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Gallagher P.H.

DECISION



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

FILE: B-190632

DATE: Septmeber 21, 1979

MATTER OF: General Electric Information Services Company

DLG 02824

DIGEST:

1. *He* Contention that agency should not proceed with implementation of GAO recommendation for corrective action until request for reconsideration has been decided is moot, since decision on reconsideration has been issued affirming prior decision. ✓
2. Protester fails to demonstrate any impropriety in agency's requesting 2-month extensions of Multiple Award Schedule Contracts in order to reopen negotiations in implementation of prior GAO recommendation for corrective action.
3. *4* Teleprocessing Services Program procurement conducted on basis of all vendors' fiscal year 1979 Multiple Award Schedule Contracts, as extended, does not fail to provide equal basis of competition. Government is not obligated to equalize alleged competitive advantage resulting from particular vendor's business circumstances. ✓
4. Protest without legal merit on its face is denied by GAO without requesting report from contracting agency.

This is our decision on a [protest by General Electric Information Services Company (GE) concerning a procurement being conducted under the General Services Administration's (GSA's) Teleprocessing Services Program]

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This is our fourth decision involving the same procurement. Pertinent background information is extensively described in our three previous decisions and will not be repeated here (Computer Sciences Corporation, 57 Comp. Gen. 627 (1978), 78-2 CPD 85 (Decision 1); Computer Sciences Corporation, B-190632, August 9, 1979 (Decision 2); and General Electric Company--Reconsideration, B-190632, September 11, 1979 (Decision 3)).

The following are summaries of the arguments presented in GE's current protest, filed with our Office on September 10, 1979, and our comments on each:

GE: GSA, in implementing the GAO recommendations in Decisions 1 and 2, is requesting the vendors to extend their fiscal year (FY) 1979 Multiple Award Schedule Contracts (MASC's) for 2 months from their scheduled expiration on September 30, 1979. It is inappropriate for GSA to proceed with such implementation until GE's request for reconsideration of Decision 2 is decided by GAO.

Comment: Our Decision 3, supra, decided GE's request for reconsideration and affirmed Decision 2. Therefore, this argument is moot.

GE: Any vendor price reductions under the extensions of the FY 1979 MASC's would not apply to the FY 1980 MASC prices. This procedure renders the MASC price reduction clause ineffectual, is anticompetitive, and is inconsistent with the clear intent of the GAO recommendation in Decision 2. Further, GSA's procedure gives Computer Sciences Corporation (CSC), which has a very large and disproportionate share of the Federal teleprocessing services market, an unfair competitive advantage; CSC can drastically reduce its price for this particular order and make up for any loss through profits on its other MASC business. It would be more appropriate for GSA to conduct the recompetition on the basis of the vendors' FY 1980 MASC's. If GSA does not believe this to be so, it should ask for clarification from GAO before proceeding.

Comment: In Decision 2 we pointed out that in a reopening of negotiations a contracting agency must try to assure, to the extent possible, that offerors have an opportunity to compete on an equal basis. We recommended in that decision that GSA conduct the recompetition on the basis of all vendors' FY 1979 MASC's. Also, as stated in Decisions 2 and 3, the details of implementing a recommendation for corrective action are matters for the sound discretion and judgment of the contracting agency.

We do not see how GSA's procedure fails to provide an opportunity for vendors to compete on an equal basis. It is well established that there is no obligation on the Government's part to try to equalize competitive advantages accruing from individual offerors' particular business circumstances, such as past experience, corporate resources, predominant position within a particular industry, or the like. See generally IMBA, Incorporated, B-188364, B-187404, November 9, 1977, 77-2 CPD 356; Braswell Shipyards, Inc., B-191451, March 24, 1978, 78-1 CPD 233; Telos Computing, Inc., 57 Comp. Gen. 370 (1978), 78-1 CPD 235, and decisions cited therein. Further, the protester's contention that GSA's procedure will not generate competition appears to be wholly speculative. It is up to GSA to decide, as it implements its procedure, whether an adequate degree of competition is being generated under the extended FY 1979 MASC's. Whether GSA should resort to the FY 1980 MASC's is a premature question at this point. However, a reasonably founded GSA determination that it is not practicable to carry out the recompetition under the extended FY 1979 MASC's and that the FY 1980 MASC's are the only basis on which to proceed would not be objected to by our Office.

GE: GSA's action in requesting 2-month extensions of the FY 1979 MASC's is of questionable legality in light of section D.20 of the MASC's, which provides in part:

"This contract may be renewed at the expiration of its terms or any extension thereof by mutual agreement of the parties. Such renewal may be for a term of one year

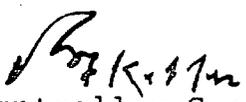
or less but in no event shall this contract, as modified, be extended beyond September 30, 1979."

Further, under applicable regulations it is doubtful that GSA has the authority to change this clearly fundamental provision without first addressing it on a program-wide basis.

Comment: We believe that, in general, what the parties have agreed to in the contract the parties can agree to modify. Also, as explained in Decisions 2 and 3, the subject of how orders should be placed under MASC's, "program-wide," is not at issue here; rather, the question is how a GAO recommendation for corrective action should be implemented in order to remedy an improper award. The regulations GE refers to deal with the former subject, not the latter.

Since the protest is, on its face, without merit, we believe it is appropriate to render a decision without requesting a report from the contracting agency. See Braswell Shipyards, Inc., supra.

The protest is denied.


Deputy Comptroller General
of the United States