

DECISION

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

FILE: B-216945.2 **DATE:** September 24, 1985
MATTER OF: Information Marketing International

DIGEST:

Protest against procuring agency's renewal of third year of 3-year agreement for subscription services under Federal Supply Schedule mandatory multiple-award contract by another firm with schedule contract is denied, where agency had need for single source of supply and protester could not furnish all of the agency's needs.

Information Marketing International (IMI) protests the award of certain delivery orders renewing subscriptions for microfilm services to Information Handling Services, Inc. (IHS), by the Sacramento Air Logistics Center, McClellan Air Force Base, California (Air Force). These orders were placed under IHS' General Services Administration (GSA) Federal Supply Schedule (FSS) contract No. GS-00S-23609. This is a mandatory multiple-award schedule contract. IMI has a similar schedule contract. We deny the protest.

The Air Force reports that in September 1982 it entered into a 3-year agreement to place the Air Force's requirements for these subscription services with IHS. In August 1984, IMI contacted the Air Force about its schedule contract. The Air Force arranged for a IMI product demonstration to the Air Force users of IHS' subscription services.

The users of the subscription services advised the contracting officer that IMI did not offer some significant services which the Air Force needed, including a master catalog services product/service listing, a locator product, and a cross referencing product. The contracting officer reports that the microfilm files had to be supplied by a single source because of space requirements, research time, manageability and continuity, and employee training required for two systems.

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Another factor considered in the decision to renew these orders under the IHS agreement was GSA's advice to the contracting officer that in light of the multiyear agreement (multiyear subscription agreements can be used in appropriate circumstances, see 41 C.F.R. § 101-25.108 (1984)), the Air Force, if it failed to renew with IHS, might have to pay termination damages. There is a special provision in IHS' 3-year agreement which provides for payment of a specific percentage sum if the subscriptions are not renewed.

IMI contends that this renewal with IHS violated the FSS ordering and evaluation procedures prescribed by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 8.405-1 (1984). IMI alleges that it can meet 90 to 95 percent of the minimum needs of the Air Force and that the Air Force should have solicited technical information and quotes from it. IMI contends that the Air Force did not properly identify its minimum needs to IMI and instead defined its requirements in terms of IHS product trade names. IMI argues that the "all or none" award violates FAR, 48 C.F.R. § 8.405-1, which IMI contends contemplates multiple awards for the various items. Finally, IMI states that in determining whether to renew these orders with IHS the Air Force improperly evaluated the IHS termination costs.

Under FAR, § 8.405-1, orders are to be placed with schedule contractors offering the lowest delivered price available for the products which meet the ordering agency's minimum needs. See Information Marketing International, B-216945, June 28, 1985, 85-1 C.P.D. ¶ 740. However, FAR, §§ 8.405-1(a)(3) and (5) permits award at other than the lowest price where compatibility with existing equipment or systems is necessary or to procure special features required in effective program performance.

In response to the agency report on the protest, IMI submitted un rebutted documentation, which indicates that IMI's products could satisfy the Air Force's minimum needs for the bulk of the items, including a cross-reference catalog and index. However, there is no indication that this documentation was provided to the Air Force prior to extension of the IHS subscriptions. Cf. Information Marketing International, B-216945, supra (burden on FSS schedule contractor to apprise procuring activity of current prices). See also 48 C.F.R. §§ 38-102-2(c) and 8.404(b). Moreover, IMI admits that it cannot furnish all of the needed subscriptions, but only 90 to 95 percent of them.

Under the circumstances, we are unable to conclude that the contracting officer's decision to renew IHS' subscriptions was totally unreasonable based upon the information that he had at that time. The Air Force subscribes to hundreds of microfilmed regulations, vendor catalogs, engineering standards and military specifications. Its determination to procure these items from a single source to allow research access through a single index/locator system is not, on this record, objectionable. Since IMI cannot supply all the needed items, the Air Force was not required to award a contract to IMI.

Regarding IMI's assertion that the Air Force improperly considered termination charges in deciding to renew IHS' contract, the record is unclear whether the contracting officer thought the government may be liable for normal termination for convenience damages or the special damage provision for non-renewal in the IHS contract, a specific percentage. We understand that GSA is taking steps to assure these charges are not in future contracts for subscription services.

IMI also protests the Air Force's failure to place a subscription for "GSA Schedules and Contracts" with IMI after soliciting an offer for it. This subscription was identified and discussed during the IMI product demonstration in August 1984. The contracting officer reports that the IMI product is not identical to the IHS product that it is now receiving, but that it would meet the Air Force's minimum needs, even though not as completely as the IHS product. The Air Force further reports that it then checked with IHS' representative, who said that IHS had a product identical to that offered by IMI at a lower price. Consequently no order was placed with IMI for this item. IMI now claims that it has another product equivalent to the IHS alternative product at less cost. However, given the dollar value of the item (under \$1,000) and since both IMI and IHS were given an opportunity to identify their products, we cannot conclude that the award to IHS without further discussions with IMI was totally unreasonable.

The protest is denied. Therefore, IMI's claim for attorney fees and costs in connection with filing the protest is also denied.

for Seymour Egan
Harry R. Van Cleve
General Counsel