

DECISION



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

FILE: B-215046 **DATE:** December 3, 1984

MATTER OF: Masstor Systems Corporation

DIGEST:

1. A protest is sustained where the agency rejected a potential source of supply for failure to demonstrate compliance with a requirement which was neither set forth in a CBD "sources sought" synopsis nor otherwise made known to the vendor.
2. Where the contracting agency concluded that a vendor's software was not acceptable but found that the vendor's hardware was acceptable, and there was no requirement for obtaining the hardware and software from one vendor, a sole source award for the hardware was unreasonable.

Masstor Systems Corporation protests the Department of the Air Force's sole source contract award to Network Systems Corporation (NSC) for hardware and software to augment an existing government-owned hyperchannel network. We sustain the protest.

Masstor responded to a synopsis published in the Commerce Business Daily (CBD), which stated that sources were sought for:

"[H]yperchannel network adaptor hardware and software as described herein. The [agency] anticipates a sole source award against a GSA schedule to [NSC] . . . for the equipment and software which will include: . . . f. Software that will provide IBM MVS and DECVAX operating system users with facilities for high-speed task-to-task communications via hyperchannel equipment . . .

This hardware and software will augment an existing government-owned hyperchannel network which interconnects a Control Data Corp. Cyber 175, several Digital Equipment Corp. VAX 11/780s, two IBM 4341s, and other contractors' computational hardware. The current [NSC] hyperchannel is a 50 megabyte/second serial bus. Firms are invited to submit a complete description of the capabilities of their proposed equipment for evaluation to determine acceptability as a potential source to fulfill the requirements of the above-described acquisition."

The agency states that the CBD notice was published pursuant to 15 U.S.C.S. § 637(e)(2)(C) (Law. Co-op. 1984). This provision requires that any proposed procurement of \$10,000 or more be publicized in the CBD at least 30 days before negotiations for a sole source contract are commenced.^{1/}

Masstor responded to the CBD notice and stated that it could supply NSC equipment to satisfy the hardware requirements and its own "MASSNET" software to fulfill the software requirements. It enclosed a detailed description of the MASSNET software.

The Air Force evaluated Masstor's response and found that the hardware offered was identical to that it expected to acquire from NSC. It concluded, however, that the MASSNET software was not acceptable because it was not compatible with the existing "NETEX" software in use by the agency. The Air Force found that in order to use MASSNET, the existing software would have to be rewritten and modified to interface with the MASSNET software. This would result in lengthy and costly delays to all projects using the current system, including high priority projects such as the Advanced Medium Range Air to Air Missile program. Therefore, the agency found the MASSNET software unacceptable and proceeded with an award to NSC.

^{1/}The purpose of section 637(e) is to improve small business access to federal procurement information.

Masstor contends that its MASSNET software is compatible with NETEX and argues that as a result, the award to NSC was improper. The protester asserts that it would have supplied a description of its NETEX interfaces, which allow NETEX programs to be executed unmodified on a MASSNET network, if it had known that a requirement for compatibility with NETEX software existed. Masstor points out that the CBD notice contained no mention of such a requirement. It also disputes the agency's position that since the CBD notice stated that the software would augment an existing hyperchannel network, the notice conveyed a requirement for software which would be compatible with the existing software.

We agree that the statement that the hardware would augment an existing network does not specifically require compatibility, but we do think it conveys a need for software which can be used with the existing system. We therefore believe that an experienced vendor should have been alerted to the possibility of a requirement for compatibility. Nevertheless, the notice did not identify the existing software, and an offeror obviously could not make any representation concerning compatibility without that information. While the Air Force implies that Masstor therefore had a duty to inquire about the existence of a compatibility requirement, we disagree.

The CBD notice stated that it was for information and planning purposes only and did not constitute a solicitation for bids or proposals. It invited firms to submit a description of their equipment so that the agency could determine their acceptability as potential sources for fulfilling the requirement stated in the announcement. Accordingly, we believe vendors reasonably could assume that so long as they responded to the specific requirements contained in the CBD notice, they would be supplying sufficient information for the Air Force's stated purposes.

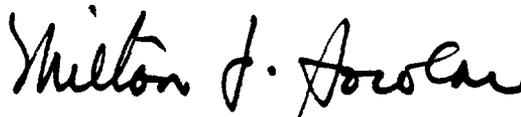
In our view, it was the Air Force's duty to make its essential requirements clear to potential offerors and allow them an opportunity to demonstrate their ability to comply before rejecting them as potential sources of supply. Cf. U.S. Financial Services, Inc., B-197082, Aug. 7, 1981, 81-2 CPD ¶ 104 at 7 (agency could not properly reject a response to a CBD notice of intent to

lease disk drives, even though proposed lease to ownership and purchase plans exceeded the agency's needs, because the agency had never limited offers to lease plans). Since the CBD notice did not fully accomplish that purpose here, the agency at least should have contacted Masstor for further information concerning the compatibility of its software before excluding it from further consideration. Without having done so, we think the Air Force lacked a reasonable basis for rejecting Masstor as a source of supply.

There is another procurement deficiency apparent from the record in this case which has not been protested, but which we cannot ignore. The agency states that the hardware Masstor could supply is identical to that it intended to and later did acquire from NSC. Yet, despite the clear availability of a competitor, the agency purchased the hardware from NSC on a sole source basis. The CBD notice contained no indication of any necessity for acquiring the software and hardware from the same source. Nor is any justification for the agency's action apparent from the record. We therefore conclude that the agency also lacked a reasonable basis for the sole source hardware purchase.

The protest is sustained.

The agency advises us that the software and hardware were acquired on a purchase basis and have been delivered. Therefore, it is impracticable to recommend termination of the contract. By letter of today, however, we are recommending to the Secretary of the Air Force that steps be taken to prevent the recurrence of the procurement deficiencies found in this case.

for 
Comptroller General
of the United States