

DOCUMENT RESUME

08162 - [C3529624]

[Acceptance of Purchase Option Credits]. B-192588. December 15, 1978. 9 pp.

Decision re: Adahl Corp.; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel; Procurement Law II.
Organization Concerned: Department of the Air Force; Tinker AFB, OK; Department of the Air Force; Computer Acquisition Office; International Business Machines Corp.
Authority: 4 C.F.R. 1. 57 Comp. Gen. 501. B-184850 (1976). B-188364 (1977). B-187404 (1977) ..

A company protested provisions of a solicitation which allowed the agency to evaluate purchase option credits available under a lease previously awarded to the contract awardee on a sole-source basis. The agency's acceptance of the purchase option credits was not prohibited by law and did not confer an unfair competitive advantage on the awardee. Evaluation of the credits to determine the lowest cost source for the procurement was proper. (RRS)

DECISION

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

8624

FILE: B-192588

DATE: December 15, 1978

MATTER OF: Amdahl Corporation

DIGEST:

1. Agency's acceptance of unrequested purchase option credits in sole source lease of Automated Data Processing Equipment (ADPE) is not prohibited by law or regulation and consideration of such credits to evaluate lowest cost source for purchase of such equipment does not confer unfair competitive advantage on lessor.
2. Allocation of special purchase option credits, accrued under General Services Administration's ADPE schedule contract with ADPE manufacturer, to particular procurements is not improper since allocation is made to agencies on first-come, first-served basis pursuant to procedures which are reasonably calculated to preclude abuse. Therefore, evaluation of credits allocated to agency for specific procurement to determine lowest cost source for purchase is appropriate.

Amdahl Corporation (Amdahl) protests the terms and conditions of Request for Proposals (RFP) F19628-78-R-0230, issued by the Department of the Air Force, Air Force Computer Acquisition Center, and the subsequent award of a contract to International Business Machines Corporation (IBM) for the purchase of a computer system for use at Tinker Air Force Base, Oklahoma (Tinker). Amdahl did not submit an offer.

Specifically, Amdahl complains of provisions of the RFP which allow the Air Force to evaluate purchase option credits available under a lease previously awarded to IBM on a sole-source basis and "Special Purchase Option Credit;" available through the General Services Administration (GSA) FY78 ADP [Automated Data Processing] Schedule Contract negotiated with IBM. These credits

total about \$2.2 million, approximately \$721,000 of which was allocated by GSA to this purchase from a special purchase option "credit bank."

The operative facts germane to this case are not in dispute.

The Air Force had leased (with option to purchase) the computer in question from IBM in 1976 for use at Offutt Air Force Base, Nebraska (Offutt). That computer became excess to Offutt's needs when it was replaced with an IBM System 3033. About that time, Tinker "realized a need" for certain computer equipment to support the E-3A aircraft based at Tinker which could be satisfied by the excess IBM equipment. On March 31, 1978, IBM advised the Air Force "for planning" purposes of its price quotations for the Offutt equipment. The total purchase price (without application of purchase option credits) was indicated to be \$3,752,869; after application of the purchase option credits the price shown was \$2,250,966 and \$1,529,183 was quoted after application of the purchase option credits and the special purchase option credits potentially available through GSA.

In May 1978, the Air Force requested authority from GSA to exercise its option to purchase the "Offutt equipment" from IBM under its then existing lease. Simultaneously, it requested that IBM hold the equipment for 30 days without charge pursuant to the terms and conditions of the IBM GSA ADP Schedule Contract (GS-00C-01252) pending a decision from GSA, to which IBM agreed. This no charge "hold" agreement was subsequently extended to August 8, 1978. However, rather than authorize the purchase, GSA directed the Air Force to "compare the requirement * * * to determine whether or not the IBM system would constitute the lowest cost method of fulfilling the [Tinker] requirement." Thus the RFP in question was issued containing the following notice:

"BASIS FOR AWARD

The Air Force has an option to lease/ purchase/convert an installed IBM 370-168

(U-34) computer with accrued credits for 19 months. These options will be considered in evaluating the proposals. In establishing the life cycle cost of this option the following formula will be used. Purchase Price - Accruals + 84 months of maintenance (Government estimated escalations applied) + Government estimated installation and transportation. Also the possibility of an additional 12 months accruals from the GSA Special Purchase Option Fund under the GSA Authorized ADP Schedule Price List GS-00C-01252 exists. Based on this evaluation, an award may not be made on the solicitation." (Emphasis supplied).

Only one firm chose to submit an offer.

GSA explains the two purchase option credits as follows:

"Purchase option credits are pecuniary sums which accrue to the account of the Government under the terms and conditions of an ADPE rental agreement. Purchase option credits are normally expressed as some percentage of the paid monthly rental which will be deducted from the purchase price of installed rental ADPE, when an option to purchase under the rental agreement is exercised during the rental term. Options to purchase installed rental ADPE and their accompanying purchase option credits are customarily offered in the trade as part of the consideration for entering into an ADPE rental agreement. Options to purchase installed ADPE and their associated purchase option credits are generally provided as standard provisions of the ADPE rental agreement, irrespective of whether or not the Government solicits for such options and their companion credits. Purchase option credits are applied when the Government exercises an existing contract option to purchase installed rental ADPE and tenders

the net purchase price (list minus purchase option credits) to the contract .

"Special Purchase Option Credits are 'additional purchase option credits' available to GSA under a Special Purchase Option Plan contained in ADP Schedule Contract GS-00C-01252.

* * * * *

"As part of its ADP Schedule contract offer, IBM has agreed to allow GSA to allocate up to 3 million dollars worth of Special Purchase Option Credit toward the purchase of inscalded rental ADPE under the terms and conditions of the Special Purchase Option Plan.

"The Special Purchase Option Credits are disbursed by GSA as part of the administration of ADP Schedule Contract GS-00C-01252. GSA allocates the Special Purchase Option Credits to agencies, to the extent that they are earned and available, generally on a first-come, first-served basis. Briefly, requests from agencies are honored when the requesting agency (i) has obtained a DPA [Delegation of Procurement Authority] from GSA, (ii) has complied with the requirements contained in the DPA, and (iii) has furnished to the contracting officer who is responsible for administering ADP Schedule Contract GS-00C-01252, documentation to substantiate that the equipment to be acquired with the requested credits will thereby be acquired from the lowest cost source available.

" * * * [P]urchase option credits relate to specifically designated machines, identified by serial number, and * * * Special Purchase Option Credits do not. * * * GSA has treated the Special Purchase Option Credits as a benefit available to the Government at large.

Accordingly, GSA has allocated the credits to agencies without regard to the contractual arrangement with IBM under which they will be applied. In administering the Special Purchase Option 'credit bank' GSA does not guarantee that the credits will be allocated to a requesting agency contemplating the purchase of installed ADPE. In that regard, from the requesting agency's perspective, achieving the benefit of the GSA allocation is somewhat speculative. This was acknowledged in the RFP when the Air Force advised that 'the possibility of an additional 12 months accruals from the GSA Special Purchase Option Fund * * * exists.' GSA has procedurally allocated the credits to the requesting agency after receiving documentation that an award to IBM will result in the lowest overall cost source. GSA has not required certification to the effect that IBM is the low cost offeror exclusive of considering the Special Purchase Option Credits."

The gravamen of Amdahl's complaint is that IBM is given an unfair competitive advantage over potential offerors under the RFP's basis of award provision because of the sole source nature of the IBM lease. Amdahl states its position as follows:

"The unfair advantage given IBM is not the result of a superior competitive position due to other Government contracts * * * but rather the result of the use of Government property [the purchase option credits] acquired on a sole source basis from IBM * * *.

" * * * [T]his is the reapplication of a Government equity right purchased from IBM, back to IBM to be utilized to reduce IBM's bid price. * * * It is in fact not a reduction in IBM's price but rather an additional cost (forfeiture of accrued equity rights) to the Government, and should be added to IBM's bid price.

"Amdahl is not contending the Government give up its right to purchase option credits, only that they not be utilized as an evaluation factor where they were derived on a sole source lease basis. If the IBM price is lowest after such evaluation, then their application is proper * * *." (Emphasis in the original).

Amdahl also claims that the Special Purchase Option Credits "permit the Government [GSA] to influence the outcome of any given procurement, and that their use in bid evaluation is therefore illegal." Thus, while Amdahl asserts that the purchase option credits are Government "property rights" which should not be forfeited, it states that the value of both types of credits available should not be considered in evaluating offers, but should be used only for the reduction of IBM's price if the price of IBM's equipment is otherwise low.

It is apparent that Amdahl's proposed procedure would result in a monetary loss to the Government to the extent of the difference between the price of the low offer under the RFP and the price ultimately payable to IBM if IBM were low only after application of the credits. For example, in this case, it is reported that IBM was not low initially or after application of the approximate \$1.5 million purchase option credits, but became low only after application of the additional \$721,783 special purchase option credits which became available from GSA. Consequently, award to the low offeror without consideration of the credits would have resulted in an actual monetary loss to the Government.

The question of including purchase option credits in leases of ADP equipment is not the issue in this case. Suffice it to say that there are only limited circumstances in which such credits can be considered in the evaluation of proposals for the lease of this equipment. See 41 C. F. R. 1-4.110^a-4(1977). However, we are aware of no rule of law or regulatory provision which precludes an agency from accepting an unsolicited offer of such credits, so long as these unrequested credits are not evaluated and not made the

basis upon which the lease award decision is made. There is also nothing to suggest that the Government "paid for" the purchase option credits in the sense that the lease price would have been any different had these credits not been included in the lease. To the contrary, these credits appear to be a custom of the trade, offered in varying degrees by many ADP manufacturers and lessors of ADP equipment. To the extent they are utilized by IBM, they appear to be the method by which IBM offers a purchase price discount to the Government for used equipment; we find no legal merit to Ajdahl's claim that the purchase option credits are an additional Government "cost" which should be added to rather than subtracted from, the IBM proposal price.

We recognize that as a result of the use of these credits as an evaluation factor for the purchase of the equipment, IBM may have enjoyed a competitive advantage over other offerors under the RFP. Nonetheless, we have long recognized that certain firms may enjoy a competitive advantage by virtue of their own incumbency, regardless of whether that incumbency arose out of a sole source or competitive award, or their own particular circumstances or as a result of Federal or other public programs. B. B. Saxon Company, Inc., 57 Comp. Gen. 501 (1978), 78-1 CPD 410. The test to be applied in these cases is simply whether the competitive advantage enjoyed by a particular firm would be the result of preference or unfair action by the Government. See, e.g., Aerospace Engineering Services Corporation, B-184850, March 9, 1976, 76-1 CPD 164. As we stated in IMBA, Inc., B-188364, B-187404, November 7, 1977, 77-2 CPD 356:

"[T]he Government is not obligated to equalize the competitive positions of all potential bidders. * * * The purpose of competitive procurement is not to insure that all bidders face the same odds in competing for Government contracts. Rather, the purpose is to insure that the Government obtains its minimum requirements at the most favorable price."

In this case, what that means is that the Government is not required to subsidize competition by foregoing its vested contractual rights under the guise of treating all offerors "equally." We believe the record adequately demonstrates that the Government did what it could to obtain competition for the Tinker requirement consistent with its own financial interests and we do not believe the Government's refusal to assume a financial loss to "neutralize" IBM can be reasonably categorized as unfair action by the Government. We therefore conclude that Amdahl's assertions with respect to the evaluation of the purchase option credits are without legal merit.

We also find no impropriety in the application of the special purchase option credits. As earlier noted, those credits, totaling \$3 million for FY78, are treated by GSA as a benefit available to the Government at large, and are allocated on a "first-come, first-served" basis. GSA advises that the credits (calculated on the basis of a specific formula published in the IBM ADP schedule contract) are allocated to agencies for specific procurements whether or not IBM is low after application of the purchase option credits, and that GSA has no knowledge of the cost evaluations of any offers prior to the allocation of the special credits. Likewise, it is reported that under GSA procedures, the agency cannot be sure that the credits requested from GSA are available, as they may have been allocated to other agencies prior to the time of any given request. In addition, it is not disputed that IBM has no role in the allocation of these credits, its principal interest being related to bookkeeping for its own purpose and advising potential Federal customers of currently leased equipment of the potential availability of the credits as determined from its own records. Thus, under these procedures, neither the requesting agency, IBM, or GSA is able to control these credits to assure IBM is the low cost source for any given procurement. Therefore, we believe that GSA has taken reasonable precautions to preclude any theoretical opportunities to abuse the special purchase option credits for the benefit of IBM, and absent any allegations and evidence of any actual abuse, we have no basis to conclude that the use of these credits in the evaluation was improper.

The protest is denied.


Deputy Comptroller General
of the United States