

DECISION



P.L. - II
T. Armstrong
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

9283

FILE: B-192807

DATE: February 23, 1979

MATTER OF: Interactive Sciences Corporation

[Protest of ICC Contract Award for Procurement of Data Processing Services]
DIGEST:

1. Adequate effort was made by agency to advise offerors of requirement for and importance of submitting conversion plan, as well as criteria to be considered in evaluating plan, where matter was part of evaluation scheme in RFP, which was amended to reflect questions and answers at preproposal conference and answers to formal questions posed by offerors. Protester received second highest score for conversion and there is no evidence of agency misleading protester in this regard.
2. Evaluation of procuring agency will be questioned by GAO only upon showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Protester has not presented such evidence and record does not show agency's evaluation of protester's proposal to have been contrary to evaluation criteria in RFP, since protester was justifiably awarded less than maximum number of points for conversion proposal for failure to meet optimum standards of RFP.
3. Consideration of cost and personnel assignment in evaluation of conversion plan was not improper, even though such subcriteria were not specifically disclosed to offerors since there is sufficient correlation between these factors and announced criteria.
4. GAO will not consider merits of protests concerning benchmark evaluation of protester's equipment, agency's evaluation of another offeror's proposal, and alleged failure of agency to question ambiguities in protester's proposal because protests are untimely filed.

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DLG 01015

Interactive Sciences Corporation (ISC) protests the award by the Interstate Commerce Commission (ICC) of contracts for the procurement of data processing services under request for proposals (RFP) No. ICC-78-K-0001. A primary contract was awarded on August 28, 1978, to CompuServe (the incumbent contractor) for the performance of timesharing services, and related batch support, for the ICC for a 5-year period, renewable annually, beginning October 1, 1978. CallData Federal Services, Inc. (CallData), was awarded a contract as the secondary vendor.

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The RFP, as amended by Change Notice No. 1, May 24, 1978, set out four categories for the evaluation of proposals: benchmark, conversion, cost, and technical presentation. Offerors were informed that a maximum of 100 points could be scored in the benchmark, conversion and technical categories, respectively, and that 200 points could be assigned on the basis of cost. The primary contract would be awarded to the offeror with the highest total point score; the offeror with the next highest total point score would be awarded the secondary contract. Offers were submitted by four firms. CompuServe received a total score of 441.4 points and CallData received a score of 388.1 points. ISC's total point score was 381.1.

The only evaluation category in contention here is the conversion category. In this category, the time an offeror proposed to convert ICC applications to its own system was evaluated. ISC was awarded 82 points. CompuServe and CallData received 76.6 points and 98.6 points, respectively. ISC contends that the ICC "improperly, arbitrarily and incorrectly" evaluated that portion of its proposal relating to conversion. ISC primarily bases its protest on two grounds. First, it asserts that there was inadequate disclosure of the conversion evaluation criteria and that the importance of submitting a conversion plan was not emphasized. Second, the protester challenges the score its conversion plan received and contends that the evaluators improperly applied the evaluation criteria to its proposal.

ISC claims that prior to August 3, 1978, it was unaware of any requirement for the submission of a conversion plan. The protester argues that since no such requirement was contained in the original RFP, issued May 12, 1978, it did not know of the importance

of conversion in the evaluation of its proposal. On August 3, 1978, after the submission of initial proposals, ISC was informed by the agency that its technical proposal lacked a plan for the conversion of the current ICC ADP systems to ISC systems. ISC understood the letter to be asking for a plan as an addition to its proposal, not a plan which would become an integral part of the proposal to be evaluated. Since the letter referred to an "overview" of the conversion plan, ISC assumed that a summary plan would suffice and, if it were awarded the contract, a more detailed plan could be developed.

ISC argues that based on the information it had received from the agency, it would have been unable to submit a more detailed plan. The protester claims that the ICC was vague in that it did not specify the starting date, the applications that had to be converted, whether only individual applications or all applications had to be converted within 30 days, and whether the 30 days referred to calendar days or working days. The lack of these details, according to ISC, weakened its proposal.

ISC states that it was assigned only 13 points out of a maximum of 20 points for the provision in its conversion plan regarding the time ISC would need to complete the conversion process. ICC indicated to ISC that ISC's failure to propose conversion of all ICC applications in a 0-30-day timeframe resulted in this score. ISC argues that this requirement was never revealed to the offerors. Regardless, ISC calls this an improper and incorrect evaluation of its proposal since "[i]t is clear from all of ISC's submissions * * * that any individual application could be converted within 30 days and any reasonable and foreseeable mix of applications could all be converted in 30 days." ISC claims it should have been assigned the 20-point maximum, in which case it would have been awarded the contract as secondary vendor over CallData.

ISC also challenges the evaluation score awarded its proposal by one of the evaluators. Each proposal submitted was judged by three technical employees of ICC's Section of Systems Development. ISC contends

that one of the evaluators incorrectly downgraded its conversion plan by using evaluation criteria which were not included in the criteria announced. The following comments were written on one of the internal conversion evaluation sheets:

"60 day effort

No cost to ICC

Personnel assigned limited"

The protester argues that cost and personnel assigned to conversion were never mentioned as evaluation criteria and that this evaluator improperly considered them in scoring ISC's conversion plan.

Contrary to ISC's position, we believe that the requirement for and importance of submitting a conversion plan was emphasized, and adequate disclosure was made of the criteria that would be considered in evaluating this plan. ISC is correct in its statement that the original RFP did not provide any information on conversion. The RFP Table of Contents listed a chapter 6 to be entitled "Evaluation Criteria." But, the RFP did not include a chapter 6. The only mention of conversion in the RFP was in chapter 3, "Procedures for Benchmarking and Evaluation of Vendor's Responses to the Commissions' Time-Sharing Services RFP," as follows:

"2. Vendor Response Evaluation:

* * * * *

"b. A detailed evaluation, by weight checklist, which considers price, conversion cost, technical response and benchmark evaluation."

However, Change Notice No. 1, mentioned above, amended the original RFP to inform offerors of the conversion evaluation criteria, among other things, and added to the RFP a chapter 6 with information concerning (1) Benchmark Evaluation Criteria; (2) Cost Evaluation Criteria; (3) Conversion Evaluation Criteria; and (4) Technical Evaluation Criteria. The following criteria were listed as being the factors that would be considered in evaluating an offeror's conversion proposal:

"CONVERSION EVALUATION CRITERIA

- "Weight 1. To be evaluated for the ease and effectiveness of conversion.
- 100 a. Can ICC programs, as currently written, be converted:
- (1) With re-compilation only
 - (2) With re-compilation with minimal re-coding by contractor
 - (3) With re-compilation with minimal re-coding by ICC personnel
 - (4) With re-compilation with major re-coding by contractor
 - (5) With re-compilation with major re-coding by ICC personnel.
- b. If ICC programs, as currently written, require redesign, coding and compilation prior to conversion is it:
- (1) Accomplished by contractor
 - (2) Accomplished by ICC personnel
- c. Are required changes to systems documentation accomplished by:
- (1) Contractor
 - (2) ICC personnel
- d. Time-frame required for conversion effort.
- (1) 0-30 days
 - (2) 30-60 days
 - (3) over 60 days
- "2. Conversion is transparent to the ICC non-technical ADP user.

100"

ICC made available to offerors the answers to questions concerning this solicitation provided at a preproposal conference on May 25, 1978, and answers to

subsequent written questions in RFP Notice No. 7, June 29, 1978. The following questions and answers from the conference were related to the conversion evaluation:

- "7. A question was asked if a vendor does not now support HASP RJE protocol would he be disqualified if he had a firm schedule for installation, * * *

Answer - A firm schedule for implementation of the HASP RJE protocol by October 1, 1978, would be considered meeting the mandatory.

* * *

- "8. A question was asked as to how points would be assigned within a sub-category in the various evaluations.

Answer - It is not our intention to assign weights to the sub-categories but to score the total area. The review will be subjective and the sub-categories are guides. This is done due to the structures of the mandatory requirements, we are not attempting to dictate options but will evaluate them according to their technical merit and how suitable they are to our users who are represented on the review team. * * *

* * * * *

- "17. What is the acceptable calendar time frame for conversion of the ICC inventory of programs.

Answer - We are facing an October 1, 1978, date for the expiration of our current support contracts. Therefore, schedules will be built around that date.

- "18. Will conversion time-frame be the same for both primary and secondary vendors.

Answer - yes.

"19. Will the conversion workload be approximately 75/25% for primary and secondary vendors.

Answer - yes."

Conversion was also discussed in Notice No. 7:

"7. Please specify what information on conversion ICC requires, and provide information to offerors for their use in developing conversion plans.

Answer - Section 9 of Chapter 2 of the RFP contains a narrative overview of the ICC major systems, and it also includes an inventory number of programs, the size of the files of the ICC. It is further amplified in Chapter 4 where a detailed inventory of the programs is contained. Approximately 90% of the programs are written in COBOL with the remainder written in FORTRAN. The current ICC workload requires all conversion to be completed by October 1st at the conclusion of the current contracts. The programs contained in the benchmark are representative of the types and complexity of all the ICC programs. This provides the basis for the vendor to determine the complexity and number of man-hours required to convert the entire ICC library."

As is evident from the above, adequate effort was made by the agency to advise offerors of the requirement for and importance of submitting a conversion plan. The relative weight of the conversion evaluation category in relation to the other evaluation categories was adequate to place the protester on notice as to the importance of a conversion plan in its proposal.

We have held that offerors should be advised of the evaluation factors to be used in evaluating their proposals and of the relative weights assigned to these factors.
Genasys Corporation, B-187811, July 29, 1977, 77-2 CPD 60.

This is necessary in order to give offerors as good an idea as is reasonably possible--considering the subjectivity and uncertainty involved--of the bases for competition. Telecommunications Management, Inc., B-190298, January 31, 1978, 78-1 CPD 80. In our view, the evaluation factors quoted above and the discussion at the conference and in Notice No. 7 were sufficient to inform offerors of what should be submitted as part of their conversion plans and of the manner in which their plans would be scored. In any event, ISC, as well as other offerors, was afforded several opportunities throughout the course of the procurement to clarify the agency's requirements. And ISC received the second highest point score for conversion. These facts tend to negate any claim by ISC of being misled, particularly in view of the explicit information on conversion provided.

ISC contends that its conversion proposal should have received the highest number of points because its proposal met all requirements of the solicitation. Our Office will not evaluate proposals or make independent judgments as to the precise numerical score to be assigned a proposal. The determination of a procuring agency will be questioned by this Office only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. K-MCC, Inc. Consultants, B-190358, March 10, 1978, 78-1 CPD 194. ISC has not established this. After examining ISC's proposal, the evaluation criteria, the individual evaluators' scoresheets and comments, and all of the information submitted by ISC relating to its protest, we cannot conclude that ICC's evaluation of ISC's conversion proposal was unreasonable, arbitrary or in violation of statute or regulation.

The final conversion point score was reached by averaging the points awarded in this category by each of the three evaluators. ISC's conversion plan was given scores of 90, 86 and 70 by the evaluators, which resulted in a final score of 82 points. We are unable to find on the basis of the record before us that ICC's evaluation of the protester's proposal was not conducted in accordance with the evaluation criteria set out in the RFP, as amended. It is clear from all three scoresheets that ISC's plan was marked down for failure to propose conversion of ICC systems within a 0-30-day time-frame.

This factor was specifically mentioned in Change Notice No. 1 as one of the criteria under which conversion plans would be evaluated. And, later information clearly called for complete conversion by October 1, 1978. Contrary to ISC's contention that "[i]t is clear from all of ISC's submissions * * * that any individual application could be converted within 30 days and any reasonable and foreseeable mix of applications could all be converted in 30 days," ISC proposed conversion of only the First Data applications to ISC's system within the optimum timeframe:

"ISC will initiate conversion of the First Data applications to ISC's System 3 on August 28, 1978 and have all twenty (20) applications (including FORTRAN Subroutine Library on First Data) operational no later than September 28, 1978."

Conversion of the ICC's CompuServe applications would not have been completed until December 4, 1978:

"ISC will initiate conversion of the CompuServe applications to ISC's System 3 on August 31, 1978 and have all twenty (20) applications (includes FORTRAN Subroutine Library on CompuServe) operational no later than December 4, 1978." (Emphasis added.)

ISC also challenges the evaluation made by one of the other evaluators. The following comments were written on one of the scoresheets:

"No cost to ICC
Personnel assigned limited"

ISC bases its challenge on the ground that cost and personnel assignments were not previously revealed to it as factors to be considered in the conversion evaluation category. We have held that each subcriteria need not be disclosed so long as offerors are advised of the basic criteria. Genasys Corporation, supra. It is not improper to use additional factors in an evaluation where there is sufficient correlation between the new factors and the generalized criteria in the RFP to put offerors

on reasonable notice of the evaluation criteria to be applied to their proposals. Littleton Research and Engineering Corp., B-191245, June 30, 1978, 78-1 CPD 466.

Here, cost and personnel assignments are sufficiently related to the announced criteria that they could properly be considered by ICC's evaluators. Three evaluation factors questioned were whether ICC programs could be converted with recompilation with re-coding by the contractor or by ICC personnel, whether prior to conversion redesign, coding and compilation would be required of the contractor or of ICC personnel, and whether changes to systems documentation would be accomplished by the contractor or ICC personnel. Cost to the ICC and personnel assigned to conversion by the offeror are necessarily related to such criteria. If an offeror proposed that recompilation, redesign or changes be accomplished by the agency, then the agency would incur additional costs, in the form of its own time and manpower, not reflected in the proposed contract price. If personnel assignments proposed by an offeror to accomplish conversion were deemed in an evaluation to be limited, then the agency would have to accept some of the burden of conversion in order for it to be accomplished in an adequate manner.

The procuring agency enjoys a reasonable range of discretion in the evaluation of proposals. Advanced Design Corporation, B-191762, August 10, 1978, 78-2 CPD 111. The use of numerical scoring is an attempt to quantify what is essentially a subjective judgment. Didactic Systems, Inc., B-190507, June 7, 1978, 78-1 CPD 418. It appears that the ICC rated ISC's proposal on the reasoned judgment of the three evaluators and in accordance with the established evaluation criteria. ISC was awarded less than the maximum number of points in the conversion evaluation category because it failed to meet the optimum standards set out in the RFP, as amended. Evaluations are based on the degree to which an offeror's written proposal adequately addresses the evaluation factors specified in the solicitation. Didactic Systems, Inc., supra.

The protester has not established objectionable error in the agency's evaluation of its proposal, especially in light of ISC's receiving the second

highest score for this portion of the evaluation. Moreover, to support our conclusion, the contracting officer directed that a recomputation of all scoring be undertaken to assure that there was no error and he came to an award decision as follows:

"The selection of the secondary vendor in accordance with the RFP was complicated by two factors. First, the point differential between vendors 2, 3, and 4 was very small. Secondly, the vendor with the second highest number of points did not provide the lowest cost. To overcome my concern about the narrow point spread, I directed a recomputation of all scoring to assure accuracy. Having been assured of the accuracy of the scoring, I reviewed the technical evaluation in light of the representations contained in the RFP. It was clearly stated in the RFP that technical factors would account for 60% of the total evaluation. Thirdly, I compared the model generated cost for FY 1979 (\$434,920) with the estimated FY 1978 expenditures for the current secondary vendor (\$600,000). Since this indicated a cost reduction of approximately \$165,000, and since Call-Data was evaluated highest in overall technical points, as well as second in technical and cost combined, I have determined that Call-Data should be awarded a contract as the secondary vendor."

ISC also protests the evaluation of CallData's conversion plan. CallData was awarded a contract under the solicitation as secondary vendor. ISC claims that CallData's proposal contained gross inconsistencies and discrepancies and that it was nonresponsive. The basis for this protest became known to ISC on November 13, 1978, at which time ISC received copies of CallData's proposal, conversion plan and all internal evaluation documents in response to Freedom of Information Act requests to the ICC. In a letter, dated October 25, 1978, we had notified ISC that we would be handling its protest together with a protest from ADP Network Services, Inc. (ADP). (This protest was subsequently withdrawn.) The ICC had not yet

responded to ADP's protest. We informed ISC that it must transmit to us its comments on the ICC's position not later than 10 days after receipt of the agency's second report. This report was received by ISC on November 15, 1978. Thus, the comments ISC made in regard to the agency's position on ISC's original protest, concerning the ICC's evaluation of its own conversion proposal, were timely received. However, in addition to submitting comments on the agency's position, ISC took advantage of this opportunity to submit a protest concerning ICC's evaluation of CallData's conversion proposal.

In order to insure GAO consideration of a protest, the protest must have been filed not later than 10 days after the basis for the protest is or should have been known. 4 C.F.R. § 20.2(b)(2) (1978). Since this protest was not received in our Office until November 29, 1978, it is untimely and the merits will not be considered.

ISC also questions why the ICC had not asked ISC to explain readily apparent ambiguities between ISC's conversion plan and its original proposal comments on conversion. ISC does not identify the ambiguities. Evidently, the "comments" to which it refers are the comments written by the evaluators on their individual scoresheets. As stated above, these became known to ISC on November 13, 1978. ISC did not raise this issue until the conference at our Office on December 8. This protest was not formally filed with us until December 27. Accordingly, this protest is dismissed as untimely.

Also in its letter of December 27, 1978, ISC protests the benchmark evaluation of its proposal. ISC claims that in its best and final offer of August 22, 1978, it had adjusted previously submitted base prices upward to reflect a change in its System 3 configuration. The core memory of the system would be increased by 50 percent--512,000 words to 768,000 words. Its benchmark test, ISC states, was run on a system configured with only 256,000 words of core memory. ISC contends that as a result of this, it lost points on the benchmark evaluation. The August 22, 1978, offer proposed a system with 50 percent greater capacity at a higher cost. However, according to ISC, it lost points because of the higher cost without gaining any for increased capacity. ISC knew the basis for this protest on November 13, 1978, but first protested this evaluation

to our Office on December 27, 1978. As this protest was filed more than 10 days after the basis for the protest was known, it is untimely and will not be considered on its merits.

Accordingly, the protest is denied to the extent it has been considered on the merits.


Deputy Comptroller General
of the United States