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*J. J. Kelly
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DECISION



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

FILE: B-188910

DATE: December 15, 1977

MATTER OF: Intermem Corporation

DIGEST:

Solicitation requirement for "announced, commercially available" equipment is met by bidder whose equipment is commercially available, regardless of method used by bidder to announce the availability of its equipment. Public announcement in trade journal is not required.

Intermem Corporation protests the award made to the Ampex Corporation under Department of the Air Force IFB F19628-77-C-0071, for a 1.5 megabyte memory system with reconfiguration, for use with IBM 360 data processing equipment. In its view Ampex failed to meet the requirements of paragraph 39 of the solicitation in that the equipment offered was not publicly announced by Ampex as being commercially available before the bid opening date.

Paragraph 39 provided:

"At the time of the bid submission, the item(s) bid must consist of equipment selected from announced, commercially available ADP equipment."

In Intermem's opinion, "announce" imports the giving of public notice. It asserts that the Ampex unit was never publicly announced in any trade journal, or otherwise. Moreover, Intermem questions whether Ampex had completed development of the equipment before bid opening.

For its part, the Air Force indicates that the contracting officer relied upon a statement by Ampex, in a letter dated March 31, 1977, in which Ampex personnel responded to an Air Force request for verification, as follows:

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"Ampex hereby verifies that the ARM-2375 bid under subject TFB was, on the date of Ampex's bid submission, 18 March 1977, equipment selected from commercially available ADP equipment which had been announced to Ampex Field Sales Force as available for sale. Ampex does not consistently make announcements of new products through trade media. This product was installed and operational at Aerojet General in Azusa, California prior to bid submission."

This, Intermem contends, is insufficient. In its view, a private internal declaration to marketing personnel is not an announcement within the meaning of the language used in the TFB. Moreover, Intermem argues that the Aerojet General installation cited in the Ampex letter did not include reconfiguration and that "there is no evidence whatsoever of a reconfiguration capability ever having been marketed or announced by Ampex" in connection with ARM 2375 memory or any other add-on memory system. (Reconfiguration is the capacity to permit a user to work around a portion of the equipment so that the system can continue to function in the event of partial failure.

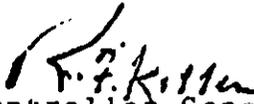
Ampex has submitted documentation which it states establishes that it installed an ARM 2375 with reconfiguration capability at Aerojet General and that it has offered identical equipment for installation at various Government facilities. It admits that it did not publish an announcement in either of the two leading trade journals, publicly proclaiming that such equipment was available, but indicates that it does not necessarily announce improvements in commercially available equipment.

We cannot sustain the protest. Ampex has submitted documentation which establishes that the Ampex ARM 2375 equipment with reconfiguration capability was available for commercial sale prior to the date for bid opening. Although we agree with Intermem that the word "announced" does import the notion of a "going public," i.e. of a public communication of the availability of this equipment with the reconfiguration feature, we do not agree that announcement through trade journals was required. Where, as here, a bidder has offered equipment which is commercially

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available, we believe the solicitation provision has been met regardless of the method used by the bidder to inform the public that its equipment was available.

Accordingly, Intermem's protest is denied.


Deputy Comptroller General
of the United States