FILE: B-215485   **DATE:** October 22, 1984

MATTER OF: CCL, Incorporated

DIGEST:

> Even where an agency's requirement for cer-
> tain computer software may not have been
> clearly set forth in a procurement synopsis,
> an offeror's failure to satisfy the require-
> ment during equipment demonstrations consti-
> tutes a proper basis for rejecting the
> offeror's computer system as technically
> unacceptable where agency comments and
> actions during the demonstrations should
> have made the offeror aware of the require-
> ment.

CCL, Incorporated protests the award of a contract
(No. DIS-8414484) to IBM Corporation by the National
Science Foundation (NSF) for 60 IBM Personal Computer
Systems. We deny the protest.

On March 13, 1984, NSF published a synopsis in the
Commerce Business Daily (CBD) announcing its intention to
place an order for this requirement against IBM's General
Services Administration nonmandatory schedule contract and
requesting interested firms to respond by submitting
documentation of their systems' capabilities and cost.
CCL and four other firms responded and were evaluated.
Following two live test demonstrations of CCL's equipment
and software, NSF determined that the system was techni-
cally unacceptable because CCL did not furnish Microsoft™
BASIC version 2.0 software (BASIC 2.0) for the demonstra-
tion. NSF considered essential the ability to perform
certain instructions available only in BASIC 2.0 soft-
ware. NSF ultimately awarded the contract to IBM at a
price of $176,848.

CCL claims its rejection was improper since it was
never advised that BASIC 2.0 was mandatory. It points out

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that while the CBD synopsis required a "basic language extension" with DOS 2.0 (the disk operating system software), it nowhere specified that this was to be the 2.0 version of Microsoft™ BASIC (which, at the time of this acquisition, was the most recent release). CCL maintains it also never was informed during the demonstrations or at any other time that NSF wanted to see BASIC 2.0 demonstrated. It concludes, in essence, that it should not have been rejected for failing to demonstrate a requirement never specified.

We find that at the least NSF could have made the CBD announcement substantially clearer had it specifically stated that BASIC 2.0 was mandatory instead of listing the requirement as "DOS 2.0 with basic language extension." We need not actually consider, however, whether the synopsis was sufficient to put CCL on notice of the BASIC 2.0 requirement as we find sufficient evidence that CCL should have been aware of the requirement as of the initial demonstration. Even where an agency fails to adequately specify a mandatory requirement in a CBD notice or solicitation it nevertheless may enforce that requirement if offerors have been put on notice of it. See Southland Associates, 62 Comp. Gen. 50 (1982), 82-2 CPD ¶ 451.

The negotiation memorandum submitted with NSF's report indicates that at the initial April 30 demonstration the version of BASIC brought by CCL for testing was unable to run any of NSF's test programs. The following exchange between the CCL and NSF representatives reportedly then took place:
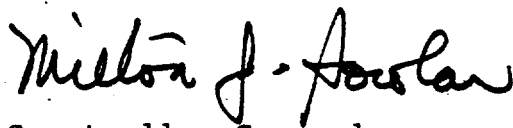
> "[CCL's representative] stated that they did not think that we wanted BASIC at all, but that [they] did have a beta-test version of Microsoft GWBASIC. He stated that they had not brought this version of BASIC for testing. When [CCL's representative] was asked if it was version 2.00 of Microsoft BASIC, he responded 'yes.' When asked if it supported tree directory structures, the response was 'yes'."

It is our opinion that CCL clearly should have been aware from NSF's comments that NSF wanted BASIC 2.0 and, specifically, the tree directory structure capability which, we understand, was available with 2.0, but not with earlier versions of Microsoft™ BASIC. This constituted sufficient notice of the requirement even given that CCL did not read the CBD synopsis as establishing the requirement. At minimum, CCL should have been prompted to inquire as to NSF's interest in BASIC 2.0.

CCL also was put on notice of the BASIC 2.0 requirement at the second demonstration on May 14. The negotiation memorandum shows that NSF specifically tested those commands added to BASIC in version 2.0, including CHDIR, MKDIR, RMDIR, FILES, WINDOW, and VIEW. None of these commands was successful and, when specifically asked, the CCL representative stated that the program brought for testing was not the 2.0 version of Microsoft™ BASIC. Again, this testing and NSF's inquiry should have put CCL on notice that BASIC 2.0 was part of NSF's requirement. Nonetheless, CCL neither sought clarification nor protested at that point.

We conclude that CCL was or should have been aware of the BASIC 2.0 requirement and that it therefore was proper for NSF to reject CCL's equipment as technically unacceptable based on CCL's failure to demonstrate a BASIC 2.0 program at either demonstration. The question of whether CCL was on notice of the requirement is academic in any event. CCL revealed at the bid protest conference on this matter that it did not have a 2.0 release of BASIC for its system at the time it prepared its proposal or at the time of either demonstration. It thus appears that CCL would not have met this requirement no matter how clearly NSF expressed it.

The protest is denied.

Acting Comptroller General
of the United States