

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

11945 W. Thompson

Page 2

November 6, 1979

B-195117, B-195206, B-195206.2,  
B-195206.3, B-195206.4, B-195206.5,  
FILE: B-195206.6, B-195206.7 DATE:

MATTER OF: Advanced Business Systems; Allied Business  
Machines; Alltronics, Inc.; Office Center,  
Inc.; Olivetti Corporation of America;  
DIGEST: Southern Business Systems; J. J. Summers  
Agency; Traylor and Williams Office Machines

*[Protest Against IFB Provisions]*

1. Protest against requirement in solicitation for time and materials contract that parts be charged at contractor's cost is denied since requirement is explicitly permitted by regulation and use is discretionary with contracting agency.
2. Protest that solicitation ceiling prices limiting bid prices for annual maintenance rates for office machines are too low to permit fair profit, is denied, since there is no evidence that such rates have unduly restricted competition by discouraging significant number of bidders.
3. Protest that requirements for recordkeeping are unduly burdensome is denied, since records are needed to provide necessary surveillance for protection of Government from possible abuses inherent in use of time and materials contracts.

Protesting Parties

The following firms have protested the listed invitations for bids (IFB's) issued by the General Services Administration (GSA).

Advanced Business Systems (ABS)  
GSD-4DPR-90008  
GSD-4DPR-90011

Allied Business Machines (Allied)  
GSD-6DPR-00002

*007703*

*110761*

*HGC 00017*

Alltronics, Inc. (Alltronics)  
GSD-6DPR-00002

Office Center, Inc. (OCI)  
GSD-6DPR-00001  
GSD-6DPR-00002

Olivetti Corporation of America (Olivetti)  
GSD-1DPR-90054  
GSD-2DPR-90014  
GSD-2DPR-90015  
GSD-2DPR-90016  
GSD-WDPR-90008  
GSD-4DPR-90008  
GSD-4DPR-90011  
GSD-5DPR-00000  
GSD-5DPR-00001  
GSD-7DPR-00002  
GSD-7DPR-00003  
GSD-9DPR-90015  
GSD-9DPR-90017  
GSD-10DPR-90134 *12*

Southern Business Systems (Southern)  
GSD-4DPR-90008  
GSD-4DPR-90011

J. J. Summers Agency (Summers)  
GSD-5DPR-00000  
GSD-5DPR-00002

Traylor and Williams Office Machines (T&W)  
GSD-7DPR-00002  
GSD-7DPR-00003 *26*

The IFB's are for indefinite requirements, time and materials contracts for the maintenance and repair of adding machines and calculators. Bidders were required to separately offer prices on an hourly rate (flat labor rate with replacement parts billed separately) and a flat annual maintenance service rate per machine including most parts.

Grounds of Protest

Allied, Alltronics, OCI, Olivetti, T&W, Southern, and Summers have protested the solicitation provisions requiring parts to be billed to the Government at the contractor's cost. Olivetti and Southern allege that the solicitations have been improperly "defined as negotiated" by GSA, while they have been actually formally advertised. ABS has protested the recordkeeping requirements of the solicitation. Alltronics has protested the annual maintenance rates, arguing that they are too low. The protests are denied for the following reasons.

Parts at Cost

All of the IFB's contain provisions requiring the contractor to bill the Government for replacement parts at the contractor's cost. GSA states that this is in accordance with Federal Procurement Regulations (FPR) § 1-3.406-1 (1964 ed., circ. 1), which permits billing of material at cost in time and materials contracts. GSA feels that parts are "material" and cites FPR § 1-15.205-22 (1964 ed., amend. 142) in support of that position. That section states that "[m]aterial costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies." (Emphasis added.) A clause stating that costs would be determined in accordance with that section was included in some of the protested IFB's.

The protesters make the following arguments in favor of deleting these provisions and permitting contractors to charge more than their cost for parts. There are overhead costs directly related to parts which should be added to the contractor's cost for the parts. These costs include time spent ordering and receiving parts, paperwork, and storage space for parts inventory. By requiring parts to be billed at cost, the Government forces contractors to recover these overhead costs by unfairly passing all parts costs on to commercial customers. Also, if overhead costs are included in the hourly labor rate, the Government may pay more for

repairs since that rate applies even when no parts are replaced. Finally, requiring parts to be billed at cost will result in decreased competition because contractors will not be able to make a fair profit and will not bid.

GSA argues that requiring parts at cost is permitted by the FPR sections cited above. While GSA does recognize that FPR § 1-3.406-1(d) permits pricing at other than cost, it states that past problems with parts pricing under these contracts have convinced it that requiring parts at cost is in the Government's best interest. GSA has supported its opinion with several GSA audit reports and one GAO audit report which found that the Government had been overcharged for parts on time and materials contracts and that contractors often replaced parts that did not need to be replaced to inflate repair charges. Also, GSA feels that alternate methods of pricing parts may violate the prohibition against cost-plus-a-percentage-of-cost contracts. 41 U.S.C. § 254(b) (1976). GSA also argues that requiring parts at cost prevents "buying in" with a low labor rate and then making up profits by overcharging on parts and excessive part replacement.

In response to the protesters' arguments, GSA contends that parts-related overhead can be anticipated and covered in the hourly labor rate. This will not result in greater overall cost for repairs since competition will force bidders to keep their hourly labor rate as low as reasonably possible by accurately estimating the percentage of repairs that will require parts and including only that amount of anticipated parts-related overhead in the rate. GSA points out that the number of bids received in response to these solicitations and the bid prices illustrate that competition has not been significantly diminished by the protested clauses.

We agree with GSA's position. By definition, a time and materials contract provides for pricing of materials at cost, FPR § 1-3.406.1, and parts are clearly included as material. FPR § 1-15.205-22. While, under certain circumstances, material may be priced on a basis other than at cost, the option of doing so is within the discretion of the contracting agency. Midwest Engine, Inc.,

B-194748, August 8, 1979, 79-2 CPD 97. In any event, GSA has adequately justified requiring parts to be charged at cost.

#### Other Contentions

The IFB's require bidders to bid an annual maintenance service rate, which is a flat rate per machine, including most parts. Ceiling prices are provided in the solicitations, and bidders must bid either "net" or a discount from these prices. Alltronics contends that these prices are too low to permit it to make a fair profit.

These ceiling rates are not so low as to unduly restrict competition, according to figures provided by GSA on the number of bidders responding to the solicitations. Alltronics' complaint appears to be based on the business judgment of that firm alone that it could not profit satisfactorily from these contracts. This basis is not sufficient to demonstrate that the rates were unreasonably low.

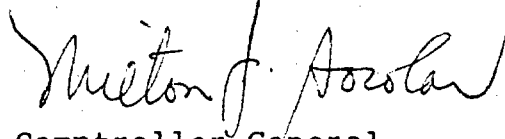
ABS has protested the IFB provisions requiring contractors to maintain records for both Government and commercial work. According to ABS, maintaining the required records is unduly burdensome. Also, ABS questions the need for maintaining records for commercial work and permitting Government examination of such records.

GSA states that these requirements were instituted as a result of findings made by GSA auditors concerning overcharging for parts and labor on time and materials contracts. GSA contends that charges for parts and labor on Government work cannot be adequately verified without reference to charges for comparable commercial work.

FPR § 1-3.406-1(b) states that particular care should be exercised in the use of a time and materials contract "since its nature does not encourage effective management control." That section further states that such contracts should be used only "where provision is

made for adequate controls, including appropriate surveillance by Government personnel." We see nothing improper in the recordkeeping requirements, especially in light of the dangers inherent in time and materials contracts and the findings of GSA and GAO audits. While ABS may find the requirements burdensome, there is no evidence that the requirements have restricted competition.

Finally, concerning the allegation that these contracts have been defined by GSA as negotiated, nothing in the record supports this allegation, and Olivetti and Southern have introduced no evidence supporting it.

A handwritten signature in dark ink, appearing to read "Milton J. Aroskar". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

For The Comptroller General  
of the United States