referred to ElectroCom as a "partially owned AEG subsidiary" when ElectroCom is, in fact, only a licensee.

<sup>5/</sup>We note that ICT's citations of PCM 2-207 and 2-408 are irrelevant, as these provisions apply only to advertised procurements and not to negotiated procurements like the present one. PCM Section 3, which deals with negotiated procurements, has no provisions comparable to 2-207 and 2-401.

Neither of these prospective offerors are incumbent contractors on the present procurement. While AEG has worked on other subsystems of the OCR/remote video code system, there is no basis to conclude that it must be barred from this competition. The competitive advantage gained by an offeror because of its position need not be discounted or equalized in favor of other offerors if it does not arise from preferential treatment or other unfair action by the Postal Service. See Thermex Energy Corporation, Comp. Gen. Dec. B-227034.2, August 17, 1987, 87-2 CPD & 164; Halifax Engineering, Inc., Comp. Gen. Dec. B-219178.2, September 30, 1985, 85-2 CPD & 559. "An advantage gained by performing a government contract is generally not unfair." Raymond International Builders, Inc., Bauer of America Corporations and SIF-Bachy, a Joint Venture, Comp. Gen. Dec. B-225827.2, August 11, 1987, 87-2 CPD & 148. There is no evidence before us that the purported competitive advantage of AEG is the result of the preferential treatment or unfair actions of the Postal Service rather than its familiarity with the present subsystem because of its prior work on the input/output subsystem. This ground of protest must be denied.

Finally, we will not overturn the contracting officer's choice of contract type. Determinations of the contracting officer may only be overturned if they are arbitrary, capricious, or unsupported by substantial evidence. See POVECO, Inc., et al., P.S. Protest No. 85-43, October 30, 1985; American Airlines, Inc., P.S. Protest No. 84-72, December 14, 1984. ICT alleges that, given the uncertainty of the requirements, a cost-reimbursable contract is necessary to protect the successful offeror. This analysis is mistaken. The PCM requires the contracting officer to use a fixed-price contract unless the cost of performance is so uncertain that it cannot be measured with sufficient reasonableness to permit the use of a fixed-price contract. PCM 3-404.2(b)(iv); 3-405.1(b). The contract file indicates that the protester has not carried its burden of proving that the uncertainties are of such a magnitude that the contracting officer's decision to use a fixed-price contract is arbitrary, capricious, or unsupported by substantial evidence.

The protest is denied.

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**[checked against original JLS 2/23/93]**