DECISION

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

10,100

FILE: B-193287   DATE: May 8, 1979

MATTER OF: Tymshare, Inc.

DIGEST:

[Protest of Contract Award by Securities and Exchange Commission]

Protest by multiple award schedule
contractor that user agency under
teleprocessing services program
omitted and incorrectly applied
various cost factors for protester
and eventual contractor in deter-
mining lowest overall cost to
Government is denied since user
agency's cost evaluation utilizing
its own formula instead of bench-
marking was reasonable and uniformly
applied by user agency.

Tymshare, Inc. (Tymshare), has protested the award
of contract by the Securities and Exchange Commission
(SEC) to Federal CSS, Inc. (FCSS), under solicitation
No. SEC-Q-552, issued pursuant to the General Services
Administration's (GSA) teleprocessing services program
(TSP). The contract is for teleprocessing services
for the SEC's budget application in its Office of the
Comptroller.   *DLG 01534*

Tymshare, FCSS and other companies have entered
into Multiple Award Schedule Contracts (MASC) under
GSA's TSP. As provided in Federal Property Management
Regulations, Temporary Regulation E-47, August 3, 1976,
as amended, TSP is the mandatory means whereby Federal
agencies acquire teleprocessing services from the pri-
vate sector. MASC is one of the alternative methods
for acquiring the teleprocessing services.

The MASC describes in some detail the procedures
for selecting a source for services. Briefly, paragraph
D.9 (Basis For User Source Selection) provides that the
principal evaluation criterion is least system life cost.

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Paragraph D.10 (User Source Selection Considerations)
provides, among other things, that Government activities
selecting a source for a particular order should prepare
a description of the services needed, develop and apply
technical and cost evaluation criteria, including run-
ning any necessary benchmarks, and eliminate from con-
sideration sources which fail to meet the requirements.
Selecting which contractor should receive an order, in
short, is on the basis of the source which meets the
user's requirements at the lowest overall cost to the
Government.

Tymshare contends that the SEC "both omitted and
incorrectly applied various cost factors for both
Tymshare and FCSS in their cost evaluation which erro-
neously resulted in the award, based on lowest overall
system life cost, * * * to [FCSS]." It is Tymshare's
position that the contract awarded to FCSS must be
canceled immediately and a new cost evaluation be con-
ducted by the SEC. Tymshare provides the following
rationale:

"1.   Software charges must be excluded
      from the cost evaluation as FCSS
      acknowledges the additional cost,
      but does not provide the cost fac-
      tors. FCSS's TSP MASC Contract
      number GS-OOC-50260 states on page
      F-18.a of Section F that 'A compo-
      nent of the ARU [resource unit] rate
      is a specific charge for the use of
      these products.' NOMAD is included
      in the list which follows on page
      F-18.a. However, no component for
      NOMAD nor any other FCSS product is
      noted on that page. Therefore, soft-
      ware charges must be excluded from the
      cost evaluation because inclusion of
      the software charges for all vendors
      except FCSS provides FCSS with an un-
      fair competitive advantage in rela-
      tionship to the other MASC vendors
      who do publish their software charges
      in accordance with GSA Solicitation
      number GSC-CDPR-H-00011-N-5-28-76. * * *

"2. The cost evaluation used to make an award to FCSS does not include the core utilization charge as described in FCSS's TSP MASC Contract number GS-OOC-50260 on pages F-8 and F-9.a. The core utilization charges in an interactive mode are $1 per unit hour for each 64K segment above 256K. Since NOMAD normally runs in 512K of core or more, that would represent an additional charge of $4 or more per interactive usage hour to the user's costs. Therefore, the core utilization charge must be included in the cost evaluation; an additional charge of $4,320 is attributed to FCSS.

"3. I/O [Input/Output] Execution charges are not included in the FCSS cost evaluation, although I/O execution charges are specifically spelled out on page F-10 Section F of FCSS's TSP MASC Contract number GS-OOC-50260. The cost evaluation includes 30,000 lines of printing per month, yet I/O execution charges of .0065 x lines x ARU are not made a part of the cost evaluation. As the user will be charged for remote printing, I/O Execution charges of $1,450 are included in the cost analysis.

"4. The FCSS volume discount of 43.51% can only be applied to items 1, 2, 3, 4 and 8 as noted on page F-22 in Section F Schedule N of FCSS's TSP MASC Contract number GS-OOC-50260. In the FCSS cost evaluation, the 43.51% volume discount was improperly applied to all items including analytic services. Therefore the application of discounts in the cost analysis of FCSS must be re-evaluated. The application of volume discounts was also inappropriately applied to TYMSHARE. TYMSHARE also excludes items 5, 6, and

7, from the application of overall
volume discounts. * * *"

The SEC, in its report to our Office, contends
that the award to FCSS was proper and represented
the best value to the Government.   The SEC report
states:

"In the final cost evaluation,
Tymshare's overall cost (or system
life cost) without software premium,
was computed to be $20,080.38; and
FCSS' overall cost was computed to
be $15,525.58.

"The final evaluations were made
based upon the technical input, the cost
evaluation and the judgment of the eval-
uation panel as to the vendor which
represented the best value to the govern-
ment, price and other factors considered.
Based upon these criteria, FCSS was
awarded the contract on September 28, 1978.
Service was initiated on November 1, 1978.

"Tymshare, Inc. wrote the contract-
ing officer on October 23, 1978, after
having been debriefed by the Commission,
to complain about the award of the contract
to FCSS.   The Commission reviewed Tymshare's
arguments and re-evaluated the offers.   The
re-evaluation indicated that Tymshare's over-
all cost for the IBM system 370 without the
software premium was $25,179.58 and FCSS'
overall cost was $18,373.22.   [Footnotes
Omitted]

In addition, the SEC responded to Tymshare's points,
as follows:

"The basis of Tymshare's protest
lies mainly in their dispute with the

way certain costs were evaluated.
For example, FCSS quotes an ARU rate
which includes charges for the pro-
posed software package whereas Tymshare
has separate premiums or surcharges
for the proposed software package.
The Commission's cost evaluation
computed the system's life cost with
and without software charges. This
was done so a fair and reasonable
evaluation could be made. Tymshare
instead proposes that the Central
Processing Unit ('CPU') utilization
charges should be directly compared
without consideration of the addi-
tional charges for software. Such
a computation would be inaccurate
since the charges for software must
be considered as an essential part
of the system life cost. [Footnote
omitted]

"Federal CSS has indicated that
it does not require an additional
core for processing utilization in
excess of the 256K Byte provided
without charge. However, Tymshare
advocates that any charges for
additional core utilization by FCSS
would be at $1.00 per hour per each
additional 64K configuration. It
was determined that the Commission's
usage would most likely not exceed
the no cost 256K byte; and, therefore,
no additional charges need be assessed
in evaluating the FCSS proposal as
opposed to the additional charges
imputed to FCSS by Tymshare.

"Input/output execution charges
('I/O') should be assessed separately
against FCSS when an I/O is a read or
write to a selector type or a line
printed, or a card read or a card

punched on a remote device, and
charges were not properly assessed in
the initial cost evaluation. The inclu-
sion of these charges would not alter
the award pattern, nor have changed
the successful vendor, although it
would increase the price of the
evaluated system life cost by FCSS.
The evaluation of FCSS' price would
be increased by approximately $1,199.

"Similarly, the evaluation of the
prices for all vendors should be ad-
justed by volume discounts inappropri-
ately applied to all items not identi-
fied by the vendor's representative
as being nondiscountable. This amount
coupled with the increases as a result
of a recalculation of the input/output
charge would amount to an increase of
approximately $2,850 for FCSS. The
applicable vendor discounts were very
close to the initial evaluation of
Tymshare, however total systems life
costs had to be increased by almost
$5,100 due to an error in the initial
evaluation of character print charges."

In response to the SEC report, Tymshare states
that "[t]he following points, addressed in SEC's
report and evaluation, are of consideration:"

"(1)   The charges for Tymshare's Software
Package, FOCUS, have been erroneously
quoted to be 1.8 times the number of
TRU's used in the reevaluation per-
formed by SEC. The correct charge is
1.55 times the number of TRU's used.
Correction of this figure will result
in a lower overall cost in Tymshare's
prices.

"In addition, Tymshare's Software Package,
EXPRESS, was included in the reevalua-
tion. Tymshare's proposal made no men-
tion of this package. Inclusion of the

costs associated with the use of this package are, at best, an error.

"(2) FCSS' Core Utilization Charges are still excluded in the reevaluation analysis. Tymshare feels that failure to consider those charges in the evaluation, results in an unfair advantage to FCSS and not the best interest of the Government since the same may be of considerable significance.

"(3) FCSS' software charges are not in the evaluation. Tymshare feels that the reasons presented to justify such action are, at best, weak."

Tymshare "strongly suggest[s] that the only feasible way to make a determination of the lowest cost vendor is to allow a benchmark representative of a typical user program to be run." It is Tymshare's belief that this benchmark would be "a valid determination of the CPU usage and I/O execution charges, as well as other associated charges. * * *" Tymshare prepared a cost evaluation, estimating that it could provide teleprocessing services to the SEC for $21,396.62 while, similar services obtained from FCSS would cost $21,501.05, or $104.33 more than Tymshare's services.

Tymshare estimates that the SEC will incur core utilization charges amounting to $4,320 under the FCSS TSP schedule contract. This figure is based on Tymshare's estimate that the SEC would probably need 512 K bytes of core if FCSS' services were used. The inclusion of this charge resulted in an additional increase in Tymshare's estimate amounting to $1,080 since central processing unit (CPU) utilization charges for both vendors were estimated by taking 25 percent of the core utilization and a few other charges.

The SEC estimates that it will not incur such
charges. We note that, in its pricing structure,
FCSS does not charge for the first 256 K bytes
of core used but charges will be made for any core
used in excess of this amount. FCSS' proposal esti-
mates that the SEC's teleprocessing needs should
not exceed the maximum no-cost limit. We have been
advised that FCSS' core utilization charges for the
first 3 months of operation amounted to $4.78. In
addition, the SEC advised that based upon this expe-
rience, the need to use more than 256 K bytes of
core is not foreseeable. While it appears, based
on the charges incurred for the first 3 months,
that there will be some charges for core utilization
provided by FCSS, we believe it is not likely that
such additional charge would be a significant amount.

Tymshare's initial objections concerning the
Input/Output execution charges and application of
volume discounts were answered by the SEC. Tymshare's
response to the SEC's report containing the reevalua-
tion did not raise any further objections concerning
the SEC's application of the Input/Output charges or
the volume discounts. Our review of the reevaluation
shows that the SEC took into account the Input/Output
charges and we note that such charges were properly
assessed by the SEC. In regard to the volume dis-
counts, while Tymshare's TSP Price list, Section F.16,
Schedule N - Discounts provides for a discount to the
Government of 25.01 percent, Tymshare's evaluation
incorrectly included 25.04 percent as its discount.
Even though the use of the correct figure will not
significantly change Tymshare's evaluation, such
should be noted. Notwithstanding, the SEC's re-
evaluation of the proposals includes, among other
things, the correct discount figure for Tymshare
and the notation that for items 5, 6, and 7 no dis-
count was taken.

With respect to Tymshare's concern with the
charges for its software package - FOCUS, Tymshare
contends that such was erroneously quoted by the SEC.
In reviewing the 1978 Fiscal Year Authorized Schedule
Price list for Tymshare, we found that the factor to
be used to determine processor charges for using the
FOCUS software package was 1.8 times the number of

TRU's (a unit measure of computer resource utiliza-
tion). Our Office has been advised that Tymshare
reduced its software package premium charges on FOCUS
to 1.55 times the number of TRU's effective November 1,
1977. However, we were also advised that the GSA
was not notified of such change until October 19,
1978. Therefore, the SEC would not have had any
knowledge of the change in the software premium
on FOCUS unless notified by Tymshare during the
discussions held in September 1978. Nevertheless,
correction of the software premium for FOCUS would
not change the evaluation or determination of the
successful vendor because in estimating system
life costs for Tymshare, the SEC did not estimate
the number of TRU's nor did the SEC apply the
FOCUS software premium to determine the lowest
offeror.

Another matter of Tymshare's interest involves
its EXPRESS software package which Tymshare states
was not mentioned in its proposal but was included
in the SEC reevaluation. We note that as with
FOCUS, the SEC cost evaluation did not apply the
EXPRESS software premium in determining the system
life cost. Accordingly, the reevaluation's inclu-
sion of EXPRESS was in name only and as such does
not affect the system life cost evaluation.

With respect to FCSS' software charges, Tymshare
contends that these charges should be included in
the SEC's evaluation.

We disagree. FCSS' TSP price list does not
have a separate surcharge or premium for its NOMAD
software package. However, this does not mean that
the user of FCSS' services does not pay for the
NOMAD package. To the contrary, the cost of the
NOMAD package is included in Federal's ARU rate.
In other words, when FCSS determines its billing
or rate algorithm (ARU), the costs associated with
the NOMAD package are included therein. The result
is the user of FCSS's services will, in effect,
be paying for NOMAD whether or not it is used.

The question of whether or not to apply the
software premium factor is of no consequence in the

instant procurement because the SEC did not estimate
the number of TRU's for Tymshare or the number of
ARU's for FCSS. The number of TRU's or ARU's cannot
be accurately forecast without a system benchmark
test.

In this regard, the GSA Automated Data and
Telecommunications Service TSP Handbook, October
1978 (Handbook), provides:

> "Part 7 - Evaluating TSP Schedule Contracts

> *   *   *   *   *

> "The degree of effort should be commen-
> surate with the size of the procurement.
> The degree of detail, depth and the accept-
> ability of simplifying assumptions should
> be scaled to the estimated system life cost.
> Requirements below $200,000 annually should
> require only the minimum documentation.

> *   *   *   *   *"

> "Part 8 Benchmarks

> *   *   *   *   *

> "Selecting activities must benchmark
> all technically qualified TSP schedule
> contractors for requirements in excess
> of $200,000 annually. It is recommended
> that selecting activities also benchmark
> all technically qualified TSP schedule
> contractors for requirements under
> $200,000 annually.

> *   *   *   *   *"

It is Tymshare's position that a benchmark should
be utilized in this procurement since it is "the only
feasible way" to determine which vendor has the pro-
posal with the lowest overall cost. While we agree
that without a benchmark test CPU charges cannot be as

accurately forecast as with a benchmark, it is our
view that a benchmark test is not the only feasible
way to determine the lowest cost vendor.

The SEC developed a formula [.25 (connect time
charges plus storage charges plus I/O charges plus
remote processing charges)] which provides a basis
for determining CPU utilization charges of the vari-
ous vendors in lieu of benchmark. The formula was
based on discussions with GSA officials and others
experienced in using teleprocessing services. We
have been advised that this formula was uniformly
applied to all of the qualified TSP vendors. In
addition, we note that the implementation of the
formula is substantially less expensive than per-
forming a benchmark test. Also, we are aware that
none of the vendors objected to the utilization
of the formula. Accordingly, in the absence of
a benchmark test, the use of the formula appears
to be reasonable.

In reference to the question of whether or not
to benchmark, our Office is cognizant that workload
definition and benchmarking for the selection of
teleprocessing services can be a very costly process
for both the user agency and the TSP schedule con-
tractor. Part 8 of the Handbook, supra, requires
that the user agency benchmark qualified TSP schedule
contractors for requirements exceeding $200,000 annu-
ally. Simultaneously, it recommends, not requires,
benchmark for requirements less than $200,000.
However, this recommendation must be read in light of
the Part 7 of the Handbook, supra, which advises that
the size of the procurement should dictate the degree
of effort. The annual cost for the SEC's teleprocess-
ing requirements amounts to less than $7,000, which
is considerably less than the minimum dollar amount
necessary to require benchmarking. Under these cir-
cumstances, since the SEC's teleprocessing needs
are relatively small in size, we do not believe
that the high cost of performing a benchmark would
be in the best interest of the Government.

In conclusion, our review of the record dis-
closed the following matter which we believe is

appropriate for noting. Tymshare charged a "per page" and a "per 1000 character" amount for output printing services. In the SEC's initial cost evaluation, the "per 1000 character" charge was applied incorrectly. Rather than applying the cost to the number of characters, the SEC applied it to the number of lines printed. This resulted in the underestimation of the character print costs by a factor of 60 since there are 60 characters per line. Accordingly, the SEC's initial estimate of $86.40 for these services was increased significantly to $5,184 in the reevaluation of Tymshare's proposal. Yet, despite several objections to the SEC's first evaluation, Tymshare's cost evaluation submitted with the initial protest failed to take into account the "per 1000 character" charge and used the $86.40 figure developed by the SEC's initial cost evaluation--a serious error. If the difference between the initial evaluation and reevaluation cost for character printing figures would have been added to the 3-year system life cost for Tymshare's services, this would have made Tymshare the more costly alternative even assuming its protest objections had been conceded. Additionally, we are cognizant that Tymshare did not object to the SEC's revised estimate for character printing in its response to the SEC's report.

Based on the foregoing, Tymshare's protest is denied.

Deputy Comptroller General
of the United States