

DECISION



17669 Carter
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Protest of GSA Issuance of Delegation of Procurement Authority

FILE: B-199234

DATE: April 6, 1981

MATTER OF: Amdahl Corporation.

DIGEST:

1. Manufacturer and vendor of computers is interested party for purposes of challenging 2-year extension of delegation of procurement authority for interim upgrade of computer system, action which will postpone and might eliminate competitive procurement of replacement system.
2. Interpretation adhered to by both contracting agency and General Services Administration of letter granting extension of delegation of procurement authority is not unreasonable. Consequently, interpretation that letter modified delegation is accepted.
3. General Services Administration, in the exercise of its discretion, is not precluded from reconsidering and modifying delegation of procurement authority, even without change in circumstances. GAO cannot conclude that concern for possibility of delays in procurement did not provide reasonable basis for extension of delegation for interim upgrade of computer equipment.
4. GAO will not question apparent interpretation by General Services Administration that fact that procurement of replacement computer system was in early stages and most

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recent estimate for completion of procurement was 36 months falls within "unusual circumstances" contemplated by regulation to authorize interim upgrade of computer equipment to extend beyond 2 years.

Amdahl Corporation has filed a protest concerning an interim acquisition by the Energy Information Administration (EIA), Department of Energy, of an International Business Machines Corporation (IBM) model 3033 MP computer system. We find the protest to be without merit.

On September 25, 1979, the General Services Administration (GSA) issued a delegation of procurement authority (DPA) to EIA for the sole-source acquisition from IBM of a model 3033 MP computer for a limited period ending with the October 1982 installation of and early 1983 conversion to a competitively acquired replacement system. Shortly thereafter, GSA received a letter from a third-party vendor of IBM computers objecting to EIA's sole-source acquisition of the computer from IBM. On January 4, 1980, GSA responded to this letter by amending EIA's DPA to require that EIA "solicit within 120 days for financial alternatives to straight lease from IBM of the 3033 MP configuration" and indicating that "although DOE, EIA's current best schedule projection for the full competitive replacement indicates 36 months, DOE may solicit for prices and evaluate and award on a total contract life (including options) not to exceed 48 months." EIA issued a request for proposals on May 16, 1980, seeking financial alternatives to the straight lease from IBM of the 3033 MP; the solicitation contemplates a performance period of 48 months, including options, and also provides for consideration of a purchase option. GSA states that it authorized a 48-month contract life so that the competitive procurement can proceed in an orderly manner even if the process falls behind schedule and also to allow time for conversion to the competitively required system.

Amdahl contends that EIA's solicitation of offers on the basis of a 48-month lease or purchase is improper and violates the terms of EIA's DPA. Amdahl does not contest EIA's initial acquisition of the 3033 MP.

As a threshold matter, we must consider a contention by IBM that Amdahl is not an "interested party" under our Bid Protest Procedures, 4 C.F.R. part 20 (1980), for the purposes of protesting this procurement. IBM argues that, since Amdahl is not a supplier of the equipment described in this make and model solicitation, Amdahl has no interest in the procurement. We disagree.

Our Bid Protest Procedures require that a party be "interested" in a procurement in order to protest it to our Office. 4 C.F.R. § 20.1(a). Whether a party is interested is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. ABC Management Services, Inc., 55 Comp. Gen. 397 (1975), 75-2 CPD 245; Kenneth R. Bland, Consultant, B-184852, October 17, 1975, 75-2 CPD 242. Amdahl contends that this solicitation postpones Amdahl's participation in a competitive procurement for up to 2 additional years and could lead to EIA purchase of the in-place equipment with the result that Amdahl would never be able to compete for EIA's system requirements. Amdahl concedes that it could not respond to the solicitation for the interim requirement, but objects to the impact this procurement could have on its ability to compete for EIA's future requirements. We are persuaded that Amdahl's present interest in competing for EIA's future requirements is sufficient to satisfy the interest criterion of our Bid Protest Procedures.

In considering Amdahl's protest, we must note at the outset that Amdahl is actually contesting GSA's grant to EIA of a substantially extended DPA rather than objecting to any action taken by EIA. Amdahl makes essentially three arguments in opposition to GSA's extension of EIA's DPA: first, Amdahl contends that GSA's letter of January 4, 1980, which purportedly modified EIA's DPA, did not actually do so; second,

Amdahl argues that there was no basis for the extension; and, third, Amdahl asserts that GSA's extension of EIA's DPA violated the provisions of Federal Property Management Regulation (FPMR) § 101-35.206(c)(4), 41 C.F.R. § 101-35.206(c)(4) (1980), because of the absence of the "unusual circumstances" required under that regulation to warrant an interim DPA for more than 2 years. This regulation, applicable to this procurement, has since been superseded. See 46 Fed. Reg. 1196, et seq., January 5, 1981. GSA commented in response to these arguments. We will consider each of Amdahl's objections in turn.

GSA's letter of January 4, 1980, which extended EIA's DPA, discusses the solicitation or financial alternatives to the straight lease from IBM of the 3033 MP in one paragraph and then in another distinctly separate portion of the letter, referring to two other related acquisitions, includes a subparagraph which alludes to the time required to accomplish "the full competitive replacement" and contains the language permitting EIA to solicit offers on a 48-month basis. Although we agree with Amdahl that the connection between this subparagraph and the solicitation in question is obscure, at least to those not intimately involved with the subject matter, we are faced with the fact that both GSA and EIA interpret the "full competitive replacement" language as clearly tying this provision to the interim procurement of the 3033 MP. We are not persuaded that their view is unreasonable and, in these circumstances, we are not convinced of Amdahl's contrary opinion.

Amdahl's assertion that GSA lacked any basis for the extension of EIA's DPA is based on two premises: first, that the letter in which GSA granted the original DPA to EIA both limited the term of the interim procurement to about 2 years and expressed the belief that the system installation could possibly be accelerated by "9-12 months" with GSA's continued involvement; and, second, that there were no changes in either EIA's operating environment or requirements between the original DPA and its amendment which would justify a 2-year extension of the interim

procurement. Amdahl suggests, in effect, that the extension of EIA's DPA was gratuitous. As we noted above, GSA justified the 48-month provision on the basis that it assured that EIA would have sufficient time to complete both the competitive procurement and conversion to the competitively acquired system in an orderly fashion.

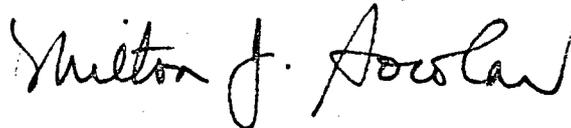
We recognize that under the Brooks Act, 40 U.S.C. § 759(a) (1976), the GSA has broad authority to develop and implement policies pertaining to the acquisition of automatic data processing equipment by the Government and that the exercise of this authority involves considerable discretion. See International Business Machines Corporation, B-193527, October 23, 1979, 79-2 CPD 280, reconsidered September 22, 1980, 80-2 CPD 213. Despite the implicit suggestion in Amdahl's arguments that the grant of a DPA is final, we find nothing which would preclude GSA, in the exercise of its discretion, from reconsidering any DPA without regard to whether there had been any change in an agency's circumstances. Furthermore, we cannot conclude that GSA's concern for the possibility of slippage in EIA's "most recent" estimate of 36 months to complete the competitive procurement did not provide a reasonable basis for GSA's grant of a 48-month DPA, particularly since the 48-month period is viewed as the outer limit of a process which might in fact be completed sooner.

Neither GSA nor EIA has responded directly to Amdahl's final contention that the extension of EIA's DPA was contrary to the provisions of FPMR § 101-35.206(c)(4). Nevertheless, we cannot conclude that GSA clearly violated this regulation in extending EIA's DPA to 4 years.

In this regard, FPMR § 101-35.206(c)(4) provides generally that DPA's for noncompetitive interim acquisitions will be limited to 2 years unless the agency and GSA "mutually agree to a longer period of time when there are unusual circumstances." Amdahl contends that these "unusual circumstances" are missing and that GSA therefore lacked the authority under this regulation to extend EIA's DPA

beyond 2 years. We note, however, that the amendment to the DPA stresses both that EIA's procurement process for the competitive replacement was in its early stages and that EIA's most recent estimate for the time needed to complete the competitive procurement was 36 months. While these circumstances might more appropriately be characterized as extenuating, rather than unusual, we will not question GSA's apparent interpretation of these circumstances as falling within the contemplation of this regulation.

The protest is denied.

A handwritten signature in black ink, reading "Milton J. Aowlaw". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States