

DECISION



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

119584

FILE: B-206285.2

DATE: September 28, 1982

MATTER OF: NBI, Inc.

DIGEST:

1. Although the contracting agency did not issue a formal amendment to the RFP specifying that it would accept a stand-alone word processing system, the award need not be disturbed because of this procedural error since the change in the specifications was brought to the attention of prospective contractors orally at a preproposal conference and was also incorporated into the RFP as part of an attachment to the solicitation.
2. Protester's allegation that the awardee's word processing system does not meet certain mandatory requirements is denied where mandates were met during benchmark.
3. Argument that awardee intends to discontinue production of its word processing system provides no basis to question the award, since the system meets the contracting agency's needs and the awardee is committed to service the system throughout its life cycle.
4. In a negotiated procurement, award to a technically superior, higher priced offeror is not objectionable where, as here, the solicitation indicates that technical factors would be given greater weight than cost.

NBI, Inc. (NBI), protests an award to the Xerox Corporation (Xerox) under request for proposals (RFP) No. 041-81-B-0006, issued by the National Labor Relations Board (NLRB), Washington, D.C.

The RFP solicited proposals for the lease/purchase of a word processing system to be used to prepare the decisions of NLRB administrative law judges. NBI argues

that the Xerox system does not satisfy several of the RFP's mandatory requirements. NLRB, on the other hand, maintains that the Xerox system complies fully with the RFP's specifications.

We deny the protest.

The RFP required a system consisting of 10 CRT terminals, four character printers, a disc storage medium with a total capacity of 80 million characters and telecommunications capability. NBI argues:

1. The RFP clearly required a shared-logic or shared-resource system, but NLRB procured a stand-alone system when it accepted the Xerox proposal;
2. The Xerox system does not satisfy Mandatory Items No. 10 (Vertical Scrolling), No. 27 (Printer Access Requirement), or No. 31 (Print Queing);
3. NLRB is purchasing a system which Xerox intends to discontinue; and
4. NBI's price was approximately \$100,000 lower than Xerox's.

NLRB denies that the RFP restricted offerors to providing a shared-logic or shared-resource system. While NLRB concedes that paragraph F.1 of the RFP, "General Description of Proposed System," and Mandatory Item No. 2, "Expansion Capability," do indicate that a shared-logic or shared-resource system was required, it points out that at the preproposal conference, it was asked whether this was the case. NLRB's answer to that question was that the system offered could be either a stand-alone, a shared-resource, or a shared-logic system. NLRB also notes that all the preproposal questions and answers were included in the RFP as attachment I.

In response, NBI points out that Federal Procurement Regulations (FPR) § 1-3.805-1(d) (1964 ed. amend. 153) specifies that any change or modification in

the Government's requirements must be made in writing as an amendment to the RFP with a copy furnished to each prospective contractor. NBI notes that NLRB never issued any amendments. Thus, in NBI's opinion, the solicitation requirements must be interpreted in light of common industry usage, and this means that offerors were required to propose either a shared-logic or a shared-resource system, not a stand-alone system. NBI concludes that, under the terms of the RFP, the Xerox system was unacceptable.

We do not agree. NBI is correct that, as a general rule, FPR § 1-3.805-1(d) provides for written amendments to any RFP. However, this section also provides in pertinent part:

"* * * Oral advice of change or modification may be given if (1) the changes involved are not complex in nature, (2) all prospective contractors are notified simultaneously (preferably by a meeting with the contracting officer), and (3) a record is made of the oral advice given. In such instances, however, the oral advice should be promptly followed by a written amendment verifying such oral advice previously given. * * *"

Thus, the oral advice given at the preproposal conference was adequate notice to NBI and all other prospective contractors that NLRB would accept a stand-alone system. Moreover, this information was included in the solicitation package in attachment I.

NBI appears to argue that, since a formal amendment was never issued in accordance with FPR § 1-3.805-1(d), neither the preproposal conference's oral notice nor attachment I's written notice is sufficient to modify the Government's requirements and permit the acceptance of a stand-alone system. However, we have recognized that an agency's answer to a question posed at a preproposal conference, later included in a revised RFP, was sufficient to put all offerors on notice of the changed requirement. See Toxstar Plastics Company, Inc., B-201105, September 18, 1981, 81-2 CPD 223. We

have also held that, if all interested parties were aware of a revision to the specifications, no one was prejudiced by the contracting agency's failure to follow up oral advice with a written amendment and the subsequent award was not objectionable. See Quality Diesel Engines, Inc., B-203790, December 3, 1981, 81-2 CPD 441. Therefore, since NBI was or should have been aware of NLRB's decision to accept stand-alone systems either through the preproposal conference or attachment I, we find that NBI was not prejudiced by NLRB's failure to issue a formal written amendment. However, we believe that NLRB should take steps to insure that any oral modifications in the future procurements are promptly followed by a written amendment verifying that oral advice.

NBI also claims that the Xerox system does not satisfy the RFP's mandatory requirements for Vertical Scrolling (allows the operator to display and move text vertically, a line at a time, up and down through a page or more of text), Printer Access (each printer capable of being accessed by each of the 10 terminals regardless of physical location), and Print Queing (allows the operator to assign work to the printer with simultaneous input/output capability, as well as allows the operator to stop the printing and then restart at that same point).

As to the Vertical Scrolling and Print Queing, NLRB states that the Xerox system does satisfy these requirements and that this was demonstrated at the benchmark testing. Accordingly, since NLRB has determined through the benchmark that the Xerox system satisfies the Vertical Scrolling and Print Queing requirements, we find these bases of protest to be without merit.

In regard to the Printer Access requirement, NBI argues that under common computer industry usage, the requirement that a printer be capable of being "accessed" by each of the terminals means that each terminal must have electric access to the printer; however, under the Xerox system, operators on all but the four terminals directly linked to the printers will have to carry a floppy disc to a second location in order to have access to a printer. NBI considers such a system to be inefficient and argues that this inefficiency will eventually lead to the lease or purchase of an additional six printers on a sole-source basis and result in a waste of funds.

In rebuttal, NLRB states that physical rather than electric access is common for a stand-alone system like Xerox's where the various pieces of equipment will be in close proximity to one another. NLRB points out that, when offerors were notified that stand-alone systems were acceptable, it was also reasonable to conclude that physical access was acceptable and that the RFP's Print Access requirement was to be interpreted in this light. NLRB denies that the Xerox system is inefficient and that it will end up leasing or purchasing a printer for each terminal. It points out that the RFP states that NLRB's future needs are projected as 16 terminals and eight printers--the same 2-to-1 ratio it has now.

We find this ground for protest to be essentially the same as NBI's claim that the RFP did not allow a stand-alone system to be offered. Since we have already found that NBI was on sufficient notice that stand-alone systems were acceptable, we find no merit to NBI's argument that the RFP required the terminals to have electric access with a central processing unit (CPU)--a characteristic common to a shared-logic or a shared-resource system. Once it was clear to all potential contractors that a stand-alone system could be offered, it should have also been clear that physical access was also acceptable since this was a common characteristic of stand-alone systems. Moreover, we find NBI's claims of potential inefficiency and the eventual waste of funds because of the use of a stand-alone system to be mere speculation which does not form a valid basis for protest.

As to NBI's claim that the Xerox system is being discontinued, we agree with NLRB that this argument has little relevance since the system meets NLRB's needs and Xerox is going to provide full service and maintenance on the system for 7 years after installation. In regard to NBI's complaint that NLRB is paying approximately \$100,000 extra for the Xerox system, we note that, in negotiated procurements, award to the lowest priced offeror is not required where the solicitation indicates that cost will be less important than technical factors. Quest Research Corporation, B-203167, December 10, 1981, B1-2 CPD 456. Since the RFP here specified that price