

DECISION



18614
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-196722.3

DATE: June 7, 1982

MATTER OF: Control Data Corporation and KET,
Incorporated--Reconsideration

DIGEST:

Where request for recons' pration of decision denying bid protest provides no basis to alter that decision, decision is affirmed.

Control Data Corporation requests that we reconsider our decision, Control Data Corporation and KET, Incorporated, 60 Comp. Gen. 548 (1981), 81-1 CPD 531, in which we denied two protests against an Internal Revenue Service (IRS) award to Centennial Systems, Inc. (CSI) for peripheral equipment to support the IRS's Integrated Data Retrieval System.

We affirm our decision.

The procurement was for five line items of equipment: disk, tape, card reader, card punch, and line printer equipment. The request for proposals (RFP) permitted an offeror to propose an all-or-none price to furnish all line items provided it also priced all items individually. CSI initially offered to furnish disk and tape equipment. Its proposal was determined to be in the competitive range, along with Control Data's proposal. Control Data priced all items and additionally quoted an all-or-none price.

Award to CSI, however, was based on an all-or-none price added in its best and final offer, in which that firm amended its proposal by furnishing prices for used Control Data card punch, card reader and line printer equipment. CSI did not address in detail how it would maintain this equipment; it simply stated that it was offering Control Data equipment "with CDC.[Control Data] maintenance."

Because the original protest presented a number of issues which no longer are contested, we summarize those on which Control Data's request for reconsideration is founded. Control Data protested that CSI's offer of the

card punches, card readers and line printers constituted a late proposal. Control Data further asserted that CSI's best and final offer did not contain a required express certification that the equipment proposed complied with the RFP and did not include adequate information on how CSI would maintain the card punch, card reader and line printer equipment. As a result, Control Data complained, CSI was able to avoid a technical evaluation of the added portion of its offer, and discussions concerning it, forcing the IRS to continue discussions with CSI after the award. The maintenance problem, Control Data maintained, was resolved only because Control Data ultimately agreed to service any CSI-furnished Control Data equipment.

In denying the first of these bases of protest, we stated:

"We find Control Data's argument that the IRS's consideration of the CSI best and final offer must be limited to two line items unconvincing. The existence of the late proposal clause in the RFP establishes a cut-off date for the receipt of initial proposals, defining the field of competitors who may participate further in the procurement. * * * CSI's initial proposal * * * did respond to what was minimally acceptable and its proposal was considered by the IRS to be within the competitive range; CSI survived the initial round and was free in our view to make or to submit an alternate best and final offer which it believed would enhance its competitive position. We are aware of nothing which precluded CSI from doing so, provided it was willing to take the risk that the changes might result in rejection of its proposal.* * *

"Moreover, Control Data has not shown that it suffered any legal prejudice as a result of CSI's action. Control Data should not have known before the closing date for receipt of best and final offers, and presumably did not know, who its competition was, or whether its competitors had offered

all five or only some of the RFP line items. Control Data was afforded an opportunity to submit a best and final offer and could have made any changes to its proposal which it believed necessary. Thus, it was placed at no disadvantage."

Regarding maintenance of the three items of equipment added in CSI's best and final offer, we pointed out that CSI offered the same type of card punches, card readers and line printers that Control Data offered and which IRS had been using for a number of years. We concluded that by the terms of CSI's offer, CSI had obligated itself to furnish Control Data maintenance meeting the RFP maintenance requirements. We saw no reason why the IRS should have questioned CSI's proposal. We concluded that Control Data's complaint essentially questioned CSI's responsibility, i.e., the firm's ability to meet its commitment to furnish Control Data maintenance, and we stated our settled position that this Office will not review affirmative determinations of responsibility except in circumstances which did not apply to Control Data's protest.

Control Data's request for reconsideration reiterates its position that it was improper for the IRS to consider CSI's allegedly "late" offer of the card punch, card reader, and line printer equipment. Control Data disagrees with our reasoning in our prior decision that, having survived the initial round of evaluation by the IRS, CSI was free to make or submit an alternate best and final offer which, by expanding the scope of its offer, would enhance its competitive position. Control Data contends that CSI should not have been permitted to add items in its best and final offer because, even though CSI could revise any offer which existed, there was no prior offer with respect to these items. Moreover, Control Data seeks to distinguish the cases cited in our prior decision by arguing, in effect, that none of them directly refutes its belief that an offer for each line item had to be included in the initial proposal.

These contentions add little to Control Data's previous arguments. Whether line items may be added in a best and final offer is logically dependent upon whether individual line items should be understood as independent proposals which stand alone. Control Data continues to assert that they are independent, so that all must be offered initially. We do not agree.

As an initial matter, the late proposal rule, Federal Procurement Regulations (FPR) § 1-3.802-1(b) (1964 ed.), addresses only when a proposal is late and what consequences follow if it is. The rule does not define what is a proposal for purposes of the late proposal rule or state when, if ever, an offeror's submission in response to a multi-item request for proposals is to be treated as a series of separate proposals for purposes of applying the late proposal rule. Control Data, moreover, does not cite and our research has not disclosed any previously-decided case which is controlling on this issue. (Thus, Control Data's argument that cases cited in our prior decision to illustrate general aspects of the negotiated procurement process were not controlling, while true, is inapposite.)

Our conclusion in our prior decision that CSI's best and final offer was not late is rooted in our view that we should avoid a construction of the late proposal rule which would require that we treat as separate proposals each offeror's response to every separate line item. In common usage, the term "proposal" is understood as embracing all that an offeror submits, regardless of the number of line items he addresses, unless he has indicated otherwise. Moreover, FPR § 1-3.802-1(d) states that:

"The normal revisions of proposals by offerors selected for discussion during the usual conduct of negotiations with such offerors are not to be considered as late proposals or later modifications to proposals * * *."

Revisions normally serve to enhance the attractiveness of a proposal by improving it. They are an accepted part of the negotiation process which benefit the Government because they permit changes to be made that result in a more favorable contract. We see no point in imposing constraints on the revision process that are not required by a specific regulation but which would prevent an agency from considering beneficial changes that it is able to evaluate.

Control Data also reiterates its contention that the IRS's acceptance of CSI's all-or-none proposal was improper because CSI did not provide sufficient information to permit evaluation of the three items in issue. Control Data argues that the IRS's acceptance of the proposal in effect improperly allowed CSI to avoid technical evaluation of and discussion concerning the equipment added.

First, we point out that to the extent Control Data believes the IRS was required to conduct an initial technical evaluation concerning all five line items (and that it was not sufficient to evaluate some initially, and evaluate others at a later time when they were proposed), its argument is merely an extension of its contention that CSI's proposal was late. As stated above, we conclude that CSI properly could add the line items to its proposal. The IRS in fact did evaluate CSI's best and final offer, and considered it to be acceptable with respect to the three added line items.

Second, concerning discussions, agencies are required to conduct discussions with offerors to permit them to learn of and correct deficiencies in their own proposals. Logistic Systems, Incorporated, 59 Comp. Gen. 548 (1980), 80-1 CPD 442. Discussions may afford agencies a better understanding of an offeror's proposal. However, we are aware of no requirement that permits one offeror to complain that an agency failed to conduct adequate discussions with its competitor.

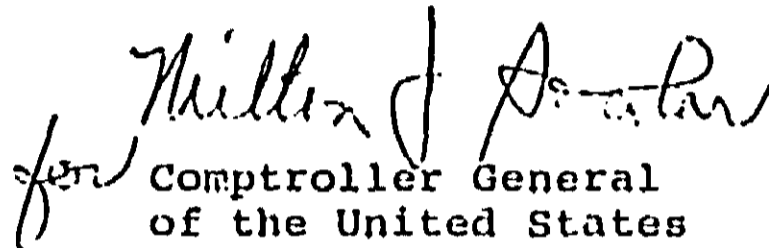
Further, although as Control Data points out the RFP stated that offerors were to submit sufficient information with their proposals to permit the agency to evaluate them, this did not permit, much less require, the IRS to reject a proposal that left out information which the IRS concluded it did not need. CSI offered equipment for the three line items added in its best and final offer that was identical to that identified in the solicitation as acceptable and was the same equipment as the IRS had been using. It was, moreover, the same equipment as Control Data proposed. In the circumstances, as discussed in our prior decision, we believe that the IRS acted properly in this regard.

Control Data also argues that CSI promised maintenance which CSI could not have delivered because it had no subcontract with Control Data at the time. This fact did not, as our prior decision indicated, relieve CSI of its contractual duty to furnish the maintenance it promised; whether it could meet its obligation was a matter of responsibility which, as indicated, we do not consider except in limited circumstances.

Finally, Control Data contends that CSI's offer to furnish 24-hour per day on-call maintenance was not sufficient because the IRS had requested pricing on an 8-hour day 5-day per week as well as 24-hour per day 7-day per week basis. Control Data asserts that CSI's proposal restricted the Government's right to vary the maintenance provided.

There is no merit to Control Data's position. Award was based on price; CSI's proposal was evaluated as low assuming maximum coverage, i.e., 24 hours per day 7 days per week. Control Data thus was not prejudiced by CSI's selection.

In the circumstances, we see no basis to alter our original decision, which is affirmed. Southwestern Bell Telephone Co.--Request for Reconsideration, B-202031, October 9, 1981, 81-2 CPD 291.

for 
Comptroller General
of the United States