

DECISION

12405 *Carter Proc I*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195028

DATE: January 3, 1980

MATTER OF: Sperry-Univac *D 3548***DIGEST:**

[Protest of GSA Contract Award for Procurement of Remote Terminals]

1. Decision by Navy in operational capability demonstration of computer peripherals to permit vendor to perform cardpunching by process not wholly compatible with computer was not unreasonable where Navy error made cardpunching by compatible method impossible. Deviation in test did not affect vendor's legal obligation to provide compatible operational system and protester has failed to demonstrate how limited waiver prejudiced its competitive position.
2. System composed of components commercially available from other vendors and awardee's own controller, previously offered to another firm, satisfies requirement for "formally announced" equipment. Requests for information necessary to interface vendor's system with Navy's particular computer does not detract from vendor's certification of availability of software.
3. Excusable delay attributable to Government and to other causes beyond control of vendor which extends date of operational capability demonstration beyond "30 days from notice" permitted in solicitation is not unreasonable. If periods of delay beyond vendor's control are omitted, vendor performed test within time required.
4. Controversy arising from use of systems log to support bid protest will not be considered because it is not relevant to question of propriety of award process. Matter is

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referred by separate letter to Administrator of General Services because of implications for protection of proprietary information in benchmarking and possibility of abuse in competitive environment.

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/ Sperry-Univac (Sperry) protests the conduct of a procurement for remote terminals by the General Services Administration (GSA) on behalf of the Navy's Automatic Data Processing Selection Office (ADPSO). The contract was awarded to C3, Inc. (C3), while Sperry's protest was pending. For the reasons stated below, we deny the protest.

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The solicitation was issued in April 1978 seeking proposals for the provision of remote terminals to be used as peripherals on leased Univac computers at Navy Data Processing Service Centers. The request for proposals (RFP) contemplated four different terminal configurations ranging from a simple typewriter-type terminal to a remote batch terminal. Because of the proposed use, the terminals necessarily were required to be compatible with Univac software and protocols. (Protocols essentially are the procedures and formats which must be used by two pieces of equipment in order for them to be able to communicate with each other.) Offerors were required to submit proposals detailing their terminal configurations and how their systems met the requirements of the RFP. The RFP also advised that the lowest cost offeror submitting an acceptable proposal would be required to perform an extensive operational capability demonstration (OCD) within 30 days of notice.

Only one limited aspect of the OCD is relevant here--a test of the system's ability to perform on-line cardpunching of data stored in the computer. During pre-OCD testing of C3's system, it was discovered that C3's on-line cardpunch routine would not work as the result of an error in the system generation performed by the Navy prior to C3's OCD. In this connection, the Univac computer used for the OCD can transmit data to peripheral devices in any of several formats but it

must first be told in the system generation which particular format is to be used in communicating with a specific peripheral. Through error, C3's cardpunch was not properly identified in the system generation, making it impossible to perform normal on-line card-punching. The Navy declined to perform a new system generation. After some discussion, the Navy approved a C3 proposal to circumvent this problem through software which would obtain data formatted for the printer (as opposed to cardpunch) from the computer and edit and reformat the data, ignoring the control characters, so that it would be appropriate for cardpunching. C3 performed its OCD cardpunching in this manner and the results were accepted by the Navy. During the course of a bid protest conference in our Office, however, C3 advised that this method was used only for the OCD and that in actual operation C3's system will perform card-punching by using the cardpunch formatted data generated by the Univac computer.

Sperry contends that the Navy waived mandatory requirements of the RFP by permitting C3 to perform its cardpunching using print files. As Sperry explains it, its Univac 1100 series system software automatically generates separate systems files or queues for data designated for printing and data designated for card-punching. Sperry argues that the Navy, in effect, waived operational capability validation of compatibility between C3's proposed cardpunch and Univac 1100 series systems software by not requiring validation of the ability of C3's proposed system to receive and use punch file data.

In Sperry Rand Corporation, 56 Comp. Gen. 312, 317-319 (1977), 77-1 CPD 77, we declined to sustain a protest on a question analagous to that presented here, although sustaining the protest on other grounds. In reaching our decision, we noted that the contracting officer's determination to waive some and modify other benchmark requirements was not based solely on a technical assessment but also on the agency's procurement judgment as to actions necessary to maintain a competitive procurement; we noted also that the waivers pertained only to incidental equipment and that the

protester had failed to demonstrate how these changes may have prejudiced its competitive position in the procurement. We think this is the case here.

Discovery of the system generation error left the Navy essentially with two alternatives: it could halt C3's OCD and correct and rerun the system generation, a costly and time consuming procedure which would delay the test and impose additional costs on C3, or it could adopt C3's proposal to circumvent the problem by performing its cardpunching in a manner not wholly compatible with the Univac computer. The waiver of testing requirements is a matter of administrative discretion which we will not question unless shown to be arbitrary. Informatics, Inc., B-190203, March 20, 1978, 78-1 CPD 215; Boston Pneumatics, Inc., B-188275, June 9, 1977, 77-1 CPD 416. In the circumstances present here, we are not prepared to hold unreasonable the Navy's resolution of its dilemma. Furthermore, the permitted change in C3's procedures for the purposes of the OCD did not affect C3's legal obligation to provide operational systems fully compatible with the Univac computer and software and, we note, Sperry has failed to demonstrate just how this limited waiver may have prejudiced its competitive position in this procurement.

Sperry also argues that C3's system and software did not meet the commercial availability requirement of the RFP. Sperry bases this contention on the absence of any announcement by C3 of its system and software in data processing trade journals or publications and the fact that C3 requested program specifications for the computer on which its OCD was performed after the date for receipt of proposals. We have held that a requirement for announced, commercially available equipment could be met by showing that the equipment had previously been offered for sale and did not require a published announcement in trade journals. See System Development Corporation, B-193487, May 1, 1979, 79-1 CPD 303; Intermem Corporation, B-188910, December 15, 1977, 77-2 CPD 464. We believe this same standard sufficient to satisfy the RFP's requirement for "formally announced" equipment. Most of the

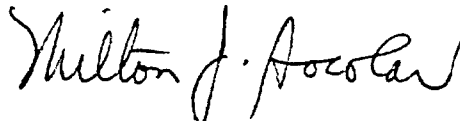
equipment offered by C3 was manufactured by and commercially available from other vendors and C3 offered the controller, the only item which C3 manufactured, to another firm shortly before the due date for proposals. C3 also certified the availability of its software in its proposal. We do not consider C3's requests for program documentation, for the types of information necessary to interface C3's offered system with the Navy's particular leased computer, to detract from this certification. On this record, we are convinced that C3's equipment and software satisfied the availability requirements of the solicitation.

Lastly, Sperry has challenged the propriety of C3's OCD on the basis that it was not performed in conformity with the "30 days after notice" requirement stated in the solicitation. We note, however, that the delay between the Navy's March 2 notice to C3 to perform its OCD and C3's actual May 1-2 performance of its OCD is substantially attributable either to the Government or to other causes beyond C3's control such as delays in obtaining dedicated communications facilities. We find nothing unreasonable in the Navy's treating the delay as excusable and find that if the periods beyond C3's control are omitted from consideration, that C3 did perform its OCD within the specified time.

The protest is denied.

One additional matter deserves our comment. The Univac computer used for C3's OCD and, we suppose, the majority of all other major computers, automatically generate a systems log which records the computers' transactions and activities. A significant portion of Sperry's protest is based on information obtained through examination of the systems log reflecting computer activity during the period of C3's OCD. Although Sperry's use of the log for this purpose generated considerable controversy among the parties to the protest, we have declined to consider this question because it bears no relevance to the paramount issue of the propriety of the award process. We note also that the anomalies resulting from C3's circumvention of the system generation error justified, as we believe

and Sperry asserts, resort to the systems log as a troubleshooting aid. We are concerned, however, about the implications this may have for the protection of proprietary information and processes during the course of benchmarking and its potential for abuse in a competitive environment. We therefore are, by separate letter, bringing this matter to the attention of the Administrator of General Services.

A handwritten signature in cursive script, reading "Milton J. Aocolan".

For The Comptroller General
of the United States