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**DECISION**



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

**FILE:** B-220590

**DATE:** January 15, 1986

**MATTER OF:** TriCom, Inc.

**DIGEST:**

1. Protest challenging agency's evaluation of protester's proposal for leasing automatic data processing equipment is timely where filed within 10 working days after protester learned that it would not receive award; protest did not have to be filed before date for submission of proposals because it concerns agency's evaluation method, not evaluation factors themselves.
2. Synopsis in Commerce Business Daily required before placing order under nonmandatory schedule contract for automatic data processing equipment is intended to test the market to determine whether there are non-schedule vendors interested in competing for the requirement at prices that would make competition practicable. Synopsis is not a formal solicitation document and need not describe the evaluation factors to be used by the agency in the same detail as an actual solicitation.
3. Agency decision to procure automatic data processing equipment under nonmandatory schedule contract is reasonable where proposal from protester, a nonschedule vendor, does not offer dollar credits toward upgrading existing equipment, a feature critical to meeting agency's needs at the lowest cost, and provides significantly lower level of support services than schedule vendor.

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4. Protester does not meet its burden of presenting virtually irrefutable proof that contracting officials had a specific and malicious intent to harm the protester where protester's contention that they acted in bad faith is completely unsubstantiated.

TriCom, Inc. protests the decision by the Export-Import Bank of the United States to place an order with IBM Corporation to lease with an option to purchase an IBM model 4341-M12 central processing unit (CPU) and an IBM 3370-A2 disk drive under General Services Administration (GSA) schedule contract No. GS00K85-01S-5911 for automatic data processing (ADP) equipment. TriCom contends that its proposal should not have been rejected by the Bank since it offered the equipment and related services at a lower price than IBM. We deny the protest.

As required by the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. § 201-32.206(f) (1985), the Bank published a notice in the Commerce Business Daily (CBD) on May 31, 1985, announcing its intent to place a delivery order with IBM under its non-mandatory ADP schedule contract and inviting other potential offerors to submit proposals for the equipment. Because the disk drive model to be ordered was incorrectly listed in the May 31 synopsis, the Bank published a second notice in the CBD on August 21, correctly listing the Bank's requirement for conversion of an IBM model 4341-L11 CPU to a 4341-M12 CPU, and one IBM model 3370-A2 disk drive, and further detailing the Bank's needs. The August 21 synopsis stated that the order would be placed with IBM under the federal lease to ownership plan, an arrangement under which the procuring agency obtains dollar credits toward upgrading existing equipment based on amounts already paid by the agency for leasing the existing equipment. The synopsis also stated that the order would be on an all or none basis and that related technical support would be furnished by IBM, including marketing presentations, capacity and other planning studies, installation, and evaluation and other advisory studies. The synopsis indicated that proposals for equivalent items were to be submitted to the Bank by September 5, but that no contract award would be made based on proposals submitted in response to the notice. See FIRMR, 41 C.F.R. § 201-32.206(f)(2)(iv).

By letter dated August 29, TriCom submitted a proposal for lease of the model 4341-M12 CPU only. <sup>1/</sup> For the 30-month lease term sought by the Bank, TriCom offered a monthly rate of \$5,350; IBM's schedule rate for the same term was \$10,800. With regard to technical support services, TriCom's proposal stated that "[f]ull marketing and planning services are available from TriCom Inc. at no additional charge." TriCom also stated that "[s]hould the Bank elect to purchase the equipment during the term of the lease, credits will be accumulated on monies previously paid."

On September 10, the Bank's ADP equipment review panel evaluated TriCom's proposal. Based on a comparison of the TriCom proposal with the terms of an order placed with IBM under the GSA schedule contract, the panel concluded that the Bank's needs would be best served by placing an order with IBM. According to the Bank, the principal grounds for its decision were the benefits to the Bank of the dollar credits toward equipment upgrade available under an IBM order, as well as the substantial value to the Bank of IBM's technical support services, which were not matched by TriCom. Specifically, the Bank states that the upgrade credits provision is beneficial because it minimizes the cost of upgrading existing equipment as either ADP technology or the Bank's needs change. In fact, the Bank anticipates upgrading the model 4341-M12 CPU prior to expiration of the 30-month lease, in order to meet its plan to expand its management information system. In comparison, under TriCom's proposal, which did not offer upgrade credits, the Bank would be required to pay TriCom the entire amount due under the lease and then resell the existing equipment before it could acquire the upgraded equipment, at a considerably higher total cost than under the upgrade credits arrangement with IBM.

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<sup>1/</sup> Although the synopsis indicated that the order would be placed on an all or none basis, the protester and the Bank agree that Bank officials told TriCom that its proposal for the CPU alone would be fully considered and would not be regarded as not meeting the Bank's requirements solely for failure to offer the disk drive as well. While TriCom argues that the Bank subsequently rejected its proposal because it offered only the CPU, the record of the Bank's evaluation of TriCom's proposal supports the Bank's position that its rejection of the proposal was not based on TriCom's failure to offer both pieces of equipment.

With regard to the technical support services, the Bank calculated the value of the services offered by IBM as equal to \$100,900 annually, or approximately \$8,400 a month. The more limited services offered by TriCom were valued at \$1,716 a month. By offsetting the estimated value of IBM's support services (\$8,400) against its price for the monthly lease (\$10,800), the Bank estimated the net cost of placing an order with IBM would be \$2,400 a month; applying the same formula to TriCom, \$3,634 a month. Thus, despite IBM's higher lease price, the Bank concluded that placing an order with IBM would result in an overall cost saving. TriCom argues that it offered a lower-priced proposal than IBM, and that the Bank's comparison of the two proposals was improper with regard to the upgrade credits provision and the value of the support services.

The Bank first contends that the protest is untimely because it involves a challenge to the evaluation factors listed in the CBD synopsis and therefore should have been filed prior to September 5, the date for submission of proposals from nonschedule vendors. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985). We disagree. As discussed further below, the protester's arguments concern the manner in which its proposal was evaluated by the Bank, not the evaluation factors themselves. Under section 21.2(a)(2) of our regulations, 4 C.F.R. § 21.2(a)(2), the protest, thus, had to be filed within 10 working days after the protester knew or should have known the basis of its protest, in this case, when TriCom was notified on September 16 that the Bank had ordered the equipment from IBM. Since the protest was filed with our Office on September 27, the ninth working day after TriCom was notified, the protest is timely.

With regard to the Bank's evaluation of its proposal, TriCom initially argues that, contrary to the Bank's conclusion, its proposal did provide for upgrade credits. In its comments on the Bank's report, TriCom for the first time elaborates on this contention, stating that the equipment it offers would be leased under an arrangement with another firm, First Municipal Leasing, which has a schedule contract with GSA. We find this argument to be without merit. TriCom's proposal itself provided only for credits toward the purchase of the equipment being leased; it does not refer to upgrade credits or to any arrangement with First Municipal Leasing. In any event, the Bank states that it has been advised by GSA that no schedule

contract exists with First Municipal Leasing. Thus, in our view, it was reasonable for the Bank to conclude that TriCom did not offer the upgrade credits feature. Further, since TriCom does not dispute the Bank's position that upgrade credits are important for meeting the Bank's needs at the lowest cost, there is no basis on which to disturb the Bank's conclusion that placing an order with IBM, which offered upgrade credits, would result in overall cost savings to the Bank.

TriCom next argues that it would have offered the same technical support services as IBM did, if the Bank's requirement for the services had been included in the CBD synopsis. The protester also contends that the synopsis should have specified the importance of the support services relative to price. As noted above, the synopsis did list the support services to be provided by IBM. It is also clear that TriCom was aware of the requirement, since its proposal stated that "full marketing and planning services" would be available at no charge.

Further, we think that the protester was adequately informed by the synopsis that there would be a detailed evaluation of support services. As explained in the FIRMR, the CBD synopsis which precedes placing an order under an ADP schedule contract is not a formal solicitation document; 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 the 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. See FIRMR, 41 C.F.R. § 201-32.206(f)(2)(iv),(g); International Systems Marketing, Inc., B-215174, Aug. 14, 1985, 85-2 CPD ¶ 166. Thus, in our view, the synopsis need not describe the evaluation factors to be used by the agency in the detail required in an actual solicitation; rather, the regulations require that the synopsis list general information regarding the equipment sought, including quantities, make and model, and support requirements. See FIRMR, 41 C.F.R. § 201-32.206(f)(2); CMI Corp., B-210154, Sept. 23, 1983, 83-2 CPD ¶ 364.

Finally, before placing an order under an ADP schedule contract, the Bank must find that the schedule items provide the lowest overall cost alternative, considering price and other factors, including contractor support. See FIRMR, 41 C.F.R. § 201-2.001 (definition of

"lowest overall cost"), section 201-32.206(g)(2)(i). Here, TriCom challenges the Bank's valuation of IBM's support services, questioning their estimated value relative to the lease price. According to TriCom, IBM's own estimate of the value of its services (approximately \$500,000 annually) is inflated; TriCom states, without elaboration, that the services are worth no more than 30 percent of the estimate. <sup>2/</sup> TriCom's estimate of the value of the services is based solely on a conversation with an unnamed computer software support firm.

While recognizing that determining the value of IBM's support services must be based on estimates, the Bank reasonably attempted to quantify the value of the services by relying on historical data regarding IBM services to the Bank. The Bank did not simply accept IBM's own estimate of the value of the services; rather, the Bank performed its own calculation of the cost of replacing the services, and ultimately estimated their value at \$100,900 annually, an amount significantly lower than the IBM estimate of \$500,000 annually. As noted above, the only support TriCom offered for its position that the Bank's estimate was unreasonable is its conversation with another computer firm about which no details are provided. As a result, we see no basis on which to challenge the Bank's method of estimating the value of the IBM support services.

Finally, TriCom contends without further explanation that Bank officials acted in bad faith with regard to TriCom and were motivated solely by their interest in continuing the lease with IBM. This argument is without merit. As discussed above, the record reasonably supports the Bank's conclusion that placing its order with IBM would result in the lowest overall cost. TriCom's allegation of bad faith is completely unsubstantiated; as a result, TriCom has failed to meet its burden of presenting virtually irrefutable proof that the contracting officials, who are presumed to act in good faith, had a specific and malicious intent to harm TriCom. See Business Communications Systems, Inc., B-218619, July 29, 1985, 85-2 CPD ¶ 103.

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<sup>2/</sup> It is not clear from TriCom's submission whether it is contending that the services are worth 30 percent of the IBM estimate of \$500,000 annually or 30 percent of the Bank's estimate of \$100,900 annually.

The protest is denied.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel