DECISION

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

FILE: B-218077.2 **DATE:** May 22, 1985

MATTER OF: Delta Systems, Inc.

DIGEST:

GAO cannot object to exercise of purchase options in Air Force contract for lease of computer equipment since protester has not shown that exercise is unreasonable given Air Force's technical opinion which GAO cannot question.

Delta Systems, Inc. (Delta), protests a $3 million portion (involving "tape and disc subsystems") of a proposed Air Force purchase of $23 million worth of computer equipment which is leased by the Air Force from Control Data Corporation (CDC) under options contained in Contract F33600-81-D-0358. Delta alleges that the Air Force's proposed option exercise is improper because Delta allegedly offers superior equipment for the $3 million portion at a better price than CDC; therefore, Delta urges that the $3 million portion be opened to competition.

We deny the protest.

The Air Force explains that the computer equipment involved in the $23 million purchase is located at six Air Force activities and was originally leased from CDC in April 1981. CDC's lease contract has been repeatedly extended and is now set to expire in September 1985. The Air Force also informs us that the contracting officer synopsized the proposed $23 million purchase in the Commerce Business Daily (CBD) to "test the market." However, the CBD notice expressly stated that the announcement was "not a request for competitive proposals."

Subsequent to the CBD notice, Delta expressed interest in proposing on the portion in question. In response to this interest, the Air Force provided Delta with an equipment list. Based on this list, Delta submitted a proposal for the requirement to the Air Force's contracting officer on February 4, 1985. The contracting officer states that he "evaluated this offer and still concluded that it was in the best interest of the Government to exercise the option in the CDC contract." Specifically, the contracting officer

states that the Air Force could not "determine if [Delta's equipment was] compatible with the existing [CDC] hardware/ software configuration" based on the information submitted in Delta's proposal. As to the cost of Delta's proposal, the Air Force states that when Delta was provided the equipment list:

> "Delta submitted a revised proposal for the entire quantity at a total price of $2,904,000.00 as compared to the CDC buy-out price of $3,018,873.15. Delta was then $114,873.15 (3.8%) lower. . . . However, if we were to purchase these items from Delta Systems, we would be forced to terminate the existing lease with CDC resulting in a termination liability, the amount of which is unknown at this time. In addition we are accruing purchase credits monthly under the provisions of the current contract with CDC, a portion of which accrues to the CDC items which Delta has proposed to replace. These purchase credits lower the CDC price as each month passes negating at least part of the Delta price advantage."

Given this analysis, the Air Force intends to exercise CDC's options even as to the part of the purchase which is contested by CDC.

The circumstances under which an option may be exercised are set forth in Federal Acquisition Regulation (FAR), § 17.207, Exercise of Options, 48 C.F.R. § 17.207 (1984), which requires, among other things, a determination that exercise of the option is the most advantageous method of fulfilling the government's needs, price and other factors considered. We will not object to the determination unless applicable regulations were not followed or the determination itself is unreasonable. Cerberonics, Inc., B-199924, B-199925, May 6, 1981, 81-1 C.P.D. ¶ 351.

Delta does not specifically argue that the Air Force violated any regulation regarding the exercise of the options; however, Delta does argue that the Air Force's determination to exercise the options is unreasonable. Specifically, Delta argues that: (1) the Air Force refused to furnish Delta with a copy of CDC's contract and a copy of a "configuration" of the CDC system--thereby allegedly

preventing Delta from submitting a complete proposal on its allegedly superior equipment; further, the Air Force has refused to inspect existing Delta equipment "at an installed customer site fewer than 80 miles from the procuring activity" so as to permit determination of the compatibility of Delta's equipment with CDC's equipment; (2) the compatibility of its equipment with CDC's equipment is shown by the fact that Delta's equipment has recently been listed by the Department of Commerce (Commerce) to be in "compliance with the appropriate Federal Information Processing Standards [standards];" and (3) the Air Force has not specifically shown that the CDC price is lower than Delta's price.

In reply, the Air Force argues that it did provide an "equipment list and configuration" to Delta when it became available. Although the Air Force did not provide Delta with a copy of the contract until recently, the Air Force argues that Delta did not need a copy of the contract to submit a proposal. On the other hand, Delta states that it needed a copy of CDC's contract to obtain information contained in the contract without which it could not show that its equipment was compatible with CDC's equipment. Delta further argues that it never received a configuration showing "what equipment in what quantity [was] attached to what I/O channel" so as to help "determine how, through our advanced technology, we might save the Air Force money through equipment consolidation, savings in floor space and better CPU utilization."

Although the Air Force apparently never furnished Delta with the type of configuration drawing that Delta describes (or a copy of CDC's contract until recently), the Air Force did furnish Delta with a detailed list of CDC equipment at the affected sites. It is the Air Force's technical view, as noted above, that this equipment list was all that Delta needed in order to submit a technical proposal showing compatibility with CDC's equipment. We are not in a position to question this technical opinion or the Air Force's judgment that it was not obliged to visit Delta's installations in order to determine the compatibility of Delta's equipment given that Delta had all the information needed to submit a written proposal.

Related to this argument is Delta's additional argument that its equipment should be considered to be acceptable because Commerce has found its equipment to be in compliance with the above standards. But we think it is implicit in

Delta's argument--that the Air Force improperly denied it an opportunity to demonstrate compatibility--that compatibility cannot be established merely through this recent Commerce approval of Delta's equipment. Although Delta also argues that it cannot be in the best interest of the Air Force to purchase "three year old used [CDC equipment] whose technological capabilities are obsolete" when Delta's "new equipment with improved technology is available at the same or lower prices," it is the apparent position of the Air Force that Delta has simply not demonstrated the capabilities of its equipment so that the claimed Delta advantages cannot be evaluated.

Given our analysis, we cannot question the Air Force's technical position on Delta's proposed equipment. Further, having not found merit in Delta's position on the technical issues, we consider it unnecessary to consider the cost issue raised by Delta since even in a procurement--as distinguished from an informal market test--a proposal's cost merit need not be considered if the proposal is noncompetitive on technical grounds. 52 Comp. Gen. 382, 388 (1973).

Finally, Delta argues that the Air Force is improperly leasing, and hence improperly purchasing, additional CDC equipment--allegedly not in compliance with Commerce's above computer standards--in violation of Commerce's "waiver request . . . granted to the Air Force" for the equipment involved in the original lease. Delta has also furnished us with a Commerce letter which states that Commerce is not "in a position to verify" Delta's argument. The Air Force insists, moreover, that it "does not require any additional [Commerce] approvals" other than the one it obtained prior to the original CDC lease. It is well established that the protester has the burden of establishing that its protest has merit. See, for example, Elsco International, B-215664, Dec. 17, 1984, 84-2 C.P.D. ¶ 672. Given the above recitals, Delta has simply not established, in our view, that the Air Force has improperly expanded the system in contravention of Commerce's original waiver.

The protest is denied.

Harry R. Van Cleve
General Counsel