

*Fitzmaurice*

*17665*

**DECISION**



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

*[Protest of Army Contract Award]*

FILE: B-200200

DATE: April 6, 1981

MATTER OF: AM International, Inc. *DLG ON 6/4/81*

**DIGEST:**

1. Protest will be considered timely when filed within 10 working days after protester received written notice of award which had effect of denying protester's oral protest to contracting agency.
2. Corrective action is recommended where agency's evaluation of proposals was inconsistent with evaluation criteria specified in solicitation for life cycle costs and sort capability.

AM International, Inc. (AMI), protests the award of a contract to Lanier Business Products, Inc. (Lanier), under request for proposals (RFP) No. DAKF23-80-R-0030 issued by the Department of the Army (Army), Contracting Division, Fort Campbell, Kentucky.

*CNG 01065  
AGC 80341*

The RFP solicited offers for word processing equipment. AMI argues that the Army did not follow the evaluation criteria set forth in the solicitation but, if it had, that AMI would have been awarded the contract. The Army, however, argues that AMI's protest is untimely and, in the alternative, that the evaluation criteria were properly applied and thus the contract was properly awarded.

For the reasons indicated below, we find AMI's protest to be timely. In addition, we recommend that the remaining portion of the procurement be resolicited based on the Government actual needs.

*DLG 399* 114849

FACTS

The RFP was issued on April 25, 1980. Three amendments were issued later. The closing date for the receipt of proposals was June 4, 1980. Five offers were found acceptable or susceptible of being made acceptable. Each offeror was then requested to demonstrate the proposed equipment as required by the RFP. The equipment was to be evaluated in accordance with the factors set forth in section "D," paragraph 4(f). This paragraph provides in pertinent part:

"A point system will be used to evaluate proposals. System will be evaluated on the following items listed in a descending order of importance, with the first item (a) carrying the highest points. Item A, ease of operation, and Item D, Size of display screen, when combined will equal fifty percent of the evaluation points, Item B, total cost, and Item C, sort capability, when combined will equal the remaining fifty percent.

\* \* \* \* \*

- "a. Ease of operation will be evaluated by the following items:
- (1). Number of key strokes required to insert or delete either character, word or line.
  - (2). Number of key strokes to move either word, line or paragraph and number of key strokes to store or print.
- "b. Total cost to the Government to include equipment, maintenance and service, installation charge, operator training and option years (under base to ownership plan.)
- "c. Sort capability over more than one field simultaneously. The greater number and size of fields which can be sorted simultaneously increases the points awarded this feature.

- "d. Size of display screens; half page screen is the minimum requirement. Proposals offering more than a half page screen will be awarded additional points."

Prior to the RFP being issued, a confidential point factor was developed which established a maximum number of points (70) to be assigned to any one piece of equipment. Moreover, as to the cost evaluation, paragraph 3, section "D," provides that the evaluation will be performed on a 60-month systems life basis.

Upon completion of the technical evaluation, a request for best and final offers was made, fixing July 28, 1980, as the closing date. After receipt of the best and final offers, the evaluators held a meeting to conduct a cost evaluation. A declining point factor was used so that the lowest cost received the highest point value. As between Lanier and AMI, Lanier was found to have the lowest total cost (\$288,518.68) and AMI the second lowest (\$301,963.95). After the points awarded for cost were added to the technical scores, Lanier was found to have the highest total point score (61) and AMI the second highest (60). Therefore, on August 8, 1980, the Army awarded a 1-year contract to Lanier as the technically acceptable offeror with the lowest overall cost. The contract also provided for three 1-year options.

AMI was notified by telephone on August 8, 1980, that the contract had been awarded to Lanier. It then lodged an oral protest with the contracting officer and visited the contracting office on August 12, 13, and 21, 1980, in an attempt to resolve the protest. On August 23, 1980, AMI received written notification of the award to Lanier. Taking this as a denial of its oral protest, AMI filed a protest with our Office on September 2, 1980.

#### TIMELINESS

The Army argues that AMI knew or should have known the basis of its protest no later than August 13, 1980, and that under our Bid Protest Procedures, 4 C.F.R. part

20 (1980), should have filed its protest with GAO no later than 10 working days after that date. Since AMI's protest was filed on September 2, 1980, the Army concludes that the protest is untimely and not for our consideration.

Section 20.2(a) of our Bid Protest Procedures states in pertinent part:

"Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 [working] days of formal notification of or constructive knowledge of initial adverse agency action will be considered \* \* \*"

AMI contends that it was trying to resolve its oral protest up until the time it received written notice of the award to Lanier. According to AMI, it took this notice as the initial adverse agency action which required a further protest to our Office. In light of this, AMI believes that its protest of September 2, 1980, was timely filed and should be considered on the merits. We agree.

The general rule is that where doubt exists as to when a protester knew or should have known of the basis for protest, that doubt is resolved in favor of the protester. See Dictaphone Corporation, B-196512, September 17, 1980, 80-2 CPD 201. Here, there is nothing in the record which indicates that the Army denied AMI's oral protest prior to the written notice of award AMI received on August 23, 1980. In light of this, any doubt as to when AMI had actual or constructive knowledge of the initial adverse agency action should be resolved in AMI's favor. Its protest, therefore, will be considered on the merits.

#### EVALUATION CRITERIA

AMI argues that the cost evaluation should have been done on a 60-month systems life basis--as specified in section "D," paragraph 3, of the RFP--rather than the 12-month basis the Army actually used.

In addition, AMI criticizes the 10-point maximum score the Army allowed for the "Sort Capability" evaluation factor. AMI points out that the RFP provided that the greater the number of fields a piece of equipment could sort simultaneously, the greater the number of points it would be awarded. In light of this, AMI believes that it should have received more than 10 points for this item because Lanier received the same score but offered equipment with less sorting capability.

Finally, AMI argues that one of the evaluators erroneously awarded Lanier four points under the "Screen Size" evaluation factor. According to AMI, Lanier's proposed screen size (a half-page screen) was not entitled to any points under the stated evaluation criteria. AMI argues that if these four points were subtracted from the evaluator's score, there would be a tie (60 points each) in the average score each company received. AMI believes this would require the Army to make a further decision on which company is in fact entitled to the contract award.

In response, the Army argues that, even if the cost evaluation is made on a 60-month basis, Lanier remains the low offeror.

As to the 10-point maximum for "Sort Capability," the Army points out that this point factor was developed prior to the RFP being issued; that, since both AMI and Lanier each offered more than a six level sort, each was entitled to, and did receive, the maximum; and that, even if the 10-point maximum was not mentioned in the RFP, it was consistent with the stated evaluation criteria.

Finally, as to the four points Lanier received for "Screen Size," the Army admits that these points should not have been awarded. Nevertheless, the Army believes that the award to Lanier is proper, since, even when the four points are subtracted, Lanier's total score remains one-half point higher than AMI's.

#### ANALYSIS

We have held that procuring agencies must provide a clear statement in their solicitations of the evaluation factors that will be utilized so that fair and intelligent

competition can be achieved. When life cycle costs are to be evaluated, we believe that the solicitation should not only indicate that fact, but also the useful life period that will be utilized in the evaluation. Philips Business Systems, Inc., B-194477, April 9, 1980, 80-1 CPD 264; Eastman Kodak Company, B-194584, August 9, 1979, 79-2 CPD 105.

Here, the RFP did in fact notify all offerors that life cycle costs would be evaluated and that the useful life period to be utilized would be 60 months. However, when the Army conducted its cost evaluation, it utilized a 12-month life period. The Army maintains that this has no significance, since, under the contracting officer's 60-month cost evaluation, Lanier remains the low offeror. We note, however, that in assigning points under the cost evaluation, the evaluators' scoring was essentially subjective. Except for a maximum score of 25 to be given the lowest offeror, the evaluators were free to award points to the remaining offerors as they saw fit. Thus, while most of the evaluators gave Lanier one or two points more than they gave AMI, one of the evaluators awarded Lanier five points more than AMI. In light of this disparity in the scoring, even though the evaluators used identical cost figures, we do not believe that it can be determined accurately how the evaluators would have scored the cost proposals if it had been done on a 60-month basis, as specified in the RFP, rather than on a 12-month basis. Therefore, given the closeness of the Lanier and AMI scores, it cannot be concluded that Lanier would have been entitled to the award regardless of the life period used for the evaluation. Moreover, the scoring was defective because it did not utilize an objective standard where identical cost figures were scored exactly the same by each evaluator.

As to the "Sort Capability" factor, we believe that it is defective and that the defect is prejudicial to AMI. Section "D," paragraph 4(f), of the RFP states that the "greater number and size of fields which can be sorted simultaneously increases the points awarded this feature." However, the Army indicates that a six level sort

capability fulfills its needs and, therefore, despite AMI offering greater sort capability than Lanier and what the Army required, the Army awarded both firms 10 points. Thus, no points were awarded for sort capability in excess of six levels. This was contrary to the language of the "Sort Capability" factor. AMI was prejudiced by the change in the evaluation method for the sort capability in that AMI's proposal indicates that it offered its "Super-Sort" software at the same price as its "Standard-Sort" in an effort to maximize its score under the "Sort Capability" factor (the Standard-Sort provides six levels while the Super-Sort provides eight). If the evaluation method specified in the RFP had been followed, AMI would have been entitled to more points than Lanier. The impropriety in the evaluation of the life cycle costs and the sort capability could have had a significant impact upon the selection of the successful offer in view of the closeness of the respective total scores.

Finally, in regard to the four points awarded to Lanier for "Screen Size," we note that the Army has conceded that Lanier should not have been awarded these points. In light of this, we do not believe it is necessary to consider this ground of protest further.

#### CONCLUSION

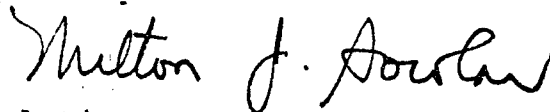
In view of the above, we recommend that the remaining portion of the procurement be resolicited based on the Government's actual needs and be evaluated on an objective basis that will insure equality of treatment. It is a fundamental principle of Federal procurement law that a solicitation must be drafted in such manner that offers can be prepared and evaluated on a common basis. Lawrence Johnson & Associates, Inc., B-196442, March 11, 1980, 80-1 CPD 188. If, after the resolicitation, some offeror other than Lanier is the successful offeror, steps should be taken to terminate the contract with Lanier for the convenience of the Government.

B-200200

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By separate letter of today, we are informing  
the Secretary of the Army of our recommendation.

Protest sustained.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General  
of the United States