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**DECISION**



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

**FILE:** B-209379

**DATE:** May 27, 1983

**MATTER OF:** Sperry Univac Division of Sperry  
Corporation

**DIGEST:**

1. Protest that assessment of software conversion cost in evaluating proposals restricts competition is untimely since RFP stated that such costs would be considered and protest was not filed prior to closing date for receipt of initial proposals.
2. Protest concerning the amount of software conversion cost which might have been assessed in evaluating proposals in second part of two phase funded procurement became academic when protester declined to submit a phase II proposal.

Sperry Univac Division of Sperry Corporation protests the consideration of software conversion costs in evaluating offers under Request for Proposals (RFP) N66032-82-R-0001 in connection with the Department of the Navy's Automatic Data Processing Selection Office Inventory Control Points Resolicitation Project. The project encompasses a two phase procurement process to replace automatic data processing (ADP) systems installed at the Aviation Supply Office (Philadelphia) and the Ships Parts Control Center (Mechanicsburg) with current technology. The equipment supports logistics management mission responsibilities of the Naval Supply Systems Command.

According to the protester, the Navy has biased the procurement in favor of IBM equipment by assessing a \$5 million penalty for software conversion costs as part of its evaluation of the system life costs of non-IBM systems. Sperry states that the assessment of software conversion costs is improper because it tends to restrict competition and that the amount to be assessed in this

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instance is not justifiable. Further, Sperry contends that the data used to calculate conversion costs should be disclosed to the vendors to facilitate competition.

To the extent Sperry complains that conversion costs should not be considered at all in the evaluation of proposals, we dismiss the protest as untimely filed. Because Sperry chose to withdraw from the competition, moreover, its protest that the amount of the conversion cost differential to be used in the evaluation is unjustifiable and its contention that the basis for the FCSC study should be disclosed are academic.

As stated, the project consists of a two-phase procurement process. The first of these involved the solicitation of proposals and the award of multiple cost reimbursement contracts on the basis, principally, of vendors' qualifications and technical approach. These contracts are to defray a part of the firms' costs (up to \$400,000 per contractor) associated with the preparation of proposals under phase II. Phase II is presently in progress and includes a detailed technical and cost evaluation of each firm's proposal and a demonstration of its equipment leading to the final selection of one contractor. The latter contract is to be awarded on a fixed-price basis for the installation of the successful vendor's proposed system.

At the conclusion of phase I, Sperry and two other vendors were awarded contracts to develop detailed phase II proposals. Sperry was advised at that time that the difference in the amount of conversion costs assessed different vendors might amount to as much as \$5 million; Sperry then protested and declined to accept its phase II contract.

The conversion costs at issue are anticipated costs the Navy will incur in converting existing software to the new system, which it plans to accomplish in-house or through separate contracts for software conversion. Referring to such costs, the Navy included the following statement in a letter accompanying each notice of award under phase I:

"The Federal Conversion Support Center (FCSC) performed a Software Conversion Study for the [Inventory Control Points] requirements, as required by FPR 1-4.1109-15. This study has concluded that the cost for conversion to an

IBM architecture will be less than conversion to a non-IBM architecture. The cost difference will not exceed \$5 million. You are further advised that this amount may vary somewhat when revised Naval Air Logistics Data Analysis (NALDA) requirements are incorporated into the conversion inventory. The final conversion costs differential (not more than \$5 million) will be added to the cost proposals of vendors proposing [a] non-IBM or non-IBM compatible configuration."

We consider first Sperry's contention that conversion costs should not be considered in evaluating proposals submitted during phase II. According to Sperry, the result of the quoted Navy statement is a creation of a two-tiered price structure in which IBM or contractors offering IBM products will be evaluated by one standard and all others, including Sperry, by another. This has a chilling effect on competition, Sperry contends, because vendors may consider the cost penalty too high to justify the cost (even with the partial phase I funding) of preparing a proposal. Sperry says it was induced to submit an initial proposal in this instance only because it was unaware of the \$5 million conversion cost differential.

We also consider at this point a related matter which Sperry has raised. Evidently Sperry believes it would have been more appropriate had the Navy included software conversion as part of the work to be performed under the phase II contract, since Sperry asserts in this respect that it would be fairer if:

"As an alternative to the two-tier conversion cost assessment, the government could permit each vendor to bid the estimated conversion costs based on its specific architecture irrespective of the cost study."

Sperry can no longer timely protest these matters. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), provide that protests based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed with our Office or the contracting agency prior to that date. The procedure which the Navy intended to follow in preparing

and releasing the results of the FCSC study with the phase I awards was set out in the RFP prior to receipt of initial phase I proposals. The RFP stated that:

The costs that can be stated in dollars directly related to the conversion from installed ADPE to replacement ADPE will be included in the evaluation for determining lowest overall cost in accordance with requirements stated in Federal Register, Vol. 46, No. 2, paragraph 1-4.1109-15 of 5 January 1981. These costs are under development by the Federal Conversion Support Center and will be provided to offerors receiving \* \* \* contracts [at completion of Phase I]."

We think this language clearly warned offerors that conversion costs (as developed by the Government through FCSC) would be considered in determining overall system cost to the extent that such costs could be stated in dollars. The scope of the procurement effort was also clearly defined. The solicitation documents indicate that the Navy sought to acquire equipment and operating system software only and that it was not buying software conversion services.

Because the solicitation clearly stated that conversion cost would be evaluated and defined the scope of the procurement, but Sperry did not file its protest until after completion of phase I, this part of its protest is untimely and is dismissed. Bell & Howell Company, Data-tape Division, B-204791, March 9, 1982, 82-1 CPD 219.

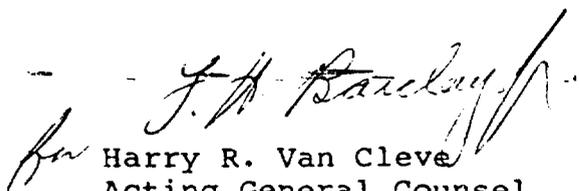
Regarding Sperry's complaint that the amount of the conversion cost differential is not justifiable, we first point out that this portion of its protest was premature when it was filed because at that time it was based only on what Sperry anticipated the amount of those costs might be. Assessment of conversion costs had no effect on the evaluation of Sperry's phase I proposal, which, as we have noted, was accepted for award. The Navy's statement that conversion costs might result in up to a \$5 million differential leaves open the possibility that the amount might be revised and appears intended only to place the participants

in the phase II effort on notice of FCSC's preliminary findings. Moreover, as Sperry explains in a letter to the contracting officer, Sperry does not believe it is possible to establish conversion costs prior to receiving phase II technical proposals which will define the equipment configurations being offered. In our view, absent a final determination of conversion costs and the submission of proposals defining the equipment offered, there is no basis upon which we could review Sperry's assertion that as applied to it the amount of the conversion costs is unreasonable. The proper time to assert such a protest would have been when such costs were applied in evaluating proposals.

Sperry, however, voluntarily withdrew from the competition at the time it protested, and it submitted no technical and pricing proposal prior to the phase II contract closing date. This action forecloses review of Sperry's complaint that the amount of conversion costs assessed against it exceeds costs which could be appropriately assessed because Sperry is now precluded from submitting a proposal to which any conversion cost differential could be applied. The issue, therefore, has been rendered academic. Compare Martin Marietta Corporation, B-204785, May 5, 1982, 82-1 CPD 423 (where we held that a prior protest concerning the propriety of conversion costs would not be considered because the costs had no bearing on the award decision).

Finally, Sperry's protest that the basis for the FCSC study should be made public is also academic. Since Sperry voluntarily withdrew from the competition, it no longer has any need for it in preparing a phase II proposal, and in any event, the Government appears to have released much of the information sought during development of Sperry's protest.

The protest is dismissed.

  
for Harry R. Van Cleve  
Acting General Counsel