

**DECISION**



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

*L. Lebow Proc II*

*8918*

FILE: B-190708

DATE: January 24, 1979

MATTER OF: Federal CSS

*[Protest of Contract Award Involving General Services Administration's  
Teleprocessing Services Program]*

1. Protest of multiple award schedule contractor that user agency under teleprocessing services program failed to disclose award evaluation factors for particular requirement is untimely and not for consideration since protest was not filed with contracting agency or GAO within 10 days after basis for protest was known.
2. While neither GSA guidelines in effect at time of award nor multiple award schedule contracts require user agencies under teleprocessing services programs to disclose purchase order evaluation criteria to competing multiple award schedule contractors, GSA's revised guidelines effective November 1, 1978, require evaluation factors to be released to interested contractor
3. Neither protester's general allegation that conversion costs were incorrectly assessed nor allegation that agency evaluation was unduly biased in favor of incumbent contractor are supported in record which shows that agency's assessment of conversion cost reflects its estimate of costs to be incurred by Government for converting current system to protester's system.
4. It would be improper to accept protester's offer to furnish machine time for conversion to protester's system at no charge where offer was first made during debriefing after protester was notified award was made to competitor.

*Tymshare, Inc. CNG 00368  
ABC 00017  
003297*

DLG-00727  
CNG-00978

Federal CSS (Federal), a subsidiary of National CSS, Inc., protests the issuance of a purchase order to Tymshare, Inc. (Tymshare) by the Department of Justice (Justice) under the General Services Administration's (GSA) teleprocessing services program (TSP).

Federal contends it should have been awarded the contract as its offer was most favorable to the Government. Federal also contends that the award to Tymshare is defective because the award evaluation factors were not made available to the competitors for the purchase order. In addition, Federal maintains that Justice incorrectly assessed conversion costs and improperly refused to consider its offer to provide conversion at no cost.

Federal, Tymshare and other companies have entered into Multiple Award Schedule Contracts (MASCs) with GSA under the TSP. The TSP is the mandatory means whereby Federal agencies acquire teleprocessing services from the private sector. See Federal Property Management Regulations, Temporary Regulation E-47 as amended. Under the program, user agencies which have received a delegation of procurement authority from GSA may place orders for teleprocessing services against the MASCs which are negotiated by GSA and provide Government-wide volume discounts.

The MASC describes in some detail the procedures for selecting a source for services. Briefly, paragraph D.9 (Basis For User Source Selection) provides that the principal evaluation criterion is least system life cost. Paragraph D.10 (User Source Selection Considerations) provides, among other things, that Government activities selecting a source for a particular order should prepare a description of the services needed, develop and apply technical and cost evaluation criteria, including running any necessary benchmarks, and eliminate from consideration sources which fail to meet the requirements. Selection of a contractor, in short, is to be on the basis of which source meets the user's requirements at the lowest overall cost to the Government.

Justice has filed a report with our Office responding to the protest. Also, GSA has filed comments on the protest.

Federal, which is a MASC contractor, objects to the failure of Justice to disclose to any of the MASC contractors the evaluation criteria which were the basis for selection. Federal, citing the general rule that offerors must be informed of the award evaluation factors and their relative importance, see, e.g., Automated Systems Corporation, B-184835, February 23, 1976, 76-1 CPD 124, contends the purchase order issued to Tymshare is improper.

Justice states the evaluation criteria were not released, and notes that under the program they are not required to be released.

GSA points out that Federal's MASC indicates in paragraph D.9 that source selection will be based upon least system life cost as determined by the requiring activity and indicates in paragraph D.10 that Government activities are responsible for developing evaluation criteria for their specific requirements. However, GSA also notes that neither the MASCs nor its guidelines to TSP user agencies (see Special Notice Concerning Teleprocessing Services Programs, issued by GSA, April 1977) requires release of evaluation information. According to GSA, "the TSP is a program designed to encourage the expeditious acquisition of teleprocessing services, so the release of the traditional solicitation document, complete with evaluation criteria, is not required."

While both Justice and GSA believe that Federal's contention is without merit, GSA states it is untimely and should not be considered by our Office.

The record indicates that on August 22, 1977, Justice sent requests to 29 TSP multiple award schedule contractors to furnish pricing and contracting information responsive to its teleprocessing services requirements. Federal states that it first asked Justice for the award evaluation criteria applicable to

the purchase order in late September or early October 1977, and that Federal made the same request on October 20, 1977.

To be considered by our Office, a protest (other than one involving an alleged solicitation impropriety) must be filed with the contracting agency or our Office within 10 days after the basis of protest is known. 4 C.F.R. 20.2(a) and (b)(2) (1978). Although the protester knew as early as September that Justice's evaluation criteria were not disclosed to any MASC contractor, it did not protest either to the contracting agency or GAO until November 16, 1977. As the protest was filed more than 10 days after the basis for protest was known, it is untimely and will not be considered on the merits. L&M Cleaning Company, B-190958, March 21, 1978, 78-1 CPD 222.

We note, however, that with respect to the disclosure of evaluation criteria, GSA has modified its guidelines to user agencies, effective November 1, 1978. These guidelines (see Handbook, Teleprocessing Services Program, issued by GSA, October 1978) require user agencies to submit their evaluation criteria to GSA at the time a request for a delegation of procurement authority is made. The user agency's application for procurement authority, including the evaluation criteria, are then required to be released to interested contractors. Of course, Justice will be subject to these guidelines for any subsequent competition of its requirements.

Federal's second point relates to Justice's assessment of conversion costs, which was part of the evaluation, and its refusal to accept Federal's offer "to provide the necessary conversion at no cost to the Government."

As part of the evaluation process, Justice added to each contractor's proposed price the estimated in-house costs (including machine time and man-hours) for converting Justice's existing data base management system to another. Justice's aim in adding conversion costs to the offered price was to determine which contractor proposed the least system life cost. As noted

above, paragraph D.9 of the MASCs essentially requires selection of the schedule contractor offering the least system life cost. Further, paragraph D.9b defines system life cost to include "conversion cost as applicable."

Federal's specific objections are that conversion costs were "unilaterally" assessed by Justice without "clear guidelines from GSA"; that it was not notified that conversion costs would be assessed; and that its assessed conversion costs were unreasonably high (particularly in relation to systems costs), indicating an undue bias in favor of Tymshare, the incumbent contractor. Federal alleges that an appropriate calculation of conversion costs would show Federal's offer to be most favorable to the Government.

The record shows that Justice estimated the costs of converting its current data base management system (FOCUS) to the system (RAMIS II) proposed by Federal in accordance with GSA's guideline that:

"Conversion costs may be considered only to the extent that such costs can be shown to be clearly essential to continuing agency needs taking into account the probable economic life of the system to be converted; that due consideration has been given to the possibility of re-designing current systems and software to take advantage of enhanced teleprocessing system capabilities or eliminating obsolete or non-standard software in conflict with applicable Federal Information Processing Standards; and that the bases for such conversion costs are clearly delineated in the evaluation documentation."

Justice calculated the cost to convert to Federal's data base management system as follows:

"Conversion

Connect Time	\$ 4,446
Processing	5,334

Prem Soft Proc.	1,481
Prem Connect	1,710
Add Core	648
Parallel Operation	5,587
* * * * *	
Conversion 3 Man Months	13,100"

It is not the function of our Office to make an independent assessment of the conversion costs to determine which MASC contractor should have been awarded the purchase order. This determination is the responsibility of the procuring activity concerned which must bear the major burden of a defective analysis. See UCE, Incorporated, B-186668, September 16, 1976, 76-2 CPD 249. It is our practice, however, to review the basis for an agency's cost evaluation in light of a protest to determine whether the agency's determination has a reasonable basis.

Here, we find no basis to conclude that Justice's assessment of the costs to convert from FOCUS to RAMIS II is unreasonably high, as Federal alleges. Justice indicates that the conversion costs were determined on the basis of machine costs and programmer costs to (1) convert existing functions from one data base system to another; (2) prepare, test and install functions not provided for in Federal's system (the service of Federal was rated technically inferior to Tymshare's); and (3) operate the present system while the conversion was being accomplished. Justice states the conversion assessment is a "true economic cost which the department would bear."

Although Federal contends the conversion assessment was unreasonably high, it has not pointed to any specific calculation deficiency. In the absence of such allegation, the record affords us no basis to dispute Justice's assessment. While no conversion costs were assessed to Tymshare, since no conversion

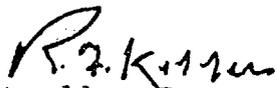
was required to use Tymshare's system, and GSA's guidelines caution that in considering conversion costs care must be taken not to prejudice open competition, it appears that Justice's conversion cost assessment consists of objectively determined factors reflecting cost the Government would incur and that the basis for assessing conversion costs was clearly delineated in the evaluation document, as required by the applicable guidelines.

While Tymshare obviously had an advantage by reason of its incumbency, this circumstance does not compel the conclusion that the assessment was not based on valid estimates of the agency's expected costs or that the agency was unduly biased in favor of Tymshare. See, e.g., 52 Comp. Gen. 905 (1973), where we held that adding changeover costs to bids submitted by new sources did not unfairly favor the current contractor, or prevent competition because of the high cost of changeover as compared with bid prices, since the basis of evaluation represented an accurate depiction of costs to the Government to change contractors. We have also held that the method used by the contracting agency to transfer services from one contractor to another is not subject to question in the absence of fraud or capricious agency action. 52 Comp. Gen. 905, supra.

In addition, we cannot agree with the protester that "conversion costs were assessed without advance notice," as paragraph D.9 of Federal's MASC states that conversion costs are a factor in determining "the least system life cost," which Federal knew or should have known was the ultimate basis for selection.

Federal's final argument is that Justice refused to accept its offer for "free conversion." In fact, the record shows that Federal offered only to furnish "machine costs", and not programmer time, at no charge, and also that the "offer" was made in the course of a debriefing after Federal had been informed award had been made to Tymshare. Of course, it would have been improper for Justice to accept Federal's offer at that time. See Ken-Mar Machine and Health Equipment, Inc., B-188529, July 14, 1977, 77-2 CPD 26.

The protest is denied.

  
Deputy Comptroller General  
of the United States