DOCUMENT RESUME

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[Deviations from Solicitation Requirements]. B-187720. May 19, 1977. 6 pp.

Decision re: International Business Machines 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 II.
Budget Function: General Government: Other General Government (806).
Organization Concerned: TRW, Inc.; Geological Survey.
Authority: 54 Comp. Gen. 363. F.P.R. 1-1.305. F.P.R. 1-3.805-1.

The protester asserted that the award of a contract was in violation of Federal Procurement Regulations because the awardee's proposed system deviated from the solicitation requirements, and the agency failed to communicate the relaxation of the specification to all offerors. The agency was not required to amend the specification to apprise all offerors of the proposed elimination of items which were not required by the system design proposed by one offeror. Since the protester also took exception to certain requirements in the solicitation in its proposal, it appeared to have understood that specification deviation was permitted so long as functional and performance requirements were met. (Author/SC)

A. Z [illegible] Proc II

DECISION

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

FILE: B-187720 DATE: May 19, 1977

MATTER OF: International Business Machines Corporation

DIGEST:

Agency is not required to amend specification to apprise all offerors of proposed elimination of items which is not required by system design proposed by one offeror to meet RFP performance requirements. Protester which also took exception to certain RFP requirements in its proposal appears to have understood that specification deviation was permitted so long as functional and performance requirements were met.

International Business Machines Corporation (IBM) protests the award of a contract to TRW, Inc. for the procurement of the EROS Digital Image Processing System (EDIPS) for the U.S. Geological Survey (USGS) EROS Data Center (EDC).

IBM asserts that the award was in violation of section 1-3.805-1 (d) of the Federal Procurement Regulations (FPR) because TRW's proposed system deviated from the solicitation requirements and the agency failed to communicate the relaxation of the specification to all offerors, thus rendering meaningless the requirement for full and free competition. Alternatively, IBM asserts that if the specifications were to be considered advisory only, the agency failed to adequately describe its needs in contravention of FPR § 1-1.305. The USGS position is that there was no relaxation of requirements and that the award was consistent with the solicitation when read as a whole.

The record is replete with shorthand letter designations for various elements of the EDIPS. Several of these are essential to the discussion of this protest, and are as follows:

__Tapes__

1. High Density Digital Tape (HDT)
2. High Density Digital Archival Tape (HDTA)
3. High Density Digital Edited Master Tape (HDTEM)
4. High Density Digital Film Production Tape (HDTPF)
5. High Density Digital Tape Production Tape (HDTPD)
6. Computer Compatible Tape (CCT)

Equipment

1. High Density Tape Recorder (HDTR)
2. High Resolution Film Recording Subsystem (HRFRS)
3. Incoming Inspection Subsystem (IISS)
4. Production Processing Subsystem (PPSS)
5. Product Generation Subsystem (PGSS)

The EDIPS is to receive material from the National Aeronautics and Space Administration (NASA) in the form of computer tapes containing high density digital data received from NASA's Landsat-C satellite for processing into film and computer tape products for dissemination to the public. The specification included in the solicitation provided for three modular subsystems interfaced by magnetic tape, i.e., the output of one subsystem on HDT became the input to the subsequent subsystem in what we will for convenience refer to as the "processing chain." The initial subsystem in the processing chain was the IISS whose input was HDTA received from NASA. The output of that subsystem was the HDTEM, as well as "browse microfilm" and "quick look hard copy." The latter tape provided the input to the PPSS, the second subsystem in the processing chain, and the output from that subsystem again consisted of high density digital tapes, in this case the HDTPF (for film production) and the HDTPD (for computer compatible digital tape production). As before, these latter tapes provided the input to the PGSS, the last subsystem in the processing chain, whose output was ultimately the products disseminated to the public, i.e., master film products produced on the HRFRS from which copies for distribution would be made, CCTs and additional HDTs.

The crux of IBM's argument is that the TRW system, which eliminates the HDTPF and the associated hardware essential to the production of that tape (HDTRs and other equipment) by direct on-line operation with the HRFRSs, rather than by off-line operation utilizing the HDTPF tape, does not conform to those specification requirements. IBM asserts that the TRW system also deviates from the specifications by eliminating a required production log printer.

USGS agrees that the TRW system does not conform to the specification provisions in every regard. It asserts, however, that offerors were not required to adhere to all aspects of that specification. Rather, USGS states, offerors were to be guided by the statement of "procurement philosophy" included in the request for proposals (RFP). The "procurement philosophy" advised prospective offerors that:

"* * * [T]he * * * system * * * consist[s] of a high density digital data processing system with three major subsystem concepts for which functional descriptions appear below * * *

"Offerors are requested to utilize creativity in configuring proposals that comply with the input and throughput requirements specified herein as well as provide the highest possible quality at the lowest possible contract price, taking into consideration the cost in subsequent Government operation of the system. The specification represents a concept that is believed to be feasible, technically sound and consistent with the operational objectives and requirements of the Geological Survey's EROS Data Center (EDC). However, it has not been optimized for implementation with any particular hardware or software that may be available from various sources. Proposers are expected to seriously consider these facts and to propose a system that they consider optimum for the EDC objectives and requirements from the standpoint of:

1. Total system costs including initial costs and projected operational costs over a five year period.

2. A system that meets the throughput requirements.

3. A system that will produce the required output products with the highest possible quality.

* * * * *

"It is suggested that the effort to optimize the system might consider factors such as, but not be limited to, the following:

1. Shifting or combining certain functions from PGSS and IISS into PPSS or some other like combination.

2. Reduction of the modularity concept between subsystems if hardware/software availability

and cost considerations will justify such combinations without sacrificing operability, maintainability, reliability, throughput, or quality.

2. Reduction of the modularity concept between subsystems if hardware/software availability and cost considerations will justify such combinations without sacrificing operability, maintainability, reliability, throughput, or quality.

3. Sharing of equipments between subsystems including the cross strapping that has been suggested along with a common processor if there are distinct advantages to such sharing.

4. Elimination of special function hardware if such special functions can be implemented by existing hardware that will provide the required functions and at the same time not place unacceptable operational constraints on the operators/inspectors." (Emphasis supplied.)

USGS states that the specification represented a "reliable and productive solution * * * without regard to price," but was "conceptual only" and that it was the "procurement philosophy" which "set forth the ground rules which would be applied * * * with due emphasis on price and overall cost to the Government." USGS further states that this was understood by IBM as well as TRW, and points to IBM's own deviations from the specification provisions. In short, it is USGS's position that the "procurement philosophy" and specification sections together established performance and certain design parameters of the EDIPS, but allowed offerors to propose innovative approaches which, while not conforming to the conceptual approach of the specification, would be both technically acceptable and less costly to the Government.

IBM, on the other hand, states that it "understood the Procurement Philosophy to intend that creativity was desired consistent with specified requirements," and argues that the USGS position would render the specifications meaningless and would preclude meaningful competition under them because "each offeror, at its own peril would be guessing as to what to eliminate and what to include." IBM admits that it did request, in its proposal, an exception to the specification requirement" for the HDTEM and HDTPD, but suggests that the RFP amendment it would have anticipated if USGS found the deviations to be acceptable was unnecessary because TRW requested and was granted the same exception so that "in practical effect the RFP was amended to accommodate the changed requirement."

We agree with USGS. Although the specification section, when read by itself, appears to require the specific modular approach set forth therein, the "procurement philosophy" section, as an integral part of the RFP, cannot be ignored. We believe that section, particularly in the underscored language quoted above, informed offerors that the specification was not mandatory in all respects, but was only "a concept * * * believed to be feasible," and that offerors were "requested to utilize creativity in configuring proposals" so as to propose a system that would meet the input, throughput, and output requirements with the "highest possible quality at the lowest possible contract price." Moreover, it appears that IBM, which took some 12 deviations (not merely the two mentioned above) from the specification provisions, none of which would have affected the functional requirements or output products of the system, was or should have been aware of the non-mandatory nature of certain aspects of the provisions.

Further, we do not believe that this reading of the specifications renders them "meaningless." Offerors were not required to guess at what to eliminate--they were to comply with the output requirements and were free to eliminate whatever was not required to meet those requirements. Although it is somewhat unusual for an agency to set forth detailed specifications and then advise that in some respects those specifications are not mandatory, in essence what USGS did here was tantamount to conducting a competition on the basis of a performance specification. Under a performance specification, of course, offerors are expected to use their own inventiveness and ingenuity in coming up with designs and approaches that will meet the Government's performance requirements. See, e.g., Ocean Design Engineering Corporation, 54 Comp. Gen. 363 (1974), 74-2 CPD 249.

Accordingly, we do not believe that the TRW system is inconsistent with the RFP requirements. Although the RFP is silent on what is included in "output products", the agency states that the output products of the EDIPS system consists of film, computer compatible tapes (products of the PGSS), browse microfilm and quick look hard copy (products of the IISS). The agency further states that the other tape "products" of the system, e.g., HDTEM, HDTPF and HDTPD, were merely intermediate products which were essential in the modular system concept set forth in the RFP, but not all necessary in the optimized systems proposed by the offerors, since the output products desired by the agency could be generated without their use. As we noted above, the TRW system eliminates the HDTPF. IBM, does not argue that the HDTPF is an output product. In fact, in its proposal, IBM recognized that film and CCT are the output products of the EDIPS system and that the generation of

those products is one function of that system. In our view, both the IBM and TRW technical proposals merely offered differing approaches, both of which are dissimilar to the three subsystem concept conceived by the agency. TRW took one further step and eliminated the need for the costly equipment needed for the production of the HDTPF. Likewise, TRW eliminated the need for a production log printer, by combining its functions with a high speed printer furnished for other purposes. As IBM stated in its proposal as its rationale for taking exception to the requirement for the HDTEM and HDTPD, "[t]his eliminates several [high density tape recorders] resulting in significant cost saving consistent with the RFP's desire to minimize the number of HDTRs." We are of the opinion that the same rationale is no less applicable to the TRW approach.

The protest is denied.

R. F. Keller

Deputy Comptroller General
of the United States