



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Amdahl Corporation

File: B-281255

Date: December 28, 1998

Karen Zucker, Esq., for the protester.

Todd Hutchen, Esq., for IBM, Global Government Industry, an intervenor.

Kavita Kalsy, Esq., Bureau of the Public Debt; and Roger D. Waldron, Esq., General Services Administration, for the agencies.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In evaluating system-life cost under Federal Supply Schedule procurement for 36-month lease of computer equipment, agency properly used vendors' catalog prices for maintenance for years beyond the lease period, where solicitation advised vendors of this evaluation scheme.
 2. Agency's technical evaluation of vendor quotations on computer systems was reasonable where performed in accordance with stated evaluation criteria and based on valid assessments of proposed systems.
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DECISION

Amdahl Corporation protests the issuance of a delivery order to IBM under request for quotations (RFQ) No. 99-007, issued by the Bureau of the Public Debt, Department of the Treasury, for a complimentary metal oxide semiconductor (CMOS) processor. Amdahl challenges the order citing alleged flaws in the evaluation of quotations and in the price/technical tradeoff.

We deny the protest.

On August 12, 1998, Treasury issued the RFQ for a CMOS through a 36-month lease-to-own-plan (LTOP). The RFQ also included related requirements such as training, system manuals, publications, and a minimum warranty period. The RFQ specifically limited quotations to those under a General Services Administration (GSA) Nonmandatory Federal Supply Schedule (FSS), FSC Group 70, Part I, in conformity with the terms and conditions of the schedule. The RFQ set forth mandatory functional requirements and listed a number of six specific features which were desired, but not required. As a seventh "desired" feature, the RFQ

sought "[a]ny additional features, functionalities, or capabilities offered which add value commensurate with the price differential." RFQ at 4.

Vendors were required to submit quotations which specified all components and prices to implement the system. For mandatory requirements, vendors were required to describe how the proposed system met the requirements with references to commercial technical literature to substantiate satisfaction of the mandatory requirements. Vendors were also advised to "highlight any additional features, functionalities, or capabilities included with the offered system which they [felt] would provide added value to the Government." RFQ at 7.

Quotations were to be evaluated under objective and subjective technical factors and price. The objective evaluation was to be conducted on a "pass/fail" basis and was to determine whether a quotation met all mandatory requirements. The subjective evaluation was to review the number and relative value added by desired features included in the quote and proposed maintenance for those offering it (as explained above, "additional" features were included in the rubric of "desired" features, even though they were separate from the six specified desired features). Desired features were considered "somewhat more important" than maintenance. RFQ at 8. The RFQ also stated that the government would weigh the inclusion of one or more of the desired features in its best value determination and that the government was willing to pay more for quotations which included one or more of the desired features.

Price was to be evaluated by totaling the prices of items and services, plus other identifiable costs expected to be incurred by the government in order to implement and operate the proposed system for a 5-year system-life. The implementation/operating costs included, but were not limited to, maintenance which the government would have to acquire separately as a follow-on to the warranty period and any offered maintenance. Price was considered somewhat more important than the technical factors.

Three vendors, including IBM and Amdahl, submitted quotations by the August 26, 1998 closing date. After evaluating the quotations, the technical evaluation team determined that both IBM and Amdahl's quotations met all mandatory requirements. They also found that IBM's proposed system provided all six specified desired features as well as nine additional features, five of which were considered of significant value, while the rest were considered of moderate value. Accordingly, the evaluators found IBM's quotation to be superior and ranked first overall. In evaluating Amdahl's quotation, the evaluators found that it provided five of the six desired features as well as three additional features, one of significant value and two of moderate value. The evaluators ranked Amdahl's quotation as superior and second overall. The agency evaluated the system-life cost of IBM's system as \$857,971.45 and Amdahl's system-life cost as \$830,397.82.

Based upon IBM's superior technical evaluation and additional features of significant value, the evaluators recommended selection of IBM, notwithstanding its higher evaluated system-life cost. The contracting officer concurred, finding the substantial technical benefits of the IBM quotation far outweighed the slight evaluated cost differential as compared to the Amdahl quotation. The contracting officer issued the delivery order to IBM on September 10. After learning of the delivery order and receiving a debriefing, Amdahl filed a protest with the agency.

In responding to the agency-level protest, the contracting officer acknowledged that Amdahl's system actually had five additional features which were the same as those offered by IBM, two of which were deemed significant. The contracting officer concluded that consideration of these additional features would not have changed the decision to select IBM.¹ After receiving notice of the contracting officer's decision, Amdahl filed this protest with our Office.

Amdahl objects to the agency's evaluation of the quotations. In Amdahl's view, had the agency conducted a proper technical and price evaluation, its lower-priced quotation would have been selected.

Under the FSS program, agencies are not required to request proposals or to conduct a competition before using their business judgment in determining whether ordering supplies or services from an FSS vendor represent the best value and meet the agency's needs at the lowest overall cost. Federal Acquisition Regulation (FAR) §§ 8.401, 8.404(b)(2). Where, as here, an agency conducts a competition, however, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. Information Sys. Tech. Corp., B-280013.2, Aug. 6, 1998, 98-2 CPD ¶ 36 at 3; COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Tracor, Inc., B-250716.2, Feb. 23, 1993, 93-1 CPD ¶ 165 at 7.

Amdahl first argues that the price evaluation was flawed because the agency failed to consider Amdahl's proposed pricing for maintenance. Amdahl proposed a reduced maintenance rate for the last 2 years of the 5-year system-life. Instead of using those prices, the agency used Amdahl's published FSS catalog prices. As a result, Amdahl's evaluated price was increased by approximately \$27,000. If this amount were eliminated from Amdahl's evaluated price, IBM's evaluated price

¹Although the agency responded to all of Amdahl's protest grounds, the agency concluded that the agency-level protest was untimely. While that protest was untimely based on the September 10 notice of award, at its September 21 debriefing, Amdahl learned additional information forming the basis of that protest. Accordingly, its protest to our Office is timely because it was filed within 10 days of receiving the agency's response to the agency-level protest.

would be approximately \$53,000 higher than Amdahl's price. Amdahl believes that the selection would have been different had the contracting officer considered this slightly higher premium associated with IBM's system.

Leaving aside the question of whether this relatively minor adjustment would have affected the source selection, we view this protest ground as an untimely challenge to the terms of the solicitation. The RFQ made clear that the agency intended to order only a 36-month LTOP. While the RFQ stated that the agency "encouraged" vendors to "offer" maintenance, this was stated only for the "36-month term" of the LTOP; there was no provision to order an additional 24 months of maintenance under the RFQ. RFQ at 7. With regard to determining the overall 5-year system-life cost of systems, however, the RFQ provided that, in addition to the price of "the items and services offered" in response to the RFQ, the price evaluation would take into account "other identifiable costs expected to be incurred by the Government in implementing and operating the proposed system for a system life of five (5) years." Id. at 8. By contrasting the price of the items and services "offered" with the price of "other" items, the RFQ made clear that those "other" items were not being purchased under the RFQ.

As one of those "other" items, the RFQ specifically identified maintenance "which the Government would have to acquire separately as a follow-on to the warranty period and any offered maintenance." Id. Since this procurement was for a 36-month LTOP, any maintenance "offered" in response to the RFQ would end (at the latest) at the close of 36 months, so that the separately acquired maintenance referred to would necessarily include maintenance for years 4 and 5 (and might include maintenance for the earlier period, as well, if not "offered" by the vendor). As to the maintenance being separately acquired, the RFQ went on:

For this purpose, we will use the current catalog or list price for maintenance meeting the requirements specified in the Statement of Work, as furnished by the Offeror, subject to verification by the Government. For any offers which fail to include this information, the Government will evaluate using the current price of such maintenance from the [original equipment manufacturer] or other readily available source.

Id. at 8-9. The RFQ thus clearly stated that the agency would use catalog or list prices for maintenance in years 4 and 5. Accordingly, Amdahl's argument that the agency should have considered discounted prices for maintenance in those 2 years is now untimely. Protests of alleged improprieties in a solicitation, apparent before the closing time, must be filed prior to the closing time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1998).

Further, since the RFQ did not cover maintenance for years 4 and 5, reduced prices that a vendor identified for those years would not be binding. As noted by GSA in

its response to our request for its views on this protest, use of catalog or list prices (rather than allowing vendors to identify lower prices) was reasonable; it gave the agency an approximate idea of maintenance prices for the competing systems, while avoiding the risk that vendors would identify very low maintenance prices for years 4 and 5, secure in the knowledge that they would not be bound to honor those low prices. See GSA Nov. 16, 1998 Response at 2 n.1. Accordingly, for purposes of evaluation, the agency reasonably used the vendors' published prices for those years.

Amdahl next contends that the agency's technical evaluation was flawed because IBM received credit for listing technical features which are standard features also available from Amdahl.² We disagree. As noted above, in evaluating IBM's system, the evaluators noted that IBM's system offered all six desired features and possessed nine additional features, five of which were considered of significant value (1. Support for asynchronous transfer mode (ATM); 2. Crypto-graphic co-processor; 3. CP & SAP sparing and SAP reassignment; 4. Asynchronous data mover facility; and 5. Y2K utilities bundled with the additional features). The other four features (6. TCP/IP check sum assist; 7. Asynchronous pageout facility; 8. Movepage facility; and 9. CMOS experienced engineers) were considered of moderate value. Amdahl's system offered only five of the six desired features and eight additional features. Amdahl points out that its system shares five of IBM's additional features. However, only two of them (Nos. 3 and 4) are considered of significant value, and the other three (Nos. 6, 7, and 8) are considered of only moderate value. While Amdahl's system possesses three other features which IBM's system does not, only one (dynamic quickswitch) was considered significant and the others (retaining the current serial number and a large cache memory) were considered of only moderate value.³ Accordingly, despite the agency's initial failure to identify all of the additional features identified by Amdahl, the agency's determination of IBM's system superiority was reasonable in light of IBM's offer of nine additional features,

²In a related argument, Amdahl contends that IBM's system cannot meet one of the desired features: ability to upgrade beyond the minimum number of ESCON channels. The agency report explains that IBM's system is currently configured to meet this desired feature. Since Amdahl has provided nothing to rebut the agency's explanation, we consider the issue to have been abandoned and will not consider it on the merits. Analex Space Sys., Inc.; PAI Corp., B-259024, B-259024.2, Feb. 21, 1995, 95-1 CPD ¶ 106 at 9.

³Amdahl also maintains that the IBM unique features are undeserving of additional credit because Amdahl will offer them in the future (e.g., ATM support and cryptographic co-processor). We see nothing unreasonable in the agency focusing its consideration on currently available features.

including five of significant value, versus Amdahl's offer of eight additional features, only three of which were of significant value.⁴

Finally, Amdahl contends that the agency improperly issued the delivery order to IBM at a higher price based on its higher evaluation rating. According to Amdahl, nothing in the RFQ allowed the agency to perform a price/technical tradeoff. We disagree. The RFQ specifically advised vendors that the agency would evaluate the number and relative value added by desired features included in the offer. It also advised that, with regard to desired features, the government would "weigh the inclusion of one or more of these features in its best value considerations [and was] willing to pay more for offers which include one or more of these features." RFQ at 4. While the RFQ stated that price was somewhat more important than technical merit, the RFQ also made clear that the agency contemplated a best value award determination and could properly determine that a superior technical quotation was worth paying a higher price. See Coleman Research Corp., B-278793, Mar. 16, 1998, 98-1 CPD ¶ 111 at 7 (government is not required to select the lowest-cost, technically acceptable proposal unless the solicitation specifies that price will be the determinative award factor).

In this case, the price of the higher-rated quotation, IBM's, was only slightly higher than that of Amdahl's. While Amdahl asserts that the technical advantages of the IBM system are "trivial," it does not provide any persuasive support for its conclusion. Its disagreement with the agency's evaluation does not make that evaluation, or the resulting judgment that the technical superiority of the IBM system was worth its slightly higher price, unreasonable.

The protest is denied.

Comptroller General
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⁴Amdahl notes that its system offers a number of additional features and questions how a vendor would know which to highlight. An offeror is responsible for affirmatively demonstrating the merits of its proposal. DBA Sys., Inc., B-241048, Jan. 15, 1991, 91-1 CPD ¶ 36 at 4, citing Vista Videocassette Servs., Inc., B-230699, July 15, 1988, 88-2 CPD ¶ 55 at 5. Here, the agency encouraged vendors to exercise their business judgment by specifically inviting offerors to highlight additional features, functionalities, or capabilities which they felt would provide added value.