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DECISION



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

FILE: B-196737

DATE: June 3, 1980

MATTER OF: Federal Data Corporation

CNG 01210

DIGEST:

Agency complied with FPR Temporary Regulation 46 where several affirmative responses to sole-source synopsis in Commerce Business Daily were received and evaluated, and agency determined that sole source was lowest overall cost alternative. In view of compliance with regulation, competition generated, and protester's knowledge of circumstances, agency was not required to consider protester's inquiries concerning procurements which were received after award.

Federal Data Corporation (FDC) [protests the award of two contracts] for computer systems to Digital Equipment Corporation (DEC) by the Naval Regional Contracting Office, Long Beach, California (NRCO), under DEC's General Services Administration (GSA) schedule contract No. GS-OOC-01504.

Against

DLG

FDC contends that the awards were not made in accordance with Federal Procurement Regulations Temporary Regulation 46 (40 Fed. Reg. 40015-40018, September 8, 1978). FDC alleges specifically that NRCO refused to accept a proposal from the firm; therefore, the contracting officer could not have determined that the awards to DEC were at the lowest overall cost to the Government, which is mandated by Temporary Regulation 46. We find, however, that the requirements of Temporary Regulation 46 were satisfied, and we have no legal objection to the award of the two contracts.

Both procurements were synopsized on September 10, 1979, in the Commerce Business Daily (CBD) to permit potential suppliers to express interest. The CBD synopsis was a notice of intention to procure from DEC without establishment of a solicitation package on the basis of the Navy's belief that alternate sources of supply were not expected to be available;

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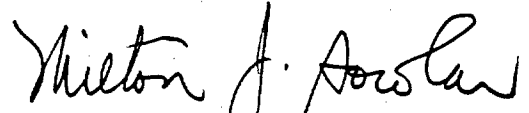
the synopsis gave a telephone number for interested parties to call for information concerning the requirements. DEC and five other firms expressed interest and contacted NRCO by telephone. Discussions concerning NRCO's needs were held with the five firms, and four firms determined that they could not meet the requirement. The other firm submitted a proposed equipment configuration for both procurements. The using activity determined one configuration unacceptable and the other acceptable. Because the cost of the acceptable configuration was higher than DEC's schedule contract price, awards were separately made to DEC on September 24 and September 26, 1979.

Based on the above, we believe NRCO complied with Temporary Regulation 46. The timing and content of the synopsis without establishment of a solicitation package, the evaluation of the responses, and the decision to award complied fully with the regulation. See Temporary Regulation 46, § 1-4.1107-6(c)(i); and § 1-4.1107-6(b)(2)(iii) which states that, "If affirmative response is received * * *, the procurement file shall be documented with evidence that use of the * * * schedule contract, including the method of acquisition; * * * is the lowest overall cost alternative available to the agency, price and other factors considered."

FDC's allegation that the contracting officer's refusal to accept FDC's proposal precluded the determination that the awards were at the lowest cost to the Government is without merit. The record indicates that FDC never submitted a proposal or contacted the agency even though the synopsis identified the procuring agency and contained a phone number for inquiries. Instead of telephoning, FDC sent two letters of inquiry, dated September 17, 1979, specifically referring to the CBD synopsis, and requested solicitations. The letters were not received until October 1, 1979, or after the awards. In view of the agency's compliance with Temporary Regulation 46, the competition generated by the synopsis, and FDC's clear knowledge of the circumstances, we find no basis to conclude that the agency should have considered FDC's postaward inquiries.

This case is distinguishable from Federal Data Corporation, 59 Comp. Gen. ____ (B-196221, March 3, 1980), 80-1 CPD 167, cited by FDC in support of its protest. In that case, an agency's similar synopsis elicited six inquiries, but, unlike here, the agency proceeded with a sole-source lease renewal without considering the other responses so that there was no demonstration that the lease renewal was the lowest cost alternative in violation of the Temporary Regulation.

Accordingly, the protest is denied.



For the Comptroller General
of the United States