

DOCUMENT RESUME

02642 - [A1612625]

[Reconsideration of Decision re Informatics, Inc.]. B-187435.
June 2, 1977. 8 pp.

Decision re: International Computaprint Corp.; by Robert F.
Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Informatics, Inc.; Department of
Commerce.

Authority: Legislative Reorganization Act of 1970 (31 U.S.C.
1176). B-187435 (1977). B-184141 (1975). 37 Comp. Gen. 688.
45 Comp. Gen. 365.

After reconsidering a decision finding that a
Department of Commerce request for proposals (RFP) for patent
data processing was defective and after recommended
resolicitation, prior decision was affirmed, as cost impact of
RFP erroneous work estimates could not be predicted without
renegotiation. Decision was modified to extent that agency was
permitted not to exercise resolicit option due to changed
requirements since the original decision. Requirement for
standardized encoding was not restrictive as need was
legitimate. (DJM)

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P.L.I

DECISION



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

FILE: B-187435

DATE: June 2, 1977

MATTER OF: Informatics, Inc. - Reconsideration

DIGEST:

1. Prior decision, holding that erroneous estimate contained in RFP misled offerors other than incumbent, is affirmed on reconsideration as arguments presented by incumbent do not alter prior determination that cost impact of erroneous estimate could not be predicted without reopening of negotiations.
2. Finding that RFP did not contain accurate estimate of file size will not have adverse effect on use of estimates in future procurements as alleged in request for reconsideration, as original decision did not hold that estimates must be precisely accurate but only that they be based on best information available to Government.
3. Prior recommendation that negotiations be reopened because of impossibility of ascertaining price impact of misleading Government estimate is modified to permit agency to not exercise option under current contract and to resolicit offers under new solicitation because of changed Government requirements since issuance of original decision.
4. While it is alleged that requirement for standardization of encoding scheme for data base to that developed by contractor under questionable award will effectively preclude potential offerors other than incumbent from competing, such requirement is not unduly restrictive where, as here, need for standardization has been demonstrated as legitimate.

International Computaprint Corporation (ICC) has requested reconsideration of our decision in the matter of Informatics, Inc., 56 Comp. Gen. _____ (B-187435, March 15, 1977), 77-1 CPD 190.

Our decision of March 15 found that request for proposals (RFP) No. 6-36995 issued by the Department of Commerce was defective and recommended that negotiations be reopened and another round of best and final offers be requested. The RFP was for the preparation of patent data for patent full text data bases for the Patent and

B-187435

Trademark Office. The RFP advised offerors that at the beginning of the contract year, the contractor might be required to receive and implement from the incumbent contractor an existing suspense file which may not exceed 20,000 Series 4 patent applications. Upon our review of the record, we found that the size of the suspense file decreased steadily over a 3-year period (July 1973 to July 1976) and at the time the RFP was issued the file contained no Series 4 applications and 1,247 Trial Voluntary Protest Program (TVPP) files. While there was a dispute among the parties as to whether the TVPP files were properly included in the Suspense File, we found it unnecessary to resolve the dispute because of the wide discrepancy between 1,247 files and the 20,000-file estimate contained in the RFP.

We found that Commerce could have more accurately predicted the size of the suspense file a new contractor would have to receive at the beginning of the contract year and that the failure to include a more realistic estimate operated to the competitive disadvantage of all offerors other than the incumbent, ICC.

Regarding the cost impact caused by the above-noted deficiency, we made the following observation in our March 15 decision:

"There is a dispute in the record as to the cost impact on Informatics' proposal caused by the failure to state the actual number of files in the suspense file or a more realistic estimate. Commerce states the cost impact would be less than the difference in the Informatics and ICC proposals and Informatics alleges that it allowed costs in its proposal which greatly exceeded this difference. We do not believe it is necessary to determine this amount exactly. Due to the closeness of the two proposals (Informatics - \$10,891,829.60; ICC - \$10,883,166.59), we find a reopening of negotiations to permit another round of best and final offers the only real means to determine the amount of such a cost impact. * * *"

ICC's request for reconsideration is initially grounded on the allegation that the erroneous estimate did not affect Informatics' price proposal because the cost difference is minimal between receiving 1,200 files and 20,000 files. ICC contends that the most expensive

B-187435

operation involved in the receipt of the incumbent's suspense file is the development of a software conversion program which would have to be developed for a file of any substantial size. The only difference between receiving 1,200 files and 20,000 files would be computer time and the additional reels of computer tape needed to store the additional files.

Informatics, in its comments in connection with the original protest, stated that if it had known the suspense file contained only 1,000 files it would not have based its costs upon using a software conversion program but would have based its costs upon rekeyboarding the files, which would be less expensive.

As noted in our decision, the work to be performed in connection with the receipt of the suspense file was not an individually priced item, but had to be absorbed by an offeror as an item of overhead. This factor, plus the closeness of the offered prices and the dispute among the parties as to the cost impact, resulted in our concluding that a reopening of negotiations was the only manner in which to assure equal competition. For these reasons, we remain of the same opinion.

Additionally, ICC argues that the conversion of the existing suspense file from the Version II format, the format in which it would be made available to the new contractor, to another format was not required under the RFP but was optional with the contractor. While this statement is true, our Office was advised during the initial protest that the Version II format was not a feasible format in which to store the suspense files because of the difficulty in adding and removing files during contract performance. Therefore, while the conversion was not required by the terms of the RFP, practical considerations required such a conversion.

ICC further argues that our decision will have an adverse effect on future procurements where Government estimates normally would be required. Also, ICC points out that other variables of work under the contract did not contain an estimate and this could work to the disadvantage of an incumbent since potential offerors could underestimate the work and submit unrealistically low bids.

Contrary to ICC's fear that procuring agencies will be hesitant to include estimates in future procurements because the estimates may not be precisely accurate, this was not the import of our decision.

B-187435

We found that Commerce had employed the same estimate, 20,000 files, over a 3-year period, when it had data in its possession which showed this figure was no longer accurate. Our Office has long held that Government estimates must be based on the best information available. 37 Comp. Gen. 688 (1958). Therefore, Government agencies need only be concerned that any estimates used are based upon the best information available.

Concerning the failure of Commerce to include estimates for other portions of the work (i.e., code counts), Commerce noted in the RFP that the code counts could vary widely from issue to issue based on the length of individual patents and therefore only included an estimate of the number of patents in each issue. We find nothing improper in this because, unlike the available suspense file data, it was impossible to give a reasonable estimate of the code counts.

Finally, ICC contends that our suggested remedy, the reopening of negotiations, is improper and unfair. ICC argues that the reopening of negotiations will constitute an "auction" which our Office has considered unacceptable in the past and, further, that Informatics, through the original protest, has seen ICC's line item best and final offer while ICC has only seen Informatics' total offered price.

For the following reason, we do not find it necessary to respond to these contentions, except to note that we have been advised that Informatics has made available to ICC its line item best and final offer and, therefore, it appears that both parties have the same knowledge regarding the other's proposal.

While the request for reconsideration by ICC was pending, Commerce advised our Office that it did not believe strict conformance with our recommendation (i.e., reopening negotiations) was in the best interest of the Government because of changes in the Government's requirements since the award of the contract to ICC. In its letter to our Office of April 20, 1977, Commerce noted the following changes:

- "1. A downward revision in the minimum annual amount of patent work that is guaranteed to the contractor. The minimum in contract 7-36977 was set at 60,000 patents per 32 week period when the Patent and Trademark Office was issuing between 70 and 80 thousand patents per year. Presently, the actual volume has fallen below the 70,000 level,

B-187435

with the Fiscal Year 1978 production expected to be below 60,000. In order to reflect the current work volume requirements a new solicitation will have a minimum guaranteed work level of 58,000 utility patents for each 52 week period in the initial year and the option year.

- "2. All prior solicitations and contracts required magnetic tape input to the Government Printing Office (GPO) 1010 Linotron. By letter dated March 29, 1977 the Government Printing Office informed the Patent and Trademark Office (P & TMO) that the Videocomp 500 photocomposer is to be used for the patent photocomposition requirement.

The Videocomp, by virtue of its design, is an inherently more flexible machine than the Linotron. More importantly it is less expensive and its use provides a substantial savings to the Patent & Trademark Office in Government Printing Office billings.

Therefore, a new solicitation would require that these input tapes be delivered for use with the GPO Videocomp 500 photocomposer instead of the Linotron 1010 photocomposer.

As it is estimated that this change will effect a substantial savings by the end of Fiscal Year 1977, the Department of Commerce intends to amend the present contract to require input to the Videocomp at the earliest possible time.

- "3. Prior to the development of the specifications for the 1975 and 1976 solicitations, the data base coding for equations and chemical diagrams had not been established. Solicitation No. 6-36995 permitted prospective contractors to submit their own encoding scheme for complex

B-187435

work units (CWU). The Government reserved the right to select or reject any proposed scheme in order to ensure compatibility with the existing encoding for the Data Base file. The encoding scheme proposed by ICC was workable in all respects and was accepted for use in the Patent Data Base File. All Patent Data Base tapes delivered by ICC under contract No. 7-36977 since the December 7, 1976 issue contain the currently accepted coding scheme.

Consequently, the new solicitation would provide all offerors a comprehensive data base coding technique which is capable of capturing almost all complex work encountered in contract performance."

Because of these changes, Commerce proposes to resolicit offers for an initial period of 1 year with a 1-year option and not to exercise the option under ICC's current contract.

Informatics, in response to Commerce's suggested alternative, contends that the first two changes in the Government's requirements (the decrease in the annual amount of patent work and the change from the Linotron to the Videocomp 500) are minor changes which could be handled by an amendment to the RFP. Regarding the third changed requirement, the use of ICC's encoding scheme, Informatics argues that such a requirement would "lock-in" ICC because of the restrictive nature of the proposed specification.

Concerning the first two proposed changes in the Government's requirements, while affecting the final quantity or form of the product furnished the Government, we do not believe they are so significant that the RFP could not be amended to reflect these changes and negotiations reopened.

However, when viewed concurrently with the third change, we believe the suggested alternative of the Commerce Department is reasonable and would have no objection to its implementation.

In connection with the use of ICC's encoding scheme for complex work units, Informatics' contention that it is restrictive of competition is based on the argument that the furnishing by Commerce of the encoding scheme is useless to another offeror unless

B-187435

the associated photocomposition computer software is also furnished. Informatics states it has developed at considerable expense its own encoding scheme in connection with prior solicitations and such scheme will be rendered useless if ICC's encoding scheme becomes the standard for all future procurements by the Commerce Department.

Commerce states that the need for standardization to one encoding scheme for complex work units was recognized by the Department when it issued the RFP under protest here. The RFP provided that "awardee(s) of contracts(s) will be required to standardize Data Base Notations to the extent that the Government will obtain full Data Base tape file compatibility as a result of any award(s) under this solicitation." Commerce estimates that at the time the current 1-year contract with ICC expires in October 1977, there will be 16,000 patents containing ICC's encoding scheme in the Data Base.

While Informatics states that the development of the software to implement ICC's encoding scheme will involve considerable time and cost and will effectively preclude other offerors from competing, we believe Commerce has justified its requirement for standardization of the encoding scheme. The fact that one or more potential offerors may be precluded from competing because of the specification terms does not render the specification unduly restrictive of competition, if it represents the legitimate needs of the Government. 45 Comp. Gen. 365 (1965); Holt Brothers-Energy Division, B-184141, September 18, 1975, 75-2 CPD 103. Here, without standardization, the Government would have to recode the 16,000 patents which will have been prepared by ICC or be faced with having two different encoding schemes in its Data Base file.

Informatics states that to allow ICC to gain this competitive advantage is unfair because of the doubt raised by our decision of March 15, 1977, that the award to ICC was proper. While we did find that the results of the procurement were questionable, it is not practicable to ignore almost 1 year's performance under the contract and attempt to reconstruct the circumstances and facts as they existed at the date of the award to ICC.

Accordingly, ICC's request for reconsideration is denied; however, our Office has no objection to the implementation of Commerce's proposed resolicitation.

This decision in no way affects the Department of Commerce's obligation to explain the actions taken under this procurement pursuant

B-187435

to the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176, as required by our decision of March 15, 1977.


Deputy Comptroller General
of the United States