DECISION

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

FILE: B-212979.3 **DATE:** April 22, 1986

MATTER OF: Centennial Computer Products, Inc.--Reconsideration and Claim for Proposal Preparation Costs

DIGEST:

1. GAO affirms prior reconsideration decision sustaining protest against the rejection of the protester's offer based on the results of a second benchmark from which the agency concluded that the protester violated the terms of the solicitation by fine tuning its computer equipment and by failing to protect against loss of data in case of a power failure. GAO rejects the agency's argument that comparison of the first and second benchmarks supports its position since there were significant changes made in running the second benchmark and there are other logical, acceptable explanations for the second benchmark results.

2. Claim for costs incurred in preparing proposal and the benchmarking of equipment in a negotiated fixed-price procurement for the lease of computer equipment is sustained where the claimant, one of two offerors, was eliminated before the submission of best and final offers through unreasonable action by the contracting agency.

The Internal Revenue Service (IRS) requests that we reconsider our decision in Centennial Computer Products, Inc.--Reconsideration, B-212979.2, Aug. 22, 1985, 85-2 C.P.D. ¶ 208, in which we sustained, on reconsideration, the protest by Centennial Computer Products, Inc. (Centennial), of the IRS's rejection of its proposal and elimination from the competitive range under request for proposals (RFP) No. IRS-83-053. The RFP was for the lease of tape, disk, and cache/disk subsystems to enhance the computer system at the IRS's Detroit Data Center. Also, Centennial claims the proposal preparation costs it incurred in connection with the procurement. We affirm our decision, and we sustain Centennial's claim.

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Background

In Centennial Computer Products, Inc., B-212979, Sept. 17, 1984, 84-2 C.P.D. ¶ 295, we questioned the IRS's elimination of Centennial for exceeding the RFP's limitation regarding the rate of access to "cache memory" during the second benchmark of the company's equipment. We held that the agency improperly had determined from the benchmark results that the company's rate of access did not meet the RFP's requirement. However, we did find that a comparison of the results of the second benchmark with those of Centennial's first benchmark supported the IRS's assertion that, in violation of the RFP, Centennial "fine tuned" its equipment for the second benchmark by slowing the noncache operation of its system to meet an RFP requirement that cache memory operation be at least twice as fast as noncache memory operation. We also found support from a comparison of the results of the two benchmarks for the IRS's position that Centennial failed to have a required data save device on its cache controller to prevent data from being lost in the event of a power failure.

We modified our holding in the Centennial reconsideration decision, to sustain Centennial's protest. We held that the IRS's statements in response to Centennial's request for reconsideration revealed that significant changes from the first benchmark in fact were made in running the second benchmark. Therefore, the test results from the second benchmark could not be compared to the test results of the first benchmark to support the agency's conclusions, especially where there were other logical explanations for Centennial's second benchmark results.

In recommending corrective action, we noted that the contract awarded under the RFP provided for four 1-year renewals. While we recognized that the first 1-year option period was nearly over and that it was not feasible for the IRS to resolicit for the coming option year, we did recommend to the IRS that it not renew the contract for the two future options years and instead resolicit its cache/disk subsystem requirements for those years.

We withdrew the recommendation for corrective action in Internal Revenue Service--Request for Reconsideration, B-220031, Dec. 20, 1985, 85-2 C.P.D. ¶ 693, because the IRS

stated that in light of its anticipated future needs, it would not be exercising the final option of the contract. We also found that a competition for the IRS's needs for the one remaining option year would not be in the government's best interest. Also, in that decision, we noted that the agency had requested reconsideration of our finding for Centennial and had presented us with several new technical arguments in support of its position that Centennial's proposal was properly rejected because the firm fine tuned its equipment for the second benchmark and did not have a data save device. We stated that we were reserving treatment of the technical merits of the IRS's position and a decision on Centennial's claim for reimbursement of its proposal preparation costs for the future. This decision addresses those matters.

IRS Reconsideration Request

The IRS contends that notwithstanding the differences in the conduct of the two benchmarks that we noted in the Centennial reconsideration decision, comparisons can be made of some of the results of the noncache operations in Centennial's first and second benchmarks to show that the company did fine tune its equipment. The IRS states that a program called "MXIO" was used in both benchmarks for the access and transfer of data on four disk units. The agency further states that in running the first benchmark, certain operations, namely, the access and transfer of 1,792 wordblocks, were performed only on one file loaded on one particular disk unit; that this was the only file on that disk unit; and that the other activities in MXIO did not access that disk. The IRS emphasizes that while the MXIO program was restructured in the second benchmark to access and transfer 896 wordblocks, the access and transfer of the 1,792 wordblock to the disk unit with one file were repeated. The IRS maintains that since 1,792 wordblock accesses and transfers were performed on the same disk unit for both benchmarks and since no other activities accessed this disk unit, the 1,792 wordblock activities on the two benchmarks are comparable and can be used to support conclusions about disk operating speed.

With regard to the specific results of the noncache operations for the two benchmarks of Centennial's equipment, the IRS states that during the first benchmark, its

measurements showed that 29,367 sequential 1,792 wordblock operations were performed for 700.6 seconds, from which IRS computed an average access and transfer time of 23.85 milliseconds. During the second benchmark, the IRS states that its measurements showed that 27,843 sequential 1,792 wordblock operations were performed for 910.6 seconds, from which IRS computed an average access and transfer time of 32.70 milliseconds. According to the IRS, this means that Centennial's equipment took 37 percent more time to access and transfer the same size wordblock during the second benchmark than its equipment took for the first benchmark. In the agency's view, this demonstrates that Centennial, whose cache equipment might not have been adequate to satisfy the RFP requirement that it be at least twice as fast as the disk units without cache, deliberately slowed down the running of the disk units to make it appear that the cache equipment was that fast.

With respect to Centennial's failure to have a data save device on its equipment during the running of the second benchmark, the IRS asserts that the procedural differences between the first and second benchmarks that we emphasized in the Centennial reconsideration decision are irrelevant because the results of the second benchmark alone show that the equipment "caches writes," i.e., does not write through to disk every time it writes into cache. This was of concern to the IRS because data written into volatile cache memory is lost when power fails, whereas data written into nonvolatile disk is preserved. The IRS argues that if the results of the second benchmark's test of noncache operation are compared with the results of that benchmark's test of cache operation, a significant speed increase is shown in the write operations for certain data during the cache operation test. Despite Centennial's claims made both orally and in writing that it never cache writes, IRS determined that this significant improvement in speed only could have been achieved by Centennial's writing this data solely to cache and avoiding the slower disk write operations. IRS concluded that since Centennial was not writing to the disk units every time it wrote to cache as it alleged it was doing to preserve the data, the company needed to have a data save device, i.e., a backup power supply.

GAO Analysis

Despite the IRS's arguments, we see no reason to disturb the finding in our Centennial reconsideration decision that in view of the changes made in conducting the second benchmark, it was inappropriate to rely on comparisons of the results of the two benchmarks to show that Centennial improperly fine tuned its equipment. The agency's argument that a comparison can be made of the results for one portion of the benchmarks using one particular disk unit is based on the fact that in both benchmarks, no other activity competed for access to the disk unit itself and, therefore, the possibility of variances due to queuing delays at the disk could be dismissed. In our opinion, however, the IRS has neglected to take into account other factors that could account for the differences in the two benchmarks. For example, measurements interpreted by IRS as "disk access and transfer times" may include queuing delays that occur elsewhere in the system, caused by such random factors as the sequence in which requests to or from any disk unit arrive, etc. Given the fact that the IRS performed only one noncache test in each benchmark, we do not think the agency collected sufficient data to eliminate the reasonable possibility that random factors were causing the apparent discrepancies noted by IRS.

Moreover, we regard benchmarks as extensions of the technical evaluation of proposals and have long been critical of the strict pass/fail benchmarks that lead to automatic exclusion rather than evidence of system capabilities that must be considered as part of the overall determination of an offeror's technical acceptability. See NCR Corp., B-209671, Sept. 16, 1983, 83-2 C.P.D. ¶ 335. Rather than causing disqualification of Centennial's proposal, the variances noted between results of the two benchmarks should have prompted further investigation and evaluation by the IRS to determine cause. Without such investigation and evaluation, IRS had insufficient technical data to conclude that Centennial fine tuned its equipment in conducting its benchmark tests and, hence, insufficient grounds on which to reject Centennial's proposal.

Turning to the IRS's data save argument, testing for the data save capability of the offerors' equipment was not covered in the RFP amendment that outlined the procedures and requirement for the second benchmark and, according to

IRS, such testing was not conducted. In this regard, the RFP did not require an offeror's proposed equipment to have a data save device regardless of the capability of the offeror's system otherwise to preserve data. Rather, the RFP specified only that a data save feature was required for a proposed cache/disk subsystem that "caches writes."

As we emphasized in the Centennial reconsideration decision, because Centennial claimed that its system preserved data by writing it to the disk units every time it wrote to cache memory and because IRS had no direct evidence that the system did not, Centennial's proposal should not have been rejected without actually testing to evaluate the system's capabilities. We noted that the agency, during the 3 days the second benchmark was being run, did not bring to Centennial's attention the fact that IRS had dismissed Centennial's written claims that its system never cache writes and had decided that Centennial's equipment was unacceptable because it lacked a data save device. In coming to its conclusions, the IRS relied only on indirect evidence and inference in support of its position, although the agency could have decided the matter conclusively by purposely interrupting the power supply during the benchmark and comparing the contents of the disk with the cache.

Consequently, we find nothing in the above IRS arguments that calls into question our earlier determination that the agency should not have eliminated Centennial's proposal from the competitive range when it did. We affirm our Centennial reconsideration decision.

Proposal Preparation Costs

An unsuccessful offeror is entitled to recover proposal preparation costs where the agency has acted arbitrarily or capriciously in evaluating either the claimant's or another offeror's proposal and the claimant would have had a substantial chance of receiving the award but for the agency's improper action. Falcon Systems, Inc., B-213661, June 22, 1984, 84-1 C.P.D. ¶ 658. For purposes of a claim for the costs of proposal preparation, we have held that the standard of arbitrary or capricious action is met by agency action that has no reasonable basis. Richard

Hoffman Corp., B-212775.3, Apr. 9, 1984, 84-1 C.P.D. ¶ 393.[1/] We further have held that where an agency's unfair action makes it impossible to determine precisely a claimant's chance of receiving an award, fairness dictates that we adopt a presumption favoring the claimant if we nevertheless can determine that the firm otherwise had a colorable chance at the award. See M.L. MacKay & Associates, Inc., B-208827, June 1, 1983, 83-1 C.P.D. ¶ 587.

The record does not permit our Office to confirm or to deny Centennial's claims as to fine tuning and the need for a data save device. Nevertheless, we also cannot find that the IRS's conclusions on these matters were reasonable, given the fact that they were based not on actual testing for them, but on the factors discussed above. We therefore cannot endorse as reasonable the IRS's elimination of Centennial's proposal from the competitive range and the attendant failure to give the company the opportunity to submit a best and final offer. In our view, then, fairness requires a finding that Centennial's chance at the award but for the unreasonable action of the IRS was sufficient to support the recovery of proposal preparation costs. See Falcon Systems, Inc., B-213661, supra. In this regard, the RFP provided for an award on a fixed-price basis to the technically acceptable offeror offering the lowest rental price for the cache/disk equipment. Although the final award price was much lower than Centennial's offered price at the time Centennial was eliminated from the competition, the IRS, at our request, has furnished information regarding the awardee's initial proposed price which reveals that it was significantly higher than Centennial's. We are unable to say that Centennial could not have reduced its price as did the awardee had Centennial properly been given the opportunity to submit a best and final offer.

[1/] The IRS solicitation under which Centennial submitted its proposal was issued prior to the passsage of the Competition in Contracting Act of 1984 (CICA). Our Bid Protest Regulations, implementing CICA, provide that the recovery of costs for bid and proposal preparation may be allowed where the protester has been unreasonably excluded from the competition and where other remedies as enumerated in our regulations are not appropriate. See 4 C.F.R. § 21.6(d), (e) (1985).

Accordingly, by separate letter to the IRS, we are recommending that Centennial be reimbursed the reasonable costs of preparing its proposal in responding to the agency's RFP. Centennial should submit substantiating documentation to the IRS to establish the amount it is entitled to recover.

for Milton J. Socolar
Comptroller General
of the United States