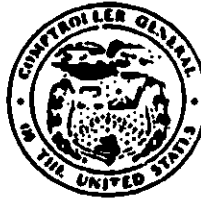


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20540

CKERMAN
P.L. II

FILE: B-186983

DATE: October 28, 1977

MATTER OF: Telefile Computer Products, Inc.

DIGEST:

1. Offeror does not meet benchmark requirement by demonstrating earlier version of model it proposes to furnish. Although offeror contends that both models are functionally identical, record shows that offeror has not yet produced model it proposes to furnish and hence agency reasonably concluded that benchmark of that model rather than earlier version of that model was required.
2. Agency did not waive its right to object to offeror's use for benchmark test of earlier version of model it proposes to furnish merely because agency evaluators permitted offeror to complete benchmark test. Evaluators' role at benchmark test was to observe and report on results of offeror's benchmark to contracting officer.
3. Allegation of bias in evaluation is not sustained since record shows that agency's evaluation was reasonable.
4. Contention that specifications contained latent ambiguities is denied. Solicitation need not use word "mandatory" to indicate to offerors that listed features were required with equipment to be supplied. Moreover, agency's possible willingness to consider proposed change from a listed feature does not indicate that listed features were not mandatory.

Telefile Computer Products, Inc. (Telefile) protests the exclusion of its proposal from the competitive range under Department of the Army request for proposals (RFP) DAAB09-76-R-0013 for the purchase of 64 programmable communications controllers, maintenance and software.

The RFP was issued on April 22, 1976, and was the subject of a prior protest to this Office which was denied. Comten, Inc., B-186983, December 8, 1976, 76-2 CPD 468; affirmed on reconsideration, March 3, 1977, 77-1 CPD 173. Based on the proposals submitted, three firms (including Telefile) were initially included within the competitive range.

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Telefile proposed a communications controller it designated as the FECF-I, an acronym for front end communications processor, with the "I" used to designate IBM compatible equipment. Telefile also proposed to furnish software it identified as FROS. Both the FECF-I and FROS were found to be technically acceptable as proposed, subject, however, to the following RFP provisions:

"SECTION E

* * * * *

"3. REQUIREMENTS.

a. HARDWARE REQUIREMENTS.

* * * * *

(13) Production status. To insure early operation and reliability of the system, only standard production modules may be proposed. Successful installation at other (non-Bidder) locations will be taken as evidence of such production status.

* * * * *

"4. DEMONSTRATIONS.

a. The government will require an operational demonstration, prior to selection of a vendor, of all equipment, software, and systems capability proposed in satisfaction of requirements in these specifications."

Telefile's demonstrations were held at two locations--a National Aeronautics and Space Administration (NASA) facility in Linthicum Heights, Maryland, and in a private facility in Irvine, California. Both locations were designated by Telefile, and at neither location was equipment identified as "FECF-I" or "FROS" software demonstrated. What was demonstrated was a communications controller marketed by Telefile as the TCP-64, and what protester states were separate elements of the FROS software.

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The protester has, in our view, appropriately identified the principal issue which is dispositive of the protest. According to Telefile:

"the real issue shines clearly, i.e., is Telefile's * * * long produced TCP-64 for all intents and purposes the same as the equipment proposed by Telefile and called the FECF-I? It is * * * Telefile's position that the TCP-64 and the FECF-I are the same * * * and the Army knows they are the same."

Protester acknowledges that the TCP-64 was manufactured using wire wrap circuitry, while the hardware proposed is to be manufactured with printed circuit boards instead of the wire wrap method of construction. There is nothing in the record to suggest that at the time of the demonstrations, any IBM compatible front end communications controllers manufactured with printed circuit boards were in regular production by Telefile or successfully installed in any location. Nonetheless, Telefile contends that the two units are functionally identical, and therefore maintains that the equipment demonstrated (TCP-64) was the same as that proposed; that the Army therefore in fact witnessed the FECF-I in operation. In this regard, at a conference held at this Office on July 20, 1977, pursuant to our Bid Protest Procedures, Telefile offered for the record what it stated to be the logic diagrams for the two systems. In addition, Telefile displayed both the wire wrap and printed circuit boards purported to be used in the respective systems.

In various submissions to this Office, the protester has asserted (1) that it changed the name of the model it proposed because it planned to use printed circuits in the hardware it delivered to the Government, (2) that the model to be delivered (wire wrap vs printed circuits) was dependent on which was coming off the production line at the time delivery was required, (3) that the product was relabeled to distinguish it from the controllers built for other host computers (the "I" for "IBM"), and (4) the Army actually observed the FECF-I in operation at NASA (although it was the wire wrap TCP-64). Thus, the protester states that "Telefile changed the name of the TCP-64 because it planned to use printed circuit boards in the delivered equipment rather than the more costly wire wrap circuits then in use."

(Emphasis added.) Telefile insists that such a change "proves the production status of the FECF-I, as a wire-wrap circuit is used basically while an item is still in the development stage. Wire-wrap circuitry can be changed much more readily and inexpensively than a printed circuit board." The protester states that the model to be delivered to the Government "was strictly a function of the time at which the order was placed." It asserts that if the model containing printed circuits "was coming off the production line at the time delivery was required", that model would have been delivered, if not, the earlier wire wrap model (TCP-64) would have been delivered. The president of Telefile states in pertinent part that:

"At no time did he state that the FECF-1 Model of the Telefile Computer Products, Inc. Front-End Communications Controller was not scheduled for production status until July 1977. Since the Telefile Computer Products, Inc. Front-End Communications Controller was relabeled to FECF-1 from TCP-64 to distinguish it from other Front-End Communications Controllers being built for other host computers, the Army apparently has chosen to belatedly confuse the FECF-1 Model Front-End Communications Processor with the Micro-Programmable version of the FECF-1 Front-End Communications Controller scheduled for normal production deliveries starting in July of 1977. * * * The Front-End Communication Controller proposed to the Army was functionally identical to the system observed at NASA except that the ULC and IFUI are on printed circuit boards as opposed to being wire-wrapped in the NASA unit." (Emphasis added.)

On the other hand, the record contains affidavits of Army personnel which state that on January 20, 1977, and March 17, 1977, Telefile representatives acknowledged that the FECF-I was a new machine which was not scheduled for production until July 1977. Moreover, we note that the RFP included the micro-programmable feature under the hardware requirements.

In any event, we cannot say that the equipment which Telefile proposed to furnish was the same as the equipment which it demonstrated to the Army. While it may be, as Telefile contends, that

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electronic hardware can be changed from wire wrap manufacture to printed circuit board manufacture and remain functionally the same, it is also possible, in our opinion, that such a change could affect performance. The two different systems will have some differences in the method of construction. As a result, it is not possible to say that the two systems will be functionally identical based solely on the documents furnished by Telefile. In order to demonstrate that the two models are functionally identical, we believe it is necessary to conduct benchmark tests on both models.

We believe, therefore, that the proposed "equipment, software and systems capability" were not demonstrated (benchmarked) as required by the RFP; all that was demonstrated was equipment asserted to have been "functionally identical" with the proposed equipment. We are of the opinion that the Army's refusal to accept that the TCP-64 and the FECF-I were one and the same was a reasonable exercise of its technical judgment. We think that the Army was entitled to have demonstrated the actual hardware and software proposed to be delivered, and not something asserted to be functionally equivalent. It also appears from the record that Telefile's proposed system was not a "standard production model" successfully installed at "non-Bidder locations." Burroughs Corporation, B-187769, July 12, 1977, 77-2 CPD 16.

Protester further asserts that the Army knew or should have known that the TCP-64, not the FECF-I, was installed at NASA because all "Government ADP equipment is coordinated through GSA with which the Army was in close communication." Thus it is claimed that the Army knew or should have known that the demonstration was to be performed on the TCP-64. Likewise it is claimed that the Army should have objected to the demonstration once it actually became aware of the equipment to be used. Accordingly, the protester claims that by not objecting to the operational demonstration on the TCP-64 the Government "waived any right it may have had to a demonstration on the FECF-I rather than the TCP-64."

We cannot attribute to the Army the knowledge which GSA may have as to the equipment at the NASA installation selected by the protester for the initial demonstration, particularly in view of the Army's denial of such knowledge. There is no evidence in the record to suggest that the protester actually advised the Army that it intended to demonstrate equipment which it claimed to be

functionally equivalent to the equipment proposed, rather than the actual equipment proposed. Nor do we agree that the Army waived its right to object to a demonstration of the TCP-64 because it allowed the demonstration to be completed without complaint. By demonstrating its existing production model rather than the model it proposed to deliver, the protester should have known that the agency might ultimately conclude that the demonstration was not in conformance with the RFP requirement that "only standard production modules may be proposed", and that the "operational demonstration of all equipment * * * proposed" was not satisfactorily completed. As the Army points out, the evaluation team's role was to observe the demonstration and to report back to the contracting officer the results of their observation.

The protester also claims that because its written proposal was found to be technically acceptable prior to the demonstration (a fact which is not controverted), it should not thereafter have been excluded from the competitive range as "nonresponsive (technically deficient) because of any asserted deficiencies in the demonstration. The protester cites Linolex Systems, Inc., et al., 53 Comp. Gen. 895 (1974), 74-1 CPD 296 and 47 Comp. Gen. 29 (1967) in support of that proposition.

We believe that the cited cases do not stand for the proposition urged. Linolex, supra, involved a benchmark test in which the offeror used its supplier's employees rather than its own personnel to perform the demonstration test. The agency stated that the purpose of the test was to validate each proposal by showing how familiar the offeror was with the equipment it proposed to furnish as well as to demonstrate the performance of the equipment. We concluded that the purpose of the test as stated in the RFP was susceptible to the offeror's interpretation and that therefore the offeror should be given the opportunity to perform the test with its own employees. In 47 Comp. Gen. 29, supra, a protest involving the procurement of substantial amounts of computer equipment, the protester was excluded from the competitive range for failure to pass a 200 hour "operational use time" test (one of the benchmark tests required). The exclusion of the protester (Honeywell) from the competitive range left only one offeror in the competition with a price premium over Honeywell of approximately \$60,000,000. We stated:

"* * * When the benchmark test left only one proposer as an eligible contractor, we do not believe the 200 hour benchmark test, which was the only test Honeywell failed, should have been considered determinative of what constituted a 'competitive' range without regard to price."

In both cases the equipment proposed was the equipment demonstrated, which was not the case here. Here, we believe the exclusion of Telefile from the competitive range, as discussed above, for failure to demonstrate the proposed equipment had a reasonable basis.

The protester asserts, however, that the Army was motivated to exclude Telefile from further negotiations because of its "desire for more complex and inherently more expensive equipment," pointing to certain "inconsistencies" in the Army's statements in the Comten protest, supra, vis-a-vis its statements made in this protest. We do not believe the "inconsistencies" asserted are significant and consequently they need not be detailed here. Moreover, we note that none of the asserted "inconsistencies", even if accepted as such, would prove the alleged motive or even explain why such motive existed. Therefore, where, as here, the record reasonably supports that agency's actions, mere allegations of a biased evaluation provides no basis for our Office to interfere with the agency's determination that a proposal is unacceptable and outside the competitive range. Joanell Laboratories, Incorporated, 56 Comp. Gen. 291 (1977), 77-1 CPD 51.

The protester also claims that the RFP contains "latent ambiguities" requiring cancellation and resolicitation of the requirement if we are unable to affirm its position with regard to the equipment demonstrated. Although "numerous latent ambiguities" are claimed, only two are asserted--(1) the "failure to identify specification requirements as mandatory or non-mandatory," and (2) the differences between the operational demonstration criteria provided to offerors and as used by the in-house evaluation team.


Our examination of the RFP reveals no such ambiguities. The specifications for both the hardware and the software are clearly listed with the preface "requirements". We do not believe the word "mandatory" is essential for any offeror's understanding that the listed features and capabilities were to be included in the hardware and software to be furnished.

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The protester nonetheless claims that it proposed to install the front-end polling feature listed in the specification 12 months after award of the contract without initial objection by the Army, and that the Army's later indication that such delivery might be negotiable, rendered the specification ambiguous. We do not believe that the protester's unilateral act, e.g., proposing to delay the delivery of a required feature to be included in the hardware, changes the plain meaning of the specification that such feature is "mandatory", nor do we believe the Army's potential willingness to negotiate that point operated to the prejudice of Telefile. Moreover, we cannot conclude that the requirement to demonstrate that feature on the proposed hardware in the face of the acceptable written proposal offering later delivery changed the mandatory nature of the requirement. Likewise, Telefile's claim of ambiguity relating to instructions to the technical evaluators did not create an ambiguity in the specifications, nor did they operate to the prejudice of Telefile. Consequently, in our view, the record does not support a finding of specification ambiguity.

Inasmuch as we have concluded that the protester failed to demonstrate the equipment it proposed, we need not consider any of the matters raised which relate to the question of whether or not the demonstrated equipment passed the demonstration test.

The protest is denied.


Acting Comptroller General
of the United States