

DECISION

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

FILE: B-216288

DATE: January 29, 1985

MATTER OF: Van Dyk Research Corporation

DIGEST:

1. Protest of the refusal of agency to permit protester to supply purchase option prices during discussion when they were not supplied in initial proposal is denied since solicitation clearly stated that offerors would not be permitted to supply prices for schedule items for which no prices were provided in initial proposals.
2. Protest of rejection of rental-only proposal to supply copy machines is denied since solicitation, while not specifically stating that rental-only proposals would be unacceptable, clearly indicated that all offers must include purchase option prices.

Van Dyk Research Corporation protests the General Services Administration's (GSA) rejection of its proposal to rent copy machines submitted in connection with solicitation No. FGE-A4-75273-N-4-3-84, a solicitation for the negotiated commercial item contracts (formerly multiple-award contracts). We deny the protest.

Van Dyk submitted its proposal under special item No. 51-55, the schedule item for rental prices; it did not offer prices for special item No. 51-100, which was the schedule item for purchases. Van Dyk contends that when it offered to include purchase prices during the negotiation, GSA refused to permit it to do so. Van Dyk further contends that the solicitation did not state that the machines could be offered only on a rental/purchase basis, that rental-only offers had been accepted in the past and that GSA could not possibly determine that its offer was not in the best interest of the government.

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GSA states that it is uneconomical to rent copy machines for extended periods without an option to purchase, and that this policy is reflected in the Federal Property Management Regulations (FPMR), 41 C.F.R. § 101-25.504 (1984). This FPMR provision states that when it is necessary for an agency to enter into a lease contract for copy machines, an option to purchase should be provided in the contract. GSA's report to our Office states that its refusal to accept purchase prices from Van Dyk during the negotiations is based on the fact that Van Dyk's initial proposal offered no prices under special item No. 51-100. GSA believes that the late proposal provision included in the solicitation prohibits the acceptance of a price for an item for which no price was included in the initial proposal.

We agree with the agency that the explicit language of the late proposal clause prohibits acceptance of Van Dyk's offer of purchase prices during negotiations. For example, the clause, in part, states that:

"(b) No additional Special Item Numbers may be added to the proposal after the firm cut-off date established for receipt of proposals. However, additional products and/or models may be added when the item offered falls under a Special Item Number originally submitted in a timely manner."

Since the copier purchase is a separate Special Item Number, it is clear that under the above-quoted portion of the late proposal clause, no purchase prices could be accepted after the closing date. The issue, then, is whether the solicitation can reasonably be interpreted to preclude rental-only offers.

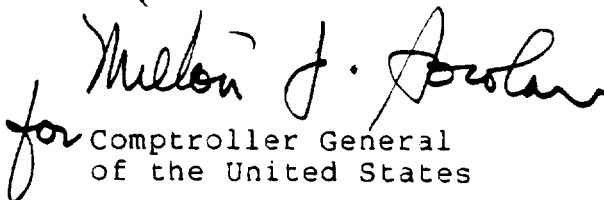
Although GSA's commencement of negotiations on an unacceptable offer may have led to Van Dyk's confusion, we think that the solicitation here, when read as a whole, requires both rental and purchase prices. The solicitation contains a purchase conversion provision that states that rental charges may be applied as partial payment toward the purchase price of new equipment; that the offerors shall submit with their proposals the dollar amount or the percentage rate of rental accruals which may be applied to

the purchase; and that when the equipment is purchased, any rental equipment which was not new at the beginning of the rental period shall be replaced with new equipment of equal or greater value, less all applicable rental accrual credits. Another provision states that life cycle costs would be considered in the evaluation. The provision noted that worksheet packages for rental and purchase prices "shall be provided for every model offered under each machine category for Rental, Rental to Ownership and Purchases."

While the solicitation does not explicitly state that rental-only proposals will be rejected, we believe it is implicit in the language used throughout the solicitation. This interpretation is bolstered by the FPMR provision discussed above. Certainly, the language relating to the conversion of rental equipment to purchase and the application of rent to the purchase price is such that any reasonable offeror contemplating a rental-only offer should have requested confirmation of its interpretation prior to proposal preparation, rather than assume that such a proposal would be accepted. See CFE Equipment Corp., B-203082, May 29, 1981, 81-1 CPD ¶ 426.

Finally, Van Dyk has submitted no supporting material indicating the circumstances underlying the award of the rental-only contracts it received from GSA in the past. We point out, however, that each contract is a separate transaction and erroneous actions taken in a prior procurement do not have binding effect upon the procuring agency in subsequent procurements. Gardner Machinery Corp., B-211474.2; B-212473, Oct. 11, 1983, 83-2 CPD ¶ 433.

The protest is denied.


for Comptroller General
of the United States