

DECISION



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

FILE: B-219601 **DATE:** November 13, 1985
MATTER OF: Management Systems Designers, Inc.

DIGEST:

1. Protest alleging an offeror's noncompliance with mandatory technical requirements is without merit where the record shows that the successful technical proposal was reasonably evaluated by the agency as meeting the requirements.
2. Although proposal for portable computers having one hard disk and one floppy disk drive deviated from specification requiring that portable units have at least two floppy disk drives, acceptance of the proposal did not prejudice competing offeror because hard disk drives are generally more expensive to offer and furnish than floppy disk drives and the units proposed did meet agency's actual needs.
3. Where a protester raises a broad ground of protest in its initial submission but fails to provide any detail on this protest ground until it files its conference comments subsequent to its receipt of the agency report, so that a further response from the agency would be needed for an objective review of the matter, the matter will not be considered because protests may not be filed in piecemeal fashion.
4. Where a protester first raises protest issues in its conference comments that are based on material first revealed by the agency in its report on the protest, GAO will consider these issues as newly filed protests.

Management Systems Designers, Inc. (MSD) protests the award to Terminals Unlimited, Inc. (TUI) of a contract for an integrated office automation system at Social Security Administration (SSA) offices in the Baltimore, Maryland, and Washington, D.C. metropolitan areas. MSD alleges that the TUI proposal, submitted in response to request for proposals (RFP) No. SSA-RFP-84-002, did not meet numerous mandatory requirements of the solicitation.

We deny the protest.

Background

The RFP generally required that the integrated office automation system allow efficient creation, management, and communication of data and text. The solicitation's project system architecture envisioned a series of "clusters," each consisting of four to eight terminals, workstation processors, and peripheral equipment. These clusters were to be linked to each other and to shared resources, such as high-speed printers, by means of local area networks. The solicitation provided that award would be made to the responsible offeror whose proposal met all mandatory requirements at the lowest overall cost to the government, price and other factors considered, for the 60-month system life.

SSA received four proposals on July 19, 1984. It then conducted discussions with each offeror. Two offerors withdrew from the competition and SSA subsequently determined that the proposals of MSD and TUI were technically acceptable. After further discussions and two rounds of best and final offers, SSA selected TUI's proposal as offering the lowest evaluated cost and awarded the contract to the firm in the amount of \$6,673,926, exclusive of options. This protest was then filed and SSA issued a stop-work order to TUI pending resolution of the protest.

MSD's Protest

MSD contends that the solicitation contained stringent and demanding mandatory requirements that had to be met by any successful offeror. MSD alleges that while its system fully complied with these mandatory requirements, TUI's system did not, and that SSA's award of the contract to the firm, therefore, constituted a waiver of mandatory specifications without a formal solicitation amendment. MSD's protest is primarily based on information obtained from an SSA official during a July 12, 1985, telephone conversation

and upon a review of a list of equipment and software proposed by TUI that was subsequently released to the protester by SSA. Without knowledge of the specific configuration or other technical details contained in TUI's proposal, the protester's objections are primarily based on its alleged knowledge of the commercially known "inherent capabilities" of the equipment proposed by TUI.^{1/}

Analysis

Generally, in considering a protest of this nature, we do not reevaluate technical proposals or substitute our judgment for that of the agency, and we will not disturb an agency's determination of the technical adequacy of a proposal absent a clear showing that the determination was unreasonable or was otherwise in violation of procurement statutes and regulations. Furthermore, the protester has the burden of affirmatively proving its case, and mere disagreement with a technical evaluation does not satisfy this requirement. A. B. Dick Co., B-211119.3, Sept. 22, 1983, 83-2 CPD ¶ 360, aff'd on reconsideration, B-211119.5, Apr. 17, 1984, 84-1 CPD ¶ 424.

The protester raises numerous technical issues, some of which it withdrew in a supplemental protest letter that itself raised still more bases for protest. An item-by-item analysis of those issues that remain follows.

^{1/} MSD and SSA arranged a debriefing for August 9, 1985, to address the technical issues of the protest as initially filed by MSD. However, MSD thereafter filed a "supplementary protest letter" based on the newly released TUI equipment and software list; SSA then canceled the debriefing. MSD alleges that SSA is "stonewalling" because it ignored MSD's request for information under the Freedom of Information Act (FOIA), and allegedly refused to document the true basis for award as procedurally required. SSA characterizes MSD's protest as conjectural and uninformed because SSA believes that TUI's configuration meets all mandatory RFP requirements and, indeed, cannot even be understood merely by examining TUI's equipment and software list. Apparently, at least some of the technical methods and solutions proposed by TUI are considered proprietary by both SSA and TUI, and therefore not releasable to the protester. In any event, this Office has no authority under FOIA to determine what information agencies must disclose under the act. Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715.

A. Workstation Processor Redundancy

Paragraph F. 105 of the mandatory specifications provided as follows:

"The system must provide workstation processor redundancy. This does not necessarily mean 100 percent duplication of equipment. There must be a method to continue operations quickly when a processor goes down. One method is to shift the terminals and peripherals from the malfunctioning processor to a nearby working processor and thus "double up" on that processor. In such an environment, each processor must normally support no more than 50 percent of the maximum number of users of which it is capable in order to permit the desired redundancy."

MSD initially asserted that TUI's equipment list revealed that there was no redundancy at all for 289 users. Specifically, MSD alleged that TUI proposed 289 IBM PC/AT systems, each with a Taxan monitor (a video display terminal), and the keyboard which comes with the PC/AT. If these units fail, according to MSD, there is no "method to continue operations quickly" as required.

The agency states that TUI proposed using the IBM PC/AT as both a workstation processor and a terminal. This is possible because of the powerful computational capabilities of the proposed workstation processors. With this configuration, the workstation processor (which is also used as a terminal) is required to support only one other terminal. Each independent terminal is physically connected to another workstation processor to provide continued terminal operation in the event of a workstation malfunction. Whenever any workstation malfunctions its attached terminal is switched to the backup workstation. Therefore, according to SSA, any workstation processor failure is only equivalent to one terminal "going down." Moreover, although the specifications only required 132 workstation processors, TUI, because of its configuration, was able to offer 289 workstation processors which provides overall redundancy far in excess of requirements.

In response, MSD concedes that, under TUI's configuration, a user's independent terminal can be switched to another workstation processor in the event of failure. However, MSD maintains that this cannot be done

for the user of the PC/AT terminal who must then borrow another user's terminal to continue operations. Since workstation processors in TUI's system are not interconnected, MSD contends that users of workstation processor terminals must go through a cumbersome process to restore their data files and must physically relocate in the event of failure. MSD concludes that this does not satisfy the requirement to be able to "continue operations quickly."

We find that TUI proposed an innovative configuration to meet the redundancy requirement that permitted the elimination of many terminals as unnecessary. We find nothing in the specification language which equates "quickly" with a requirement that operations physically continue at the same failed terminal. While effort is required to restore data files at a physically different location under TUI's configuration, MSD has provided no evidence supporting a conclusion that this operation would be excessively cumbersome or time consuming. Further, we think that the agency has reasonable discretion in determining how "quickly" its operations must continue, and we will not substitute our judgment for that of the agency. Accordingly, this basis of protest is denied.

B. Portable Units

Paragraph F. 703 of the mandatory specifications required that "all portables must have at least two integral floppy disk drives, with at least 320k bytes formatted storage per floppy disk expandable to 640K bytes." MSD initially alleged that the portable units offered by TUI (Corona Portable personal computers) have an installed hard disk, and so can accommodate only one floppy disk drive.

SSA states that the 10MB (million bits) hard disk drive and floppy disk drive configuration proposed by TUI exceeds the performance requirements of two floppy disk drives and a 640K byte direct access storage capacity. The agency further contends that the hard disk drive serves the same function as a second floppy disk drive at a higher performance level. SSA therefore concludes that there was no basis to find TUI's proposal technically deficient.

In response, MSD argues that although a hard disk drive can store more data than a floppy disk drive, the two are not equivalent in performance for all purposes, each having certain advantages and disadvantages. For example, MSD states that the floppy disk is a removable storage

medium and therefore its sequential storage capacity is theoretically unlimited. Also, MSD states that a floppy disk drive is a more convenient data entry device.

The specifications here were not merely performance requirements--they clearly and explicitly required that all portables have at least two floppy disk drives. Nevertheless, we note that a hard disk drive for most purposes functions better than a floppy disk and is generally more expensive to offer and furnish. Accordingly, while the TUI proposal deviated from the specifications, it is not likely that TUI benefited in terms of the evaluation of lowest cost proposal was either insignificant or nil. Further, this requirement was a subpart of a small part of the total system configuration. We therefore find no prejudice to MSD. See Centennial Computer Products, Inc., B-211645, May 18, 1984, 84-1 CPD ¶ 528.

C. Encryption/Decryption Capability

Paragraph F.3608 of the mandatory specifications required that the network software proposed provide an "NBS (National Bureau of Standards)-derived encryption and decryption capability to allow secure communications on the network by users at the users' option." MSD initially alleged that its review of available local area networks revealed few, and perhaps only one, with the capability of NBS-derived network encryption at the users' option. Further, according to MSD, the one known capable network has not been offered by TUI, so that there is "evidence" that this requirement will not be met.

The agency, in its report, states that the network proposed by TUI includes the workstation and shared office automation facility (SOAF) processors and their accompanying operating system software. The network software proposed by TUI thus includes IBM PC/AT software because the IBM PC/AT serves as TUI's network interface device and, as such, should be considered an integral part of the network itself. This IBM PC/AT software contains a "crypt" command that is a derivative of the NBS standard and thus meets the requirement.

MSD now argues that SSA erroneously construes the PC/AT as part of the network, rather than as a device attached to the network. Also, MSD argues that the

encryption capability in TUI's system is inadequate because it requires two steps: the user must first create ("encrypt") a file, and then transmit the message. Thus, according to MSD, TUI's system will not send and receive communications securely in an interactive mode, such as between two managers discussing sensitive information.

We think that TUI's system was reasonably evaluated as meeting the encryption/decryption requirement. The specifications simply do not require this capability with all modes, so long as the user is capable of encrypted communication of all messages. Thus, while a prior file may have to be created before transmitting communications in an encrypted form, the capability is always there to send any message securely. Accordingly, TUI's system allows "secure communications on the network by users at the users option."

We also believe that the term "network" properly should be interpreted liberally to include any functional or operational part of the network as a whole. Since the IBM PC/AT is TUI's network interface device under the terms of the solicitation, SSA reasonably found TUI to meet the requirement.

D. Network Requirements

MSD alleges that TUI proposed an "Ethernet-type" network with "Fusion" software that does not meet three of the five network control capability requirements contained in paragraph F.3701 of the mandatory specifications. This allegation arises from the fact that TUI proposed a baseband-type network^{2/} while MSD proposed a broadband-type network.^{3/} MSD essentially questions whether any baseband network meets SSA's mandatory specifications.

First, the specifications require "movement of any network interface device from one frequency channel to another." MSD argues that this requirement cannot be met by any baseband network which has, by definition, only one

^{2/}"Baseband" can be defined as a transmission method without modulation. The signals take up the entire bandwidth (all frequencies) of the media.

^{3/}"Broadband" can be defined as a transmission method with modulation. The signals can be separated into different frequencies; hence, voice, data, and video can be transmitted over the same media.

channel. In response, the agency states that this movement requirement is simply inapplicable to a baseband network precisely because there is only a single, high-speed channel. Thus, there are no different frequency channels to move between on a baseband network.

We think MSD's allegations are without merit. The requirement for movement from one frequency channel to another is clearly applicable only to networks with signals that can be separated into different frequencies. Since baseband networks have no modulation and operate on all frequencies, there is no need to move from one channel to another.

Further, we are not persuaded by MSD's assertion that the presence of the requirement for movement from one channel to another in effect mandates that offerors propose a broadband network. As the agency points out, such an interpretation is inconsistent with the RFP as a whole. For example, paragraph F.3206 provides: "If broadband networks are bid, the networks must have the ability to link [Data Terminal Equipment] devices on separate frequency channels." (Emphasis supplied.) Paragraphs F.3203 and F.3506 are similar. Moreover, we find nothing in the solicitation which otherwise prevents an offeror from proposing a baseband network. We therefore find MSD's interpretation of the solicitation to be unreasonable.

MSD's remaining two arguments concern specification requirements that the network have the ability to change the device ID of any terminal and to change the communication characteristics of any network interface device. MSD's protest here is based on its theory that a PC/AT should not be deemed by SSA to be a "network interface device," but rather that just the "communication card" installed in the PC/AT should be so considered. We think that MSD's theory is ill-conceived. The IBM PC/AT, with its software, is clearly capable of communicating with the entire network and, as such, is an operational and functional part of the whole network. Therefore, MSD's protest on this issue is without merit.

E. Graphics Software

Paragraph F.1545 of the mandatory specifications required that proposed software "allow insertion of characters, words . . . and graphics material," with automatic expansion of affected text. MSD initially merely protested that "based on a review of available software, it is unlikely that [TUI] has met this requirement."

In response to this general allegation, SSA stated in its report that the Technical Evaluation Panel (TEP) thoroughly reviewed the word processing software proposed by TUI, including documentation concerning TUI's "Imagen Laser" printer and "Star Radix" printer (which support this capability), as well as a certification from TUI, and concluded that the proposed software met SSA's mandatory requirements. SSA maintains that MSD's contrary allegations are not supportable.

The protester, in its conference comments, has for the first time provided specific details about its basis for protest. It asserts that TUI's software, identified as "Latitude," is inadequate and fails to meet the specifications. The protester has now provided extensive expert documentation in support of its contention as an attachment to its conference comments.

We think the agency adequately responded to MSD's initial broad ground of protest. Further, we will not review the merits of the specifics noted in MSD's conference comments. The protester knew that TUI proposed "Latitude" as its software upon receipt of the equipment and software list that provided the basis for its supplemental protest, but provided no details until it filed its conference comments. Where, as here, a protester raises a broad ground of protest in its initial submission but fails to provide any detail on the protest ground until it comments on the agency report, so that a further response from the agency would be needed for an objective review of the matter, the protest is filed in a piecemeal fashion and will not be considered.^{4/} See LaBarge Products, B-219345.3, Sept. 5, 1985, 64 Comp. Gen. ¶ _____, 85-2 CPD ¶ 270. We therefore will not further consider this protest ground.

F. Meaningful Discussions

In its conference comments, MSD for the first time protested that SSA improperly and unnecessarily conducted additional discussions and requested a second round of best and final offers. MSD maintains that the agency report shows that between the first best and finals on May 9, and

^{4/}Under our regulations, when a conference is held, a protester's conference comments serve both as its comments on the agency report and on the conference. See 4 C.F.R. § 21.5(c).

the second best and finals on July 5, 1985, SSA communicated with TUI by letter dated May 21 and possible other undisclosed oral communications. The protester asserts that these communications show a clear inequality in the conduct of the discussions because during the same period, no substantive communications of any kind were conducted with MSD.

We have reviewed the contents of the agency's communications with both offerors after the first round of best and final offers and find nothing improper in them.^{5/} Apparently, the agency still believed after receipt of the initial best and final offers that additional information and statements were required from both offerors. We have upheld agency determinations to request a second round of best and final offers where a valid reason exists for the action. Tymnet, Inc. et al., B-209617, et al., Apr. 12, 1983, 83-1 CPD ¶ 384. Our review of the record shows that there were valid reasons for the agency's request here, as it was necessary to obtain additional clarifications and corrections from the offerors.

We also find no evidence of unequal or preferential treatment of any offeror by SSA. We note that SSA did not communicate exclusively with TUI, but communicated with MSD also concerning its technical proposal by letter dated July 1, 1985. This letter refers to discussions held with MSD on June 28, identifies specific deficiencies in MSD's proposal, and requests a best and final offer. While there may have been more detailed discussions with TUI, the extent of discussions with a particular offeror depends on the deficiencies present in its proposal so that equality of treatment does not necessarily mean equally extensive discussions with all offerors. See Pope Maintenance Corp., B-206143.3, Sept. 9, 1982, 82-2 CPD ¶ 218. In fact, the record shows that the evaluators identified a greater number of deficiencies remaining in TUI's proposal than in MSD's proposal after the first round of best and final offers. Since both offerors were subsequently given an opportunity to respond to the deficiencies identified in their proposals by submitting revised proposals by a common cutoff date, we find no basis to object to the agency's actions here.

^{5/}We note that the record contains no evidence to support MSD's otherwise unsupported allegation of "other undisclosed oral communications" between SSA and TUI.

G. Other Matters

MSD initially protested, without detailing its objections, that "mandatory requirements F.1900-1937 lay out very stringent specifications for the data base management system. It is believed that these requirements also have not been met."

In its report on the protest, SSA states that TUI's DBMS is fully functional and takes strong exception to MSD's unsupported initial general allegation, noting that there are 38 mandatory technical requirements in the solicitation that directly relate to the DBMS. The agency asserts that it is not reasonable to expect a detailed response to such an allegation.

In its conference comments, however, MSD now asserts that TUI's DBMS fails to meet four specific mandatory requirements, and supports its contentions with detailed technical analyses and documentation.^{6/} The agency has not submitted any response, nor do our regulations provide for any such supplemental response. See 4 C.F.R. Pt. 21 (1985).

Generally, the protest system established by the Competition in Contracting Act of 1984 (CICA), and implemented by our Bid Protest Regulations, is designed to provide for the expeditious resolution of protests with only minimal disruption to the orderly process of government procurement. See 31 U.S.C.A. § 3554 (West Supp. 1985). This process does not contemplate a piecemeal development of protest issues, since that would enable a protester to delay our decision and thereby both jeopardize our ability to meet the CICA requirement that we issue a decision within 90 working days, and undermine the objectives of the process by, for example, delaying an award that otherwise could have been effected earlier. Protesters therefore must assert and substantiate all of their grounds of protest as promptly as possible, and a failure to do so may result in portions of a protest being dismissed or not considered. See LaBarge Products, B-219345.3, supra.

^{6/}At the conference, counsel for the protester stated that the protest was highly technical in nature and that he was therefore unwilling or unqualified to discuss the technical issues or to add any details until the protester furnished its written comments on the conference. Thus, the agency still did not know the specific basis for this protest ground until after the record was closed following receipt of conference comments.

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Nevertheless, it is clear from MSD's conference comments that its contention that TUI's DBMS fails to meet mandatory requirements is based on TUI's proposed use of a software package, identified as "Unify," for both the workstation processors and for the SOAF. Although MSD was aware when it filed its initial protest that TUI proposed to use the Unify software since it was identified on the list of TUI software that SSA furnished MSD, the protester states that it was only upon receipt of the agency's report that it became aware that Unify was the software package for both the workstations and the SOAF. It then obtained an "independent" evaluation of this software package that it incorporated into its conference comments and that allegedly shows that the proposed software is defective.

Our review of the record reveals that the protester apparently is correct in its contention that only upon receipt of the agency's report did it become aware of the dual use of the Unify software package. Further, its conference comments were submitted within 10 working days of its receipt of the report. Therefore, we view MSD's current contentions as a new timely protest. See 4 C.F.R. § 21.2(a)(2). Since we cannot decide the matter based on this record, we have opened and docketed this issue as a separate newly filed protest and have requested a report from the agency.

In its conference comments, MSD has also raised other new or substantially new grounds for protest that stem from material first revealed by SSA in its report to our Office. The agency has not had an opportunity to respond to these matters in the context of the current protest. Specifically, these new issues include: (1) allegedly improper lease of an optical character reader, and (2) allegedly noncompliant external communications (based on a newly revealed configuration). We are also treating these issues as newly filed protests and will consider them in a separate decision.

Conclusion

The protest is denied.

for *Raymond E. Jones*
Harry R. Van Cleve
General Counsel