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DECISION

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

FILE: B-215174 **DATE:** August 14, 1985

MATTER OF: International Systems Marketing, Inc.

DIGEST:

1. A contractor buying for an agency must seek maximum practicable competition before placing a delivery order against a nonmandatory automatic data processing (ADP) schedule contract. Contractor's technical evaluation of the protester's equipment offered as functional equivalent to named brand computers in response to a Commerce Business Daily (CBD) announcement of intention to place a delivery order for named brand computers is consistent with the mandate to maximize competition.

2. The overriding consideration in evaluating equivalency of product offered in response to CBD notice of contractor's intent to place delivery order for brand name computer system on behalf of agency is whether the "equal" product performs the needed function in a like manner with the desired results. Contractor's technical evaluation will not be disturbed where it is not shown to be unreasonable, and where protester merely disagrees with evaluation on basis of technical disputes, protester has not carried burden of proof.

International Systems Marketing, Inc. (ISM), protests the Department of Energy's (DOE) proposed delivery order (DE-AC06-77RL01030) to International Business Machine Corporation (IBM) covering 60 IBM-PC Model 5150174 computers and related equipment under IBM's nonmandatory automatic data processing (ADP) schedule contract No. GS-00K-84-0155658 with the General Services Administration. The purchase actually will be made for DOE by Rockwell Hanford Operations (Rockwell), a prime contractor acting as purchasing agent for DOE. The protester contends that it has offered the functional equivalent to the IBM equipment specified for

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less than the IBM scheduled price, but the agency, through its purchasing agent Rockwell, will not allow it to compete for the requirement based on an improper technical evaluation and rejection of the equipment it offered. We deny the protest.

BACKGROUND

The Richland Operations Office of DOE (Richland) is responsible for the management of a 570-square mile area in Washington State, commonly called the Hanford Site, where nuclear related activities are conducted. Richland implements its management responsibilities through contracts with eight commercial firms which must interface with each other to meet the programmatic missions of DOE in the control and utilization of the Hanford Site. The contractual activities of two of these prime contractors are involved in this protest--namely Boeing Computer Services-Richland (Boeing) which provides onsite automatic data processing services to Richland and Rockwell which is responsible for direct site purchasing of goods and services used by Boeing and other DOE contractors. The protest is subject to review by this Office as a subcontract protest. Optimum Systems, Inc., 54 Comp. Gen. 767, 774 (1975), 75-1 C.P.D. ¶ 166 at 9.

DOE reports that Rockwell conducted this procurement in accordance with the Federal Information Resources Management Regulations (FIRMR) (41 C.F.R. §§ 1-4.11, et seq. (1984)), which permit an agency to place an order against automatic data processing (ADP) schedule contracts, like IBM's in this case, when certain conditions are met. One condition is that the agency synopsize in the Commerce Business Daily (CBD) its intent to place an order against a nonmandatory ADP schedule contract at least 15 calendar days before placing the order. Id. § 1-4.1109-6(b)(3). The agency must then evaluate all written responses to the notice from responsible nonschedule vendors to determine whether the schedule contract represents the lowest overall cost alternative. Id. § 1-4.1109-6(g)(2)(i). This procedure is not a formal competition; rather, it is a device to test the ADP market to determine whether there are nonschedule vendors interested in competing for the requirement at prices that would make competition practicable. If evaluation of responses indicates that a competitive acquisition would be more advantageous to the government, a formal solicitation normally would be issued, and all vendors, including schedule vendors, invited to compete. Id. § 1-4.1109-6(g). See also CMI Corporation, B-210154, Sept. 23, 1983, 83-2 C.P.D. ¶ 364 at 2.

In the April 25, 1984, CBD Rockwell published its intent to purchase 60 IBM-PC Model 5150174 computers and related equipment for DOE directly from IBM under IBM's nonmandatory automatic data processing schedule contract No. GS-00K-84-0155658 with the General Services Administration unless another vendor established its ability to furnish IBM-PC computers. On May 1, ISM responded to the synopsis by offering to supply the ISM UNISYSTEM-PC Personal Computer as a functional equivalent to the IBM-PC. ISM stated in its response that its equipment had been tested by DOE and was in use by other government agencies. ISM also submitted a list of its equipment users to assist in verifying compatibility with the IBM system and offered to provide demonstrations of its equipment together with technical information for a complete technical evaluation.

Claiming that it had not received any response from Rockwell or DOE, and since the CBD synopsis provided for award to IBM in the absence of any response by May 10, ISM filed its protest with this Office on May 7, 1984, contending that:

> "the purchase of the brand name product without consideration of functionally equivalent products violated public contracts law and DOE regulations which seek to encourage competition to the extent consistent with the procurement."

DOE reported to our Office on June 1, 1984, that ISM's protest basis was both premature and moot, because Boeing was in the process of performing a technical evaluation to determine whether ISM's product was equivalent to the IBM-PC computer, or otherwise suited for application at the Hanford Site. In fact, on May 8 Rockwell asked Boeing to evaluate the ISM product and by May 18 an ISM UNISYSTEM-PC computer had been obtained on loan for testing and evaluation purposes. DOE also reported that even if the ISM UNISYSTEM-PC computer was determined to be the functional equivalent of the IBM-PC computer, a competitive procurement for the agency's requirement would not necessarily follow without the additional finding that the ISM product met the agency's minimum needs. In this case, minimum needs--in addition to the salient characteristics of a product--included considerations of vendor maintenance, training, installation configuration and usage throughout the Hanford Site. At the time, consistent with the Hanford Automatic Data Processing Management Plan, the IBM-PC computer was the only product determined to meet the minimum needs of the agency as the initial micro computer hardware configuration. Thus,

whether the ISM product was equal to the IBM-PC computer was only the first of several critical analyses essential to determining if ISM's product and related services would meet DOE's minimum needs.

On August 27, DOE supplemented its report on ISM's protest with the results of Boeing's technical evaluation and the conclusion that the ISM UNISYSTEM-PC computer is not "equal" to the IBM-PC computer.

On October 4, ISM responded to both DOE reports of June 1 and August 27 contending that (1) its protest was not premature, but rather was competent in stating a basis on which relief may be granted by this Office and was timely filed under our Bid Protest Procedures (4 C.F.R. Part 21 (1984)); and (2) DOE and Rockwell may not reject ISM's offer on the basis of the Boeing technical evaluation because the results of the evaluation are "flawed by improper testing procedures."

TIMELINESS

Our Bid Protest Procedures applicable to this procurement (4 C.F.R. Part 21 (1984)) encourage protesters to seek resolution of their complaints initially with the contracting agency, and a protest will be considered if filed initially with this Office not later than 10 days after the basis for protest is known. See 4 C.F.R. §§ 21.2(a) and (b)(2) (1984). Here, ISM protested Rockwell's intention to procure only IBM-PC machines with DOE before the May 10 closing date for receipt of offers. Rockwell's intention to contract with IBM was first stated in the April 25, 1984, CBD announcement and has persisted throughout the period resulting in our decision here. Moreover, Boeing did not complete its evaluation of ISM's equipment for Rockwell until July 19 when it determined that the ISM UNISYSTEM-PC computer should be rejected as not equal to the IBM-PC computer. Accordingly, since ISM protested Rockwell's intent to buy from IBM and the ultimate rejection of ISM's product before both the closing date and before Boeing determined that the ISM UNISYSTEM-PC computer was not acceptable, we consider ISM's protest to be timely under 4 C.F.R. § 21.2(b)(2) which requires filing within 10 days after the basis for protest is known. Moreover, in view of Boeing's determination that ISM's product is not acceptable, the protest is neither premature nor academic and we will, therefore, consider it on its merits.

THE EVALUATION

ISM contends that the solicitation is improperly restricted to IBM and that DOE, through Boeing, has incorrectly evaluated and rejected the equipment ISM proposed. Initially, we note that specifications should state only the actual minimum needs of the agency and should not limit acceptable offers to one supplier's product unless that product is the only one which will satisfy the agency's needs. Wang Laboratories, Inc., B-215589, Sept. 17, 1984, 84-2 C.P.D. ¶ 300, reconsidered and affirmed, B-215589.2, Dec. 10, 1984, 84-2 C.P.D. ¶ 642. See also FIRMIR, 41 C.F.R. §§ 1-4.1109(a)(2) (1984), which provides that all purchases must be made on a competitive basis to the maximum practicable extent and the existence of a nonmandatory ADP schedule contract does not excuse the procuring agency from seeking maximum practicable competition. Moreover, we have held that, where a procuring agency has information which indicates that a second source may be capable of fulfilling the agency's needs, it is incumbent upon procuring officials to investigate further prior to awarding a sole-source contract. DANTEC Electronics, Inc., B-213247, Aug. 27, 1984, 84-2 C.P.D. ¶ 224 at 5. We conclude that Boeing's evaluation of ISM's UNISYSTEM-PC computer, as it represents the agency's evaluation of the protester's response to the CBD notice, was consistent with the mandate to maximize competition. See also Comdisco, Inc., B-214409.2, Oct. 18, 1984, 64 Comp. Gen. 11, 84-2 C.P.D. ¶ 416.

As to the evaluation itself, our decisions generally recognize that the procuring agency is responsible for evaluating the data supplied by an offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror's item. Automated Production Equipment Corporation, B-210476, Mar. 6, 1984, 84-1 C.P.D. ¶ 269. The overriding consideration in determining the equivalency of an offered product to the named product for purposes of acceptability is whether the "equal" product performs the needed function in a like manner and with the desired results. See Lanier Business Products of Western Maryland, Inc., B-214468, July 23, 1984, 84-2 C.P.D. ¶ 85 at 4. We will not disturb the technical determination by the agency unless it is shown to be unreasonable. Automated Production Equipment Corp., B-210476, supra. Moreover, the protester bears the burden of affirmatively proving its case, and the fact that the protester does not agree with the agency's technical evaluation does not in itself render the evaluation unreasonable. Panasonic Industrial Company, B-207852.2, Apr. 12, 1983, 83-1 C.P.D. ¶ 379.

DOE explains that the Hanford Computer Store, which is operated by Boeing and for which this procurement would provide inventory stock available for Richland contractors, is the cornerstone of the Hanford ADP Management Plan to maximize sitewide compatibility and increase ADP responsiveness and flexibility. DOE reports that prior to the establishment of the Hanford Computer Store each of the eight DOE Hanford Site contractors was responsible for defining and taking steps to satisfy its ADP equipment requirements. There was no sitewide control over the type of equipment purchased, its utilization, maintenance, or training. The lack of control, coupled with the burgeoning office computer industry created significant problems at Richland with respect to effective implementation and execution of DOE's mission and utilization of DOE funds. Equipment incompatibility, ineffective utilization of limited training resources, the potential procurement of outmoded or less than state-of-the-art equipment, and increased maintenance, training and operations budgets are illustrative examples offered by DOE of the types of problems which arose. Thus, DOE created the Hanford Computer Store for the use of its prime contractors in order to effect a more unified ADP procurement policy and to maximize sitewide compatibility. The Hanford Computer Store provides configuration control on general usage computer operating systems. In the instant procurement, the ISM UNISYSTEM-PC computer was evaluated for equivalency with the IBM-PC computer as the "initial Level-One microcomputer hardware configuration" for the Hanford Site. Level-One supported hardware and software are defined as those products that have demonstrated a suitability for meeting a large base of user's requirements. DOE reports that Boeing's evaluation methodology was divided into three major areas; namely, user friendliness, hardware compatibility, and software compatibility.1/

1/ The user friendliness evaluation considers how easy the product is to set up and install, how quickly an operator can become proficient at using the product, and a review of the way the features of the product are implemented. The hardware compatibility evaluation determines whether or not the product will successfully operate and function with the other hardware devices that are typically connected to this type of product. Software compatibility evaluation is based upon similar tests as the hardware compatibility evaluation. DOE further reports that any new software product is considered against current Level-One approved software to ensure that the ultimate users of the product will need a minimum of outside assistance in setting up and learning how to use the new product.

HARDWARE PROBLEM

From reviews performed by Boeing on 14 types of hardware currently classified in Level-One, DOE reports that two hard disk systems, the Tallgrass and Davong products, did not work satisfactorily on the ISM UNISYSTEM-PC computer. These hard disk systems provide mass storage to the Personal Computer without which many applications currently running at the Hanford Site would be reduced to such limited storage capacities that they could not run on the UNISYSTEM-PC. Accessing the hard disk by the ISM personal computer commonly resulted in an interrupt level conflict with the system's second serial port.2/ To ensure that the Tallgrass hard disk system was working properly during the tests with the ISM product, the entire Tallgrass system was removed from the ISM unit and installed on an IBM-PC computer. The same tests were run without any problems. Data files on the hard disk could be accessed without error, programs that were stored on the hard disk could be run from the hard disk, and files could be sent to the hard disk. The problem was discussed with ISM which sent a replacement integrated circuit for its unit. This replacement integrated circuit was installed by Boeing under telephone supervision from ISM. The retest resulted in the same failure as the report of "error in base memory" occurred each time the files stored on the Tallgrass hard disk were accessed.

Boeing also experienced difficulty when the ISM UNISYSTEM-PC computer user wanted to go from one to two serial ports since none of the documentation provided by ISM clearly showed how to reconfigure the serial interface ports if both serial ports and the parallel port were required. ISM had to supply the information to the user by telephone.

Another problem occurred when Boeing evaluators attempted to use the Davong hard disk system. The operating system could not be installed at all using the standard set-up procedure. During the test the system would "hang," that is, it would not function until the computer was turned off and then back on again. Immediately after this test, Boeing reports that the floppy disk controller on the UNISYSTEM-PC unit also failed. When ISM was contacted regarding this problem, they offered no suggestions as to why the Davong hard disk system would not work on their computer and

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2/ The interrupts are internal messages to tell the computer when a device is ready to receive or send data; it appeared in the course of this evaluation that the computer was unable to distinguish between the ports or the hard disk as the source of the interrupt messages.

instead forwarded a replacement controller board for the one which had failed the test.

ISM contends that any hardware problem experienced by Boeing was the result of improper testing procedures since, as ISM observes, its Operations/Technical/Reference Manual was returned unopened. In addition, ISM claims it was in constant telephone contact with Boeing, and requested notification by Boeing if any problems arose. ISM then contends that Boeing did not notify it of any problem. ISM blames Boeing's failure to use its manual for Boeing's misunderstanding concerning the second serial port on ISM's unit which ISM explains was initially set up to handle just one serial port, the second serial port being disabled to allow for testing of optional hardware. In addition, ISM asserts that the manual specifically covered the reconfiguration of the serial interface ports when both serial and parallel ports were required, which involves enabling and disabling the ports with an integrated circuit available from ISM at no charge. ISM concludes on the issue of hardware that its UNISYSTEM-PC computer can operate the Tallgrass and Davong hard disk systems in the same manner as an IBM-PC.

DOE responds to the charge that Boeing's technical personnel did not use the ISM reference manual by stating that Boeing received two documents with the ISM hardware, the first was a photocopy of an ISM company document which Boeing opened and used; the second was an IBM users' manual which Boeing already had on hand and therefore did not open. Boeing further reports that it did contact ISM repeatedly when evaluation personnel were unable to make both the Tallgrass and Davong hard disk systems work with ISM equipment. Boeing indicates that it discussed these problems with ISM but was unable to correct the problems upon retesting. Boeing concludes that the ISM computer should have worked as shipped from the factory, but it did not, and this fact alone indicates that the ISM computer is not equal to the IBM-PC computer.

SOFTWARE PROBLEM

Boeing found that all software tested satisfactorily except where the software required responses through the function keys "alt-F1" through "alt-F10". This problem occurred using Visicalc IV and PC-Term.[3/] Performing an

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3/ The PC Term and Visicalc IV software packages provide telecommunications with mainframe computers and spreadsheet analysis.

assembly language test to evaluate why the UNISYSTEM-PC computer would not operate these particular keys, Boeing determined that the differences are a function of the code that reads the keyboard. ISM responds that Boeing's problem was apparently caused by the replacement of the original 8088 chip which was on the unit supplied by ISM. Boeing counters that this is not the case and it did not replace ISM's 8088 chip that was sent with the evaluation unit. Moreover, Boeing offers that it knows of no reason to replace 8088 chips to solve the problem related to software incompatibility and states that Boeing evaluations do not include testing of individual electronic devices.

ISM concludes that the evaluation was faulty, that its protest should be upheld and a competitive procurement should be initiated. DOE contends that Boeing's evaluation was not an exhaustive technical review of ISM's product design technique and manufacturing methodology, nor was the purpose of the review to provide reverse engineering services to ISM and thereby develop an IBM-PC computer "equal" for ISM. Rather, in DOE's view, the evaluation was as complete as practicable under the circumstances, testing to assure that ISM's claims of compatibility across the board with IBM-PC products were well founded. DOE concludes on the basis of Boeing's evaluation that those claims are incorrect and that the ISM computer is not an "equal" product to the IBM-PC computer.

CONCLUSION

As we have indicated, the overall determination of the technical adequacy of a response to a CBD notice of a delivery order against a schedule contract is primarily a function of the procuring agency which we question only upon a clear showing of unreasonableness, an arbitrary abuse of discretion or a violation of procurement, statutes and regulations. See also Jarrett S. Blankenship Co., B-213473, June 25, 1984, 84-1 C.P.D. ¶ 662.

Essentially, this case presents numerous areas of disagreement between the protester and the user agency, and both sides have presented highly technical support for their points of view. However, it is the protester which must bear the burden of showing that the contracting officials' actions were arbitrary, capricious or an abuse of procurement discretion. See DANTEC Electronics, Inc., B-213247, supra, at 4. The fact that ISM's equipment allegedly has been used by other activities does not meet this standard or otherwise support ISM's protest in this case since one

procuring activity's acceptance of an item does not determine the propriety of another procuring activity's evaluation of that same item. Automated Production Equipment Corporation, B-210476, supra.

From the record presented, it is clear that Boeing's experts tested ISM's personal computer for equivalency with IBM's personal computer and compatibility with software used extensively by DOE user contractors. For example, in the hardware compatibility evaluation to determine whether or not the product will successfully operate and function with other hardware devices in the level-One microcomputer hardware configuration, Boeing determined that two essential hard disk systems, the Tallgrass and Davong products, did not work satisfactorily with the ISM UNISYSTEM-PC computer. In similar tests to determine the compatibility and suitability of the ISM UNISYSTEM-PC computer with users' level-One supported software requirements, Boeing determined that the equally essential Visicalc IV and PC Term software packages tested unsatisfactorily with the ISM product. ISM was contacted when problems arose, but Boeing personnel were unable to effect corrections and determined that ISM's product was not equal to IBM's product. While ISM disagrees with Boeing's opinions and has provided highly technical arguments to support its positions, ISM has not shown that Boeing's experts' technical opinions in evaluating the ISM UNISYSTEM-PC computer were clearly unreasonable or that the test procedures followed were in any way deficient. Jarrett S. Blankenship Co., B-213473, supra. We, therefore, defer to the contracting agency's expert evaluation and opinion in this case since ISM has not met the heavy burden of proof placed upon it. See DANTEC Electronics, Inc., B-213247, supra, and decisions cited therein; see also Wang Laboratories, Inc., B-215589, supra.

The protest is denied.

for Seymour Efros
Comptroller General
of the United States