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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Kenwood USA Corporation

File: B-294638; B-294638.2; B-294638.3

Date: November 29, 2004

Joseph J. Summerill IV, Esq., and Franci Gardner, Esq., Barnes & Thornburg, for the protester.

Maj. Frank A. March, Department of the Army, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that specifications for radios for use by Iraqi Police Service are unduly restrictive is denied where specifications are based on technical capabilities of various vendors, and protester fails to establish either that it is incapable of meeting specifications or is otherwise competitively harmed by them.

DECISION

Kenwood USA Corporation protests the specifications in request for proposals (RFP) No. W914NS-04-R-9040, issued by the Department of the Army for portable and mobile radios and base stations for use by the Iraqi Police Service (IPS). Kenwood asserts that the specifications “mimic” Motorola brand radios and exceed the agency’s minimum needs.

We deny the protest.

The RFP was issued for the procurement of encrypted communications equipment--portable, mobile, and base station radios, UHF repeater, and accessories--for use in Iraq. There are 79 principal jurisdictions in Iraq requiring radios for the IPS. Previous solicitations provided radios for 32 of these jurisdictions; the current RFP is intended to field the remaining 47 with a higher capability radio that will better fill the current and future requirements for the Iraqi Security Forces. Initially, the RFP specified Motorola brand radios with an encryption board identified as Motorola part

number MO82-430.¹ The RFP set forth numerous other specifications, including frequency range and stability; channel capacity and spacing; battery, shock, vibration, dust and humidity standards; transmitter output; FM hum and noise; conducted/radiated emissions; audio response and distortion; and spurious emissions.

Kenwood protested to our Office, challenging the procurement's 5-day response deadline and arguing that the brand name designation, the encryption board, and the frequency range (403-470 megahertz (MHz)), were unduly restrictive specifications.² The agency responded by deleting the Motorola brand name references and extending the proposal deadline. It also replaced the Motorola encryption board designation, which it found had been listed in error, with a corrected one, the Transcript 460, but left the remaining specifications unchanged. The agency also amended the background statement to read as follows:

The [IPS] has a requirement to field an interim first responders network to a number of cities where systems have not yet been fielded. These systems will provide local police communications until the Advanced First Responders Network [AFRN] is fielded in 2005-6. The systems must be interoperable with Iraqi National Guard [ING] and other forces.”

RFP amend. 2.

Kenwood protested the RFP's specifications, as revised, alleging that they remained unduly restrictive because they “mimic specifications listed in [Motorola] technical manuals,” and that Motorola was the only entity that would be able to compete successfully. Kenwood specifically challenged the frequency range, the interoperability requirement, and the encryption board. Supplemental Protest, Sept. 13, 2004, at 3-5. The agency responded by undertaking a review of all specifications except frequency range, channel spacing, power output, and encryption board, all of which it determined were necessary, and extended the due date for proposals. As a result of this review, the agency amended the RFP (amend. 0004) by eliminating some specifications—including those for modulation limiting, conducted/radiated emissions, and audio response—and modifying others,

¹ This part number identified the board as a Transcript brand encryption board. Protest, Sept. 1, 2004, at 4.

² Contemporaneous with the original RFP, the agency completed a justification and approval (J&A) specifying the Motorola brand radios. Kenwood challenged various aspects of the J&A and the agency subsequently determined not to rely on it as a basis for its specifications.

including mobile radio channel capacity (reduced from 128 to 16), and the hum and noise requirements under the various transmitter specifications.

The agency explains that the unchanged specifications—frequency range, channel spacing, power output, and encryption board—were left unchanged based on the needs of the Iraqi users and its own survey of radios from various vendors. In this regard, the agency explains, the frequency range of 403-470 MHz was based on the public safety frequency band allocation set by the Iraqi Ministry of Defense. Technical Representative (TR) Statement, Oct. 8, 2004, ¶ I. Both the frequency allocation and the encryption board requirements were specified so that the IPS radios would be able to interoperate with the radios of the ING, which is the IPS's contingency backup force, and the final recipient of these radios when the AFRN receives its new, replacement radios. *Id.*, ¶¶ I, V. Channel spacing and maximum power output specifications were dictated by the Iraqi Frequency Management Office. *Id.*, ¶ III. In addition, the agency surveyed the radios of various vendors, including Kenwood, Macom, Icom, Harris, and Motorola before compiling the requirements as a set of parameters that all radios met. Supplemental (Suppl.) TR Statement, Oct. 28, 2004, ¶ II.

Kenwood asserts that these specifications remain restrictive because they continue to mimic Motorola requirements, and that they do not reflect the agency's minimum needs.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. Parcel 47C LLC, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 7. In preparing a solicitation, however, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agency's legitimate needs. 10 U.S.C. § 2305(a)(1)(B) (2000). Because any specification or solicitation requirement is restrictive in the sense that something is required of offerors, we only consider protests of restrictions that have an effect on competition, such as where a restriction precludes a firm from competing or works to its disadvantage in a competition. See A.T. Kearney, Inc., B-225708, May 7, 1987, 87-1 CPD ¶ 490 at 3; Mid-Atlantic Serv. & Supp. Corp., B-218416, July 25, 1985, 85-2 CPD ¶ 86.

We find no evidence that Kenwood has been competitively harmed or otherwise prejudiced by the challenged specifications. In this regard, apart from those specifications set by Iraqi government agencies and the need for interoperability, the remaining specifications were based on a survey of radios including a Kenwood model. According to the agency's technical representative, and undisputed by the protester, Kenwood is capable of meeting or exceeding all specifications, with the sole exception of the frequency range. Supp. TR Statement, ¶ II. Even as to this specification, Kenwood itself included it, unchanged, in a proposed list of specifications that Kenwood recommended to enhance competition. Letter from Kenwood to Army, Oct. 19, 2004. Moreover, despite our specific request that it do so,

Kenwood has not furnished us with an explanation as to how any of the challenged specifications prevent firms other than Motorola from competing effectively.³ In this regard, according to the agency, and undisputed by Kenwood, at least one vendor, Tait, submitted a proposal that met the specified requirements with other than a Motorola product. Supp. TR Statement ¶ II. We conclude that there is no evidence that Kenwood was competitively harmed by the allegedly restrictive specifications, and that there thus is no basis to sustain the protest. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Further, even if the record established that Kenwood was unable to compete due to the challenged specifications, Kenwood has failed to establish that the specifications do not represent the agency's needs. In this regard, where a protester challenges a specification as unduly restrictive, the procuring agency has the burden of showing that the specification is reasonably necessary to meet its needs; we will review the agency's explanation to determine if it is reasonable, that is, whether it can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3.

Here, the agency has reasonably established that the challenged specifications are necessary to meet its needs. For example, with regard to the need for a higher-level encryption board, the agency explains that lost radios have been taken by hostile forces and used to eavesdrop on current activities. TR Statement, ¶ V. Whenever a radio was lost, radios with lower-level encryption boards had to be brought in from the field and physically re-keyed so that eavesdropping would not be possible. Id. In contrast, the higher-level Transcript 460 encryption chip will enable the IPS to disable captured radios over the air by using a PIN code, and also will allow re-keying over the air. Id. The Transcript 460 board also was specified because of the agency's need for interoperability. The agency explains that each board manufacturer uses different algorithms, and due to the proprietary nature of the algorithms, radios using one manufacturer's board cannot interoperate with radios using a different board. Suppl. TR Statement, ¶ I. The IPS's contingency backup force, the ING, currently employs 11,000 radios with the specified Transcript 460 board. Id.; Agency Declaration Nov. 10, 2004. Thus, only radios with the Transcript 460 board will be interoperable with the ING's radios. As a result, while, as Kenwood observes, there may be different encryption boards available that provide the same level of security and sometimes better encryption than the Transcript 460 board (Kenwood Comments, Oct. 18, 2004, at 10), the need for interoperability

³ Our Office specifically requested Kenwood to "identify which . . . specifications prevent it from competing and why; that is, which specifications Kenwood is unable, as opposed to unwilling, to meet." GAO Fax, Oct. 22, 2004. In response, Kenwood merely asserted that the specifications mimicked Motorola's and offered no value. Letter from Kenwood to GAO, Oct. 29, 2004.

makes use of a different manufacturer's board impracticable. We conclude that the agency has reasonably established that only the Transcript 460 board will meet the agency's needs.

Kenwood maintains that the agency recently "entered into new contracts . . . to purchase encrypted radios for use by the [IPS] which are AFRN compatible, but do not require the specifications listed in [the RFP]," including the Transcript 460 encryption board. Letter from Kenwood to GAO, Oct. 18, 2004, at 11-12. The agency responds that, even though previous purchases of radios for the IPS did not comply with the current RFP specifications, it was unaware of any contracts or purchase orders for IPS radios issued within the last 30 days. Suppl. Agency Report at 3. The agency explained that the only purchase related to IPS radios was one to upgrade radios already fielded in other cities to a trunked system, to enhance the security of the radios. Suppl. TR, ¶ IV. In its comments responding to the supplemental report, Kenwood did not rebut the agency's position. Where, as here, an agency submits a detailed response to protest arguments, and the protester makes no further mention of an issue, or merely references an issue but does not substantively reply to the agency's detailed position, we deem the issues abandoned. Citrus Coll.; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶104 at 8.

The protest is denied.

Anthony H. Gamboa
General Counsel