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DECISION

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

FILE: B-204225 DATE: March 17, 1982

MATTER OF: Westinghouse Information Services

DIGEST:

1. Size and composition of benchmark test is matter within discretion of contracting agency and will not be found improper if it has a reasonable basis. A substantial, complex benchmark is found to be reasonable because agency was constrained by time pressure and benchmark reflected substantial, complex contract requirements, and agency provided all necessary benchmark documentation within sufficient time for offerors to respond.

2. While agency did not prepare software conversion study as required by regulation, that is not omission which affects validity of procurement, since it is an internal agency document for use of agency officials in planning procurement strategy.

Westinghouse Information Services (Westinghouse) protests request for proposals (RFP) No. GSC-COPAS-S-00008-N for teleprocessing services for the General Services Administration (GSA) Office of Finance.

Westinghouse contends that the benchmark requirement is unnecessarily large and complex, and as a result unduly restricts competition. Westinghouse also complains of the timing and documentation of the benchmark.

GSA admits that the benchmark requirement is large and complicated, but contends that it could not be smaller and simpler and be useful in assessing offerors' abilities to perform. GSA contends that the benchmark was properly documented and the material available in a timely manner. Finally, GSA claims that the aspects of the procurement unsatisfactory to Westinghouse were mandated by an urgent timeframe

imposed by circumstances beyond GSA's control. For the reasons discussed below, we agree with GSA and, thus, deny the protest.

The requirements here have been satisfied since 1974 through a sole-source contract with the Computer Sciences Corporation (CSC). This contract was to expire on December 31, 1981. In May 1980, GSA completed a Long-Range Plan to acquire automatic data processing resources. It was determined that the Office of Finance requirements should be procured competitively, and that the sole-source contract with CSC should not be continued beyond December 31, 1981. However, the CSC contract was eventually extended 6 months due to slippage in the milestone dates of the protested procurement.

An RFP for the long-range acquisition was issued on October 31, 1980. However, the RFP was withdrawn because of inadequacies on February 25, 1981. According to GSA, at that time, various alternatives to resolving its short-term automatic data processing needs in the interim were considered. GSA decided that another sole-source contract with CSC could not be justified. Therefore, GSA decided to compete the Office of Finance requirement on an expedited basis.

GSA solicited the 79 vendors which have agreed to the Teleprocessing Services Program (TSP) Basic Agreement. Seventy companies requested and received RFP's. GSA issued a draft RFP on May 13, 1981, held an industry conference on May 27 that was attended by 23 vendors, and issued the final RFP on June 24. The original proposal due date was July 27, 1981. Amendment No. 1, issued on July 16, changed the due date to August 31, and amendment No. 4, issued August 31, changed the due date to September 28. Two proposals were received, and after discussions with both offerors award was made to CSC.

Westinghouse's essential complaint is that the benchmark, a test of offerors' abilities to perform the tasks that will be required under the contract, is larger and more complex than is necessary. The incumbent, CSC, has employed nonstandard software,

which must be converted to a standard computer language as part of contract performance. The benchmark requires that the offeror convert a portion of that software to run the benchmark. In this case, offerors must convert 73,665 lines of code to run the benchmark, or approximately 21 percent of the total amount of code to be converted under the contract.

Westinghouse "recognizes that the time constraints in the case of this procurement made it difficult for the Government to have the proprietary [nonstandard] software converted prior to issuing the benchmark." The protester also admits that the Government has a legitimate interest in requiring offerors to demonstrate their ability to convert the nonstandard code. However, Westinghouse states that "[i]n our view, the government's interests could have been protected by requiring a contractor to perform a benchmark as much as 90 percent smaller than the one specified." Westinghouse also complains that the live data provided by GSA for the benchmark exceeds two million transactions. Additionally, the protester contends that GSA should have developed a "make believe" benchmark instead of using a sampling of actual work. The large benchmark effort restricts competition, according to the protester, because it forces offerors to incur substantial costs just to compete that should be borne by the Government after the award of the contract.

Additionally, Westinghouse claims that the size and composition of the benchmark violates standards set forth in GSA's TSP Handbook (October 1979). Specifically, Westinghouse cites part 9-2a(2) regarding size, which states:

> "A limited number of independent benchmark programs should be chosen to represent the various categories making up the workload. The selected program should be as simple as possible without compromising true representation of the workload. All benchmark programs should be in a commonly used higher level language, in compliance with existing Federal standards. Federal standards for media and interchange codes should be used for representation of the required data inputs." [Emphasis added by protester.]

Regarding the composition of the benchmark, Westinghouse cites part 9-2b(5) which states, in part, that:

> "Benchmark programs should be either developed by the selecting activity or taken from an independent source. This will limit ADP system or contractor bias. If existing programs are used for benchmarks, nonstandard software or proprietary features must be removed or fully documented and narrative descriptions of each program must be included. [Emphasis added by protester.]

Westinghouse also alleges that GSA did not provide all benchmark materials at least 45 days prior to the closing date as required by part 9-2c(3) of the TSP Handbook, and did not provide all benchmark documentation, as required by part 9-2b(6).

As a preliminary matter, GSA contends that the requirements in the TSP Handbook cited by Westinghouse are not mandatory, but are recommended practices to provide guidance to agencies. In any event, GSA claims it has complied with the intent of the relevant guidelines to the extent possible given the time constraints of the procurement.

Additionally, GSA states that it realized that competition would necessarily be restricted to some degree by the size and complexity of the procurement and by the expedited timeframe, but that competition was maximized to the greatest degree possible consistent with GSA's minimum needs.

According to GSA, it did not have the manpower or expertise to convert the nonstandard software in-house in the time available prior to issuing the RFP or prior to the closing date. Also, the time constraints prevented GSA from having the software converted by a separate contract. Therefore, GSA contends that it had no choice but to include the software conversion as a major part of this procurement. Consequently, it had to be a part of the benchmark, both to test offerors' ability to do the conversion and to permit them to perform benchmark tasks.

GSA argues that while the benchmark is relatively large and complex, it could not be smaller and simpler and be a valid test of offerors' abilities to perform. According to GSA, the benchmark test was based on a representative sampling of critical tasks and frequently used batch jobs. The number of transactions contained in the benchmark is not 2 million, as Westinghouse alleges, but is fewer than 1,000. According to GSA, this represents less than 1 percent of the number of transactions in the actual workload. GSA states that due to time constraints it could not develop an adequate "make believe" benchmark. GSA contends that reducing the benchmark requirement to the level suggested by Westinghouse would render it a meaningless exercise.

Concerning the dates that benchmark materials became available to offerors, GSA provides the following chronology.

	Availability Date
1. Draft RFP (Section G.6, Benchmark)	May 13, 1981
2. Source Programs for Benchmark tapes	May 21, 1981
3. "Replacement" Source Programs for Benchmark tapes (contained a few annotated changes and additions)	June 19, 1981
4. Final RFP (Section G.6, Benchmark)	June 24, 1981
5. Benchmark Test Package	July 1, 1981
6. Clarification to Benchmark	July 14, 1981

GSA admits that the final benchmark test package was not available 45 days prior to when benchmarks were scheduled at that time (July 27 - September 17). However, GSA argues that it was available as early as possible given the compressed time schedule of the procurement. Also, a substantial portion of the material was available well before July 1. Finally, since the proposal due date was extended twice, offerors in fact had the material more than 45 days in advance of the final time schedule for benchmarks.

Finally, concerning available documentation, GSA states that in addition to the documentation listed in the chronology, all available additional documentation was made available to offerors in a document room at GSA. GSA notes that Westinghouse never visited the room, and therefore has no way of knowing what documentation was available.

In deciding a protest involving benchmarking, our standard of review is the same as for any other evaluation procedure, i.e., the establishment of qualification and testing procedures is a matter within the technical expertise of the cognizant procuring activity. We will not question the use of such procedures unless they are without a reasonable basis. Tymshare, Inc., B-190822, September 5, 1978, 78-2 CPD 167. Thus, if a benchmark is rationally based, its use as an evaluation tool is within the discretion of the procuring agency. Computer Sciences Corporation, 60 Comp. Gen. 113 (1980), 80-2 CPD 424.

In applying this standard, the facts and circumstances of each procurement must be weighed in determining whether an agency's course of action has a reasonable basis. In the present case, the lengthy sole-source history of the requirement, the interim nature of the procurement, and the short timeframe dictated by the expiration date of the present sole-source contract must be considered in deciding whether GSA's actions were reasonable.

There is no question that the benchmark is large and complex both as to the amount of nonstandard software to be converted and the number of operations to be performed. However, the contract requirements include the conversion of a substantial amount of nonstandard software in a short timeframe, and performance of a large and complex workload. GSA has stated that it had neither the time nor the manpower to convert the nonstandard software itself or have it done by separate contract. Nothing in the record indicates otherwise. Further, GSA has stated that the time constraints prevented it from preparing a "make believe" benchmark, and that the benchmark workload represents a fair sample of the workload to be performed (less than 1 percent). The record supports these assertions.

Given the circumstances of the procurement, we cannot say that the size or composition of the benchmark was without a reasonable basis. We agree that the TSP Handbook sections on benchmarking are recommendations and guidelines, not mandatory requirements. Those sections represent the type of benchmark that would be preferable under ordinary conditions. Deviations from recommendations and guidelines are justified where, as here, conditions warrant.

Concerning the time that the benchmark materials were available, it is our opinion that offerors had access to the materials for a sufficient time. Much of the benchmark material was available well before the initial closing date of July 27, 1981, although the benchmark test package was not available until July 1, 1981. More importantly, amendment No. 1, issued on July 16, changed the closing date to August 31. That gave offerors 45 days from that date with the benchmark materials, in addition to the time that the materials had already been available.

Regarding the documentation made available to offerors, Westinghouse has not specified what documentation was unavailable that it needed to run the benchmark. This may be due, in part, to Westinghouse's failure to examine the documents available in GSA's document room. In resolving this protest, we examined the documentation

available in that room and in our opinion it was sufficient.

Westinghouse's final complaint is that GSA failed to conduct or to have conducted a comprehensive conversion study as required by 41 C.F.R. § 1-4.1109-13 (1981). Westinghouse claims that such a study would have been available to offerors through Freedom of Information Act requests and could have provided useful information to offerors. Without such a study available, Westinghouse contends that it was faced with an unknown conversion effort.

GSA admits that it did not perform a conversion study. However, GSA points out that the conversion study is not for the benefit of offerors and is not intended to be disseminated. Rather it is for the benefit of the Government in determining proper management procurement decisions to ensure that Government needs will be met at the lowest overall costs, price and other factors considered. GSA also states that the information relevant to offerors concerning the size and composition of the conversion effort was included in the RFP so that all offerors would be adequately informed. Finally, GSA contends that given the circumstances surrounding the procurement, GSA followed the best procurement strategy for the Government concerning conversion.

While the above provision does mandate a software conversion study, the failure to perform one is not the type of procurement error that affects the validity of the procurement process. It is intended to be an internal document, for the benefit and use of the Government in procurement planning. We disagree with Westinghouse's contention that the conversion was an unknown effort. The relevant information pertaining to conversion was available to offerors.

While we have denied Westinghouse's protest, and upheld GSA's actions as reasonable, we must stress that the particular circumstances surrounding this

procurement were instrumental in our determination. We trust that GSA will make every effort to broaden the competitive base for this requirement when the long range automatic data processing plan is implemented.

Milton J. Socolar

for Comptroller General
of the United States