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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Data Communications Systems Corporation  
File: B-227340  
Date: August 6, 1987

## DIGEST

Protest is sustained where agency ordered equipment that did not meet the specifications set forth in the agency's published notice. Since specifications overstated agency's needs and equipment, which has been installed and is functioning, in fact satisfies its needs, General Accounting Office will not require cancellation of the order and resolicitation of the requirement. Protester is instead entitled to the costs of preparing its response and pursuing its protest.

## DECISION

Data Communications Systems Corporation protests the U.S. Army Missile Command's award to Racal-Milgo Information Systems of delivery order No. DAAH03-87-F-0015 for multiplexors and related communications equipment. The delivery order was placed against Racal-Milgo's nonmandatory Automated Data Processing (ADP) schedule contract with the General Services Administration. Data Communications argues that Racal-Milgo's equipment does not meet the Army's specifications. We sustain the protest.

The Army published a notice in the Commerce Business Daily (CBD) on December 15, 1986, announcing its intent to place an order for the equipment under AT&T's ADP schedule contract. The Army received four responses to the CBD synopsis and decided that Racal-Milgo proposed the lowest cost alternative meeting its needs. Data Communications was second low. The Army placed an order for the Racal-Milgo equipment on March 19, 1987. Data Communications protested to our Office on May 29, after receiving the Army's response to a Freedom of Information Act inquiry. It maintained that the Racal-Milgo equipment did not meet the requirements set forth in the CBD notice.

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In its administrative report, the agency concedes that the CBD synopsis overstated its requirements by indicating that it required equipment with port contention capability. According to the contracting officer, however, the Army does not in fact require port contention capability due to operational limitations inherent in its existing computer system. The Army contends that the Racal-Milgo equipment, which does not have that feature, satisfies its needs, and states that cancellation of the delivery order is not practicable since the Racal-Milgo equipment has already been delivered and installed.

Data Communications argues that we should require that the Army cancel the delivery order and make award to it.

Our Bid Protest Regulations provide that in determining the appropriate remedy for an improper procurement we will consider all of the circumstances surrounding the procurement, including the extent of performance and the cost to the government of the recommended corrective action. 4 C.F.R. § 21.6(b) (1987).<sup>1/</sup> Where contract performance has been completed, we will not usually require that the agency incur the cost and disruption of contract termination. Window Systems Engineering, B-222599, Aug. 27, 1986, 86-2 CPD ¶ 230.

We would not, in any event, recommend the cancellation of Racal-Milgo's delivery order and award to the protester since the Army has determined that it does not require port contention capability. It would make no sense to recommend that the agency pay for equipment with features the agency does not need. The appropriate remedy in those circumstances would be cancellation of the delivery order followed by resolicitation of the requirement using a purchase description that excludes the unnecessary feature. See, e.g. Tandem Computers, Inc., B-221333, 65 Comp. Gen. 490 (1986), 86-1 CPD ¶ 362.

Here, because cancellation is not practicable, we will allow the protester to recover the costs of filing its protest as well as the cost of preparing its response to the CBD notice since the protester was the apparent low acceptable offeror and it was improperly induced to compete by the

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<sup>1/</sup> We will not consider these factors where the agency head has determined that it is in the agency's best interest to proceed with contract performance notwithstanding the pending protest. 4 C.F.R. §§ 21.4(b) and 21.6(c). These provisions are not relevant here since the protest was filed more than 10 days after award. 4 C.F.R. § 21.4(b).

Army's defective notice. See Tandem Computers, Inc., 65 .  
Comp. Gen. 490, supra. Data Communications should submit  
its claim for such costs directly to the agency. 4 C.F.R.  
§ 21.6(f).

The protest is sustained.

*for*   
Comptroller General  
of the United States