

Proc II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

10,087

FILE: B-193205

DATE: May 7, 1979

MATTER OF: Data Test Corporation

DLG 00196

DIGEST:

1. (Although Federal statutes and regulations which apply to direct procurements by Federal agencies are not applicable per se to procurements by contractors operating Government-owned facilities, procurement practices of prime operating contractors must be in compliance with basic principles of Federal procurement law, i.e., the "Federal norm".)
2. Decision whether item satisfies technical requirements of solicitation issued by contractor operating Government-owned facility rests primarily with operating contractor. GAO will not overturn such decision unless clearly without reasonable basis.
3. Operating contractor reasonably determined item satisfied technical requirements of solicitation where quotation clearly stated that item met all specifications and item otherwise appeared to conform with solicitation requirements.
4. Protest allegation first raised three months after initial protest was filed is untimely since it was neither made within 10 working days after basis of allegation was known nor related to issues timely raised.
5. Operating contractor improperly accepted 90 day warranty offered by awardee rather than 1 year warranty required by solicitation without giving other offerors opportunity to submit revised offers on basis

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[Protester Maintained Competitor's Product Did Not MEET Specifications]

of 90 day warranty. "Federal norm" requires that award be made in accordance with terms of solicitation and that offerors compete on same basis.

DLG001528
DLG001529

Data Test Corporation (Data Test) has protested the purchase of an automatic logic board tester from Systron-Donner Corporation (Systron-Donner) under request for quotations (RFQ) No. 2815009, issued by Lawrence Livermore Laboratory (LL). LL is a Government-owned facility operated by the University of California under a cost-type prime contract with the Department of Energy. Data Test maintains that Systron-Donner's Model 3700 tester did not comply with the RFQ specifications in several respects and therefore should have not been purchased.

Under the terms of the RFQ which was issued on August 22, 1978, the tester was required to be "made of standard commercial products." The RFQ required responding firms to correlate their proposals with the RFQ specifications and to state whether their tester fully complied with each paragraph of the specifications.

Four quotations were received and three were found to be technically acceptable. Of the three, Systron-Donner submitted the lowest quote of \$48,330.25, while Data Test and Watkins-Johnson Company submitted quotes of \$58,583.15 and \$237,388, respectively. Systron-Donner's quote stated that it complied with all of the RFQ specifications. After a visit to Systron-Donner's plant to further evaluate its tester and facilities, award was made to that firm.

Data Test asserts that Systron-Donner's Model 3700 tester was not technically acceptable because it did not satisfy the requirements of paragraphs 3, 4 and 5 of the specifications.

The protester maintains that the requirements of paragraph 3 cannot be met by the Model 3700 since it does not have "multilevel pin electronics." Data Test further asserts Systron-Donner's quote indicated that "dual programmable power supplies" were optional in variance with the requirements of paragraph 3.

LL states that under paragraph 3 of the specifications, the tester drive and receive pin voltage levels were required to be selectable under program control and the Model 3700 meets this requirement. LL also states that although Systron-Donner's proposal indicated dual programmable level was optional, a technical clarification indicated that both the drive and receive pins of the model tester were capable of being set.

Data Test also alleges that the Model 3700 does not have analog voltage measurement capability as required by paragraph 4 of the specifications. The protester states that while Systron-Donner claims such a capability, the user is required to mount a transducer in its adapter at its own expense. Data Test maintains that the requirements of paragraph 4 are completely "subverted" by such a response. Data Test additionally alleges that there is no evidence of a hardware gray code generator in the Model 3700 as required by paragraph 5.

LL disagrees and maintains that Model 3700 meets the terms of paragraph 4 which require the tester to have analog voltage measurement capability. The laboratory states that "voltage to ± 20 V. can be measured by the system probe" of the Model 3700 as a standard feature. LL states the specifications do not preclude operator action such as the use of a probe to test analog devices and that use of an adaptor is not necessary as suggested by Data Test.

LL further asserts that Model 3700 satisfies the gray code generator requirement of paragraph 5. LL maintains that Systron-Donner's quote clearly indicated that automatic patterns, including gray code, are a standard feature.

In short, LL argues that the Systron-Donner Model 3700 complies with all the technical requirements.

We recently held that while Federal statutes and regulations which apply to direct procurement by Federal agencies may not apply per se to procurement

by prime operating contractors, the prime contractor's procurement must be consistent with and achieve the same policy objectives as the Federal statutes and regulations. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10. In other words, those practices must be in compliance with basic principles of Federal procurement law, i.e., the "Federal norm". Piasecki Aircraft Corporation, supra.

The "Federal norm" requires that award be made in accordance with the provisions of the solicitation or other "ground rules" applicable to the procurement. Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175; Union Carbide Corporation, 55 Comp. Gen. 802 (1976), 76-1 CPD 134. However, the decision whether an item satisfies the technical requirements of the solicitation, i.e., is technically acceptable, rests primarily with the prime operating contractor. We will not overturn such a decision unless it was clearly without a reasonable basis. Piasecki Aircraft Corporation, supra.

We believe that LL reasonably concluded that Systron-Donner's Model 3700 tester met the RFQ specifications. As noted earlier, under the terms of the specifications, an offeror was required to indicate whether its tester complied with each requirement. Systron-Donner's quote clearly indicated that its tester was in full compliance with each requirement and met all of the specifications. Furthermore, Systron-Donner's quote as clarified indicated that the Model 3700's drive and receive pin voltage levels were selectable under program control. Additionally, Systron Donner's proposal provided that its Model 3700 had analog voltage measurement capability and that the gray code generator requirement was met. Clearly LL acted reasonably in concluding the Model 3700 met the technical requirements of the RFQ.


In a letter received by our Office on January 19, 1979, approximately three months after the protest was originally filed, Data Test asserted that the Model 3700 was not a standard commercial product as the RFQ required. The protester argued, based on an article appearing in a trade publication on December 25, 1978, that

it appeared the equipment supplied by Systron-Donner was a "one-of-a-kind-prototype."

Where, as here, a new ground of protest is raised after the filing of a timely initial protest, we have considered that the new ground must independently satisfy the timeliness criteria of our Bid Protest Procedures, 4 C.F.R. Part 20 (1978). Guardian Electric Manufacturing Company, B-191871, November 30, 1978, 78-2 CPD 376. Since Data Test's position regarding the commercial status of Model 3700 was filed more than 10 days after the protester should have known of the basis of its contention it is untimely and will not be considered. 4 C.F.R. § 20.2(b)(2).

We note that although the RFQ required a one-year warranty, Systron-Donner proposed and LL accepted a 90 day warranty. There is no indication that the other firms were notified of this requirement change and given an opportunity to submit revised quotations based on the shorter warranty period. LL insists that it would gain little advantage by a full year warranty and argues that the remaining firms would not have significantly reduced their prices if informed of the changed requirement. Nevertheless the "Federal norm" requires that an award must be in accordance with the terms of the solicitation and requires that offerors compete on the same basis. Cohu, Inc., supra. LL erred in not informing all offerors that a 90 day warranty would be accepted and not providing them with the opportunity to alter their quotations.

In summary, we believe that LL reasonably determined that the Model 3700 satisfied the technical requirements of the RFQ but improperly decided to accept a 90 day warranty without giving other offerors an opportunity to submit revised offers. However, since the tester was delivered on December 15, 1978, no corrective action is recommended.


Deputy Comptroller General
of the United States