

DECISION



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

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FILE: B-180833

DATE: July 2, 1974

MATTER OF: Digital Equipment Corporation

DIGEST: Protest by Federal Supply Schedule contractor against GSA's refusal to add additional equipment to existing contract schedule for automatic data processing equipment is denied since record does not establish that GSA abused its discretion in determining that the additional equipment offerings would not result in substantial economic benefit to Government. However, in view of allegations regarding unequal treatment of suppliers and nonuniform approach to determining economic benefit, information is held for consideration in audit.

Digital Equipment Corporation (DEC) has protested the refusal of the Automated Data and Telecommunications Service, General Services Administration (GSA), to amend that company's Automatic Data Processing (ADP) Schedule Contract No. GS-00C-00162 by adding certain items of DEC equipment to the Federal Supply Schedule dealing with General Purpose ADP Equipment and Software.

The contract was awarded to DEC on September 28, 1973. On November 19, 1973, DEC proposed the addition of certain ADP equipment to its ADP Schedule Price List. GSA accepted some units for inclusion on the Schedule, but determined that the other offered units "did not provide sufficient economic benefit to the Government to warrant inclusion in the DEC Schedule Contract." DEC claims that "sufficient economic benefit" is a "phrase without definition," that the various GSA contract negotiators apply different standards in determining the existence of such a benefit, and that its offerings do in fact provide economic benefit to the Government.

GSA reports that its policy, which was reflected in the solicitation leading to the award of DEC's contract, is to require discounts from suppliers' established catalog or market prices as well as other terms and conditions more

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favorable than those offered to commercial customers, and that such "good faith departures from * * * standard commercial ways of doing business are prerequisite to the award of an ADP Schedule Contract." DEC asserts that it did offer departures from its commercial practices which in effect were discounts which would provide economic benefit to the Government. However, GSA's administrative report indicates that GSA evaluated DEC's offerings as no more favorable and in some instances less favorable than what DEC was offering commercially.

We have previously recognized, in response to a protest against GSA's policy of requiring discounts from commercially offered prices, that the Administrator of GSA is "vested with the authority and responsibility for determining policy and methods of procurement" under the Federal Property and Administrative Services Act, as amended, Public Law 152, 63 Stat. 377, 40 U.S.C. 471; 40 U.S.C. 481; 41 U.S.C. 251 et seq., and that "there is no basis for our Office to substitute our judgment for that of the Administrator in determining GSA's policy with respect to preferential discounts." B-163971, May 21, 1969. In this connection, we have found that the discount policy, while not necessarily appropriate in every case, has resulted in savings to the Government. Letter report B-173971, September 26, 1969. Furthermore, just as procuring activities have considerable discretion to determine the reasonableness of prices offered, e.g., B-177426, May 14, 1973, we think GSA necessarily must be regarded as having similar discretion to determine the economic benefit to the Government of discounts and other terms and conditions offered by would-be Federal Supply Schedule suppliers.

The record before us does not establish that GSA abused its discretion in rejecting DEC's proposed additions to its Schedule contract. Therefore, the protest is denied. However, we are concerned over DEC's assertions regarding the alleged lack of uniformity and unequal treatment of suppliers in other cases with respect to determinations of economic benefit, especially in view of our recent report B-115369, "More Competition Needed In The Federal Procurement Of Automatic Data Processing Equipment", May 7, 1974. Therefore, the record in this case will be held for consideration during our ongoing audit of GSA's ADP equipment procurement practices.


Deputy Comptroller General
of the United States