

DECISION



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

Boyle

FILE: B-202316

DATE: June 8, 1981

MATTER OF: Burroughs Corporation

DIGEST:

Where (1) RFP notified offerors of importance and impact of not passing benchmark, (2) offerors were notified of nature, scope, and specific requirements of benchmark, and (3) offerors were not promised second benchmark attempt, GAO will not disturb agency refusal to permit unsuccessful offeror second benchmark attempt on basis of proposed modifications to its system; in circumstances, second attempt would permit opportunity to optimize system performance and prejudice offerors which successfully completed benchmark.

Burroughs Corporation protests against any award under request for proposals (RFP) No. BGFO-80-19 issued by the Department of the Treasury for eight computer systems to be installed at regional disbursing centers.

Treasury eliminated Burroughs from the competition because Burroughs failed to pass the live test demonstration or benchmark. Burroughs requested a second chance to pass the test; Treasury refused on the grounds that there was no promise of a second attempt and a second try would prejudice other competitors. We conclude that the protest is without merit.

Burroughs states that the best interests of the Government are served when there is maximum competition; to that end, the prevalent practice in computer procurements is to allow reruns of benchmarks. Burroughs also states that this practice is fair to vendors which have invested in preparing for the test. The protester

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indicates that it expended a great deal in preparing for Treasury's benchmark, that the cause for its failure is correctable, and that the Burroughs system can meet Treasury's operating and performance requirements.

Burroughs essentially contends that Treasury's standard for successfully completing the benchmark was unreasonably applied because not enough flexibility was employed. Several decisions of our Office are cited which note that agencies have some discretion in applying benchmark requirements. Burroughs argues that the reason given for its disqualification would not have been an adequate ground for default.

Burroughs notes that the RFP did not preclude second attempts to pass the benchmark. Further, Burroughs argues that since its technical proposal was acceptable, applicable regulations (41 C.F.R. § 1-3.805-1(b) (1980)) required Treasury to allow Burroughs to submit revisions to its proposal; thus, a second attempt to pass the benchmark would be appropriate.

Treasury explains that the determination not to give Burroughs a second attempt was made and reaffirmed after careful consideration of competitive requirements, the RFP's provisions, discretion available in computer procurements, the need for flexibility in benchmarks, fairness to all vendors, and the integrity of the procurement process. First, the RFP and benchmark manual notified vendors that the failure to pass the timed demonstration would be adequate reason for elimination from the competition. Second, unlike in procurements for computer services, Treasury is not aware of a recommended policy of affording second benchmark attempts in computer equipment procurements. Third, Treasury was not inflexible in conducting the benchmark since Burroughs was given special allowances regarding the scheduled hours of the test. Fourth, if Burroughs received a second chance, other vendors would be entitled to one also because each attempt is another opportunity to optimize performance, thus improving the cost aspects of proposals. Finally, Treasury believes that permitting second attempts

encourages marginal first efforts because if the first is insufficient, the vendor knows it will get a second attempt.

In deciding protests against an agency's determination to exclude a proposal from the competitive range, we recognize that such a determination is primarily a matter of agency discretion, which we will not question when the agency has a reasonable basis. Price Waterhouse & Co., B-202196, May 14, 1981, 81-1 CPD _____. Here, Treasury's determination not to give Burroughs a second benchmark attempt was a determination to exclude Burroughs' proposal from the competitive range. Thus, 41 C.F.R. § 1-3.805-1(b), which covers the conduct of negotiations with offerors in the competitive range, is not applicable. Compare, CompuServe Data Systems, Inc., 60 Comp. Gen. _____. (B-195982.2, May 14, 1981), 81-1 CPD _____. We note that (1) the RFP notified offerors of the importance and impact of not passing the benchmark, (2) the RFP and benchmark manual adequately communicated the nature, scope, and specific requirements of the benchmark, (3) Burroughs did not successfully complete the benchmark in the allotted time, and (4) offerors were not promised a second benchmark attempt.

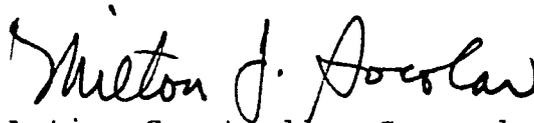
We also note that more than one other competitor did successfully complete the benchmark. We share Treasury's concern that a second attempt would permit Burroughs the opportunity to optimize its proposed system's performance, thus requiring, at a minimum, second attempts by the other competitors. These second attempts would delay the procurement and double the Government's benchmarking cost in resources. Further, in Information Consultants, Incorporated, B-183532, August 8, 1975, 75-2 CPD 96, we held that it would not be proper to permit a second benchmark attempt on the basis of modifications to the offeror's system. Cf. 50 Comp. Gen. 547 (1971).

This situation is unlike the one in The Computer Company, B-198876, October 3, 1980, 80-2 CPD 240, aff'd, 60 Comp. Gen. _____. (B-198876.3, January 2, 1981), 81-1 CPD 1. There, the offeror's failure was caused by the operator and not by the computer system;

the capability could have been easily tested again during the first benchmark if Government personnel pointed out the deficiency; and at the time our decision was rendered, only a portion of the test had to be rerun to verify the capability. Here, the failure was system related; Treasury told Burroughs of its failure on the spot; Burroughs tried three times unsuccessfully to correct the failure; and Burroughs would have to rerun, at least, a major portion of the benchmark.

Although we recommend that wherever practicable vendors be permitted a second benchmark attempt, in both services and systems procurements, in the circumstances, we have no basis to disturb Treasury's determination not to permit Burroughs a second benchmark attempt.

Protest denied.



Acting Comptroller General
of the United States