



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: International Data Products, Inc.; Commax Technologies, Inc.

File: B-275480.2, B-275480.3, B-275480.4

Date: April 3, 1997

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DIGEST

An offeror's global or blanket certification of compliance with the specifications is insufficient to establish compliance where the agency has reason to question the characteristics of the products being offered.

DECISION

International Data Products, Inc. (IDP) and Commax Technologies, Inc. protest the Department of the Army, Army Materiel Command's (AMC) award of contracts to Sysorex Information Systems, Inc. and Government Technology Services, Inc. (GTSI), under request for proposals (RFP) No. DAHC94-96-R-0003, for portable computer systems and related resources. The protesters primarily argue that the awardees' proposals failed to comply with various mandatory specification requirements.

We deny the protests.

The solicitation contemplated award of two firm, fixed-price, indefinite delivery, indefinite quantity contracts, with a contract period of 2 years, for commercial off-the-shelf (COTS) portable computer systems, including generally a number of

standard configurations and a number of high performance configurations.¹ Award was to be made to the two responsible offerors whose offers “represent the best overall value to the Government” under four criteria: (1) technical, (2) past performance, (3) cost, and (4) management. The technical factor--comprised of eight subfactors, including performance of the standard and high performance systems on the Winstone 32, Winbench 96, and Ziff-Davis BatteryMark benchmark tests and on the agency’s ergonomics tests--was “significantly more important” than past performance, cost or management; past performance was “comparatively equal” to cost; and past performance and cost both were “more important” than management. Although the solicitation included detailed specifications, it did not require the submission of detailed technical proposals. Instead, it required that offerors: (1) furnish “commercial technical information sheets/brochures sufficient to identify the products being offered (e.g., specification sheets),” and identify the original equipment manufacturer (OEM) of the products; (2) furnish the results from unwitnessed benchmark tests; (3) furnish bid samples consisting of the core systems, but not the various required peripherals, for witnessed benchmark testing; (4) make oral presentations; and (5) complete a “global certification” stating that “the offeror meets all the requirements of the solicitation . . . except as noted below. . .,” and agreeing that in the event that it should “fail to meet any requirements, the contractor shall, at no additional cost, make any changes necessary to the products or services to comply with the contract requirements.” (In addition, offerors were required to submit price, past performance, and management information.)

Eight proposals were received. Following discussions, oral presentations and benchmark testing, AMC requested best and final offers (BAFO) from five offerors, including IDP, Commax, Sysorex and GTSI. Based upon the evaluation of BAFOs, oral presentations and benchmark testing, AMC determined that the proposals of

¹Although the agency’s answer to offeror question No. 75 (answers to questions from offerors were incorporated in the RFP) stated that the applicable definition of commerciality would be that specified by Federal Acquisition Regulation § 52.212-4(e), the answer indicated that

“[t]he fact that a product is unannounced when offered would not violate the commerciality requirement for that reason as long as the product otherwise satisfies the provisions of the clause, which encompasses certain items not yet available in the commercial marketplace that have evolved through advances in technology or performance and that will be available in time to satisfy the delivery requirements under the contract.”

Sysorex and GTSI, which included signed global certifications of compliance with the specifications, represented the best value. The evaluation scores were as follows:

	Sysorex	GTSI	Commax	IDP
Technical	38.78	32.43	39.88	32.43
Past Performance	15.05	18.65	11.45	16.85
Management	13.55	13.55	11	12.2
Total Non-Cost	67.38	64.63	62.33	61.48
Evaluated Cost	\$(DELETED) million	\$(DELETED) million	\$(DELETED) million	\$(DELETED) million

Upon learning of the resulting awards to Sysorex and GTSI, IDP and Commax filed these protests with our Office.

GLOBAL CERTIFICATION

As an initial matter, AMC contends that by signing the solicitation's global certification of compliance, and taking no exception to the specifications, the awardees established the technical acceptability of their proposals, irrespective of the contents of the proposals. AMC concludes that the awardees' proposal are not subject to challenge on the basis that they do not satisfy specification requirements.

We disagree. While an agency can properly provide for a certification of compliance and based on such certification accept a proposal that does not affirmatively establish compliance with the specifications, an offeror's blanket certification or promise of compliance is insufficient to establish compliance where the agency has reason to question the characteristics of the products being offered.

See generally Lappen Auto Supply Co., Inc., B-261475, Aug. 14, 1995, 95-2 CPD ¶ 68 at 4 (although “brand name” offeror was not required to submit descriptive literature, its unsolicited literature could not be disregarded to the extent that it clearly qualified the bid by describing an item that did not satisfy a specified salient characteristic); SeaBeam Instruments, Inc., B-253129, Aug. 19, 1993, 93-2 CPD ¶ 106 at 7 (certification of compliance with Appropriations Act domestic manufacture restriction may not be accepted where the proposal suggests noncompliance); Mine Safety Appliances Co.; Interspiro, Inc., B-247919.5; B-247919.6, Sept. 3, 1992, 92-2 CPD ¶ 150 at 3 (even where a solicitation does not require a showing of compliance with each solicitation requirement, a proposal that does not explicitly show compliance with a requirement may not be accepted where there is reason to doubt that the offeror is agreeing to meet that requirement). Thus, notwithstanding the existence of a signed global certification, our Office will still review protests that the agency had reason to question the characteristics of the products being offered.

IDP PROTEST

IDP asserts that the IBM Thinkpad 760E portable proposed by Sysorex to meet the high performance requirement is noncompliant with the specification requirement that “[t]he base configuration for a high performance portable shall include an internal 3½” floppy disk drive, a built-in pointing device, 1.2 [gigabyte] removable hard disk drive, internal 5¼” CD-ROM Player. . . .” Specifically, Sysorex’s proposal indicated that the IDP Thinkpad 760E uses a single drive-bay to accommodate internally either a floppy disk drive or a CD-ROM drive; thus, the floppy disk drive and CD-ROM drive are accommodated on an interchangeable basis rather than simultaneously. IDP argues that simultaneous accommodation is required.

Where a dispute exists as to the meaning of a solicitation requirement, we will resolve the matter by reading the solicitation as a whole, and in a manner that is reasonable and which gives effect to all its provisions. Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149 at 5. Further, we will not read a provision restrictively where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. Reflectone Training Sys., Inc.; Hernandez Eng'g, Inc., B-261224; B-261224.2, Aug. 30, 1995, 95-2 CPD ¶ 95 at 5; MAR Inc., B-242465, May 6, 1991, 91-1 CPD ¶ 437 at 4.

We find no basis to conclude that simultaneous accommodation was required. First, the specifications did not expressly require simultaneous accommodation, and AMC notes (and IDP does not refute) that interchangeable floppy disk and CD-ROM drives is a common commercial approach for portables (five of the eight offerors proposed portables based on this approach). Further, in offeror question No. 59, IDP asked the agency to “confirm this offeror’s understanding that the Standard Portable need not support the 3.5 “floppy disk drive and optional CD-ROM simultaneously.” AMC answered that: “The offeror’s understanding is correct. The

Standard Portable need not support the 3.5 "floppy disk drive and the optional Standard Portable CD-ROM Player . . . simultaneously." While AMC's answer did not address the high performance portable, in the absence of any express RFP requirement that the high performance model provide for simultaneous accommodation, and given the fact that interchangeability is a common commercial approach, we think AMC's answer was sufficient to indicate that it did not intend that offerors read a simultaneous accommodation requirement into the RFP.² Put another way, it was unreasonable for IDP to read the RFP restrictively by assuming that the solicitation was intended to preclude a common commercial approach to providing the required functionality, when the solicitation did not include any such express restriction. We conclude that Sysorex's proposal reasonably was found compliant with this aspect of the specifications.

COMMAX PROTEST

Docking Station

Commax asserts that GTSI's proposal failed to comply with a solicitation requirement for docking stations (which permit connection of the portable with desktop components and provide additional capabilities). In this regard, the solicitation required offerors to propose standard and high performance portables equipped with a PCMCIA card reader "capable of accommodating two Type II and one Type III device (not simultaneously)," five separate types of PCMCIA cards, and docking stations for both portables. Commax contends that because GTSI proposed a PCMCIA card reader that accommodates two Type II cards or one Type III PCMCIA card, and a "universal" docking station that connects to the portables using the PCMCIA slot--rather than a docking station connecting with the portables through the docking station interface connector--and occupies one Type II PCMCIA slot, thereby preventing use of the PCMCIA card reader by a Type III card, GTSI's docking station is noncompliant with the solicitation requirements as clarified by the agency's response to offeror question No. 46. In its answer, AMC responded to a request that the solicitation "requirement for the MPEG [video] module be supplied via a PCMCIA card," by stating that

²We recognize that, as noted by the protester, although both portables must support a CD-ROM drive, the CD-ROM for the high performance portable was a mandatory part of the base configuration while the CD-ROM for the standard portable was an optional item. However, AMC's answer to question No. 59--that the standard portable need not support the floppy disk drive and the CD-ROM simultaneously--addressed the agency's needs with respect to simultaneous support of the two devices where a CD-ROM also is required for the standard portable. Thus, we see no reason why AMC's answer should not likewise apply to the high performance portable.

“[t]he Army needs to use the existing PCMCIA card reader for other missions (e.g., remote communications and Fortezza). Use of a PCMCIA MPEG card would greatly limit the Government’s flexibility. The requirement remains as stated.”

Commax argues that use of the PCMCIA card reader by GTSI’s docking station is inconsistent with the above-stated need of the agency to use the PCMCIA card reader “for other missions.” Commax specifically notes that by occupying one Type II slot, GTSI’s docking station prevents the use of the PCMCIA card reader by the Type III card GTSI proposed to meet the solicitation requirement for a PCMCIA hard card.³

The fact that GTSI’s proposed docking station connects to the portable through the PCMCIA card reader was not apparent from GTSI’s proposal, which did not discuss the mode of connection to the portable, and only became known to the agency during the course of the protest (AMC relied on the global certification in finding GTSI’s proposal compliant). Hearing Transcript (Tr.) at 309. Commax argues that this should not protect GTSI from the consequences of its proposal of an allegedly nonconforming docking station, since GTSI allegedly concealed the identity of the OEM for the docking station. In this regard, claims Commax, while GTSI’s proposal identified Everex Systems, Inc. as the OEM, the proposed docking station, which apparently was designed and engineered by CNF, Inc. and known as the CNF Digitari 535i Universal Docking Station, was to be manufactured by CNF.

GTSI, on the other hand, has testified that it was advised by Everex, and believed, that although CNF designed the docking station, Everex would manufacture it.

³Commax also cites AMC’s answer to an offeror’s request that, because the requirement for a docking station is “limiting,” and the functionality of a docking station can be furnished by a PCMCIA card reader, the agency delete the requirement for a docking station. The agency responded that

“[t]he Government has a requirement for docking stations that are capable of supporting expansion cards and storage bays for use with not only products provided with the vendor proposal, but also to provide the flexibility to utilize items which already exist in the Government inventory. The requirement stands as stated.”

This question and answer, however, addressed the need for the docking station, while Commax’ protest focuses on the need for and use of the PCMCIA card reader. Thus, we do not consider it relevant to the question of whether GTSI’s proposed docking station makes unacceptable use of the PCMCIA card reader.

Tr. at 172-174, 179-180, 185, 216-221. Indeed, GTSI maintains that Everex will in fact manufacture the docking stations for this contract under license from CNF.⁴

Generally, where an offeror has made an intentional misrepresentation that materially influenced the agency's consideration of its proposal, the proposal should be disqualified and a contract awarded based upon the proposal should be canceled. The Law Offices of George E. Hill, B-272168, Sept. 4, 1996, 96-2 CPD ¶ 96 at 4; Gold Appraisal Co., B-259201, Mar. 15, 1995, 95-1 CPD ¶ 144 at 6.

Here, it is clear that the alleged misrepresentation and concealment could not have been material. AMC states that, had it been aware that GTSI was offering a CNF Digitari 535i Universal Docking Station, it would have accepted it as compliant with the specifications. According to the agency, a PCMCIA-based docking station would not have the same negative impact on utilization of the PCMCIA card reader as would a PCMCIA MPEG card (referenced in the answer to question 46). AMC maintains in this regard that users generally want to have an MPEG card (and its video capabilities) available at all times, which is why the agency considers a PCMCIA MPEG card to pose an impediment to communications. In contrast, AMC explains, since a docking station is intended for home station (rather than remote) use, and communications are possible even when the PCMCIA-based docking station is connected to the portable (through use of a modem that is resident on either a network, via a docking station interface card, or on an internal docking station modem expansion board), a docking station does not impede remote communications. In addition, the agency states, a Type II Fortezza encryption card can be used with a PCMCIA-based docking station utilizing a Type II connection, since the card reader can accommodate two Type II devices simultaneously. Tr. at 312-313. Indeed, the agency considers GTSI's offer of a universal PCMCIA-based docking station not only to be compliant with the specifications, but also to represent a significant advantage, since it could be used with portables in the existing Army inventory, as well as portables obtained from other sources.

AMC's position--that use of the PCMCIA card reader by GTSI's docking station is consistent with the specifications--is reasonable. As with the simultaneous accommodation issue discussed above, the specifications, even as clarified by the questions and answers, did not expressly prohibit such an approach. Specifically, notwithstanding the protester's urged expansive reading, the agency's answer to question No. 46 stated only that use of the PCMCIA card reader for purposes of meeting the MPEG requirement was unacceptable; it did not state that use by a docking station--which, unlike an MPEG card would not impede communications--likewise was unacceptable, and the specifications did not even address how the

⁴GTSI also offered evidence to the effect that it believed when preparing its proposal that its proposed docking station would be commercially available by the time of contract delivery. See, e.g., Tr. at 195-197, 222-224.

required docking station was to connect with the portable.⁵ Under these circumstances, it was unreasonable for Commax to assume that the solicitation precluded GTSI's approach.

Other Issues

Commax challenges other aspects of the evaluation of proposals. We conclude that Commax's arguments are either without merit or, given Commax's lower non cost score and significantly higher cost, do not demonstrate competitive prejudice.

For example, Commax argues that GTSI's proposal failed to comply with the solicitation requirements for memory upgrades to the required graphics accelerator cards. In this regard, the specifications required: (1) a standard graphics accelerator card that supports a resolution of 800x600 with 16.7 million simultaneous colors, and whose memory is "upgradeable to 4 MB [megabytes]"; and (2) a high performance graphics accelerator card that supports a resolution of 1024x768 with 16.7 million simultaneous colors, and whose memory is "upgradeable to 8 MB." The record indicates that two common types of memory on graphics cards are DRAM (Direct Random Access Memory) and VRAM (Video Random Access Memory). Although the base configurations of GTSI's standard and high performance graphics cards come with VRAM, they are only upgradeable with DRAM; adding DRAM would tend to accelerate graphics processing and facilitate 3D (3-dimensional) displays and full motion video without jitters but, unlike an addition of VRAM, would not permit higher resolutions at a given color depth on these cards. Tr. at 207-209, 335-338, 439, 441-442, 449. Commax essentially argues that because the specifications define the performance requirements for the base configuration graphics cards in terms of resolution at a given color depth, any upgrade to GTSI's graphics cards must involve the addition of VRAM, since only VRAM will increase resolution at a given color depth. According to the protester, had it been afforded an opportunity to propose to the allegedly relaxed

⁵At a minimum, we fail to understand why, in view of the fact that the specifications did not expressly prohibit a PCMCIA-based docking station, and the protester's claim as to the significance of this for the choice of portable and components, the protester did not seek clarification from the agency with respect to this matter. In this regard, a Commax employee involved in developing its technical approach to this procurement testified that had it viewed a universal PCMCIA-based docking station as being acceptable, and thus not believed it necessary to propose a proprietary-design docking station with a more limited market for its product, it could have realized savings totaling approximately \$22 to \$22.5 million as a result of the consequently greater choice it would have had with respect to portables and other components. Tr. at 111-122. (Likewise, Commax maintains that permitting "a universal docking station removes the tremendous 'compatibility' challenge" offerors would otherwise face when utilizing a proprietary design.)

specifications, it could have reduced its price by approximately \$[DELETED] by offering different graphics accelerator cards.

We find the protester's position unpersuasive. As with the other features discussed above, the protester's restrictive interpretation is not supported by any RFP language. The solicitation neither defined the type of memory to be used in the upgrades nor established performance requirements for the upgraded cards. Although the solicitation implicitly required an improvement in performance from an upgrade, the record indicates that upgrading GTSI's proposed graphics accelerator cards with DRAM would in fact improve performance; it would tend to accelerate graphics processing and facilitate 3D displays and full motion video without jitters. (Indeed, it appears from the record that for certain graphics accelerator cards, but not for GTSI's proposed cards, a DRAM upgrade would also permit higher resolutions at a given color depth.) The record further indicates that some Army users actually were more interested in the additional 3D capability offered by a DRAM upgrade than in the additional capability offered by a VRAM upgrade. Tr. at 335-338. In our view, it was unreasonable for Commax to assume without inquiry that the solicitation precluded a commercial approach to providing memory on graphics accelerator cards when the solicitation did not include any such express prohibition.

As a further example, Commax challenges the agency's acceptance of the product GTSI offered to comply with the solicitation requirement for a combination printer/scanner/copier/fax machine. We agree with the protester that, given the manufacturer's speed rating for this product, as revealed in the descriptive literature enclosed with GTSI's proposal, the unit was noncompliant under any reasonable interpretation of the specifications. However, Commax claims it could have reduced its price only by \$[DELETED] had it been aware of this relaxed specification. Since Commax's evaluated price was approximately \$[DELETED] million higher than Sysorex's much higher-rated proposal and \$[DELETED] million higher than GTSI's somewhat higher-rated proposal, it clearly suffered no competitive prejudice as a result of the relaxation.

The protests are denied.

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of the United States