



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Micromass, Inc.

File: B-278869

Date: March 24, 1998

Mike Colucci for the protester.

Gena E. Cadieux, Esq., Department of Energy, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that evaluation methodology in solicitation for commercial thermal ionization mass spectrometer and related equipment unduly restricts competition and favors a particular manufacturer is denied where the record supports the agency's view that the methodology is necessary for the agency to assess the compatibility of items offered with existing laboratory equipment, and the evaluation methodology in fact is aimed at enabling the agency to make such an assessment.

DECISION

Micromass, Inc. protests the terms of solicitation No. DE-RP02-98-CH10908, issued by the Department of Energy, for a thermal ionization mass spectrometer (TIMS) and related laboratory equipment to be used by the New Brunswick Laboratory (NBL).¹ The protester contends that certain evaluation factors in the solicitation unduly restrict competition and favor the manufacturer of the agency's existing TIMS.

We deny the protest.

On December 3, 1997, the agency issued a combined synopsis/solicitation under subpart 13.6 (June 1997) of the Federal Acquisition Regulation (FAR) entitled, "Test Program for Certain Commercial Items" using simplified procedures set forth in FAR subpart 12.6 for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000, including

¹NBL is the national standards laboratory for nuclear materials and produces reference materials by certifying their isotopic and chemical compositions. The reference materials certified by NBL are used by commercial, academic, and other national laboratories for quality control, quality assurance, and traceability measurements. NBL's mission also includes work with other international reference material organizations to verify and jointly certify international reference standards.

options.² As amended, the solicitation requires delivery of a single commercial TIMS as well as related equipment, and offerors must provide commercial literature or other information about the items being offered to show that they are commercial items as defined in FAR § 2.101.³

The solicitation provides for award of a fixed-price contract to the offeror whose proposal provides the best value to the government, considering technical evaluation factors and price. As authorized by FAR § 12.602, the synopsis/solicitation provides for technical evaluation factors and, as amended, states their relative importance and calls for evaluation of these factors. Three technical factors, which are subdivided into subfactors, are listed in descending order of importance: instrument performance; compatibility with the agency's existing Finnigan MAT 261 TIMS; and past performance.⁴ Regarding compatibility with the existing Finnigan MAT 261 TIMS (factor 2), offers will be evaluated based on the following three subfactors: compatibility of filament types and associated hardware; software algorithms; and hardware compatibility and parts interchangeability. Price will be evaluated for reasonableness and the solicitation explains that, in selecting the best overall proposal, the agency will consider the probable price of doing business with the offeror, including the cost of training and adaptation to new procedures for instrumental analysis, peripheral equipment, and maintenance.

Micromass protests that the solicitation is unduly restrictive and otherwise defective. Specifically, Micromass objects to the factor addressing compatibility with existing Finnigan MAT 261 TIMS because this evaluation methodology is "hardware restrictive" and favors Finnigan. Micromass further protests the use of price reasonableness as an evaluation factor on the grounds that it is a "subjectively weighted" criterion.

²The combined synopsis/solicitation was posted on the electronic version of the Commerce Business Daily internet web site (CBD/Net) on December 3, and published in the CBD on December 8.

³FAR § 2.101 defines a commercial item in relevant part as:

- (a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--
 - (1) Has been sold, leased, or licensed to the general public; or
 - (2) Has been offered for sale, lease, or license to the general public.

⁴Amendment No. 2 of the solicitation states that while "the [three] technical evaluation factors are listed in descending order of importance . . . this does not apply to [the] technical evaluation subfactors."

Agency acquisition officials have broad discretion in selecting evaluation factors that should apply to an acquisition, and the relative importance of these factors. See FAR § 15.605 (June 1997); see also U.S. Defense Sys., Inc., B-251544 et al., Mar. 30, 1993, 93-1 CPD ¶ 279 at 5. Where a protester alleges that a solicitation provision is unduly restrictive, we will review the record to determine whether the provision is reasonably related to the agency's minimum needs. See Systems Application & Techs., Inc., B-270672, Apr. 8, 1996, 96-1 CPD ¶ 182 at 3.

The evaluation of proposed equipment's compatibility with the agency's existing TIMS is unobjectionable. DOE explains that NBL requires a new TIMS that is as compatible as possible with its existing TIMS so that the laboratory can continue to achieve the highest possible levels of analytical accuracy and precision in nuclear safeguards measurements and in certifying isotopic composition for nuclear reference materials. According to the agency, NBL currently operates three Finnigan MAT TIMS, as well as a Finnigan MAT gas mass spectrometer that shares some common electronic boards, components, and vacuum apparatus. Although the existing mass spectrometers are not current state-of-the-art instruments, they will be maintained for a number of years to perform certain routine isotopic measurements to fulfill the mission and programmatic needs of the laboratory.

While a new state-of-the-art TIMS will require some unique spare parts because the change from analog to digital electronics will preclude the interchangeability of some components, the agency states that there are other components that can be shared with the mass spectrometers the laboratory already owns. For example, NBL considers it necessary that filament types be interchangeable between the existing spectrometers and the new TIMS as this will allow cross-calibration among all of the mass spectrometers, and provide NBL with the capability to analyze the same sample load on different mass spectrometers. In addition to the level of hardware compatibility that already exists at NBL, the agency reports that the spectrometers at NBL also share similar software protocols for data acquisition and testing. DOE reports that it decided to include compatibility with existing Finnigan MAT 261 spectrometer as an evaluation factor because NBL has established analytical protocols for the TIMS which have been used in certifying nuclear reference materials nationwide for more than 10 years.

The agency reports that a new TIMS that possesses the most similarities in hardware and software with the three existing TIMS will best meet the ongoing needs of the NBL to maintain the highest level of analytical consistency and minimize instrument analytical bias, thereby improving the level of accuracy. Consequently, the use of different filament types and different software would require validation of new analytical protocols and testing to make sure that analyses using the new instrument are comparable to previously certified measurements; validation of new protocols would require extensive staff-hours and the NBL staff would require training in these new protocols.

While the protester continues to disagree with the agency's decision to evaluate the compatibility of an offeror's instrument with the existing Finnigan mass spectrometers at NBL, there is nothing improper in such an evaluation. We think evaluating the compatibility of the offered equipment clearly is consistent with the agency's goal of achieving maximum accuracy and precision in certifying nuclear reference standards and nuclear safeguards measurements. As discussed above, the agency has determined that hardware and software compatibility between the new and existing mass spectrometers is directly related to the mission of the NBL; it is not apparent to us, and Micromass does not explain, how the agency's determination in this regard is unreasonable. Instead, the protester argues, for example, that DOE has failed to present any data establishing that software algorithms or filament types from any other manufacturer will produce differences in analytical results. The protester claims other laboratories have used both Micromass and Finnigan instruments and report consistent readings between these instruments; however, Micromass does not provide any evidence to support its assertions. We do not know, for example, whether these laboratories perform the same type testing for the same purposes as NBL, nor is it clear that these laboratories use the same model instrument as the NBL. Under these circumstances, we have no basis to question the agency's position that use of a noncompatible instrument could give rise to differences in analytical results that may adversely affect NBL's mission.

Further, contrary to the protester's contention, the evaluation methodology does not restrict the competition only to Finnigan. First, as the agency points out, the compatibility evaluation factor does not require complete compatibility with existing NBL mass spectrometers; the evaluation will simply give more credit for a greater degree of compatibility. In any event, since this evaluation factor is ranked second of the three factors, an offeror could receive high enough scores on the other factors--instrument performance and past performance (in combination with price)--to be awarded the contract. Although claiming the evaluation methodology is unduly restrictive, Micromass does not argue that it is unable to offer compatible instrumentation. Even if Micromass were correct that the evaluation methodology impermissibly favors Finnigan, agencies properly may employ such evaluation factors that relate to their needs which, as discussed above, is the case here. Premiere Vending, 73 Comp. Gen. 201, 206 (1994), 94-1 CPD ¶ 380 at 7. The fact that a particular prospective offeror is unable or unwilling to compete under a solicitation that reflects the agency's needs does not establish that the solicitation is unduly restrictive. See Mortara Instrument, Inc., B-272461, Oct. 18, 1996, 96-2 CPD ¶ 212 at 6; Systems Application & Techs., Inc., B-270672, supra, at 5. We note that there is no evidence that DOE included the challenged evaluation methodology in order to eliminate Micromass from the competition.

Finally, Micromass complains that DOE impermissibly issued amendment No. 4 to further extend the deadline for receipt of proposals after the January 14, 1998, amended closing date. We find nothing improper about the issuance of the

amendment. Agencies may extend the closing date for receipt of initial proposals after the expiration of the original closing date to enhance competition. See Ivey Mechanical Co., B-272764, Aug. 23, 1996, 96-2 CPD ¶ 83 at 1-2. The agency reports that it decided to extend the closing date when it appeared it would only receive one offer. The record further shows that the amendment was posted on the CBD/Net web site on January 13 (1 day prior to the January 14 amended closing date). In addition, the agency reports, and the protester does not dispute, that the protester's representative was apprised by telephone on January 13 that the deadline for receipt of proposals had been extended until January 20. Under these circumstances, we have no basis to question the agency's actions.

The protest is denied.⁵

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⁵Although Micromass argues that the solicitation is defective because it includes price reasonableness as a "subjectively weighted" evaluation factor, there is no merit to this allegation. First, the amended solicitation does not identify price reasonableness as a weighted evaluation factor. Second, the amended solicitation simply states that price reasonableness will be evaluated in accordance with FAR part 15. The protester has provided no basis for our Office to find this improper.