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**DECISION**



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

**FILE:** B-222249 **DATE:** June 19, 1986  
**MATTER OF:** Federal Services Group

**DIGEST:**

Protest against Navy's issuance of a purchase order to nonmandatory General Services Administration (GSA) schedule contractor for maintenance of certain automated data processing equipment is sustained where Commerce Business Daily (CBD) synopsis did not contain an accurate description of Navy's minimum needs as required by GSA regulations and it appears potential offerors could meet those needs at substantially lower cost to the government.

Federal Services Group protests the Department of the Navy's issuance of a purchase order to International Business Machines Corporation (IBM) for maintenance of certain automated data processing equipment under IBM's schedule contract No. GS00K86A6S5557 with the General Services Administration (GSA). Federal Services Group contends that the issuance of this purchase order against IBM's nonmandatory GSA schedule contract was improper because Federal Services Group offered to provide the same services to the Navy at a substantially lower proposed price. We find that Federal Services Group's protest has merit and we sustain the protest.

On November 12, 1985, the Naval Supply Center, San Diego, announced in the Commerce Business Daily (CBD) its intention to purchase maintenance services for certain automated data processing equipment from IBM for a 1-year period. Firms, other than IBM, desiring to compete were advised to submit proposals within 15 calendar days identifying their interest in and capability to satisfy the requirement and their proposed price to perform the work.

Two companies--Federal Services Group and Sorbus--submitted proposals. The Navy determined that it could not

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properly evaluate the proposals because neither proposal contained sufficient data, and, therefore, Navy representatives contacted both firms to obtain additional information. Among the questions asked of both firms was what their response time would be to requests for service. Federal Services Group and Sorbus both indicated that they would respond to requests for service within 4 hours. The Navy decided that both firms' proposals were inadequate, because the mission of the user activity would be adversely affected if services were not rendered within 2 hours. In addition to the impact on the user activity's mission, the Navy reports that lost time caused by inoperative IBM equipment would result in a \$900 to \$1,000 per hour loss based upon salaries of individuals who would be idle while waiting for necessary repairs to be performed. In particular, concerning Federal Services Group's proposal, the Navy determined that it was "inadequate and not cost effective" to support the operations of the user activity. The Navy reports that the equipment is used to produce tactical software tapes used in F-2 Hawkeve early warning radar aircraft and it is critical that response time be kept to a minimum in order not to degrade squadron combat readiness. Accordingly, the Navy determined that Federal Services Group's proposal at a price of \$39,172.80 was technically unacceptable and, on February 26, 1986, placed an order against IBM's GSA contract in the amount of \$54,726.

The use of GSA nonmandatory schedules to acquire automated data processing resources, including maintenance and support services, is governed by the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. ch. 201 (1985) (throughout the remainder of this decision all citations to the FIRMR are to the section number within chapter 201). The FIRMR permits an agency to place an order against GSA nonmandatory automated data processing schedule contracts like IBM's when certain conditions are met. One condition is that the agency synopsise in the CBD its intent to place an order against a nonmandatory schedule contract at least 15 calendar days before placing the order. FIRMR, § 32.206(f). The agency must then evaluate all written responses to the notice from responsible non-schedule vendors to determine whether ordering from the schedule contract or preparing a solicitation document will result in the lowest overall cost alternative. This procedure is not a formal competition; rather, it is a device 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. 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. See CMI Corp., B-210154, Sept. 23, 1983, 83-2 C.P.D. ¶ 364 at 2; FIRMR, §§ 32.206(f), (g).

We believe that the Navy did not properly test the market to determine whether to issue a solicitation or order from IBM's schedule contract for the required maintenance services. The CBD synopsis is required to include sufficient information to permit the agency to analyze responses from potential suppliers which do not have GSA schedule contracts and to compare those responses to the GSA nonmandatory schedule contract. FIRMR, §§ 32.206(f), (g). The FIRMR in section 32.206(f)(2) sets forth the minimum information which must be contained in the CBD announcement. In particular, the CBD notice must contain an accurate description of the equipment or services to be ordered, including: "(D) The support requirement (e.g., hours of maintenance coverage or response times) for the ordered items . . . ." FIRMR § 32.206(f)(2)(v).

The Navy did not include an accurate description of its maintenance services requirements in the CBD synopsis; rather, the CBD announcement contained only a very general description of the type of work to be performed. Most significantly, the CBD synopsis did not include any indication of the hours of required coverage or the required response times for these maintenance services. Ultimately, it was the 2-hour response time which became the determining factor in the Navy's decision to issue a purchase order to IBM rather than soliciting for offers on a competitive basis. At a minimum, the Navy should have indicated that the user activity's needs were such that a 2-hour response time was mandatory. While Navy representatives did ask both Sorbus and Federal Services Group how long they would take to respond to requests for services, the record shows that the Navy specifically did not tell Federal Services Group that its 4-hour response time was not adequate or that 2 hours was the maximum acceptable response time. Federal Services Group states that "normally" it can respond to requests for services in the same manner as is required of IBM under its schedule contract within a 2-hour period and it would have so indicated had it been informed of the Navy's needs in this regard; the Navy has provided no evidence to show that Federal Services Group would not be

able to meet the user activity's actual, unstated, response-time needs.

Moreover, in this regard, we note that IBM's schedule contract states that IBM maintenance personnel will "normally" arrive at the government installation within 2 hours after repairs have been requested; the IBM contract also specifically indicates that in some instances a malfunction may not be diagnosed and repairs may not begin within 2 hours after a request therefor and states the procedures which will be followed by IBM in such instances. It thus appears from the Navy's acceptance of a response time of more than 2 hours from IBM in certain circumstances that the unstated, 2-hour response requirement may not be a mandatory requirement at all, but rather, a desired service expected of the contractor in most instances.

In these circumstances, we find that Navy's failure to describe accurately its minimum needs--in particular, the required response time--in either the CBD synopsis or during conversations with the protester was inconsistent with the FIRMR synopsis requirement at section 32.206(f) and left potential contractors with having to guess which provisions of IBM's contract were crucial to the Navy. Furthermore, in view of the fact that IBM's price is approximately \$15,553 more than Federal Services Group's proposed price, the Navy's award to IBM may be inconsistent with the FIRMR mandate that agencies procure automated data processing resources using the method which will achieve the lowest cost alternative. FIRMR, §§ 32.206(a)(2) and 32.206(q). Compare Spectrum Leasing Corp., B-205367, Mar. 4, 1982, 82-1 C.P.D. 199, wherein we upheld the Marine Corps' decision to reject the protester's response to the CBD synopsis as unacceptable and to purchase from the nonmandatory schedule contractor, in part, because the CBD synopsis adequately communicated the mandatory nature of the delivery requirement which the protester's proposal failed to meet.

For the above reasons, we sustain Federal Services Group's protest. We recommend that the Navy properly synopsisize its actual maintenance services needs for the remaining contract period (until September 30, 1986) as well as for any foreseeable follow-on contract period in accord with the FIRMR synopsis requirements and this decision in order to determine whether there are responsible firms which will compete with IBM if a solicitation is ultimately issued. The Navy will then be able to determine the lowest cost alternative for procuring its maintenance services as

required by the FIRMR. By letter of today, we are notifying the Secretary of the Navy of our recommendation.

The protest is sustained.

*for Melton J. Fowler*  
Comptroller General  
of the United States