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[Agency Decision Not to Award Contract]. B-187455. April 22, 1977. 4 pp.

Decision re: Interdata, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel; Procurement Law I.
Budget Function: General Government; Other Federal Government (806).

Organization Concerned: General Services Administration.

Authority: Federal Property and Administrative Services Act, as amended (P.L. 85-624; 69 Stat. 377; 40 U.S.C. 481; 41 U.S.C. 251 et seq.). B-185103 (1976). B-180833 (1974). B-163971 (1969). B-173971 (1969). B-177426 (1973).

Protester objected to the agency's decision not to award it an automatic data processing schedule contract. The protester did not carry its burden of affirmatively proving its case. There, as here, there is no showing that implementation of agency policy of requiring preferential discounts was contrary to law or an abuse of discretion, there is no basis for GAO to substitute its judgment for that of the agency administrator. (Author/SC)

02075

R. Kleiman
Proc I

DIVISION



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

FILE: B-187455

DATE: April 22, 1977

MATTER OF: Interdata, Incorporated

DIGEST:

1. Protester has burden of affirmatively proving its case; where, as here, protester makes general, unsupported allegations of fact, protester has not carried its burden.
2. Administrator of GSA is vested by statute with broad authority to determine policy and methods for procuring ADP equipment; where, as here, there is no showing that implementation of policy of requiring preferential discounts was contrary to law or an abuse of discretion, there is no basis for GAO to substitute its judgment for that of Administrator.

Interdata, Incorporated (Interdata), has protested the General Services Administration's (GSA) decision not to award it an automatic data processing (ADP) Schedule contract. GSA declined to offer Interdata an ADP Schedule contract after determining that the Government would receive considerably less economic benefit than Interdata offered to its commercial customers for the same volume of business which GSA projected for Interdata under an ADP Schedule contract.

For the reasons that follow, we have found that the decision not to award Interdata an ADP Schedule contract was not an abuse of discretion or contrary to law.

In May 1976, GSA issued solicitation No. GSC-CDFS-5-00007-N-6-3-76 to various suppliers of automatic data processing equipment (ADPE), soliciting offers for the rental, purchase, maintenance, and repair of ADPE from October 1, 1976, through September 30, 1977.

Interdata submitted a proposal, which, according to GSA, showed that Interdata offered larger discounts to commercial customers than it did to the Government. On June 23, 1976, GSA held negotiations with Interdata. During the negotiations, Interdata was advised that one of the objectives of the ADP Schedule Contract Program was to obtain ADP Schedule contract prices and terms which were more favorable than those offered to commercial customers doing a comparable volume of business.

B-187455

Interdata subsequently modified its proposal to offer, among other things, increased discounts to the Government. By letter dated July 20, 1976, GSA's contracting officer informed Interdata that:

"An evaluation of your final offer causes us to conclude that the Government would receive considerably less economic benefits than Interdata provides to its commercial customers who procure the same volume of business that is projected for the ADP Schedule. Accordingly, we do not find your final offer acceptable, and there will be no award made on that offer."

The contracting officer also gave Interdata fifteen calendar days to reconsider its offer. At the request of Interdata, the contracting officer extended the time period for reaching an agreement to August 16, 1976.

On August 9, 1976, Interdata submitted what it termed its "firm and final offer." On September 9, 1976, the contracting officer notified Interdata that its final offer was found to be considerably less favorable than that provided to Interdata's commercial customers, and, therefore, Interdata would not be awarded an ADP Schedule contract for fiscal year 1977.

Interdata subsequently filed a timely protest with our Office alleging, among other things, that:

"* * * INTERDATA'S position is consistent with those of other Computer Manufacturers and Suppliers who have made and are making ADP Schedule offers on the basis of less than maximum commercial discounts. Furthermore, to seek maximum commercial discounts on G.S.A.'s Terms and Conditions works to the disadvantage of those smaller Computer Manufacturers who would be in a position to actively and fully supply the Federal Government with its ADP product needs."

Interdata subsequently alleged that: (1) it believed that discounts offered by its competitors and accepted by GSA for fiscal year 1977 Schedule contracts were less than those offered by Interdata; (2) awards were made to Interdata's competitors on terms less favorable than the competitors offered to commercial customers; (3) to then require Interdata to offer better than commercial terms and discounts to GSA was prejudicial to Interdata; (4) the discounts offered by Interdata to GSA were substantially in excess of those provided to commercial customers.

B-187455

It should be pointed out that Interdata offered no evidence in support of allegations (1) and (2) above; nor did Interdata offer any support for its allegation that the discounts sought by GSA worked to the disadvantage of smaller computer manufacturers which would be in a position to supply the Federal Government with ADP products.

With regard to allegations (1) and (2) above, GSA has stated, inter alia, that:

"Interdata has not identified its competitors, nor has it identified where GSA has accepted lower discounts and less favorable terms than those offered by Interdata or offered by its competitors to their commercial customers, therefore, we cannot discuss the ADP Schedule contract of any specific FY 77 contractor. Further if Interdata did state specific instances we could not discuss the ADP Schedule contracts of any specific vendors because this could reveal commercial data submitted by these contractors which we have agreed to keep in strict confidence.

* * * * *

"As best as we can determine from the information supplied by offerors we have not entered into a FY 77 ADP Schedule which did not provide greater overall economic benefits than a commercial customer would obtain under a commercial quantity agreement if he purchased the same volume and under similar conditions as purchases are made under the schedule."

GSA has also stated that:

"We do not feel that to seek discounts commensurate with what a commercial customer with similar purchase volume and purchasing under similar conditions as those made under the ADP Schedule would receive, would work to the competitive disadvantage of smaller computer manufacturers."

The protester has the burden of affirmatively proving its case; and where, as here, the protester makes general, unsupported allegations of fact (allegations (1) and (2) above), the protester has not carried its burden. Reliable Maintenance Services, Inc., --request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. It therefore necessarily follows that we cannot find that Interdata was prejudiced by GSA's policy of requiring preferential discounts (allegation (3) above).

B-187458


With regard to the discounts which Interdata offered to the Government (allegation (4) above), both GSA and Interdata submitted extensive data to support their respective positions. In addition, GSA correctly points out that the percentage discounts used by Interdata in its submission are not actually offered to the public. Consequently, GSA concludes that Interdata's submission is without merit because it has no basis in reality.

In Digital Equipment Corporation, B-180833, July 2, 1974, 74-2 CPD 2, we considered GSA's policy of requiring discounts from suppliers' established catalog or market prices. In that decision, we held in pertinent part that:

"* * * the Administrator of GSA is 'vested with the authority and responsibility for determining policy and methods of procurement' under the Federal Property and Administrative Services Act, as amended, Public Law 152, 63 Stat. 377, 40 U.S.C. 471; 40 U.S.C. 481; 41 U.S.C. 251, et seq., and that 'there is no basis for our Office to substitute our judgment for that of the Administrator in determining GSA's policy with respect to preferential discounts.' B-163971, May 21, 1969. In this connection, we have found that the discount policy, while not necessarily appropriate in every case, has resulted in savings to the Government. Letter report B-173971, September 26, 1969. Furthermore, just as procuring activities have considerable discretion to determine the reasonableness of prices offered, e.g., B-177426, May 14, 1973, we think GSA necessarily must be regarded as having similar discretion to determine the economic benefit to the Government of discounts and other terms and conditions offered by would-be Federal Supply Schedule suppliers."

In our view, the record before us does not establish that GSA abused its discretion by rejecting Interdata's proposal or that the rejection of Interdata's proposal contravened any legal or regulatory requirement. Consequently, there is no basis for our Office to substitute our judgment for that of the Administrator.

For the foregoing reasons, the protest is denied.


Deputy Comptroller General
of the United States