



Comptroller General
of the United States

Washington, D.C. 20548

145707

Decision

Matter of: Imagex, Incorporated

File: B-246023

Date: January 21, 1992

Nancy Gretzinger for the protester,
David L. Hurd, Intrafed Inc., an interested party,
Kenneth A. Lechter, Esq., and James K. White, Esq.,
Department of Commerce, for the agency,
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

1. Procuring agency properly issued a delivery order for a network multiuser imaging system to a higher-priced, mandatory federal supply schedule contractor where the agency reasonably determined that a lower-priced system would not meet the agency's minimum needs.
2. Agency is not required to refer the rejection of a quotation on grounds of technical unacceptability to the Small Business Administration for certificate of competency consideration.

DECISION

Imagex, Incorporated protests the issuance of delivery order No. 40AANA102047 to Intrafed Inc. by the Department of Commerce, for a network multiuser imaging system under the General Services Administration mandatory Federal Supply Schedule (FSS). Imagex alleges that the agency improperly determined that its quote did not satisfy the agency's delivery requirements.

We deny the protest.

The National Oceanic and Atmospheric Administration, a division of the Department of Commerce, submitted a requisition for the network multiuser imaging system on August 22, 1991. The contracting officer determined that this system was available through the mandatory FSS. Four vendors with FSS contracts were contacted, including Imagex.

The agency conducted a technical evaluation of the vendors' catalogues, and then contacted the vendors with specific questions concerning their software packages. The agency contacted Imagex in an effort to determine whether its system was off-the-shelf and whether the system could be delivered in 30 days from September 30, the anticipated date of award. An Imagex representative referred the agency to Imagex's supplier for responses to the technical questions, and on September 12, Imagex had its supplier call the agency to answer the questions. Imagex's supplier informed the agency that the system software was currently being tested and that it would not be ready for release for approximately 3 months.

On September 12, the agency issued a request for quotations (RFQ) to five vendors on the schedule, with responses due by September 19; a delivery date of 30 days after receipt of the order (ARO) was specified. The RFQ required that the product be an off-the-shelf system that did not require custom modification. On September 18, Imagex contacted the agency with a series of questions which were answered by the agency's technical representatives, some of which indicated to the agency that the product offered by Imagex might not meet the technical requirements.¹

Three quotes were received by September 19, with Imagex submitting the lowest quote of \$83,564.74; Sand Dollar Software submitted the second lowest quote of \$85,620, and Intrafed, Inc. quoted \$89,117. The agency's technical representative evaluated the responses, and Imagex was contacted again with technical questions concerning its software. Again, Imagex referred the technical representative to Imagex's supplier. The agency asked the supplier when the software being offered was due to be released, and the supplier now told the agency that the software was currently being tested but had a formal release scheduled for November 1991 (as opposed to the December release date provided 8 days earlier).

¹For example, Imagex inquired:

"If one company can deliver the product according to all the requirements in 30 days and another can deliver an equivalent product in 45 days, will it be considered that the first company meets the specifications more closely?"

Another question was whether a vendor meeting most of the requirements but offering a lower price will receive the purchase order as opposed to a vendor complying with all of the requirements but offering a higher price.

Based on this information, the technical representative concluded that Imagex's system did not comply with the requirement for an off-the-shelf item that could be delivered within 30 days ARO. The agency placed a delivery order with Intrafed on September 24, as the only FSS quoter whose system met all of the solicitation requirements.²

On the same day, Imagex contacted the agency about the status of the procurement and was informed that an order had been placed with Intrafed because Imagex's lower-priced product had been determined to be technically unacceptable as it was not off-the-shelf and capable of being delivered within the agency time requirements. The agency then conducted a conference call with Imagex and its supplier wherein the supplier stated that he had told the agency November 1 because that was when he thought the agency wanted the software, and that the system was introduced in a software show in May and was to be installed for the first time on September 30, for a company in Florida, where it would be "closely monitored and tested," meaning that the supplier's personnel would be on-site to ensure a successful installation. Imagex filed a protest with us on October 3, challenging the agency's determination that Imagex would not meet the required delivery schedule, and arguing that agency was required to submit this determination to the Small Business Administration (SBA) for certificate of competency consideration.

Quotations solicited from FSS contractors are informational responses, indicating the products the vendors would propose to meet the government's needs and the prices of those products and related services, which the government may use as the basis for issuing a purchase order to an FSS contractor. Herman Miller, Inc., B-232839, Jan. 26, 1989, 89-1 CPD ¶ 79. The procuring agency is required to place orders with the schedule contractor offering the lowest delivered price for products meeting the needs of the government. Federal Acquisition Regulation (FAR) § 8.405-1. An agency may place an order based on a higher priced item where the delivery offered by the lower-priced contractor does not meet the agency's actual needs. FAR § 8.405-1(a).

We find that the agency reasonably determined that Imagex's product was not an off-the-shelf product deliverable in 30 days ARO. The technical evaluator based this determination on information received from Imagex's supplier, whom Imagex had directed the evaluator to contact on two separate occasions. The supplier indicated first that the software

²The second low quoter, Sand Dollar, did not satisfy the requirement that the product be off-the-shelf.

would not be available until December; that date later was changed to November. In either event, since the agency intended to place an order by September 30 and needed delivery of an off-the-shelf system within 30 days of the contractor's receipt of the order, it could reasonably view the supplier's information as indicating that the Imagex system software would not be available in the required timeframe.

Contrary to Imagex's interpretation of the agency's evaluation of its quote, the agency did not determine that Imagex was untruthful or dishonest; rather, it determined that Imagex's product did not satisfy the agency's technical requirements. The record does not reflect that the contracting officer made a determination concerning Imagex's responsibility; rather, it reflects that Imagex's quotation was found to be technically unacceptable. Under these circumstances, referral to the SBA was not required. TM Sys., Inc., B-236708, Dec. 21, 1989, 89-2 CPD ¶ 577.

The protest is denied.


for James F. Hinchman
General Counsel