

Boyle 118633

DECISION



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

FILE: B-206553

DATE: June 8, 1982

MATTER OF: CMI Corporation

DIGEST:

Protester's timely written response to a Commerce Business Daily synopsis indicated that used equipment was being proposed; whereas, the announcement clearly disclosed that the agency required new equipment. GAO concludes that the protester's response did not constitute an acceptable affirmative written response; therefore, under applicable regulations, the procuring agency was not required to consider its lower proposed costs before placing an order against another vendor's schedule contract.

CMI Corporation protests the issuance by the Agency for International Development (AID) of a purchase order to International Business Machines Corporation (IBM) under IBM's schedule contract No. GS-00C-02900 with the General Services Administration (GSA) for purchase of one IBM central processor, model No. 4341-L01, and related equipment and maintenance. CMI contends that the award was improper because CMI offered the identical items at a lower proposed price. AID reports that CMI's offer was not acceptable and that the award was proper because no other offeror proposed the required items at a price lower than IBM's. We find that CMI's protest is without merit.

AID announced in the Commerce Business Daily its intention to purchase from IBM a certain IBM central processor (and related equipment and maintenance), or equivalent. Vendors, other than IBM, desiring to compete were advised to provide firm prices and other written information explaining how all the requirements listed in the announcement would be satisfied. One of the 23 listed requirements was that the equipment to be furnished must be the latest technology and newly manufactured.

CMI submitted a timely response to AID, consisting of a one-page offer and a two-page enclosure briefly explaining the third-party computer industry. CMI's timely response did not explain how all of AID's disclosed requirements would be satisfied, CMI did not offer a firm price for all items being procured, and CMI indicated that used rather than new equipment was being proposed. At no time during the course of this protest has CMI stated that it would have or could have provided new equipment.

After receipt of CMI's initial response, AID contacted CMI and advised CMI that its submission did not address all the areas outlined in the announcement. In response, CMI submitted more information in the form of a one-page letter containing a firm price for equipment, which was lower than IBM's schedule contract price. AID determined that CMI's response was unacceptable for several reasons, one of which was that CMI's proposed used equipment was not acceptable.

CMI essentially contends that AID's award to IBM was improper because CMI proposed the exact make and model of the equipment required at a lower price than IBM's schedule contract price.

GSA's regulations permit an agency to place an order against schedule contracts, like IBM's, when certain conditions are satisfied. One condition is that the agency must consider all written responses to a Commerce Business Daily synopsis, and the agency must determine that the schedule contract is the lowest overall cost alternative to the agency. Federal Procurement Regulations § 1-4.1109-6 (1964 ed., amend. 211). Further, the Commerce Business Daily announcement adequately notified potential offerors that only affirmative responses would be considered.

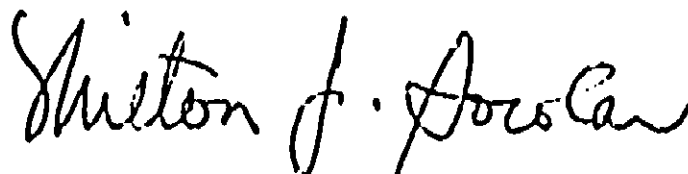
This situation is similar to the one in our decision in the matter of SMS Data Products Group, B-197776, February 18, 1981, 81-1 CPD 103. There, the Commerce Business Daily announcement similarly notified potential offerors of the intent to procure an IBM model No. 4341 or equivalent meeting certain specified performance characteristics unless the contracting activity received a timely affirmative written response containing

sufficient technical documentation to verify compliance with the stated characteristics. The protester's written response did not contain sufficient documentation. There, time permitted the contracting activity to allow the protester to amend its initial written response but, again, the documentation provided was insufficient. We held that the contracting activity was not required to consider the protester's response as an acceptable affirmative response.

Similarly, in Spectrum Leasing Corporation, B-205367, March 4, 1982, 82-1 CPD 199, we found that the protester's timely written response to an agency's Commerce Business Daily announcement did not constitute an acceptable affirmative response because the protester did not address its capability to meet the agency's disclosed critical delivery requirement; consequently, the procuring agency was not required to consider the protester's proposed lower costs before placing an order against another vendor's schedule contract.

Here, CMI's proposed used equipment clearly did not satisfy the Agency's explicitly disclosed requirement for new equipment. In our view, that basis alone constituted adequate justification for AID to reject CMI's lower priced proposal as an unacceptable response. Thus, we need not consider the adequacy of AID's other possible bases for rejecting CMI's proposal. Further, since we find that AID properly rejected CMI's proposal for not proposing new equipment, we need not consider CMI's contention that AID improperly informed IBM of its requirement prior to the announcement in the Commerce Business Daily because CMI was not prejudiced by AID's prior notice to IBM.

Protest denied.

*for*   
Comptroller General  
of the United States