

DECISION



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

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FILE: B-204084, B-204085 **DATE:** May 3, 1982
B-204085.3, B-204085.6

MATTER OF: Remington Rand Corporation; SCM
Corporation; Olivetti Corporation

DIGEST:

1. GAO finds that the protester's contention--that data gathered during GSA's typewriter testing program is invalid--is without merit because (1) the protester's records correspond to GSA's records, (2) the other firms used regular and comparable service technicians, (3) in the circumstances, the sample size was not shown to be unreasonably small and the sample selection procedure was not improper, and (4) GSA did not cause key top failures on the protester's typewriters by improperly adjusting the equipment.
2. GAO concludes that GSA's determination not to consider historical service data as a factor in the solicitations' life-cycle-cost formula is not an abuse of discretion because there is no showing that such data is reasonably available, reliable, and readily comparable among vendors.
3. Where adequate competition and reasonable prices have been obtained, GAO decides that GSA had a reasonable basis to restrict competition in two typewriter procurements to models tested by GSA in advance of the procurements.
4. Where an assertion--that GSA promised the protester that participation in life-cycle-cost program would not be a prerequisite for future procurements--is unsupported and is categorically denied by GSA, GAO concludes that the protester has not carried its burden of proof.
5. Protest--that (1) GSA intends to limit future typewriter procurements to models previously tested and (2) GSA did not permit substitution of the protester's model 94C for its model 93C--is premature since there is no evidence that GSA made such determinations.

6. Contention--that the life-cycle-cost formula's residual value factor is too speculative to be meaningful and is designed to unfairly favor one vendor--is without merit because residual value is a necessary element of the formula, GSA's approach to determining it is objective and reasonable, and GAO finds no unfair advantage to any vendor by the inclusion of the residual value factor.
7. GAO concludes that pre-bid-opening public disclosure of each participating vendor's operating-cost data and assigned residual value was not required for intelligent bidding since each bidder knew its own information. Moreover, post-bid-opening disclosure of the successful bidder's information will permit each bidder to determine whether it should have been considered the low bidder under the IFBs' award scheme.

Remington Rand Corporation (Remington), SCM Corporation, and Olivetti Corporation protest against any award under invitations for bid (IFB) Nos. FCGE-Y7-75195-A (200 units for the Social Security Administration) and FCGE-Y7-75198-A (indefinite quantity for other agencies during fiscal year 1982) issued by the General Services Administration (GSA) for certain single-element, electric typewriters. Under both IFBs, GSA will select the awardee by using a life-cycle-cost formula--a bidder's cost per typewriter is determined by adding the typewriter's bid price to GSA's predetermined operating cost for that typewriter (obtained from testing performed by GSA) and subtracting the residual value for that typewriter (determined by GSA prior to the scheduled bid opening).

Remington contends that the testing procedures and results used by GSA to obtain the operating-cost element of the formula unfairly prejudice Remington, and that GSA's testing alone does not reflect actual operating costs; thus, the IFBs' award scheme will not result in savings to the Government over the current multiple-award method of procurement. SCM contends that the IFBs' provisions limiting the competition to only those typewriters

tested by GSA unfairly prevent SCM from participating in the procurement and possibly preclude the Government from receiving a lower priced typewriter. Olivetti contends that (1) since GSA advised Olivetti that participation in the GSA testing program would not be a prerequisite for eligibility to compete in future typewriter procurements, GSA is estopped from conducting these procurements; (2) the prior testing requirement unfairly precludes Olivetti from offering a new untested model; (3) the residual value component of the IFBs' formula to determine the awardee is meaningless and should be deleted; and (4) the lump-sum operating cost of each typewriter obtained from the GSA testing should be released in advance of bid opening so that bidders could compete on an intelligent basis.

We find that the protests are without merit.

By letter dated August 14, 1980, GSA notified suppliers of single-element, electric typewriters of the initiation of a life-cycle-cost testing program. The letter stated that the purpose of the program was to obtain cost data for specific typewriters, which the Government would be procuring in the future. The letter also stated that the testing program was independent of any procurement or solicitation and its sole purpose was to establish, in advance, those formula elements, which must be determined through life-cycle testing. The letter notified suppliers that in order to bid on future life-cycle-cost procurements, a bidder must have first qualified its models under this testing program. Remington and Olivetti participated in the testing program, which ended on April 30, 1981. When the testing began, SCM did not supply a single-element, electric typewriter, so SCM did not participate in the program; however, SCM now supplies such a typewriter but, under the terms of the IFBs, SCM cannot participate in the competition because its typewriter was not tested.

For a number of years, GSA satisfied a large portion of the Government's requirement for this typewriter through multiple-award schedule contracts based on initial purchase price without regard to life-cycle costs. In an effort to save money, GSA initiated the single-award IFBs involved here utilizing a life-cycle-cost award scheme.

I. Remington's Protest

Regarding GSA's testing program, Remington first contends that the data gathered by GSA during the testing differs from the data contained in the service records of Remington's dealers used to service the typewriters during the testing. Remington bases its contention on its comparison of the typewriter failures noted by GSA and the record of actual service calls computed by Remington's dealers performing the service. Remington finds no correlation between the alleged failures noted by GSA and its dealers' service records. Remington also contends that GSA's records reflect typewriter failures, which occurred after the testing cycle was completed. Remington concludes that GSA's data collection and other errors in the administration of the test render the entire procedure invalid.

Second, Remington contends that the method of service conducted by the participating suppliers was unrepresentative of actual field conditions. Remington explains that the level of technical expertise or the service technician can significantly impact the time required to service the typewriter. To approximate actual field conditions, Remington states that it did not use manufacturing headquarters personnel with particular and sophisticated expertise; instead, Remington used its dealers' technical service representatives in the Washington area. Remington suggests that other suppliers may have used manufacturing headquarters personnel, which gave them an unfair advantage and invalidated the results. Remington states that a high number of repeat service calls on Remington typewriters could have been avoided if the initial call was made by a headquarters maintenance technician. Remington requests the opportunity to have its typewriters retested using headquarters technicians to make the service calls.

Third, Remington contends that the procedure GSA used to select the typewriters to be tested is inherently unreliable statistically. GSA selected only four typewriters from one lot at one production facility; Remington suggests that GSA should have selected a larger number of typewriters from both of Remington's production facilities on a serial number basis. Remington argues that a sample of four out of 130,000 typewriters (0.003 percent) is

unreliable and unrepresentative. To support its argument, Remington points to variations in the amount of service required on each of its typewriters during testing.

Fourth, Remington states that numerous service calls were required because there were broken key tops on Remington's typewriters. Remington contends that these failures were caused by GSA's improper setting of the robot testing equipment. Remington explains that its typewriter has the keyboard with the greatest angle; thus, it is likely that the robots were improperly adjusted by GSA. Remington also states that historical data does not corroborate the high degree of key top breakage revealed in the GSA testing.

In response to Remington's contentions regarding GSA's testing, GSA first argues that Remington's protest should be dismissed, as untimely, because on August 14, 1980, Remington knew how GSA intended to conduct the tests and on April 30, 1981, Remington knew what information GSA had obtained from the test; yet, Remington did not protest to either GSA or GAO until July 17, 1981. Second, GSA argues that Remington's protest should be dismissed since Remington presented its protest on a piecemeal basis by not filing the details requested by GAO until August 27, 1981.

We find that Remington's protests are timely under our Bid Protest Procedures because our procedures apply to specific procurements, as compared with hypothetical questions. Under the express terms of GSA's August 14, 1980, letter, the testing program did not concern any specific procurement. Thus, Remington had nothing to protest to our Office until GSA issued these IFBs. Since Remington's protests were filed here prior to the bid opening dates (July 28 and August 4, 1981), the protests are timely. Further, as GSA notes, our Office requested Remington to file the details of its protest by August 26, 1981; however, on August 26, 1981, Remington advised our Office the details were enroute and we received them the next day. In view of the fact that the date for receipt of details was an intermediate deadline, we do not find, in the circumstances, that the extra day constitutes piecemeal presentation of the issues such that dismissal is warranted.

Regarding Remington's contention concerning GSA's test data and the service records of Remington's dealers, GSA states that, in fact, there is a one-to-one correlation between GSA's reported defects and Remington's records and that GSA did not consider defects which occurred after the testing cycle was completed. The record contains GSA's detailed analysis of each reported defect and each receipt concerning the related service call, together with the service time reported by the dealer and the service time recorded by GSA. The difference in total service time reported by GSA and the Remington dealers is 55 minutes out of 3,000 total minutes, or a difference of 1.8 percent. GSA's records showed Remington used less service time than Remington's records showed. GSA attributes the minor difference to the timing methods used by GSA and Remington's dealers. GSA explains that only actual service time plus instruction time was counted by GSA but Remington's dealers may have included travel time in the service time.

GSA also explains that it extended the test beyond the test period to ensure that the test machines were in working order at the end of the test period. GSA states that it disregarded machine errors which occurred outside the designated test period.

We note that Remington offers no rebuttal to GSA's explanations. We find the detail and analysis of the data presented by GSA to be persuasive. We can see a direct correlation between GSA's data and Remington's dealers' service records and we find that the 1.8-percent difference is de minimus. Further, we have no basis to conclude that GSA considered test errors which occurred beyond the testing cycle. Thus, the first aspect of Remington's protest is without merit.

Concerning Remington's contention regarding other vendors using headquarters personnel to service the typewriters, GSA states that if the service provided by Remington's dealers was inferior to that provided by other participants, then Remington must be held responsible because GSA permitted each participant to select the personnel to service its typewriters. GSA also states that Remington's dealers provided service that was comparable to the service offered by most other participants.

GSA explains that three participants have Washington, D.C., service offices and they used from two to four different persons to perform the service; all of these service technicians were part of each company's permanent Washington staff. The other participants used independent dealers to perform the service. GSA also explains that only three of Remington's service calls could be considered repeat because the time interval between service calls in those three cases was a day or less; whereas, the interval between the other ranged from 1.6 to 6 months of GSA's 10-year test cycle.

In our view, Remington's concern--that the test results were unrealistic because other participants may have used unusually high skilled service technicians from the manufacturer's headquarters--is without foundation. The record shows that all participants used their regular servicing sources for the Washington, D.C., area. Further, in our view, Remington's request--that the testing be redone so that Remington could use more skilled service technicians to lower the service time on repeat calls--must be denied because (1) Remington had the opportunity to select the service source for the testing, (2) Remington's source was comparable to the other participants' sources, and (3) Remington's request could produce unrealistic results. Thus, we find this aspect of Remington's protest to be without merit.

Regarding GSA's selection of the typewriters to be tested, GSA states that it assumed that there are no significant differences in identical models offered by manufacturers. GSA contends that its quality assurance specialist selected a sample from a serial number list with the aid of a random number table. The samples were marked and sealed to be certain that no modifications were made that could bias the test. Thus, GSA explains that the samples had to be selected from those in the warehouse at that time so that the vendor would not be required to move the sample without adequate supervision. GSA notes that since Remington sells its typewriters--made at different sites, on different production lines, and at different times--for the same price, Remington must assume that they are all equivalent.

In our view, GSA's determination regarding the number of typewriters to be tested and manner of their selection represents GSA's assessment of how its minimum needs can most appropriately be satisfied. Our Office will not disturb such a determination unless there is a clear showing that the determination is without a reasonable basis. See Inverscience Systems, Inc., B-205458, March 9, 1982, 82-1 CPD _____. Here, while four typewriters for each vendor are a small percentage of overall production and while there were variations in the amount of service required by each of Remington's typewriters, we are not persuaded that these facts present a clear showing that GSA's determination is without a reasonable basis. We recognize that practical constraints (like the time available for typewriter testing, the space available in GSA's test facility, the amount of test equipment, the number of typewriters that manufacturers are willing to donate for testing) restrict the number of typewriters that could be tested. We note that, with regard to these test elements, all vendors were treated equally and we find no actual prejudice to Remington regarding the test results. Consequently, we conclude that this aspect of Remington's protest is without merit.

Regarding the broken key top problem, GSA contends that the setting of the typing robot was not the cause of the five key top failures. GSA explains that the slope and key arrangement of the Remington model 101 are basically the same as the other brands tested and that some other brands had key top failures. GSA notes that typewriter repair shops routinely stock replacement key tops, indicating that such failures are not uncommon. GSA also explains that the test stands used were adjusted to accommodate the particular typewriter being tested. Lastly, GSA suggests that, since Remington has only 3 years of historical data on its model 101, that data does not address possible key top failures after 3 years of usage.

We note that the five failures occurred at test times corresponding to 1.5, 3.9, 4.8, 5.3, and 6.4 years. Thus, data on 3 years of usage would not be relevant to possible failures after 3 years. After considering Remington's position and GSA's response, we have no basis to conclude that GSA caused the key top failures.

Aside from Remington's objections to the GSA tests, Remington also objects to the operating-cost element of the formula used in both IFBs. Remington notes that the formula relies exclusively on the test data to obtain operating cost. Remington contends that a better indicator of the actual operating cost of a particular product is the historical record in the field of the typewriter's operating performance. Remington states that GSA must use historical data to assure that the typewriters being purchased have a history of quick service response and a good record of operation under actual field conditions. Remington argues that the fact one vendor may have a small dealer network must be considered; the test data does not reflect that service may be performed by a dealer 30 to 60 miles away from the using agency, which could result in substantial downtime and service delays. Remington concludes that GSA's failure to consider historical data is an abuse of discretion.

In response, GSA contends that the use of historical data was not feasible or essential because: (1) of the models tested, only the IBM Selectric II model has true 10-year historical data; (2) the most complete historical data in existence is proprietary information in the possession of the vendors and most vendors would not release the information; (3) there is no common comparison basis for existing data; and (4) using only complete historical data would restrict the competition to older and possibly obsolete models, since no comparable data exists for newer typewriters. Moreover, GSA contends that the data gathered from GSA's testing program is more reliable than data now in the possession of the vendors because there is no assurance that the vendors' data can be adjusted to reflect differences in the way the vendors gathered, transmitted, compiled, and filed the information.

Remington has not persuaded our Office that historical service data is reasonably available, reliable, and readily comparable to permit its use in the operating-cost formula. Further, Remington has not persuaded our Office that GSA's determination--that the operating-cost element is adequate without such historical data--constitutes an abuse of discretion. Finally, the requirement for such data for the full 10-year life of a proposed typewriter would exclude most vendors, including Remington, from the competition and,

in our view, unreasonably limit the competition to older models. Thus, this aspect of Remington's protest is without merit.

II. SCM's Protest

The IFBs restricted competition to the typewriter models tested by GSA. As noted, when the tests began, SCM did not manufacture a single-element, electric typewriter. Subsequently, SCM began manufacturing (through acquisition) the type of typewriter being procured but, under the terms of the IFBs, SCM could not submit a bid because its model was not tested by GSA. SCM notes that no current testing is ongoing and no future testing is scheduled. By excluding SCM's typewriter, SCM contends that GSA is prevented from receiving the best price.

GSA responds that SCM had failed to demonstrate a clear abuse of discretion in GSA's determination that the life-cycle-cost format (which excludes all untested typewriters, like SCM's) is the best method to satisfy the Government's needs. GSA emphasizes that it is concerned here with only these two IFBs and that no determination has been made regarding how single-element, electric typewriters will be procured in the future.

GSA notes that, by using the current format, the Government has received bid prices 15.8 percent (definite quantity IFB) and 13.3 percent (indefinite quantity IFB) below the current multiple-award schedule prices.

We note that GSA obtained adequate competition and reasonable bid prices on both procurements. In our view, SCM's ineligibility to participate is not a sufficient basis to interfere with the procurements, particularly in view of SCM's late entry into the market. We find that GSA's purpose of the life-cycle-cost format--to promote cost savings--is a legitimate minimum need of the Government. The determination of how best to satisfy the Government's requirements is primarily the responsibility of the procuring agency within the ambit of sound administrative discretion. In these matters, we do not substitute our judgment for that of the agency unless there is a clear showing of abuse of discretion. 48 Comp. Gen. 62 (1965). Here, SCM has made no showing of abuse of discretion by GSA. Accordingly, we deny SCM's protest.

III. Olivetti's Protest

Olivetti first contends that GSA specifically promised Olivetti that participation in the testing program would not be made a prerequisite for future procurements. Thus, Olivetti concludes that GSA is estopped from proceeding with the procurements.

GSA specifically denies that any such promise was made.

We note that Olivetti has offered no details concerning the specific promise. Olivetti has not suggested who at GSA made the promise, when it was made, or to whom at Olivetti the promise was made. Olivetti has named no witnesses and has offered no affidavits to support its contention.

Where the record contains only the protester's unsupported assertion and the agency's categorical denial, we must conclude that the protester has not carried its burden of proof. See, e.g., Courier-Citizen Company, B-192899, May 9, 1979, 79-1 CPD 323. Thus, we find this aspect of Olivetti's protest to be unpersuasive.

Second, Olivetti contends that, by not providing for future testing, GSA intends to limit all future electric typewriter procurement to the models in the first GSA tests. Olivetti states that GSA did not notify Olivetti of the importance of the testing program so that Olivetti could have submitted all of its models for testing.

Regarding future procurements, as noted, GSA has not announced what procedure will be employed to qualify models other than those tested. Thus, in this regard, Olivetti's protest is premature.

Third, Olivetti contends that GSA unfairly refused to permit Olivetti to bid based on Olivetti's untested model 94C, which Olivetti states is the same as Olivetti's model 93C (which was tested) with the optional additional feature of variable pitch level.

In response, GSA notes that Olivetti did not submit its model 94C for testing. GSA also notes that the life-cycle-cost qualification program contemplates acceptable model changes and production line changes but at no time has Olivetti explained to GSA why there was a necessity to change model numbers without materially changing the model.

The record in this protest contains Olivetti's unsupported assertion that it should be permitted to bid based on the model 94C and GSA's explanation that Olivetti did not follow the procedures related to model and production line changes. In sum, the record does not confirm the existence of a dispute on this point between GSA and Olivetti. To the extent that Olivetti would like our Office to conclude that the model 94C is an acceptable substitute for the model 93C, Olivetti has provided nothing to support its position. To the extent that Olivetti is contending that the IFBs should not have barred bids based on untested models, Olivetti's protest is denied on essentially the same basis that SCM's protest is denied. Thus, we find this aspect of Olivetti's protest to be without merit.

Fourth, Olivetti contends that the residual value factor in the IFBs' life-cycle-cost formula is designed to give an unfair advantage to a specific manufacturer and the residual value factor is without evidentiary support. Residual value is the estimated value of the typewriter 10 years after purchase. Olivetti states that, 3 years from now, most manufacturers do not expect to be manufacturing an electromechanical typewriter like the one being procured. Olivetti contends that, in these procurements, residual value cannot be determined.

In response, GSA explains that the residual value is essentially a trade-in value after 10 years and GSA determined the residual value of each tested model on an objective basis using industry publications. GSA denies that it is intended to give an advantage to anyone. GSA states that residual value is difficult to ascertain but it is an essential and significant part of the life-cycle-cost formula.

In reply, Olivetti notes that only IBM's 10-year trade-in value is listed for this type of typewriter and that attempting to estimate residual value for other vendors is very difficult. Olivetti believes that currently IBM's used typewriters are worth more than other vendors' models but there is no assurance that 10 years from now the situation will be the same.

We have noted that the purpose of formal advertising statutes is to give bidders an equal opportunity to compete for Government contracts, to prevent unjust favoritism, collusion, or fraud, and to secure for the Government the benefits flowing from free and unrestricted competition. Competition on an equal basis requires that the invitation for bids must be sufficiently definite to permit preparation and evaluation of bids on a common basis. In those situations, where bid evaluation factors, in addition to bid price, can be described and evaluated with reasonable certainty we have held that they properly may be included in the bid evaluation formulas. See generally, B-151177, June 17, 1963. Conversely, when those factors cannot be described and evaluated with reasonable certainty, we have held that the bid evaluation formula should not contain those factors. See, e.g., 33 Comp. Gen. 108 (1953).

In our view, residual value is a proper factor to be considered in the IFBs' life-cycle-cost formula; it simply is a cost element that logically cannot be ignored despite the observed difficulty in determining what the precise residual value of each tested model is. Determining residual value is the primary responsibility of GSA and GSA had an objective approach to the task, which we do not find to be unreasonable. We find no unfair advantage to IBM or unfair prejudice to Olivetti even if its speculation--that the residual value of Olivetti's product assigned by GSA is less than IBM's--is correct.

Fifth, Olivetti contends that GSA's failure to publicly disclose, prior to bid opening, the residual value and the lump-sum, operating data assigned to each model tested denied Olivetti information needed to make an intelligent bid and made it impossible for any offeror to determine whether an award will be made in conformance with GSA's announced plan.

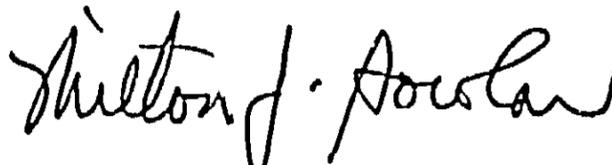
In response, GSA contends that the requested information is proprietary and only one firm has consented (conditionally) to its release. GSA states that the data of the successful bidder will be made public upon award. GSA notes that since each vendor is aware of its test data and assigned residual value, each bidder can determine whether its bid price should have been considered low under the IFBs' formula.

In our view, Olivetti's concern about the award's conformance with the announced plan is adequately addressed by GSA's postaward release of the successful bidder's data, since each bidder will then have enough information to determine whether it should have been considered the low bidder under the IFBs' formula. Regarding release of the requested data prior to bid opening, we are not persuaded that intelligent bidding was foreclosed without public release of the information. In our view, each vendor knew enough about its test results, the competition's multiple-award schedule typewriter prices, and some vendors' likely residual value to submit an intelligent bid based on the IFBs' award scheme.

Further, our decision at 36 Comp. Gen. 380 (1956) provides support for GSA's view that release of the data was not required. There, the IFB disclosed that the contracting officer would evaluate bids by adding an estimated cost for maintenance over an assumed 15 years of service of the microwave radio communications system being procured. The maintenance cost estimate was prepared after bid opening. We noted that, at a minimum, the basis of bid evaluation must be stated with sufficient clarity and exactness to inform each bidder prior to bid opening of objectively determinable factors--make known to or which can be ascertained by the bidder at the time its bid is being prepared--from which the bidder may estimate within reasonable limits the effect of the application of such evaluation factors on its bid in relation to other possible bids. We held that--while the basis of evaluation could have been stated more specifically--sufficient data was available to permit each bidder to estimate the maintenance cost of its system for 15 years and each bidder could make at least a reasonable estimate of the effect of the factor on its bid in relation to the other bidders' systems.

Here, each bidder knew, in advance of bid opening, the precise amount that GSA would use as the operating cost component of the formula to evaluate its bid. Further, the elements of the operating cost formula was explicitly disclosed in the IFB. Thus, since the bidders in the instant matter knew much more than the bidders in 36 Comp. Gen. 380, we have no basis to object to GSA's withholding of the requested data on other bidders. Accordingly, we find that this aspect of Olivetti's protest is without merit.

Protests denied.



Acting Comptroller General
of the United States