DECISION

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

FILE: B-208662 DATE: August 15, 1983

MATTER OF: System Development Corporation and Cray Research, Inc.

DIGEST:

Award to firm which failed to certify in its proposal that three prior installations of similar equipment met specified criteria was improper because solicitation made such certification mandatory.

We sustain the protest filed by System Development Corporation and Cray Research, Inc. (SDC/Cray) concerning an award to Control Data Corporation (CDC) under request for proposals (RFP) SA-81-TPB-0017 issued by the Department of Commerce for a class VI computer system. SDC/Cray contends that CDC's proposal was unacceptable because it did not comply with § F.1.2 of the RFP, which required that vendors certify that they had previously installed at least three class VI computer systems and prove that these systems had successfully achieved an availability level of at least 95 percent. We sustain the protest because our review of the record indicates that the certification requirement was not met.

A class VI or "super" computer is designed to process data supplied by other less powerful computers, in this instance IBM Corporation 360/370 series machines. The equipment acquired here is to be used by the National Oceanic and Atmospheric Administration (NOAA) to process meteorological data for the National Weather Service. The contract obligates the contractor to furnish the computer, software, peripheral equipment, maintenance and training of Government personnel. Only SDC/Cray and CDC submitted proposals.

As stated in the introductory paragraph of RFP § F.1.2, each offeror was to demonstrate its technical competence in the development, production, installation and maintenance of class VI computer systems by providing the certification and supporting data requested in that section. Offerors were required to list three independent sites at which they had installed a class VI computer (having among other characteristics at least 64-million

bits of primary memory, and full operating software). For at least one of these sites the class VI computer had to be supported by IBM 360/370 compatible equipment. For each listed installation, the offeror was required to certify that the:

> "* * * equipment has been accepted by the customer organization, and for a period of at least six months, has been used in that organization's normal data processing activities and has been maintained by procedures and personnel equivalent to that being offered to NOAA. For this six month period at each site, the Offeror must either have met a contractual obligation for a 95% availability level * * * or provide evidence from operational logs, maintenance records or other similar means that a 95% availability level has been met. Additionally at each site, the system must have been in operation and had at least 600 hours of actual use time. The availability level must refer to a fixed set of equipment including at least the components outlined above." [1]

CDC's initial proposal identified three sites at which its equipment had been installed, including one where CDC claimed its computer was supported by IBM 360/370 compatible equipment. CDC did not, however,

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[1]Availability is a measure of the probability, expressed as a percent, that a system achieves a minimum acceptable performance level. Memorex Corporation, B-195053, April 7, 1980, 80-1 CPD 253. As used here, based on past experience, availability was to be computed by calculating the percentage determined through dividing "operational use time" by the sum of operational use time, "downtime," and time for preventive maintenance. The RFP defined operational use time as time the system is in actual operation or is ready for actual operation. Downtime was defined as time during which the scheduled workload could not be processed due to inoperative equipment, either because of a malfunction or because the system had been released to the contractor for remedial maintenance.

state that the requirements to which it was to certify were met; nor did CDC furnish data from operational logs, maintenance records or other similar means to show that 95 percent availability had been achieved at each (or any) of the three sites.

During discussions, Commerce advised CDC that it had not complied with § F.1.2. In response, CDC amended its proposal by adding the statement:

> "Control Data Corporation certifies that the three installations referenced in [its proposal] meet an availability level of at least 95%."

Advised by Commerce that the documentation provided was not adequate to satisfy the § F.1.2 requirement, CDC furnished a summary of data examined by Commerce Department personnel during an on-site visit to CDC's plant. The summary purported to show that 95 percent availability was achieved over a 6-month period at each of the three listed installations.

According to SDC/Cray, CDC did not and could not have met the requirements of § F.1.2. SDC/Cray emphasizes that compliance with § F.1.2 was mandatory. It views CDC's initial proposal as fatally flawed, because it lacked any certification or evidence of compliance. The protester points out that during discussions, CDC attempted to persuade Commerce to accept an alternative, less stringent definition of availability, which SDC/Cray believes clearly shows that CDC's proposal was unacceptable. SDC/Cray maintains that CDC never furnished an unqualified certification, that the acceptance of such a proposal required that the RFP be amended, and that in that event other offerors would have had to have been afforded an opportunity to change their proposals. Further, SDC/Cray believes that Commerce had a duty in the circumstances to audit and verify that CDC's equipment met the 95 percent availability requirement; it labels as insufficient the on-site examination of CDC's maintenance records conducted during the visit to CDC's facilities. It contends that an adequate review would have established that the 95 percent availability level was not met at the three sites and that the other requirements (customer acceptance and 6 months operating experience supporting the customer's normal data processing activities with maintenance as proposed) were

not met, at least at the site where CDC claimed the IBM 360/370 interface had been installed.

In response, Commerce contends that § F.1.2 states a definitive responsibility criterion and that the only substantial question presented by the protester is whether the contracting officer's affirmative determination that CDC met the 95 percent availability requirement had a reasonable basis or was arbitrary and capricious. The agency contends that it had a reasonable basis to conclude that this requirement was met because (1) the contracting officer's representatives who inspected CDC's records at CDC's plant reported that the documents examined were operational logs, maintenance records or other similar materials from which evidence as to whether CDC met the criterion could be extracted; and (2) CDC subsequently furnished a summary of that data which purported to show that 95 percent availability was attained at the three sites.

As we read § F.1.2, it plainly required that offerors certify to the existence of certain facts: (1) that the listed equipment, including in one instance an IBM 360/370 interface, had been accepted by the customer; (2) that this equipment had been used by the customer for a period of at least 6 months in its normal data processing activities; and (3) that during that period it was maintained using procedures and personnel comparable to the procedures and personnel which the vendor was proposing to furnish the Government. If at each of the three sites the offeror had been under a contractual obligation to meet a 95 percent availability criterion, its certification was complete (assuming 600 hours of actual use in each instance). If on the other hand it was not under such an obligation, it was permitted to submit evidence from operational logs, maintenance records, and so forth showing that that level was actually achieved.

We think the importance of § F.1.2 transcends the limited scope the agency assigned it in accepting CDC's submissions as sufficient. The facts to be certified concerned system capabilities which were material solicitation requirements; Commerce clearly wanted a computer system which had performed under similar conditions at the high level called for here. The certification was the means chosen by Commerce for having offerors establish the existence of these material capabilities. Thus, absent some other indication that a system could satisfy the requirements under § F.1.2, a proposal had to include a proper certification to be acceptable.

In our view, CDC's amended proposal did not comply with the plain intent of § F.1.2. As SDC/Cray contends, CDC never certified that the three installations it listed had been accepted by its customers, were used by them in their normal data processing activities over the 6-month period, or were maintained by applying procedures and by personnel equivalent to that offered the Government. We find no other indication in CDC's proposal that its system met the requirements of § F.1.2.

Moreover, it is not clear that the documentation CDC submitted with its summary establishes that the listed installations had achieved 95 percent availability for all of the equipment identified in § F.1.2. As CDC acknowledged in its proposal, the RFP system description was based on the use of a 64-bit "long format floating point word." The 64-million bit requirement in § F.1.2 thus corresponds to 1-million 64-bit words. The record discloses that until CDC submitted its best and final offer, it sought to convince Commerce to relax its requirements by modifying its definition of availability to permit CDC to treat its system as ready for actual operation whenever 850,000 words of primary memory were operable, if the scheduled workload could be performed. Since the documentation accompanying the CDC summary stated expressly that the data furnished had been compiled using the CDC proposed definition, it appears that the accompanying data may have been based on providing 150,000 (or 15 percent) fewer words than § F.1.2 specified.

As Commerce points out, the fact that CDC's proposal did not initially establish the material capabilities under § F.1.2 would not have constituted a basis for rejecting it if it was reasonably susceptible of being made acceptable through negotiation. Telemechanics, Inc., B-203428, B-203643, B-204354, October 9, 1981, 81-2 CPD 294. CDC could have submitted the certification or other evidence of its system's capabilities at any time up to the closing date for receipt of best and final offers. As we recognized in the Telemechanics case, however, a proposal in a negotiated procurement ultimately must conform to the solicitation to be acceptable.

The fact that agency personnel inspected CDC's maintenance records for the three sites during the visit to CDC's facilities does not alter our view because the information garnered during that inspection was never

incorporated in CDC's proposal. This examination of CDC's records could not have corrected CDC's failure to assume an obligation to furnish a computer meeting the requirements of § F.1.2. It is significant, furthermore, that the visit was conducted not for the purpose of verifying that the § F.1.2 criteria were met, but rather to observe CDC's benchmark, and that the observers determined and reported to the contracting officer only that the records examined constituted appropriate records, in Commerce's words, "from which evidence as to whether CDC met the 95 percent availability requirement could be validly extracted."

In light of our view of the issues discussed, we need not discuss other issues SDC/Cray raises.

While we sustain the protest, we do not agree with SDC/Cray that a contract should be awarded to SDC/Cray as the only offeror which submitted an acceptable proposal. In this regard, the record indicates that Commerce contributed to CDC's failure to conform its proposal to § F.1.2. CDC states that at final oral discussions with Commerce prior to submitting its best and final offer, it specifically asked agency personnel whether its offer had satisfied the certification requirement. In Commerce's subsequent letter requesting CDC's best and final offer, the agency advised CDC that the "documentation provided on the 95 percent availability is acceptable." CDC thus was led to believe that further response on this issue was not needed.

In any case, inasmuch as CDC's computer system has been installed, we believe remedial action based solely on CDC's failure to demonstrate in its proposal that its system met the § F.1.2 requirements would be inappropriate. Since it appears that the requirements of § F.1.2 were designed to indicate the likelihood that the furnished system would satisfy the contractual requirement for 95 percent availability, we think the only relevant consideration at this juncture is whether CDC's system is in fact operating in accordance with this requirement. We therefore recommend that Commerce make this determination. If it finds that the system is meeting the requirement, it should so verify in a submission to our Office. If the system is not meeting the requirement, the agency should take appropriate action. In this regard, § G.4.3 of the RFP, for example, provides that should the system not

operate at 95 percent availability for 3 consecutive months, the contractor must furnish at no additional cost the hardware, software and services necessary for operation at that level.

The protest is sustained.

for Milton J. Socolar
Comptroller General
of the United States