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DECISION



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

FILE: B-206946

DATE: February 10, 1983

MATTER OF: Alanthus Data Communications Corporation

DIGEST:

An offeror was improperly eliminated from the competitive range for failure to comply with certain mandatory solicitation requirements where the agency's conclusion regarding one requirement was unreasonable and where the other requirements were not stated in the solicitation with sufficient particularity to insure a common understanding of the agency's needs.

Alanthus Data Communications Corporation protests the Department of Labor's rejection of its proposal under request for proposals (RFP) No. L/A 81-11 for word processing equipment. We sustain the protest.

Background

Labor rejected the protester's proposal for failure to meet the mandatory requirements of paragraph III.F.1. of the RFP. That paragraph provides as follows:

"F. Text Edit and Merge Features

1. The system shall provide the operator a capability to easily and readily accomplish the text editing and merging functions. Specifically, the operator should not be required to embed code into the keyboard character string or carry on operator-system dialogue to carry out the functions listed below. As a minimum, the following should be accomplished with the use of function keys, singularly or in combination.

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- a. Insert, delete and replace character(s), word(s), and line(s).
- b. Move character string.
- c. Center line of text.
- d. Justify margins."

Specifically, Labor found that the equipment offered by Alanthus did not meet the mandatory requirements concerning operator-system dialogue, embedding of code and use of function keys for the "replace," "center," and "justify" functions.

In its initial protest letter to this Office, Alanthus asserted that the equipment it offered did meet the mandatory requirements and that it had been unfairly eliminated from the competition. Later, on the basis of information contained in a supplemental agency report on its protest, Alanthus also argued that it did not fully understand what Labor's actual requirements were because they were not clearly defined. It added that it has equipment capable of meeting the actual requirements and that it should be given an opportunity to offer it.

Labor contends that its requirements were clear and that the terminology used in the RFP is generally understood in the word processing industry. Labor also states that Alanthus was twice given the opportunity to clarify its proposal; it was not, however, permitted to revise it. On the second of these occasions, Alanthus attended a "pre-negotiation" session during which Labor says the questioned requirements were precisely defined and the inadequacies found in Alanthus' proposal were fully explained.

Alanthus denies that Labor ever defined its requirements. The protester also argues that since the word processing industry is relatively new, there are no generally understood meanings for terms such as "operator-system dialogue" and "embed code."

Negotiations have been held with the offerors remaining in the competitive range, and best and final offers have been submitted. Award is being withheld pending disposition of this protest.

Timeliness

Labor contends that Alanthus' protest is untimely under our Bid Protest Procedures, which require that protests such as this be filed not later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(b)(2) (1982). Labor points out that it informed Alanthus of the rejection of its proposal on February 25, 1982, but Alanthus did not file its protest here until April 1, 1982.

Nevertheless, where a timely protest has been filed with the contracting agency, we will consider a subsequent protest to this Office provided that it is filed within 10 working days after notification of initial adverse agency action on the original protest. 4 C.F.R. § 21.2(a). Here, Alanthus wrote to Labor on March 1, 1982 stating that it considered the rejection of its proposal to be unjustified and unfair. Alanthus received no response to this letter until March 25, 1982, when it spoke by phone with a Labor representative who indicated that Labor did not intend to consider the matter further.

We believe that Alanthus' March 1 letter to Labor both clearly indicated an intent to protest and was timely since it was filed within 10 working days after the protester was notified of rejection of its proposal. Further, we consider the March 25, 1982 phone conversation with Labor to constitute initial adverse agency action on that protest. We therefore find Alanthus' protest to this Office timely since it was filed within 10 working days of March 25.

Basis for Rejection of Alanthus' Proposal

Alanthus' second clarification letter to Labor, submitted after the pre-negotiation session, states that the functions in question--replace, center and justify--can be performed as follows:

•-Replace

• * • If the OVERTYPE key on the left side of the keyboard is depressed, wherever the cursor is positioned, then as text is keyed it overtypes on existing text. There is no limit to the amount of text.

• • • • *

"-Center line of text

Text is automatically centered if it is formatted as centered 'C' type text. This can be done as text is keyed or by centering previously keyed text.

"EXAMPLE:

NEW TEXT-

Depress FORMAT then depress C. All keyed text will automatically be centered as keyed.

PREVIOUSLY ENTERED TEXT-

Mark the desired text to be centered by moving the cursor then depressing MARK LINE, MARK PARA, etc. Depress FORMAT SEL, then depress C. The marked text will be centered and adjusted.

"-Justify margins.

As in centering of text, margins can be justified by specifying that format style before entering text, or marking previously entered text and selecting the desired format.

"EXAMPLE

NEW-

To justify both left and right margins (block format), depress FORMAT, then depress B.

PREVIOUS-

Move the cursor to desired area, then mark by line, paragraph, etc. Depress FORMAT SEL, then depress B. Text will be formatted and adjusted."

In addition, the clarification letter states that the replace function can be performed in an alternative manner. This involves positioning the cursor at the material to be replaced, "marking" it by depressing the appropriate "MARK" key, next depressing the "CODE" and "f/6" keys (which

together implement the replace function), then specifying the required substitution at the bottom of the screen, and finally depressing the GO key.

The technical panel's specific reasons for finding that the approaches just described did not satisfy the mandatory requirements of paragraph III.F.1 were:

***[O]perator-system dialogue is required when implementing the "Replace" function (Depress CODE/F6). The 'Centering' and 'Justification' functions require operator-system dialogue and embedding [sic] of code into the keyboard character string by requiring the operator to enter the Format Selection mode and then to depress a code key on the keyboard to select the centering format or the type of justification desired.

*** As has been explained above ***, all of the functions in this requirement cannot be accomplished with the use of function keys."

The record contains no further explanation for Labor's rejection of Alanthus' proposal.

In this connection, it is not our role to make determinations as to the acceptability or relative merits of technical proposals. PSI Associates, Inc., B-200839, May 19, 1981, 81-1 CPD 382. In considering objections to the technical evaluation of proposals, however, we will examine the record to see whether the agency's determinations have a rational basis. Id. Further, in so doing, we will consider the meanings which reasonably may be attributed to solicitation provisions. New York University, B-195792, August 18, 1980, 80-2 CPD 126.

As discussed below, we consider Labor's conclusion that Alanthus' system requires operator-system dialogue when performing the replace, center and justify functions to be unreasonable. In addition, we find that Labor's actual requirements concerning embedding of code and function keys were unclear, and that Alanthus should be given an opportunity to respond to Labor's actual requirements.

Operator-System Dialogue

Labor says its used the term "operator-system dialogue" to mean:

"Communication between the system and the operator via the CRT Display Monitor whereby the system queries the operator as to what is to be done for a particular task and then the operator is required to 'talk' to the system by entering information in answer to the system query to accomplish the task."

Thus, Labor refers to those word processing systems which "prompt" the operator by displaying an instruction or question to which the operator must respond in order to execute a function.

As noted above, to perform the center and justify functions under Alanthus' proposed system, the operator depresses either the FORMAT key or FORMAT SEL key after first "marking" the material to be centered or justified. Then, the operator depresses either the letter "C" key for center or letter "B" key for justify. We find no basis to conclude that any of these steps requires operator-system dialogue.

There is no indication that the operator must respond to an instruction or question displayed by the system before the tasks in question can be accomplished. Rather, Alanthus' letter indicates that the steps necessary to accomplish the specified functions can be performed sequentially, without first waiting for and responding to instructions from the system. That the operator, in order to perform the functions, must first depress the FORMAT or FORMAT SEL key does not by itself indicate that dialogue is required.

Concerning the replace function, Labor identifies the step in which the CODE and "f/6" keys are depressed at the same time as requiring dialogue. (The Code key works as a shift key, and when depressed together with the key "f/6," represents the replace function, as stated above.) Nothing indicates, however, that this step results in an instruction or question to which the operator must respond, or that it is a required response to an instruction or question.

Moreover, this step is part of a sequence of steps identified as an alternative method of performing the replace function. The function can also be performed by simply marking the text to be replaced, and entering the new text with the "Overtime" key depressed. This method of performing the replace function requires no apparent use of dialogue, and Labor in fact does not claim that it does.

Consequently, we conclude that Labor had no reasonable basis for its finding that Alanthus' system did not meet the mandatory RFP requirement concerning operator-system dialogue. The RFP provided that the operator should not be required to carry on dialogue to perform the replace, center and justify functions. The record before us indicates that Alanthus' proposal satisfies that requirement.

Embedding of Code and Function Keys

Labor says it used the term "embed code into the keyboard character string" to mean "the depression of a key or keys on the standard typewriter keyboard which are coded commands (understandable only by a particular system or indigenous to it) required to accomplish a particular task." Labor adds that "coded" means that a symbol is utilized, the meaning of which the operator must memorize or find by consulting a table of codes.

Based on this definition, it appears that Labor found Alanthus' proposed system to require embedding of code because the system operator was required to depress standard typewriter keys "C" and "B" in order to perform the center and justify functions. Thus, the operator had to know "C" meant center and "B" meant justify, or had to consult a table of codes in order to find the appropriate symbol for center or justify, before those functions could be performed.

This also explains why Labor concluded that under Alanthus' proposal, not all functions could be performed by the use of function keys. Labor defines "function keys" as "those keys separate from the standard keyboard, the depression of which accomplish a particular task without further operator intervention." Since the keys "C" and "B" are not separate from the standard keyboard, they are not "function keys" as Labor used the term.

We agree with Labor that Alanthus' proposed system did not meet the solicitation's mandatory requirements concerning embedding of code and use of function keys, as Labor defines those terms. Nevertheless, we also agree with Alanthus' assertion that Labor's meaning was not clear from the face of the solicitation.

We disagree with Labor's contention that the definitions of the terms in question are commonly understood in the word processing industry, and that those definitions coincide with its own. For example, based on the advice of our own technical personnel, it is our understanding that "embed code into the keyboard character string" can just as reasonably be interpreted as Alanthus apparently understood it here, that is, as the depression of a symbol on the keyboard in order to perform a function, which results in that symbol becoming part of (or "embedded" into) the keyed text as it appears on the CRT display monitor. Similarly, we understand that "function keys" can refer to keys which, when depressed, perform a function even though they are not separate from the standard keyboard.

As Alanthus points out, the depression of the letter "C" or "B," following the depression of the FORMAT or FORMAT SEL key on its proposed system, does not result in those letters or any other symbol becoming part of the keyed text. Rather, those keys command the machine to perform specific functions and thus become function keys. Alanthus' system therefore complies with the RFP requirements concerning embedding of code and function keys, as Alanthus reasonably understood them.

A fundamental principle of procurement law dictates that solicitations be drafted in clear and unambiguous terms. American Chain & Cable Company, Inc., B-188749, August 19, 1977, 77-2 CPD 129. It is axiomatic that there can be no effective competition on a common basis, and that there can be no intelligent bidding for a contract, unless all offerors know what the contract requirements will be. Id. We conclude that Labor did not comply with those principles here because it failed to state its requirements with sufficient particularity to insure a common understanding of its needs.

Finally, we recognize Labor's contention that it fully explained its requirements to Alanthus during the pre-negotiation session. Alanthus denies this, but even assuming that Labor is correct, it would not change our disposition of the case. We note that Alanthus was never given an opportunity to revise its proposal, but instead was found technically unacceptable and eliminated from the competitive range without first being provided an opportunity to participate in discussions and modify its proposal accordingly. In this connection, an inquiry made of an offeror does not constitute discussions if, as here, it is made for the sole purpose of obtaining clarification of the initial proposal and does not result in the submission of a revised proposal. See John Fluke Manufacturing Company, Inc., B-195091, November 20, 1979, 79-2 CPD 367.

Thus, even assuming that Labor made its requirements to Alanthus clear during the pre-negotiation session, Alanthus was not able to respond on the basis of its new understanding since it could not amend its proposal. We believe it should be afforded an opportunity to do so.

We note that Alanthus states that it can meet Labor's actual requirements as it has a keyboard available which has separate keys labeled "Replace," "Center" and "Justify." Although an interested party alleges that this keyboard was not available at the time Alanthus submitted its original offer, Alanthus denies this. The interested party has offered no proof to substantiate its allegation and consequently we cannot accept the allegation as fact.

Recommendation and Conclusion

By separate letter, we are recommending to the Secretary of Labor that Alanthus be included in the competitive range and that negotiations be reopened with all offerors in the range based on Labor's actual requirements.

The protest is sustained.

Milton J. Acolar
for Comptroller General
of the United States