

5270

DECISION



A. J. ...

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

FILE: B-189661

DATE: February 3, 1978

MATTER OF: ACCESS Corporation

DIGEST:

1. Specifications in first step of two-step advertised procurement which require (1) commercially available, off-the-shelf equipment and (2) formal announcement of equipment for marketing purposes are not definitive responsibility criteria; rather, they relate to technical acceptability of first-step proposals.
2. In view of extensive information available to protester concerning ultimately successful bidder's equipment for two-step advertised procurement, and assuming no prior publication in Commerce Business Daily of information in second-step IFB concerning acceptability of technical offers, protester knew or should have known basis for protest that proposal did not comply with requirement that equipment be commercially available, off-the-shelf and formally announced for marketing purposes when it received second-step IFB. Protest filed approximately 1 month later is therefore untimely.
3. Protest concerning successful proposal's satisfaction of file integrity, recoverability and benchmark requirements in first step of two-step procurement of data retrieval system is timely, since protester states it did not know basis for protest until after bid opening in second step, and record is not clear enough to support conclusion that protester reasonably should have known basis for protest before that time.
4. Protester has not shown that second-step bid departed from first-step technical proposal or solicitation requirements, that agency lacked reasonable basis in finding proposal for data retrieval system satisfied file integrity and recoverability requirements or that

acceptance of proposal in these respects contravened RFTP requirement for commercially available, off-the-shelf equipment.

5. Allegation that agency treated offerors unequally in benchmark demonstrations is unsubstantiated, as solicitation permitted substitutions of equipment in benchmark and there is no showing that by accepting competitor's proposal agency waived certain specifications as protester alleges.
6. Objection after bid opening--that disclosure in IFB (second step of two-step formally advertised procurement) of equipment and component items proposed in offerors' acceptable first-step technical proposals was prejudicial--is untimely. However, issue is considered on merits under "significant issue" exception to timeliness standards, 4 C.F.R. § 20.2(c) (1977).
7. Disclosure in second-step solicitation of equipment and components which offerors proposed in first-step technical proposals is not proper procedure. ASPR § 2-503.2 contemplates incorporation by reference in second step of acceptable technical proposals. Other means are available to achieve agency's objective of obtaining unit prices for individual equipment items.
8. Absent any showing that basic or option item prices in bid were nominal or enhanced, bid cannot be regarded as mathematically unbalanced. Even assuming bid is mathematically unbalanced, material unbalancing would not be present if, as protester states, agency is in fact purchasing option items.
9. Contention that agency unfairly allowed successful bidder to extend its bid acceptance period for shorter periods of time than agency had requested of both bidders is without merit, since

Government has no enforceable right to extensions of bid acceptance period and protester had same right as successful bidder to extend bid as it saw fit.

This is our decision on a protest filed by ACCESS Corporation on July 20, 1977, shortly after bids were opened under invitation for bids (IFB) No. DSA-400-77 B-2999, issued by the Defense Logistics Agency (DLA). The IFB was the second step of a two-step formally advertised procurement which contemplated the award of a contract for automated data storage and retrieval equipment systems. DLA awarded the contract in October 1977 to Infodetics Corporation.

The protester contends that Infodetics could not satisfy definitive responsibility criteria in the solicitation; that the Infodetics bid was nonresponsive; that the IFB was structured in an inherently prejudicial manner; that Infodetics' bid was unbalanced; and that DLA's actions in obtaining bid extensions from the two bidders were unfair.

Alleged Failure to Satisfy Definitive
Responsibility Criteria

The protester initially contends that Infodetics could not satisfy what ACCESS characterizes as "definitive responsibility criteria" contained in the first-step solicitation, Request for Technical Proposals (RFTP) No. DSA-400-77-R-0320. The RFTP specifications provided in pertinent part as follows:

"2.3.1. It is the intent of the Government to utilize commercially available 'off-the-shelf' equipment to satisfy this procurement. Accordingly, only such type equipment should be offered, no research will be funded in support of the requirement and the equipment delivered shall be operational hardware. The introduction of novel and untried components shall not be construed as responsive. Within each

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organization of the Defense Supply Centers listed in Exhibit C is a Technical Data Management Office (TDMO). It is within the Repository Branch where the system, as described herein, shall be operated.

* * * * *

"2.11.1.26. Availability of Equipment and Software. The equipment and software proposed in response to this solicitation document must have been formally announced for marketing purposes on or before the closing date on this solicitation and/or be capable of a benchmark demonstration as specified in this solicitation document."

In this regard, the protester's October 21, 1977, letter to our Office in pertinent part states:

"The requirement that the systems offered by competitors constitute equipment of a 'commercial, off-the-shelf' nature defined for ACCESS, and for other would-be competitors, the scope of the competition for award. Companies that had previously marketed the system that they would offer in response to the DLA RFTP would be deemed responsible; those attempting to sell a non-standard, previously unproduced or unintegrated system would, upon the completion of a pre-award survey, be disqualified.
* * *"

ACCESS contends that Infodetics could not offer "commercial, off-the-shelf hardware" because it has never produced the system it proposed to furnish, and was only capable of benchmarking a system produced by

a division of the Mosler Safe Company which Infodetics had acquired. Further, ACCESS maintains that the Infodetics equipment had never been formally announced for marketing purposes as of the step-one closing date (December 15, 1976). The protester cites AUL Instruments, Inc., B-186319, September 1, 1976, 76-2 CPD 212; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, and 54 id. 775 (1975), 75-1 CPD 138; and Haughton Elevator Division, Reliance Electric Company, 55 Comp. Gen. 1051 (1976), 76-1 CPD 294, in support of its position.

These allegations have been considered and rejected by DLA. Also, DLA and Infodetics maintain that ACCESS' objections are untimely. In this regard, the contracting officer points out that the second-step IFB, issued June 21, 1977, clearly identified the components of the systems which ACCESS and Infodetics had proposed in their respective first-step technical proposals, and asserts that ACCESS therefore knew or should have known the grounds of its protest when it received its copy of the IFB.

ACCESS maintains its protest is timely. The protester states it was not until July 18, 1977, that it learned from the contracting officer's technical representative that the system which had been benchmarked by Infodetics was an "in place" Mosler system at Huntsville, Alabama. ACCESS states it then ascertained that this system did not meet the specifications and promptly protested. ACCESS notes in this regard that the information concerning the conduct of benchmark testing was not publicly disclosed by DLA prior to bid opening and maintains that it would have been impossible for it to know from the contents of the step-two IFB precisely what equipment had been benchmarked by Infodetics or what the capabilities of that equipment were.

ACCESS further alleges that on August 1, 1977, it received for the first time information from an independent consultant concerning the ongoing redesign of the Infodetics system. Also, the protester asserts that questions of bidder responsibility are only determined upon the conduct of a preaward survey after bid opening. ACCESS contends that only when it learned of DLA's intention to award to

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Infodetics did it become aware of the apparent affirmative preaward survey of Infodetics, and thus that the grounds of protest were not known and could not have been known prior to that time, citing Action Manufacturing Company--Reconsideration MBAssociates, B-186195, November 17, 1976, 76-2 CPD 424. Finally, ACCESS notes that when a protester states it did not become aware of the grounds for protest--such as the manner in which benchmark tests were conducted--until a certain time, the protest should be considered timely in the absence of objective evidence to the contrary, citing Burroughs Corporation, 56 Comp. Gen. 142 (1976), 76-2 CPD 472, affirmed sub nom. Honeywell Information Systems, Inc., 56 Comp. Gen. 505 (1977), 77-1 CPD 256.

In regard to the protester's contention that the above specifications are definitive responsibility criteria, we note that responsibility involves, among other things, a prospective contractor's organization, technical experience, knowledge, skills, "know-how," technical equipment, and facilities. 45 Comp. Gen. 4, 7 (1965); see also Armed Services Procurement Regulation (ASPR) § 1-900 et seq. (1976). We have indicated that definitive responsibility criteria involve specific and objective factors, for example in Haughton, supra, a requirement that the successful bidder have approximately 5 years' successful experience in repairing and servicing certain elevator equipment.

ACCESS argues that a solicitation requirement for "commercial, off-the-shelf" equipment is a definitive responsibility criterion, citing Data Test Corporation, supra. In Data Test such a requirement in a formally advertised procurement was viewed as a matter of bidder responsibility rather than bid responsiveness.

The specifications in the present case were contained in the first step of a two-step formally advertised procurement. The first-step procedure is similar to a negotiated procurement, i.e., technical proposals are evaluated, discussions may be held and revised proposals may be submitted. 51 Comp. Gen. 85, 88 (1971). In a negotiated procurement, it has been recognized that criteria traditionally associated with responsibility may be used in the technical evaluation of proposals. Design Concepts, Inc., B-184754, December 24, 1975, 75-2 CPD 410. However,

this does not establish that such criteria are definitive responsibility criteria. For example, in AUL Instruments, supra, we found that a requirement in a negotiated procurement for commercial, off-the-shelf equipment related to the technical acceptability of proposals, not offerors' responsibility. See, also, ASPR § 2-501(i) (1976), which in pertinent part provides:

"* * * When it is necessary in order to clarify basic technical requirements, related requirements such as management approach, manufacturing plan, or facilities to be utilized may be clarified in [the first] step. Conformity to the technical requirements is resolved in this step, but capacity and credit, as defined in 1-705.4, are not."

We believe it is clear that sections 2.3.1 and 2.11.1.26 of the RFTP, supra, relate to the acceptability of equipment and software offered in first-step technical proposals, and not to whether the successful bidder would be capable of performing in accordance with the specifications after award. RFTP sections 2.C and 3.E indicated that technical proposals which were not acceptable would be rejected--not that offerors submitting such proposals would be found non-responsible. Since the RFTP specifications were not definitive responsibility criteria, ACCESS' contention that it could not have been aware of the grounds for protest until a preaward survey was conducted after bid opening is without merit.

Further, the Action Manufacturing Company decision cited by ACCESS is not in point as it involved the principle that an apparent low bidder was not required to file a "defensive" protest at the time of bid opening in response to another bidder's protest. Here, the issues involve the nature of the solicitation requirements allegedly not met and when the protester knew or should have known the basis for protest. A protester in ACCESS' position cannot, by mischaracterizing RFTP technical

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acceptability provisions as definitive responsibility criteria, wait until bids are opened and an award is about to be made by the agency before filing its protest if it knew or reasonably should have known at an earlier time the grounds for believing that a competitor could not meet the RFTP specifications

In this regard, the contracting officer maintains that ACCESS had extensive knowledge of the Infodetics system prior to the time it protested. Specifically, the contracting officer cites a statement by the president of ACCESS to a DLA official in March 1977 to the effect that ACCESS had considered acquiring the Mosler division in question but had abandoned the idea; a remark by another ACCESS official in April 1977 concerning the effect on the procurement if Infodetics were to bid its system with a card-to-card copier in the second step; and the furnishing in April 1977 by an ACCESS official of a Mosler Information Systems price list to a DLA official.

In addition, Infodetics has pointed out that beginning in March 1976 there have been a number of press releases, public displays or other public disclosures dealing with Infodetics' acquisition of the Mosler division and Infodetics' plans for marketing document retrieval equipment. Specifically, Infodetics cites its own and Mosler's press releases dated March 31, 1976; several newspaper articles at about the same time; advertisements in Infosystems magazine in October 1976 and April and May 1977; advertisements in Information and Records Management magazine in April and May 1977; and a booth and display at the June 1976 National Computer Conference show in New York. Infodetics also states that both before and after the acquisition ACCESS hired several former Mosler employees and has identified by name a salesman and an engineer. Infodetics states that at a trade show in Dallas on May 17, 1977, the ex-Mosler ACCESS salesman extensively questioned Infodetics' personnel about the differences between the system being marketed by Infodetics and the system previously marketed by Mosler. Infodetics maintains, in short, that, through the ex-Mosler employees and by virtue of its general knowledge of the industry, ACCESS was familiar with Infodetics' newly acquired division and product long before it protested to our Office.

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ACCESS has not offered any information to refute the foregoing statements by the contracting officer and Infodetics.

Under section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. Part 20 (1977), protests other than those involving apparent solicitation improprieties must be filed not later than 10 working days after the basis for protest was known or should have been known, whichever is earlier. Where a protest concerns the acceptability of a competitor's first-step technical proposal in a two-step formally advertised procurement, the pertinent inquiry is when the protester knew or should have known the necessary information concerning the agency's action in accepting the proposal. For example, in Hyster Company, 55 Comp. Gen. 267 (1975), 75-2 CPD 176, where the protester did not learn with certainty that a particular model of a competitor's equipment had been considered acceptable until several months after bid opening under the second step-- information which it had diligently pursued--its protest filed immediately after it received the information was timely. Also, as pointed out in the Burroughs and Honeywell decisions, supra, a protester's reasonable statement as to when it became aware of the grounds for protest will be accepted in the absence of any objective evidence to the contrary. However, where a protester knew that an offeror must have qualified under the first step of a two-step procurement with one of two models the offeror produces, it was ruled that the protest that neither model meets the specified requirements of the first step should have been filed within 10 working days after publication of notice of acceptable technical offers in the Commerce Business Daily. Ingersoll-Rand Company, B-189071, October 3, 1977, 77-2 CPD 254.

In the present case, we believe ACCESS' July 20, 1977, protest is untimely insofar as it alleges generally the failure of the Infodetics' technical proposal to comply with the RFTP's "commercially available, off-the-shelf" requirement or the requirement that equipment and software have been formally announced for marketing purposes. In view of the information cited by DLA and

Infodetics, and not challenged by ACCESS, ACCESS knew or reasonably should have known these grounds for protest when it received its copy of the IFB on or about June 21, 1977, assuming the information in the IFB concerning the acceptability of Infodetics' technical offer had not been published in the Commerce Business Daily before. ACCESS' allegations concerning the benchmark testing are discussed infra.

Alleged Bid Nonresponsiveness

The protester further alleges that the Infodetics bid was nonresponsive to the following RFTP specifications:

"2.6.4.6. File Integrity. The design of the proposed system shall provide for an audit capability of all engineering drawings contained in the system to identify any aperture cards which may have been misfiled. The audit capability must provide a means by which the operator can determine an engineering drawing has been misfiled

* * * * *

"2.7.5. Recoverability. Each proposal will include a comprehensive description of recovery capability for malfunctions involving retrieval and storage of data. Options/alternatives must be provided to allow operators to continue after the malfunction is encountered."

ACCESS also contends that the system bid by Infodetics was not the system that was demonstrated during the benchmark test and that DLA could not waive the above specification requirements for the benefit of Infodetics in the benchmark, citing Standard Conveyor Company, et al., 56 Comp. Gen. 454 (1977), 77-1 CPD 220.

A bid in the second step of a two-step procurement is presumed to be responsive on the theory that a bidder

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whose step-one proposal has been found acceptable is not likely to disqualify its step-two bid by departing from its proposal or the requirements of the specifications. Spectrolab, a Division of Textron, Inc., B-180008, June 12, 1974, 74-1 CPD 321, and decisions cited therein. ACCESS has not shown how the Infodetics bid departed from the Infodetics technical proposal or the solicitation requirements. We believe the protester's contentions, like those previously discussed, actually relate to the technical acceptability of the Infodetics proposal in the first step.

Infodetics argues that ACCESS should have known these grounds for protest at least 2 months before the protest was filed, for the reasons discussed supra--primarily, ACCESS' general knowledge of the industry. However, unlike the questions whether commercially available, off-the-shelf equipment was proposed or whether a system had been formally announced for marketing purposes, these issues are more closely related to the contents of the Infodetics technical proposal and the steps taken by DLA in evaluating the proposal--such as the manner in which benchmark tests were conducted. We do not believe there is enough in the record to support a conclusion that ACCESS should have known these grounds for protest more than 10 working days before it protested. For example, the record is not clear enough to show why the listing of the Infodetics equipment and components in the IFB should have been enough to cause ACCESS to believe that the Infodetics proposal failed to offer required audit and recoverability capabilities. Similarly there is no showing why ACCESS knew or should have known how the benchmark test of Infodetics' system was conducted. Accordingly, we believe these objections must be considered timely.

Aside from bare statements that Infodetics' proposed system lacks the necessary audit and recoverability capabilities, ACCESS has furnished no evidence to support its contentions. The contracting officer states that his technical advisors determined that Infodetics' proposed system offered an audit capability as required

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by RFTP section 2.6.4.6. and further notes that paragraph 5.7 of the Infodetics proposal described the system's recovery capability. We see no ground to conclude that DLA's acceptance of the proposal in these respects lacked a reasonable basis.

ACCESS contends, however, that these issues relate back to the alleged failure of Infodetics to offer commercially available, off-the-shelf equipment. In this regard, ACCESS alleges in effect that if Infodetics proposed the required audit and recovery capabilities, this in itself shows the system offered was not commercially available, because the Mosler system which was benchmarked did not have such capabilities. A related contention is that because the minicomputer offered in Infodetics' proposal was different from the Mosler system's, Infodetics' offer of the minicomputer and associated software shows that a commercially available system was not proposed. Also, the protester argues that the lack of commercially available equipment is shown by Infodetics' offer of an autofile feature, which ACCESS maintains has never been used previously in Mosler or Infodetics systems.

While some close questions may be involved, on balance we believe the objections that the minicomputer, software and autofile feature show the lack of commercially available, off-the-shelf equipment are untimely. The IFB listed the minicomputer model and autofile feature proposed by Infodetics. In view of the extensive information available to ACCESS concerning Infodetics' acquisition of the Mosler division and Infodetics' marketing of data retrieval equipment, we believe that reasonably diligent inquiry on the protester's part when it received the IFB should have revealed these bases for protest.

Moreover, to the extent that there is any relation back between the timely objections concerning audit and recovery capabilities and the commercially available, off-the-shelf requirement, we find ACCESS' contention to be without merit. In this regard, the contracting officer points out that it was the basic intent of RFTP section 2.3.1 to alert offerors that the Government would not fund research and development work and that this was explained to ACCESS during the technical discussions of its proposal in the first step. The contracting officer further states that Infodetics proposed some

components which it manufactures and other components-- such as the minicomputer and autofile--which it was obtaining from suppliers. According to the contracting officer, all of the equipment items were either already in use in existing document retrieval systems or were off-the-shelf items generally available in the commercial market. In this connection, AUL Instruments, supra, cited by ACCESS, is distinguishable. There, under an RFP calling essentially for commercial, off-the-shelf equipment, the agency found that none of the protester's proposed assemblies were components or assemblies generally available for sale to the public either by the protester or any other manufacturer and the protester's "build from scratch" approach was accordingly rejected.

In the present case, the contracting officer maintains that it was not the intent of RFTP section 2.3.1 to restrict competition to offers of systems exactly the same as those previously manufactured by the offerors. In our view, the agency's interpretation and application of the RFTP in this respect cannot be said to clearly lack a reasonable basis.

The protester's complaint concerning the Infodetics benchmark test is that it did not include the autofile unit and minicomputer offered in the Infodetics proposal. The contracting officer confirms that this is so, but notes that RFTP section 2.10.2.c specifically allowed substitutions to be made in the equipment on which the benchmark demonstration was to be conducted. Moreover, the protester's argument appears to be that DLA treated the offerors unequally by waiving the audit and recoverability requirements for the benefit of Infodetics while holding ACCESS to those requirements. However, based upon evaluation of the Infodetics proposal and the benchmark, DLA found that Infodetics met the audit and recoverability requirements. ACCESS has not shown that this conclusion lacks a reasonable basis. The Standard Conveyor Company decision, cited by ACCESS, is not in point. There, the acceptance of an offeror's proposal specifying thinner gage steel rollers than the RFTP had called for was found to be a substantial change in the requirements and we recommended that the competition be reopened on the basis of the Government's actual

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minimum needs. Here, there is no showing that acceptance of the Infodetics proposal effected any change in the RFTP requirements.

Finally, we do not see what is established by the protester's allegations concerning the ongoing "redesign" of the Infodetics system. The protester has not shown that DLA erred in evaluating the Infodetics proposal and finding it to be acceptable or that Infodetics did not bid in accordance with that proposal and the solicitation requirements. In these circumstances, there is no basis for finding that ACCESS was treated unfairly in the competition or that DLA contracted for a system other than the one which was offered.

Alleged Prejudicial IFB Provisions

ACCESS next contends that the step-two IFB was inherently prejudicial because it followed the unorthodox procedure of listing the items of equipment and components to be delivered by each of the offerors rather than incorporating by reference the acceptable step-one technical proposals. ACCESS alleges that, while the listed Infodetics equipment and components were "unknown to the industry," the ACCESS items were shown by vendor part number and the most important ACCESS component was listed on a General Services Administration Federal Supply Schedule. The protester believes that the contents of the IFB afforded Infodetics the opportunity to preprice the ACCESS bid by means of the Federal Supply Schedule and the published price lists of ACCESS and its vendors.

The contracting officer states he knows of no regulation or policy which prohibits the disclosure of the contents of an acceptable technical proposal during the second step of a two-step formally advertised procurement. He further indicates that the components of the systems offered by each bidder were listed in the IFB so that they could be individually priced.

The protester's contention is obviously untimely. Under section 20.2(b)(1) of our Bid Protest Procedures, protests concerning alleged solicitation improprieties which are apparent to bid opening must be filed prior

to bid opening. However, ACCESS contends the issue raised is "significant." Under 4 C.F.R. § 20.2(c), our Office may consider an untimely protest where we determine that it raises issues significant to procurement practices or procedures. A significant issue, in this sense, has been described as one involving a procurement principle of widespread interest. 52 Comp. Gen. 20 (1972). Considering the frequent use of the two-step procedure and that we have never addressed the issue raised before, we will consider it on the merits as a matter of widespread interest.

The second step of a two-step formally advertised procurement is carried out substantially in accordance with the principles applicable to ordinary formal advertising. See 40 Comp. Gen. 35 (1960) and ASPR § 2-503.2 (1976). The differences between ordinary formal advertising and step-two advertising are described as follows in ASPR § 2-503.2:

"Upon completion of step one, a formally advertised procurement in accordance with Parts 2, 3, and 4 of this Section will be conducted except that invitations for bids:

"(i) will be issued only to those sources whose technical proposals have been evaluated and determined to be acceptable under step one;

"(ii) will include the provision in 7-2003.37;

"(iii) will prominently state that the supplies or services to be procured will be in accordance with the specifications and the bidder's technical proposals. This should be accomplished in the item description by a provision

substantially in the form
of the following example.

"Radio Antenna, in accordance with Exhibit No. dated (use other description of specifications as appropriate) and your Technical Proposal (insert specific identification of the bidder's proposal including any revision thereof as finally accepted) incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of the provisions of said Exhibit (or specifications).

"(iv) will not be synopsisized (see Section I, Part 10) or publicly posted (see 2-203.2), except that the names of firms which have submitted acceptable technical proposals in the first step of two-step formal advertising will be listed in the Commerce Business Daily for the benefit of prospective subcontractors in accordance with 1-1003.6(a)(2)."

We believe that the regulation contemplates that the step-two solicitation document will incorporate offerors' acceptable technical proposals by reference and reasonably implies that any unnecessary information disclosure going beyond this is to be avoided. The procedure followed in the present case of listing offerors' proposed equipment and components in the second-step IFB is not necessary to the objective of obtaining unit prices for each individual item of equipment or component. We see no difficulty with an agency's furnishing to each qualified second-step bidder its own individualized price schedule as part of the IFB. However, except for this and the other differences between ordinary formal advertising and step-two advertising described in ASPR § 2-503.2, supra, the rest of the IFB furnished to each bidder must be identical, because step-two advertising is to be

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carried out substantially in conformity with the principles of ordinary formal advertising (under which the same solicitation is furnished to each prospective bidder).

In view of the foregoing, we agree with the protester that the listing in the IFB of bidders' equipment and component items was not a proper procedure. However, in regard to the prejudice ACCESS alleges it suffered, the contracting officer has stated:

"* * * It is noted that one of the essential elements of Access' argument is that the price for its major component, the 100 cartridge storage/retrieval unit #CCM5-7100, has been published in a General Services Administration Federal Supply Schedule thus affording Infodetics an opportunity to predict the price which Access would bid. The contracting officer submits that any competitor reasonably familiar with the Access system and knowledgeable of the technical and performance requirements specified in the RFTP could have made an intelligent guess as to what equipment had been approved for Access and could have used the Federal Supply Schedule to price the component without the list of equipment in the IFB. In addition, the price of the one component represents only about one third the price bid by Access for its least expensive system. Accordingly, the Federal Supply Schedule would be of only limited value to a competitor. It should also be noted that the wide disparity between the two firms' bids, amounting to more than \$500,000.00 indicates that Infodetics did not make an accurate prediction as to the amount of Access' bid."

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The protester's October 21, 1977, comments merely repeat that the IFB was structured in an unfair manner and do not effectively respond to the contracting officer's statement. We believe that any prejudice to ACCESS in the circumstances is speculative. However, by letter of today we are calling to the attention of the Director of DLA our conclusion concerning the propriety of the IFB's listing of bidders' equipment and component items.

Alleged Unbalanced Bid

ACCESS further contends that Infodetics' bid prices for the basic units appear to be extremely low while optional components are priced exceedingly high. The protester believes that, because its price was in effect predisclosed through the listing of its components in the step-two IFB, Infodetics was able to construct a low bid on the basic units that would permit recovery of losses on the option units.

The IFB invited bids on systems to be installed in four different locations with the number to be purchased dependent on the availability of funds. Infodetics' prices for the four locations (involving varying amounts of equipment) ranged from \$185,020 to \$438,530. In addition to its bid prices for the systems, Infodetics bid on card-to-card copiers as optional items for each location at a price of \$98,000 each. The contracting officer states he has no evidence to show that Infodetics underpriced the basic systems or overpriced the option items.

We have difficulty following the protester's argument. Since there is no evidence in the record to show that Infodetics' various bid prices do not represent the cost of the work plus profit, or are nominal for some items and enhanced for others, there is no basis to conclude that the Infodetics bid was mathematically unbalanced. See York Division, Borg-Warner Corporation, B-185945, June 29, 1976, 76-1 CPD 420. Moreover, where the issue of unbalancing arises in the context of the pricing of basic versus option items, material unbalancing is present only where the agency did not have a reasonable expectation of exercising the options. See York Division, supra; contrast Mobilease

Corporation, 54 Comp. Gen. 242 (1974), 74-2 CPD 185. In the present case, ACCESS states that it understands DLA will in fact purchase the optional equipment offered by Infodetics. Accordingly, even if the Infodetics bid was mathematically unbalanced, there is no basis to conclude that material unbalancing (the existence of reasonable doubt that award will not result in the lowest ultimate cost to the Government) is present here. The case cited by the protester (Michael O'Connor, Inc., et al., B-183381, July 6, 1976, 76-2 CPD 8) is not in point, because there the IFB failed to contain reasonably accurate estimates of what the agency expected to purchase.

Bid Extensions

ACCESS next contends that DLA unfairly allowed Infodetics to extend its bid for shorter periods of time than had been requested of both bidders. The IFB's Standard Form 33 (November 1969 ed.) provided for an "automatic" bid acceptance time of 60 calendar days (in this case, July 15--September 13, 1977) unless a bidder inserted a different bid acceptance period. The protester states that it later agreed, at DLA's request, to extend its bid until October 19, 1977, and then learned that although DLA had made the same request to Infodetics, Infodetics had been allowed to make several shorter extensions of its bid, the last of which terminated on October 19. ACCESS cites 48 Comp. Gen. 19 (1968) and other authorities in support of its position.

The precedent cited by ACCESS deal with the situation where a bidder has offered a bid acceptance period less than the full automatic time specified in the IFB. In such situations, the rule is that the bidder will not be permitted to extend its bid acceptance period, since to allow this would give the bidder an unfair advantage (its initial cost exposure would be for a shorter time period than that of the bidders which offered the full automatic time). These precedent are inapplicable to the present case, because Infodetics' bid offered the full automatic acceptance time of 60 calendar days.

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ACCESS contends, however, that the same principles should apply to the present situation, because a bidder which refuses to grant the full amount of a requested extension is allowed to "game" the procurement to its own advantage, a result which the protester believes should not be encouraged and fostered.

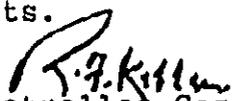
This argument is without merit. The protester's objection is analagous to those made in several cases that a successful bidder had been improperly allowed to extend the bid acceptance time for only some of the items offered in its bid. See B-177504, January 23, 1973, and Corbin Sales Corporation, B-181454, October 29, 1975, 75-2 CPD 261. In these decisions we pointed out that the Government has no enforceable right to extension on the bid acceptance period and does not relinquish any right or benefit in accepting extension of only part of the bid. Further, ASPR § 2-404.1(c) (1976), which deals with bid extensions, does not impose any requirement that an equal time extension must be obtained from all bidders. In regard to the alleged unfair treatment of ACCESS in this situation, it is sufficient to note that ACCESS had the same right as Infodetics to extend its bid acceptance period as it saw fit. Since the Government has no enforceable right to a bid extension, it is for bidders to decide whether or not they wish to continue to have a bid in being. See 42 Comp. Gen. 604, 607-608 (1963). Finally, the present case does not involve any attempt by Infodetics to change the material terms and conditions of its bid, such as the price. See, in this regard, 50 Comp. Gen. 383 (1970).

Conclusion

The protest is denied.

By letter of today, we are calling to the attention of the Director of DLA our conclusion, supra, that the disclosure in the IFB of the equipment and component items offerors had proposed in the acceptable first-step technical proposals was not proper and suggesting that this information be brought to the attention of responsible procurement personnel in order to prevent a recurrence of this situation in future procurements.

Deputy


Comptroller General
of the United States



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

C. Gallagher
P.L.

B-189661

February 3, 1978

The Honorable Bill Gradison
House of Representatives

Dear Mr. Gradison:

Further reference is made to your letter to our Office dated August 4, 1977, requesting a review of a protest by ACCESS Corporation concerning invitation for bids No. DSA-400-77-B-2999, issued by the Defense Logistics Agency.

By decision of today, copy enclosed, we have denied the protest.

Sincerely yours,

Deputy

[Signature]
Comptroller General
of the United States

Enclosure



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

C. Gallagher
P 17

B-189661

February 3, 1978

Lieutenant General W. W. Vaughan
Director, Defense Logistics Agency

Dear General Vaughan:

We refer to a letter to our Office dated October 4, 1977, with enclosure, from your Assistant Counsel (DLA-G), which reported on the protest of ACCESS Corporation concerning solicitation No. DSA-400-77-B-2999, the second step of a two-step formally advertised procurement.

Enclosed is a copy of our decision of today. While the protest has been denied, we wish to call your attention to that portion of the decision which concludes, for the reasons stated, that the disclosure in the solicitation of the equipment and component items proposed in the acceptable first-step technical proposals was not proper. We suggest that this information be brought to the attention of responsible procurement personnel in order to prevent a recurrence of this situation in future procurements.

Sincerely yours,

R. F. Kettner

Deputy Comptroller General
of the United States

Enclosure