General Louis H. Wilson
Commandant, United States Marine Corps

Dear General Wilson:

Enclosed is a copy of our decision of today in the matter of Whitlow Computer Systems, Inc., B-190968, in which the protest is denied.

While in this matter we did not find any prejudicial impropriety sufficient enough to sustain the protest, we noted the Marine Corps' excess reliance on the incumbent contractor resulting in its substantial influence on the statement of minimum needs contained in the specifications. We recommend that appropriate action be taken to avoid such excess reliance in future competitive procurements.

Please advise us of the action taken on this recommendation.

Sincerely yours,

R.F. Keller

Deputy Comptroller General of the United States

Enclosure
Agency argues that protest is untimely filed because (1) more than 10 working days before protest to GAO, agency advised protester that another offeror's proposal satisfied RFP's technical requirements as interpreted by agency, and (2) protester's familiarity with that offeror's standard commercial product implied protester's full knowledge of that offeror's proposal. Since protester did not review that offeror's proposal, GAO has no basis to conclude that protester could have had full knowledge of its contents; thus, protest is timely because protester had no basis of protest at time of agency's advice.

2. Offerors erroneously believed that RFP required certain automatic secondary allocation capability and both proposed systems with that capability; however, RFP did not require it and agency did not need it. In circumstances, GAO will not object to award based on RFP because needs of Government are satisfied and there is no showing that cost to Government was increased by offerors' erroneous interpretation of RFP.

3. Contentions--based on (1) protester's knowledge of another offeror's standard commercial sort system, and (2) conflicting views of agency's technical personnel—that other offeror's proposal failed to satisfy two of RFP's mandatory technical requirements are without merit. GAO in camera technical review of other offeror's proposal provides no basis to disturb agency's determination that such proposal was technically acceptable.
Whitlow Computer Systems, Inc. (Whitlow), protests the award of a contract to Trans-American Computer Associates, Inc. (Computer Associates), under request for proposals (RFP) No. M00027-77-R0029 issued by the United States Marine Corps for a computer sort system. Whitlow contends that the Marine Corps should have rejected Computer Associates' proposal as technically unacceptable for failure to satisfy three mandatory technical requirements of the RFP. The Marine Corps contends that Whitlow's protest is untimely and, alternatively, that (1) Computer Associates' proposal was technically acceptable and its acceptance did not prejudice Whitlow, and (2) any specification defects resulted from Whitlow's influence while the specifications were being drafted.

BACKGROUND

In 1972, the Marine Corps installed Whitlow's computer sort system in some of its installations. By June 1975, eight installations employing 11 computers were using the Whitlow system. In 1977, the Marine Corps decided to use the Whitlow system on all 21 of its computers and a delegation of procurement authority from the General Services Administration for the sole-sourcing procurement was requested. When Computer Associates advised the Marine Corps that its computer sort system would satisfy the requirements, the subject competitive RFP was issued; however, the statement of the Marine Corps' minimum needs in the specifications reflected substantial influence from the characteristics of the installed Whitlow system.

Two proposals were received in response to the RFP and, after evaluation, both were considered technically acceptable. Somehow Whitlow discovered that Computer Associates' proposal was considered technically acceptable by the Marine Corps and that determination was orally protested to the Marine Corps based on Whitlow's understanding that Computer Associates' standard commercial sort system was unable.
to meet three mandatory technical requirements; however, Whitlow had no knowledge of the sort system actually proposed by Computer Associates. In a meeting with the Marine Corps on November 7, 1977, Whitlow was advised that Computer Associates' proposal was technically acceptable and the oral protest was denied. Subsequently, best and final offers were received from both firms and later award was made to Computer Associates based on its low-priced, technically acceptable proposal; upon notification of such award, Whitlow protested here on December 23, 1977.

TIMELINESS OF PROTEST

The Marine Corps argues that in the November 7, 1977, meeting Whitlow was first advised of the technical acceptability of Computer Associates' proposal and of the Marine Corps' interpretation of the specifications and that on November 14, 1977, Whitlow was again advised that Computer Associates' proposal was considered technically acceptable. The Marine Corps contends that since Whitlow admits familiarity with Computer Associates' techniques, it can be inferred that Whitlow had full knowledge of the substance of Computer Associates' proposal. Therefore, the Marine Corps concludes that the "initial adverse agency" action took place not later than November 14, 1977; thus, in order for Whitlow's protest to be timely under GAO Bid Protest Procedures, Whitlow should have filed the protest here within 10 working days of such action, but did not. Therefore, the Marine Corps argues that Whitlow's protest is untimely and should not be considered on the merits.

The thrust of the Marine Corps timeliness argument rests upon the presumption that Whitlow could ascertain whether Computer Associates proposed its standard commercial sort system or one tailored to the needs of the Marine Corps as specified in the RFP. Since Whitlow was not permitted to review Computer Associates' proposal--even after award--we cannot
conclude that Whitlow could have had full knowledge of its contents. Without such knowledge, the November meetings could not have provided a basis for protest. Accordingly, Whitlow's protest is timely and we will consider the merits of Whitlow's protest.

TECHNICAL ACCEPTABILITY OF COMPUTER ASSOCIATES' PROPOSAL

Whitlow believes—based on its knowledge of Computer Associates' standard commercial sort system—that the awardee's proposed system should have been rejected as technically unacceptable because (1) it did not provide for automatic secondary allocation of sortout data sets, (2) it did not provide the means of predetermining the utilization of system resources, and (3) it did not provide user exits in which the user can supply parameters to dynamically control the sort.

Sortout Data Set Capability

In section "F," item 4, the RFP provided that the computer sort system "[must] provide for secondary allocation for ** SORTOUT data sets." Whitlow contends that item 4 called for "automatic" data set sortout capability because the operating system of the hardware—that would host the desired sort system—provides "nonautomatic" secondary allocation of sortout data sets via the hardware's job control language and compatibility with the hardware's operating system was required by item 1, section "F," of the RFP. In support of Whitlow's interpretation of item 4, at the informal bid protest conference held on the matter at GAO, one of the technical personnel of the Marine Corps stated that, in his view, item 4 required "automatic" data set sortout capability.

In contrast to Whitlow's contention, the Marine Corps contends—contrary to the view of the technical adviser—that (1) the word "automatic" does not appear in item 4, (2) automatic data set sortout capability was not a requirement of the Marine Corps, and (3) since secondary allocation
of sortout data sets is provided by the hardware's operating system, a portion of item 4 merely overlapped or repeated an inherent requirement of item 1. The Marine Corps also contends that on November 7, 1977, Whitlow was advised that the "automatic" feature was not required.

From the language of items 1 and 4, we believe that the automatic feature was not required. However, after our independent technical review of the requirements of items 1 and 4 and our in camera review of Computer Associates' proposal, we find that both offerors included the automatic feature in their respective proposals. While Whitlow's system was not the same as Computer Associates' system—which provides instructions in its system documentation for the coding of the job control language of the hardware to automatically provide secondary allocations for sortout data sets—we have no basis to conclude that Computer Associates' proposal should have been considered technically unacceptable with regard to item 4.

In sum, the Government's minimum needs are satisfied and there is no indication that the Government would pay any additional amount for the "automatic" feature. Since both offerors believed item 4 required the automatic feature and both proposed the automatic feature, we cannot conclude that Whitlow was prejudiced on this score.

Means for Predetermining Resource Utilization

Under section "F," item 7, of the RFP the computer sort system must provide the means of predetermining the utilization of system resources using statistics and data on file characteristics, record bias, sort efficiency, etc. Whitlow contends—based on information made available to it by Computer Associates—that the awardee's proposal did not provide for the collection of certain file characteristics, without which the predetermination of resource utilization would be impossible. In support of its position, Whitlow also relies on
the statement at the informal conference by one of the Marine Corps' technical advisers that the awardee's proposed system could not make the required predetermination.

The Marine Corps explains, in written comments after the conference, that the awardee's sort--after being run one time--is capable of providing the required resource utilization data for future production runs and that Whitlow was advised on November 7, 1977, that this means of predetermining resource utilization satisfied the requirements of item 7. The Marine Corps also explains that while Whitlow's sort system includes a simulation program that allows a programmer to specify the approximate file characteristics and operating environment to predetermine approximate resource utilization, the Marine Corps did not require a separate program and Whitlow was so advised. The Marine Corps concludes that Whitlow had an opportunity to modify its proposal but elected not to do so.

We note that Whitlow's arguments are based on what it believes is contained in the awardee's proposal, which Whitlow has not seen. We have reviewed in camera Computer Associates' proposal from a technical standpoint and find that it did provide a means of predetermining system resource utilization. That means includes running one sort representing a given class of sorts to obtain certain data and analyzing that data in combination with (1) information obtained from the data file collected by the host hardware system, and (2) charts and graphs contained in Computer Associates' software documentation package. Accordingly, we have no basis to disturb the Marine Corps' determination that the awardee's proposal is technically acceptable with regard to item 7.
User Exits to Control Sort

In section "F," item 9, the RFP required that the computer sort system must provide user exits in which the user can supply parameters to dynamically control the sort. Whitlow contends that since item 1 requires sort compatibility with the host hardware operating system, which contains standard user exits, item 9 must have required the desired sort system to provide nonstandard user exits, as Whitlow's does. Based on Whitlow's knowledge of Computer Associates' standard commercial sort system and certain statements made by one of the Marine Corps' technical representatives at the informal conference, Whitlow believes that Computer Associates did not propose to provide the required nonstandard user exits.

In response, the Marine Corps explains that the awardee's proposed sort system supports all the standard user exits as required by item 1 and also allows parameters to be changed at the time of sort execution by using a particular data definition card. In the Marine Corps' technical judgment, the awardee's proposal satisfies the requirements of item 9 and item 9 properly states the Marine Corps' production processing minimum requirements.

We have reviewed, in camera, Computer Associates' proposal to determine whether the Marine Corps' determination was reasonably based. We found that the awardee proposed to support all standard user exits and, in addition, to permit the modification of sort parameters for control purposes at the time of program execution. Although the Whitlow sort system may be capable of providing substantially more nonstandard user exits, we have no basis to conclude that the Marine Corps' determination—regarding the compliance of Computer Associates' proposal with the requirements of item 9—is unreasonable.

CONCLUSION

Protest denied.
By letter of today, however, we are bringing to the attention of the Commandant of the Marine Corps a basic procurement deficiency noted in this letter—the agency's apparent excess reliance on an incumbent contractor in establishing the agency's minimum needs. As summarized by one of the Marine Corps' technical personnel at the informal conference, "the Corps needed a Volkswagen and issued specs for a Cadillac." In this case we did not find any prejudice with regard to the specifications. However, appropriate action should be taken to avoid excess reliance on incumbent contractors in drafting specifications.

R.G.K.

Deputy Comptroller General
of the United States