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DECISION



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

FILE: B-207466

DATE: November 15, 1982

MATTER OF: International Computaprint Corporation

DIGEST:

1. Agency properly determined to relax testing requirements where incumbent has been the only awardee over the 12-year procurement history of the requirement and prior procurements have resulted in minimal competition and frequent protests which have resulted in GAO decisions requiring the agency to attempt to increase the feasibility of effective competition.
2. Agency determination to increase the number of days in the test period for the production of demonstration computer tapes was reasonable in view of agency goal of fostering competition and determination that any test was necessarily of limited scope and that relaxed timeframe provided only speculative risk of possibility of inaccurate or unrepresentative test results, which was outweighed by the possible benefits of increased competition.

International Computaprint Corporation (ICC) protests the action of the Department of Commerce (Commerce) in amending request for proposals (RFP) No. PT-82-SAC-00316, for the preparation of patent data on computer magnetic tape for the Patent Full-Text Data Base and related requirements of the Patent and Trademark Office.

The RFP states that offerors may be required to complete a Pilot Patent Production Demonstration (PPPD), which is essentially a benchmark test, in order to demonstrate the technical capability to produce the required tapes. In order to perform the PPPD, an offeror is given

advance notice of the availability of 25 selected patent files; it is then provided with the actual files for a specified, limited time period. The offeror is required to produce and deliver the completed computer tapes for technical evaluation by the agency. The PPPD provides for two possible resubmissions of corrected tapes within limited time periods if the tapes are initially rejected as unacceptable for technical reasons. The RFP requires that the finally submitted demonstration tapes must clearly establish a basis for determining that the offeror has the requisite technical understanding of the requirements and has provided substantial evidence of the capability to produce the work accurately and in a timely manner.

The RFP initially provided for notification 5 working days in advance of the availability of the files and for 10 working days for actual production of the tapes under the PPPD. Amendment No. 0001, to which ICC objects, increased the time permitted for actual production of the tapes under the PPPD to 35 working days.

ICC, the incumbent, asserts that this increased time period is inconsistent with the portions of the RFP that emphasize the importance of timeliness of performance and makes a meaningful PPPD impossible. ICC argues that the time increase undermines the intent of the solicitation by making it possible for an offeror to create a custom-tailored set of programs which would permit acceptable delivery of the 25 patents involved in the PPPD, but which would be ineffective in an actual production mode.

We find the protest without merit.

Commerce indicates that it issued the amendment in response to a potential offeror's contention that it would not be able to develop the extensive computer software required within the 10-day performance period. The contracting officer determined that extending the PPPD period was in the best interest of the Government as it would serve to foster competition. In reaching this determination, the contracting officer took into consideration the complexity of the work and the associated high startup costs and the fact that only one proposal was received under the two prior solicitations for this requirement. In addition, the contracting officer found that the original PPPD time constraints were inconsistent with the requirement of our Office for flexibility in the application of benchmark and other test requirements.

This contractual requirement has existed since 1970 and only ICC has been awarded and performed the contract. Preceding solicitations have been the subject of numerous protests to our Office. These protests essentially have concerned the allegedly overly restrictive nature of the solicitation, and frequently the protests have been successful, resulting in a variety of recommendations by our Office that Commerce take steps to increase the possibility of competition. In its effort to foster competition over the years, Commerce has substantially relaxed the PPPD requirements.

ICC contends that Commerce's relaxation of the PPPD requirements constitutes a misapprehension on Commerce's part that it is required to compensate for ICC's presumed advantage as an incumbent. ICC further asserts that, in any case, in its effort to foster competition, Commerce has increased the wrong time period, i.e., it should have increased the time period between notice that the PPPD will be held and the time that the test patent files become available, rather than the time for production of the tapes.

ICC is correct in its general assertion that the Government is not required to structure its procurements so as to neutralize the competitive advantages of incumbency. However, it does not follow that an agency is precluded from attempting to foster competition by providing for an evaluation method which increases the feasibility of effective competition by nonincumbents. This is in accord with the general statutory and regulatory preference for maximum feasible competition and, also, with the very objective of our bid protest function to insure full and free competition for Government contracts. Trinity Services Inc., B-206959.2, June 14, 1982, 82-1 CPD 577; Don-Ko Water Treatment Company, B-203067, May 28, 1981, 81-1 CPD 419. In furtherance of this policy, we have indicated that we will not question the use of relaxed, less restrictive specifications or testing requirements absent evidence of favoritism. Davey Compressor Company, B-203781.2, May 10, 1982, 82-1 CPD 444; Honeywell, Inc., B-205093, March 16, 1982, 82-1 CPD 248; Union Carbide Corporation, B-188426, September 20, 1977, 77-2 CPD 204. Similarly, we have emphasized the need for flexibility in the conduct of benchmark tests and the concomitant undesirability of

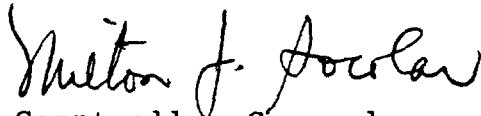
"pass/fail" benchmark tests. See The Computer Company, B-198876, October 3, 1980, 80-2 CPD 240; Id.--Reconsideration, 60 Comp. Gen. 151 (1981), 81-1 CPD 1; Elgar Corporation, B-186660 October 20, 1976, 76-2 CPD 350. In view of the history of this procurement, we believe that Commerce's decision to relax the PPPD requirements in order to foster competition was well founded.

With respect to ICC's allegation that Commerce increased the wrong time period, i.e., that it should have increased the 5-day notification period rather than the production period, we believe that Commerce had a reasonable basis for its decision. In deciding a protest involving benchmarking, our standard of review is the same as for any other evaluation procedure, i.e., the establishment of qualification and testing procedures is a matter within the technical expertise of the cognizant procuring activity. We will not question the use of such procedures unless they are without a reasonable basis. Westinghouse Information Services, B-204225, March 17, 1982, 82-1 CPD 253; Tymshare, Inc., B-190822, September 5, 1978, 78-2 CPD 167; Burroughs Corporation, B-187769, July 12, 1977, 77-2 CPD 16. We note that assurance that sufficiently rigorous specifications are used is ordinarily of concern primarily to procurement personnel and user activities, since it is they who must suffer any difficulties which result from inadequate equipment. Grove Manufacturing Company, B-202531, August 17, 1981, 81-2 CPD 147. Thus, to the extent that ICC's objections relate simply to the allegedly inadequate protection afforded to the agency by the relaxed PPPD test, it is not for review by our Office in the absence of evidence of fraud or willful misconduct by procurement or user personnel. Grove, supra.

In view of the circumstances of this procurement, we believe that Commerce had a reasonable basis for establishing the amended timeframe within which the PPPD production was to be performed. The PPPD is a limited test which both Commerce and ICC agree does not provide proof of an offeror's ability to produce at full-production capacity. Commerce also recognized that it would be possible for an offer to "simulate" results in the original 10-working-day production period. We find, however, that Commerce reasonably concluded that notwithstanding the speculative risk that a prospective contractor would attempt simulated

production because of the extension, the benefit to the Government through affording potential offerors a fair opportunity to compete for the award by extending the PPPD period far outweighs any possible increase in risk.

We deny the protest.

for 
Comptroller General
of the United States