

DOCUMENT RESUME

02980 - [A2013081]

[Protests of Alleged Deficient Specifications, Refusal to Waive Testing, and Increase in Benchmark Test Response Time].  
B-187769. July 12, 1977. 7 pp.

Decision re: Burroughs Corp.; by Paul G. Dembling (for Elmer R. Staats, Comptroller General).

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

Organization Concerned: Bureau of Land Management.

Authority: 50 Comp. Gen. 20. 50 Comp. Gen. 23. B-185418 (1976).  
4 C.F.R. 20.2(b) (1). 4 C.F.R. 20.2(c).

Protest alleging deficient specifications was untimely. Agency's refusal to waive testing until protester was able to comply with computer processor specifications was not arbitrary. Benchmark test time and tasks to be done were increased, thereby increasing competition. Protest was denied. (DJM)

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**DECISION**



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

MARTIN  
P.L. II

FILE: B-187769

DATE: July 12, 1977

MATTER OF: Burroughs Corporation

**DIGEST:**

1. Protest alleging specifications were deficient and violated OMB Circular is untimely under Bid Protest Procedures when not filed before closing date for receipt of initial proposals. Moreover, issues raised are not considered significant.
2. Agency's insistence that computer processor offered by protester comply with specifications and its refusal to waive testing pending protesters development of compliant processor is not arbitrary.
3. Protester's allegation that response time under benchmark test was relaxed to benefit certain competitors is not sustained by record which shows that increase in response time was offset by proportionate increase in functions to be performed and that change was made to benefit several competitors, thus increasing competition.

Burroughs Corporation (Burroughs) protests the award of any contract under request for proposals (RFP) No. YA-512-RFP6-21, issued by the Bureau of Land Management (BLM) of the Department of the Interior. The RFP solicited offers to furnish and install a large scale computer system and the necessary software, maintenance and supporting services.

After oral and written discussions, Burroughs' original proposal was rejected as technically unacceptable primarily because its Data Communications Processor (DPC B 6358) did not meet the specifications for the front-end processor. Burroughs then proposed a new front-end processor (DPC B 6359) which was not then developed to the extent that it could be functionally demonstrated. Burroughs requested permission to perform

the required benchmark tests on the DPC B 6358 with the understanding that the DPC B 6359 would be delivered if it was awarded the contract. BLM refused to grant this request or to waive the functional demonstration of the DPC B 6359 and informed Burroughs that its revised proposal was unacceptable. Burroughs then protested on the following grounds:

"1. That the Contracting Officer arbitrarily and capriciously refused to permit Burroughs to perform the RFP authorized Benchmark Time Test with its originally configured and proposed computer system (DCP B 6358) for reasons solely based on hardware configuration and not on functional accomplishment of the system performance parameters provided for in the RFP and demonstrable by testing.

"2. That in doing so, the Contracting Officer totally and arbitrarily disregarded the provisions of OMB Circular A-109, which was issued on April 5, 1976 before the subject RFP was issued, which is applicable to major systems acquisitions including ADP procurements, and which calls for the use of functional specifications.

"3. That the Contracting Officer upon initially rejecting Burroughs' original proposed system without benchmark testing, and upon entertaining and receiving an alternate proposal by Burroughs for a new hardware system (DCP B 6359) deliverable by installation date, arbitrarily refused to consider same and/or grant a waiver of present benchmark testing.

"4. That the Contracting Officer two days before original benchmark testing by a Burroughs' competitor in this procurement (IBM), relaxed the Response Time Specification (entitled Benchmark Description Job Set E) approximately 30% from 3.5 x 10 seconds). On information and belief this was accomplished to accommodate other bidders, yet the Contracting Officer has arbitrarily

and capriciously taken action here rejecting any benchmark testing with Burroughs' original DCP B 6358 System and refusing to waive present testing of Burroughs' alternate proposed new DCP B 6359 System deliverable on schedule. Such selective and double standard treatment of bidders is contrary to the competitive process.

"5. That the above actions of the Contracting Officer violate the provisions of federal procurement law and regulations mandating maximum competition from all qualified sources of supply."

The RFP stated that

"The front-end processor must have been specifically designed for the function of relieving the central processor in the computing system from the task of handling communications line monitoring and related tasks involved with local and remote terminal input and output. The utilization of either hardware and/or software normally associated with the main frame is not permissible for the purpose of meeting the front-end requirement."

It is not disputed that DCP B 6358 did not meet this requirement. Burroughs, however, challenges the necessity of requiring the front-end processor to relieve the central processor of the circuit discipline, error control, message assembly, editing, routing, code conversion and buffer queueing functions.

After Burroughs presented its objections to the General Services Administration (GSA), by letter dated November 15, 1976, GSA requested that BLM provide it with justification for the inclusion of mandatory computer functions in the front-end processor rather than in the host processor. This was done and GSA, by letter of February 18, 1977, stated its belief that there was a reasonable basis for the requirement that specific operational functions be solely within the front-end processor,

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but that, in its view, such a design requirement "could best be verified by empirical data such as statistical studies, or simulations regarding the subject computer functions." However, GSA recognized that BLM's need was urgent and therefore it would "impose no objection" to the BLS requirement.

GSA also stated its determination that the change in average response time from 3.5 to 10 seconds was of such significance as to require an amendment to the RFP and that all vendors be afforded a fair opportunity to propose or to amend proposals already submitted. GSA stated its understanding that the amendment was an accurate statement of BLM's requirement and was necessary only for purposes of clarification arising from the inability to isolate compilation time from execution time. Further, the GSA letter recommended that offerors already tested be given the opportunity to adjust their proposals and rerun the benchmark test and that vendors who secured the original benchmark documentation but did not propose, be given an opportunity to reconsider.

BLM then wrote to Burroughs and the two other companies which had submitted proposals and afforded them an opportunity to revise their proposals and to propose any product announced prior to March 9, 1977. In addition, BLM wrote four other companies which had not submitted proposals asking if they now desired to do so. Based on the replies, BLM reopened the procurement with a closing date of May 2, 1977. After reviewing the new and the revised proposals, BLM will conduct the benchmarks tests but will defer the award pending this decision. A functional demonstration of Burroughs' DCP B 6359 was recently conducted and Burroughs was informed that the DCP B 6359 had not adequately performed the functional demonstrations.

The record indicates that BLM conducted a thorough study of its needs and decided that the front-end processor for the computer system should perform many of the usual functions of the central processor so that the central processor could perform more efficiently other functions which the front-end processor could not perform. It believed that such a configuration would result in more efficient operations, would be in accord

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with the trends in the industry and would provide more flexibility in the event of the anticipated expansion of the system. BLM's intention to require such a front-end processor capability was made known to the vendors by the release for comments of the specifications prior to issuance of the formal RFP. No objection to such a requirement was raised at that time or after the release of the RFP until the Burroughs proposal was questioned by the proposal evaluation team.

We do not believe that it can be fairly said that BLM acted arbitrarily or capriciously in requiring Burroughs to meet the specifications. To the extent that Burroughs' protest is based upon improprieties apparent in the specifications, it is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976), which require that protests based upon such alleged improprieties be filed prior to the closing date for receipt of initial proposals. To the extent that the first and second grounds set forth above were apparent in the solicitation, they will not be considered in this decision.

While not agreeing that its protest is untimely, Burroughs asserts that because it raises issues significant to Federal procurement practices, "good cause" has been shown to invoke section 20.2(c) of our Bid Protest Procedures (4 C.F.R. § 20.2(c) (1976)). This section does permit consideration of untimely protests where good cause is shown or where issues significant to procurement practices or procedures are raised. The good cause exception generally refers to some compelling reason beyond the protester's control which prevented him from filing a timely protest. 52 Comp. Gen. 20, 23 (1972). We see no such reason present in this case. The significant issue exception is limited to issues which are of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. See Catalytic, Incorporated, B-187444, November 23, 1976, 76-2 CPD 445. We see nothing in this case to warrant invoking this exception.

Burroughs alleges that BLM's refusal to waive the functional testing of the DCP B 6359 or to permit benchmark testing of the system with the DCP B 6358 on the understanding that the DCP B 6359 would be delivered on schedule, was arbitrary. In essence, this challenges the technical judgment upon which BLM's refusal was based.

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However, we will not question technical judgments of the agencies in the absence of a clear showing of unreasonableness or a violation of the procurement statutes and regulations. 54 Comp. Gen. 612 (1975). The record indicates that at the time of BLM's refusal to waive the functional testing of the DPC B 6359, no demonstrable DPC B 6359 existed and that Burroughs had projected delivery of the DPC B 6359 no later than October 1977. BLM contends that the required front-end processor was an integral part of the computer system and that the failure to functionally demonstrate it would reduce effectiveness of the benchmark tests to an unacceptable level. Under these circumstances, we believe that BLM has a reasonable basis to insist that the DPC B 6359 be functionally demonstrated and to refuse to conduct the benchmark test with the non-complaint DPC B 6358.

We do not believe that GSA's letter of February 18, 1977 lends support to Burroughs' position. As pointed out above, the letter expressed GSA's belief that there was a reasonable basis for requiring the specific operational functions solely within the front-end processor. It also stated that while it believed that the necessity for architectural design specifications could best be verified by empirical data such as statistical studies or simulations, it would impose no objection in this case due to the urgency. It then suggested that if BLM agreed that GSA's view had merit, BLM enter into meaningful negotiations with Burroughs and cited various actions which "could" be taken. The record does show that while BLM reopened the procurement to all, it did not adopt a GSA suggestion to the effect that Burroughs (and possibly other offerors) be allowed to demonstrate substitute equipment and be permitted to deliver the substitute equipment until the required processor could be delivered. In our opinion, the failure to follow this suggestion does not support a charge of arbitrariness.

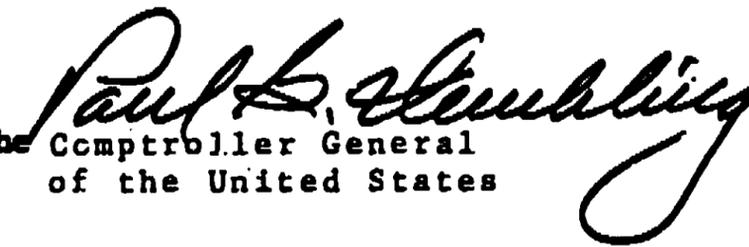
With regard to Burroughs' fourth ground for protest, BLM contends that contrary to Burroughs' statement that the specifications were relaxed, the specifications were clarified with regard to the procedures to be followed during the response time portion of the benchmark testing. BLM states that the RFP did not define response time and that although no offeror objected to the 3-1/2 second response time, it became evident during the technical discussions of the proposals that the offerors were

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proposing different methods of meeting the 3-1/2 second requirement because of their different interpretations. Although all such methods were acceptable, one contained features not available to competitors such as the availability and quality of manpower and pre-benchmark computer power. Therefore, BLM decided to add compilation and code loading to the execution of the queries and updates and to compensate for these additional processes by increasing the 3-1/2 second response time to 10 seconds. BLM states that the actual benchmark demonstrations indicated that all offerors met the 3-1/2 second response time originally required for the execution of the queries and updates and would have met it without the clarification. We see no indication of arbitrary, capricious or unfair action by BLM with regard to this matter.

Finally, the statutory and regulatory mandates for maximum competition cannot be reasonably construed to require an agency after receipt of proposals to waive for one competitor mandatory requirements which other competitors have met. This Office has often stated that the preclusion of one or more competitors from a particular competition does not render a specification unduly restrictive if, in fact, the specification represents the legitimate needs of the agency. Gardner Machinery Corporation; G. A. Braun, Incorporated, B-185418, September 15, 1976, 76-2 CPD 245.

Accordingly, this protest is denied.

  
For the Comptroller General  
of the United States