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**DECISION**



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

**FILE:** B-201853.2

**DATE:** April 16, 1982

**MATTER OF:** Centennial Systems, Inc.

**DIGEST:**

1. A best and final offer cover letter, which states that the "offer is predicated on the following," followed by the statement that "for every \* \* \* system ordered CLIN's 0002 [spare parts kits], 0014 [operator training], 0015 [repair technician training], 0018 [Transportation/Delivery], \* \* \* must be ordered" may reasonably be interpreted as requiring that a spare parts kit be ordered with each word processing system. The protester's unilateral inclusion of an "unevaluated option" for additional spare parts kits beyond the one kit to every four systems specified in the solicitation is harmonious with this interpretation.
2. The Navy was not obligated to seek verification or clarification of a best and final offer where the record shows there was no doubt of the meaning of a condition stated in a cover letter but only as to its effect on the evaluation. Furthermore, a condition stated in a cover letter which would substantially change the agency's obligation to purchase spare parts kits from that stated in the solicitation is tantamount to a change in the offeror's already acceptable technical proposal which could only be confirmed by reopening negotiations. An agency is not required to reopen negotiations for this purpose.
3. A condition unilaterally inserted into a best and final offer which may reasonably be interpreted as requiring the ordering of spare parts kits on a 1 to 1 ratio with word processors may properly be evaluated

on that basis, even though inconsistent with the solicitation's specified 4 to 1 ratio of systems to kits. There was equal competition because offerors knew of the specified 4 to 1 ratio, and the protester's inclusion of a 1 to 1 ratio, which raised its evaluated costs, prejudiced only itself.

Centennial Systems, Inc. (CSI), protests the award of a contract to the Xerox Corporation by the Department of the Navy. This matter is also the subject of litigation in the United States District Court for the District of Columbia, Centennial Systems, Inc. v. United States of America, et al., Civil Action No. 81-2532, which has expressed an interest in our opinion in connection with the court's consideration of the merits of CSI's complaint. After a review of the record, including the pleadings and exhibits filed by the parties with the court and a transcript of a hearing held on November 2, 1981, on CSI's motion for a preliminary injunction, we deny CSI's protest.

In order to expedite our consideration of this matter, we have segregated it from a companion protest by NBI, Inc. (B-201853.3), against the same procurement. Our consideration of this matter is limited solely to the questions raised by CSI.

The Navy initiated this procurement by issuing a request for proposals (RFP) for an indefinite quantity contract for the furnishing of word processing equipment, including hardware, software, training, and vendor support, for use both aboard Navy vessels and at shore installations worldwide. Under the evaluation criteria in the RFP, the award of the contract was to be made to the lowest cost, technically acceptable offeror. By letter, the Navy requested technically acceptable offerors, including CSI, to submit best and final offers. This letter stated that the Government was anticipating the receipt of revised price proposals only and that while offerors could revise their technical proposals, the Government contemplated no further discussions and any unacceptable revision could lead to rejection of the offeror's already acceptable technical proposal.

Offerors were to take the RFP's liquidated damages provisions into account in formulating their best and final offers.

Best and final offers were to be submitted on a preprinted form which identified as separate contract line items (CLIN's) the elements of equipment, services, and support which vendors would be expected to provide together with an estimated quantity for each CLIN. The form provided two blanks in which offerors were to insert their unit price for each CLIN and an extended total based on the estimated quantity stated on the form. There was no space on the form for total price. The CLIN's and quantities relevant here were as follows:

CLIN 0001	Word Processing Equipment	2,000 units
CLIN 0002	Shipboard Spare Parts Kit	500 units
CLIN 0012	Cost of Overseas Packaging	1 unit
CLIN 0014	Initial Operator Training	400 Sessions over 2 years
CLIN 0015	Initial Repair Technician Training	400 Sessions over 2 years
CLIN 0018	Installation (Delivery)	
CLIN 0020	Installation/Reinstallation	

The RFP stated that the cost evaluation would be based on these quantities and also stated that the Navy would assume one spare parts kit (CLIN 0002) for four machines (CLIN 0001) for evaluation purposes. The Navy had cautioned offerors in negotiations not to alter the form. The CSI officer responsible for this procurement testified during the November 2, 1981, hearing, to which we referred above, that CSI had been advised during negotiations that it was the Navy's view that the Navy's only obligation under this contract would be to order the stipulated minimum quantity of 260 word processors and that the Navy might not order any other CLIN which the Navy felt was overpriced.

In response to the Navy's request for a best and final offer, CSI provided a completed price form accompanied by a cover letter, an attached sheet of

"unevaluated options," and an alternate offer. (The District Court has issued a protective order covering CSI's prices; we therefore will not disclose them.) CSI's cover letter stated in part:

"Because of the interaction between contract support requirements for each unit, our offer is predicated on the following.

"For every domestic system ordered, CLIN's 0002 [Spare Parts Kit], 0014, 0015, 0018 and 0020 as a minimum must be ordered.

"For every foreign system ordered, CLIN's 0002 [Spare Parts Kit], 0012, 0014, 0015, 0018 and 0020 as a minimum must be ordered."

CSI's "unevaluated options" included an item for "Spare Kits--Additional" at the same price for kits listed on the price form.

CSI's best and final offer was first evaluated by a Lieutenant Lee who initially scanned CSI's cover letter and then computed CSI's total offer on the basis of 2,000 machines and 500 spare parts kits in accordance with the preprinted price form. Lieutenant Lee then reread CSI's cover letter and decided that the text quoted above would require the Navy to order a spare parts kit for each system ordered. Lieutenant Lee therefore recomputed CSI's offer on the basis of 2,000 systems and 2,000 spare parts kits. Lieutenant Lee verified his understanding of CSI's cover letter by showing it to other Navy personnel whose understanding of the letter paralleled Lieutenant Lee's. The effect of Lieutenant Lee's recomputation was to displace CSI as the low offeror. The contract was awarded to the Xerox Corporation.

CSI contends that its offer should have been evaluated on the basis of 2,000 machines and 500 spare parts kits. CSI objects to the Navy's evaluation of its offer on several grounds. Broadly stated, these are: (1) The Navy's interpretation of CSI's cover letter was unreasonable; (2) The Navy should have

recognized that CSI had made an error and sought verification of CSI's offer; and (3) The Navy's evaluation of CSI's offer represented an improper departure from the evaluation criteria in the solicitation.

#### 1. Unreasonable Interpretation

CSI asserts that the statements in its best and final cover letter were merely intended to confirm CSI's understanding that the Navy would be purchasing sufficient support for the processors because of the liquidated damages provisions in the solicitation and contends that the Navy's interpretation of the letter lacked any reasonable basis. In support of this argument, CSI contends that the Navy's reading of the letter would also have required the Navy to order a training session for both operators and technicians (CLIN's 0014 and 0015) for each machine. CSI states that even the Navy recognized this as an absurd result because it did not evaluate CSI on the basis of 2,000 training sessions. CSI also contends that the Navy's interpretation is wholly inconsistent with both CSI's price sheet, which clearly showed 500 spare parts kits, with no change, and with the history of negotiations, during which CSI "never took exception" to the 4 to 1 ratio of machines to spares. We find no merit in CSI's contentions.

Initially, we point out that both the Navy and CSI contend that the history of negotiations on this procurement supports their respective positions based on different recollections of what transpired. The Navy, for instance, contends that a CSI representative championed the cause of a 1 to 1 ratio of machines to spare parts kits during the negotiations and the Navy had to insist on the 4 to 1 ratio in the RFP. CSI, on the other hand, recalls no such effort by any of its representatives and suggests instead that the subject of spare parts kits was discussed only briefly and that CSI "never took exception" to the 4 to 1 ratio. Neither party has offered any convincing contemporaneous evidence upon which we might resolve this dispute. However, we conclude that whether or not CSI may have advocated or just mentioned a 1 to 1 ratio, CSI never enthusiastically embraced the specified 4 to 1 ratio of machines to parts kits during the negotiations.

Although we agree with CSI that all of the documents comprising CSI's best and final offer must be read together, we do not agree that the Navy's interpretation of the cover letter is inconsistent with the rest of that offer. We note particularly the harmony between the "For every \* \* \* system ordered, CLIN 0002 \* \* \* must be ordered" language of the cover letter, the quantity of 500 spare parts kits reflected on the price sheet, and the "Spares Kits--Additional" included with CSI's "unevaluated options" at the same price that is quoted on CSI's price sheet. We conclude that these various elements of CSI's best and final offer, taken together, may reasonably be interpreted to mean that CLIN 0002 (spare parts) must be ordered for each machine, with the prices for the first 500 reflected on the price sheet and the price for quantities above 500 shown on CSI's "unevaluated options" list. Furthermore, this interpretation is consistent with the "Because of the interaction between contract support requirements for each unit" language of CSI's cover letter which suggests a response by CSI to a statement in the RFP that "The Navy will not accept 'unavailability due to inadequate spare parts' as a valid reason for downtime" for the purpose of assessing liquidated damages.

Moreover, CSI's contention that the Navy's interpretation is fatally flawed because the Navy treated CSI's reference to the spare parts kits (CLIN 0002) and training (CLIN's 0014 and 0015) differently ignores the fundamental distinctions between these items. For instance, both in the solicitation and throughout the procurement process, the quantity of spare parts kits was directly linked to the quantity of machines in a fixed ratio--while the number of training sessions is substantially independent of the quantity of machines. Also, CSI elected to quote a price for additional spare parts kits beyond the 500 specified in the RFP but did not quote a price for any additional training sessions. Given this combination of factors, we think CSI's best and final offer may reasonably be read as intended to change only the ratio of machines to spare parts kits.

In sum, we think the Navy's interpretation of CSI's best and final offer was reasonable.

## 2. Verification; Notice of Error

CSI alleges that Navy personnel were either uncertain of the meaning of or should have recognized conflicts in CSI's best and final offer. CSI cites a number of our decisions which stand for the general proposition that questions concerning an offeror's best and final offer should be resolved through contacts with the vendor for verification or clarification of the offer. See, for instance, Dynalelectron Corporation, B-199741, July 31, 1981, 81-2 CPD 70; Cassidy Cleaning, Inc., B-194701, September 28, 1979, 79-2 CPD 229; or General Kinetics, B-189359, March 24, 1978, 78-1 CPD 231. CSI asserts that under these decisions, the Navy had a duty to seek verification of CSI's offer before changing CSI's prices. CSI points out that the Navy did seek verification of Xerox's offer--because the difference between Xerox's evaluated price and the next lower offer was sufficiently large that the Navy considered notice of a possible mistake--and contends that the Navy should have afforded CSI an equal opportunity before changing CSI's low offer. The Navy contends that the cases which CSI cites are inapplicable here because the meaning of CSI's cover letter was clear.

CSI relies in large degree on a recitation of events surrounding the evaluation of its best and final offer to support the conclusion that the Navy harbored uncertainties concerning the meaning of CSI's best and final offer cover letter. CSI notes, for instance, that Lieutenant Lee first evaluated CSI's offer on the basis of 500 spare parts kits--the quantity specified in the price sheet--before returning to CSI's cover letter and deciding to change the quantity of spare parts kits to 2,000 for evaluation purposes. Lieutenant Lee also showed CSI's cover letter to Mr. Walter Mackie, a contracting officer's technical representative, whose understanding of CSI's letter was the same as Lieutenant Lee's, but who inquired whether CSI's offer could be evaluated on the basis of 2,000 kits. Lieutenant Lee sought and obtained confirmation of his evaluation from Ms. Carolyn Williams, a Navy contracting officer. Shortly after these events occurred, Lieutenant Lee departed for a new duty station and his evaluation role was assumed by Ms. Sally Faulkner who verified the best and final

offer computations. CSI points to the fact that Ms. Faulkner made several erasures and corrections on the Navy's cost comparison sheets as evidence that Ms. Faulkner had doubts about the meaning of CSI's cover letter. CSI contends that these facts clearly demonstrate that Navy personnel were uncertain of the meaning of CSI's cover letter.

CSI also points out that the District Court, in a memorandum opinion filed on November 10, 1981, with the court's order denying CSI's motion for a preliminary injunction, stated that CSI's "best and final offer presented the Navy with conflicting information contained in the cover letter and the price schedule." CSI contends that this conclusion by the court amounts to a rejection of the Navy's assertion of the "absolute clarity" of CSI's cover letter.

We agree generally with the Navy's position. At the outset, although we concur in the court's expression of an apparent conflict between CSI's price sheet and its cover letter with respect to the quantity of spare parts kits that the Navy might be required to obtain, this conflict may be resolved by referring to CSI's "unevaluated option" for additional spare parts kits beyond the 500 shown on the price sheet. As we suggested in our earlier discussion of the Navy's interpretation of CSI's cover letter, the Navy's view of CSI's best and final offer effectively harmonizes these three elements--the price sheet, the cover letter, and CSI's "unevaluated options"--and eliminates the apparent conflicts in CSI's offer. Furthermore, on the record before us, we cannot agree that the various events connected with the evaluation of CSI's offer demonstrate that the Navy was uncertain of the meaning of CSI's cover letter. Although we agree with CSI that there seems to have been some question concerning the evaluation of CSI's offer, it appears to have been confined to the single issue of the propriety of evaluating CSI's offer on the basis of 2,000 spare parts kits rather than the 500 specified in the solicitation. We find no persuasive evidence that any Navy personnel ever differed with or questioned Lieutenant Lee's interpretation that CSI's cover letter would require the Navy to order a spare parts kit for each word processor.

In sum, we do not find that the Navy should have been on notice of any potential error in CSI's offer requiring verification. As for the Xerox confirmation, this was specifically permitted by Defense Acquisition Regulation § 3-805.5 (Defense Acquisition Circular No. 76-17, September 1, 1978), Mil-Air Engines & Cylinders, Inc., B-203659, October 26, 1981, 81-2 CPD 341.

Furthermore, we do not agree with CSI's premise that this is a simple matter of price verification. Clarification or verification contemplates an inquiry to an offeror for the sole purpose of eliminating minor uncertainties or irregularities in a proposal; if, however, the inquiry is essential to determine the acceptability of the proposal or affords the offeror an opportunity to change its proposal, then what is occurring is not verification or clarification, but the conduct of negotiations. See ABT Associates, Inc., B-196365, May 27, 1980, 80-1 CPD 262. We have held that an agency is not required to reopen negotiations to remedy defects introduced into a previously acceptable technical proposal by a best and final offer. RCA Service Company, B-197752, June 11, 1980, 80-1 CPD 407; Logicon, Inc., B-196105, March 25, 1980, 80-1 CPD 218; H.G. Peters & Co., B-189552, December 8, 1977, 77-2 CPD 443; Decision Sciences Corp., B-184438, August 3, 1976, 76-2 CPD 114; Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15.

The Navy reasonably interpreted CSI's letter as a substantial change to the Navy's obligation to order spare parts from that contemplated by the solicitation. Despite CSI's suggestion that this only affects CSI's bottom line price, we think that a change of this magnitude in the Navy's obligation to order spare parts is tantamount to a modification of CSI's technical proposal which would have required the reopening of negotiations to change. As we just noted, the Navy was not required to reopen negotiations for this purpose.

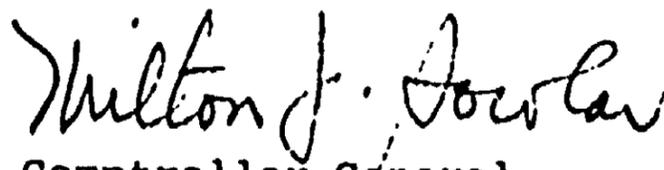
### 3. Change in Evaluation Criteria

CSI cites numerous decisions by our Office in which we have held that agencies must adhere to the evaluation scheme announced in the solicitation and

that if an agency either changes its requirements or the evaluation scheme, or decides to accept a proposal which deviates from the requirements of the solicitation, to the prejudice of any offeror, then all offerors must be advised of the change and the competition reopened so that all offerors may compete on an equal basis. See AAA Engineering and Drafting, Inc., B-202140, July 7, 1981, 81-2 CPD 16; Genasys Corporation, 56 Comp. Gen. 836 (1977), 77-2 CPD 60; Federal Data Corporation, B-194709, July 14, 1981, 81-2 CPD 28. CSI contends that the Navy's evaluation of CSI on the basis of 2,000 spare parts kits instead of the estimated 500 kits specified in the price sheet was an unannounced and prejudicial change in the evaluation criteria which requires that the contract with Xerox be terminated and the competition reopened. We disagree.

As CSI suggests, we will require that a competition be reopened when offerors have been denied the opportunity to compete on an equal basis. This infirmity is not present here, however. Certainly both Xerox and CSI knew that the Navy would be evaluating best and final cost proposals on the basis of one spare parts kit for every four word processors, or just 500 spare parts kits for an estimated 2,000 word processors, which is clearly stated in the solicitation. Consequently, at least as to this point, we believe the competition was on an equal basis. To the extent that there may have been an "unannounced and prejudicial change in the evaluation criteria," we think it was an appropriate response by the Navy to the 1 for 1 condition which CSI unilaterally imposed in its best and final offer and which, we note, prejudiced no other offeror. We find no impropriety here.

CSI's protest is denied.

for   
Comptroller General  
of the United States



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

B-201853.2

April 16, 1982

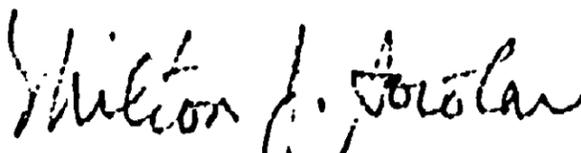
The Honorable Norma Holloway Johnson  
United States District Judge  
United States District Court  
for the District of Columbia

Dear Judge Johnson:

We refer to your interest in our decision on a protest filed by Centennial Systems, Inc. (CSI). This matter is also the subject of litigation before the court, Centennial Systems, Inc. v. United States, Civil Action No. 81-2532.

Enclosed is a copy of our decision of today denying CSI's protest. Copies of our decision have been furnished to the parties and the Department of the Navy.

Sincerely yours,

*for*   
Comptroller General  
of the United States

Enclosure