

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

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FILE: B-213150**DATE:** January 3, 1984**MATTER OF:** Amdahl Corporation**DIGEST:**

Protester contends that only one vendor can comply with solicitation requirements for current customer references and a demonstration. Procuring agency contends that it did not intend requirements to be mandatory. However, requirements are mandatory. Protest is sustained because solicitation did not reflect agency's actual requirements.

Amdahl Corporation (Amdahl) protests against request for proposals (RFP) No. OFM/83/001 issued on September 2, 1983, by the District of Columbia (District), Office of Financial Management, Office of Financial Information Services, SHARE Computer Center. The procurement is for the replacement of two existing central processing units (IBM-370-165 II) and ancillary equipment with two IBM 3083 E-16 central processing units (CPU) or an equivalent software and plug compatible model for delivery, related equipment, maintenance, and optional future upgrade. Amdahl protests against the following RFP requirements: (1) offerors may be asked to demonstrate capabilities and shall list at least three customer facilities where the proposed equipment of the same series is functioning with MVS/XA upgrade; and (2) the proposed CPU series and model must have been announced after January 1, 1981. Amdahl contends that the solicitation is, in effect, an unjustified sole source to International Business Machines Corporation (IBM).

The protest is sustained.

Amdahl initially protested to the District on September 12, 1983. The District denied the protest by letter dated September 15. Initial proposals were due by 4 p.m. on September 23. Amdahl protested to our Office at 3 p.m. on September 23. The District contends that protesters should seek resolution of their complaints initially with the procuring agency, 4 C.F.R. § 21.2(a) (1983), and Amdahl failed to do so insofar as the demonstration requirement is concerned. We nevertheless find that this ground of

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protest is timely because it was filed with our Office prior to the receipt of initial proposals. See 4 C.F.R. § 21.2(b); OAO Corporation, B-211246.2, October 11, 1983, 83-2 CPD 432.

Proposals were submitted by IBM and Municipal Leasing Corporation. The latter was determined to be technically unacceptable because it did not submit a technical proposal.

The RFP required that the CPU be capable of executing the IBM System 370 (MVS/SP 1.3 operating system) and be capable of being upgraded to the new IBM MVS/XA (extended architecture) operating system. The RFP advised that the upgrade conversion from MVS/SP 1.3 to MVS/XA would occur 18 to 24 months after award of the contract. Even though an MVS/XA operating system would not be needed until that time, the RFP required that offerors list at least three customer facilities where the proposed equipment or equipment of the same series is functioning with the MVS/XA operating system. The solicitation also notified offerors that at the government's option, they may be asked to demonstrate, with functioning equipment and software, the capabilities of the proposed equipment and software (including the current MVS/SP 1.3 and the MVS/XA).

Although Amdahl has announced that it will run MVS/XA on its 580 series (Amdahl's equivalent to the IBM 303X series), this capacity will not be available until the second quarter of 1984. Amdahl, therefore, cannot provide current references. Amdahl protests that it will have MVS/XA capacity long before the District needs it and that it is unreasonable to require references and a demonstration of MVS/XA at this time. Amdahl contends that only IBM can comply with these requirements and this is, therefore, a de facto sole-source procurement.

The District contends it did not intend to preclude consideration of proposals by offerors who do not have equipment currently supporting the MVS/XA operating system. The District states:

" . . . When it drafted the RFP, SHARE was aware that companies other than IBM planned to provide MVS/XA support through currently available equipment at some point after contract award. Consequently, SHARE determined that it would consider proposals for equipment equivalent to the IBM 3083E-16 CPU.

However, in order to give necessary consideration to proven capacity to provide MVS/XA support, SHARE included the provisions for references and possible demonstration in the RFP."

The District interprets the solicitation as allowing the submission of proposals by offerors who do not have equipment supporting MVS/XA. The District states:

"A reasonable response by an offeror lacking currently functioning systems would have been to include in Tab D a statement explaining the current unavailability of functioning systems and its resulting inability to provide references in addition to the required explanation of its intended support of the MVS/XA system."

Amdahl contends that such a response would have put it in an untenable position because an award to Amdahl could have been overturned by an unsuccessful offeror's protest that Amdahl had not met the stated mandatory requirements. Amdahl's concern is well founded. We recently sustained a protest against the award of a contract because the awardee failed to comply with a solicitation requirement for references of clients who were currently operating the offered hardware. Ampex Corporation, B-212356, November 15, 1983, 83-2 CPD 565.

The District intended the following: (1) offerors would provide all available information regarding the capability of their equipment; (2) the submission of references would improve an offeror's technical score, but would not be mandatory as to unavailable MVS/XA; and (3) offerors may be required to demonstrate their equipment, but would not be required to demonstrate MVS/XA if it was not currently available. However, this evaluation scheme was not reflected in the RFP. This is contrary to the requirement that a solicitation reflect a procuring agency's intended evaluation criteria. Gardner Machinery Corporation, B-211474.2; B-212473, October 11, 1983, 83-2 CPD 433. This is necessary so that offerors can compete on a common basis. In this case, the solicitation's requirement for three customer references and demonstration of MVS/XA did not reflect the District's intended evaluation scheme. This action unnecessarily precluded the participation of at least one offeror who may have met the District's needs. We

accordingly find that there was prejudice because the District did not obtain competition on the basis of its actual requirements. See Gardner Machine Corporation, supra. We sustain the protest on this ground.

While we need not address Amdahl's alternative ground of protest because of the above result, we note the District, in its report, has now set forth its explanation of the announcement date requirement and has stated that Amdahl's model would be acceptable under the requirement.

The District initially indicated that award would be made by October 30, 1983, and that the first CPU would have to be installed by January 15, 1984, because the SHARE Computer Center would not have another available conversion period until May 1984. We have now learned that award was made December 30, 1983.

We therefore recommend that the District terminate for convenience the contract and reopen the competition on an expedited basis, with the solicitation modified to reflect the District's actual requirements.

for *Harry R. Van Cleave*
Comptroller General
of the United States