



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

B-175741

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May 14, 1973

Futuronics Corporation  
178 Hanse Avenue  
Freeport, New York 11520

Attention: Mr. Albert A. Blanck  
President

Gentlemen:

Further reference is made to your telefax of April 19, 1972, and subsequent correspondence, protesting against the award of a contract to Multiplex Communications, Inc. (Multiplex), under RFP 3FP-B5-NB20222-9-21-71, issued by the General Services Administration (GSA). The basis of your protest is that proprietary information contained in an unsolicited proposal was extracted and used by GSA in items 0100 and 0200 of the above-referenced RFP without your prior consent.

The record shows that on June 23, 1969, Futuronics submitted to GSA an unsolicited proposal entitled "Digital Data Communications System (DIDAC)." It was stated in the proposal that the DIDAC System would reduce "the traffic switching requirements of [GSA's Advanced Record System/Message Switching Centers] which results in a significant reduction in the probability of service delays and misrouted messages." The proposal contained the following introductory paragraph:

PROPRIETARY DATA

This data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; provided, that if a contract is awarded to this offeror as a result of or in connection with the submission of this data, the Government shall have the right to duplicate, use or disclose the data to the extent provided in

[Claim of Improper Use of Proprietary Data]

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the contract. This restriction does not limit the government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction is contained in Sheets ALL.

It appears that on several occasions in 1970 and 1971, representatives of your firm discussed the merits of your proposal with GSA. As a result of these discussions, you state, it was your belief that GSA was going to purchase a DIDAC System. In particular, you allege that on December 23, 1970, GSA's Deputy Assistant Commissioner for Procurement advised an official of your firm that a Federal Supply Schedule contract would be negotiated with Futuro-nics on a sole source basis. However, GSA's position is that:

\* \* \* it appears that the protestor misinterpreted the effect of the conversation. What is reflected in the protestor's memorandum [of the conversation] is simply that GSA would commence negotiations with the firm, leading possibly to the award of a multiple award Federal Supply Schedule contract. This could not properly be construed to be a commitment to make a contract. Moreover, even if a contract had finally been awarded it would not have provided any GSA commitment to buy, but would merely have permitted Federal agencies to order if the protestor's products were needed.

We regard the administrative position to be consistent with your memorandum of the conversation dated December 23, 1970, and therefore we are unable to conclude that the conversation represented any commitment to purchase a DIDAC System from you on a sole source basis.

On August 13, 1971, GSA issued the instant solicitation for 12 each Teletypewriter Equipment (Item 0100); one each Manual Switching System (Item 0200); and one each Automatic Switching System (Item 0300). Five proposals were received by the closing date of September 21, 1971, and technically evaluated. Since only your offer and that of Multiplex included Item 0200, the evaluation board recommended that all other offerors be eliminated to preclude obtaining equipment not fully compatible with Item 0200. Negotiations were closed on March 22, 1972, and on April 5, 1972, award was made to Multiplex, whose price was 64 percent lower than yours.

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On April 19, 1972, approximately eight months after the issuance of the RFP, you protested to our Office. The thrust of your protest, which is presented quite generally, is that GSA extracted proprietary information from your unsolicited proposal and, without your consent, used it in the specifications for Items 0100 and 0200 in the instant RFP.

In response to your protest, GSA furnished our Office with reports from the Assistant Commissioner for Telecommunications Operations and from the Evaluation Board of the same office. It is stated in the former report:

\* \* \* Our specifications for subject RFQ were totally developed from the use of technical knowledge of GSA staff personnel, and the use of pertinent engineering data which was extracted from appropriate government publications dating from the 1940's to the present.

In support thereof, the Evaluation Board enclosed copies of the publications from which the specifications for the instant RFP were derived. The Evaluation Board further concluded:

- (1) The Futuronics unsolicited proposal does not set forth any new or sophisticated operational communications concepts or techniques for electrical transmissions of record traffic.
- (2) The proposal does not outline a system where great design and engineering efforts have to be expended for the system's development.
- (3) The system proposed is in the general use of optional teletypewriter features which can be obtained from teletypewriter manufacturing sources for use in developing a system.
- (4) The methods used by Futuronics in their proposal are in the general knowledge of system communications and the public domain.

You were provided a copy of the administrative report, but made no response thereto.

It is noted that although you were aware of the contents of the RFP, you did not claim that proprietary data had been used

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improperly until after notification of award to another firm, eight months after the RFQ was issued. In regard to the factual dispute on the question whether your proprietary data was used improperly, it has been our position that we must accord a significant degree of finality to decisions made by the contracting agencies of the Government in such matters; and that no substantial basis exists for recognition of a claim of improper use of proprietary data where, as here, the party claimant apparently has failed to take reasonable action to prevent or suppress its unauthorized use. See 46 Comp. Gen. 885, 889 (1967).

In view of the foregoing, your protest is denied.

Sincerely yours,

Paul G. Deabling

For the Comptroller General  
of the United States