

DECISION



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

FILE: B-207660.3

DATE: May 16, 1983

MATTER OF: Burroughs Corporation, Inc.

DIGEST:

Navy's decision, after amending the RFP, to refuse to consider revised proposal from offeror whose initial proposal was rejected as late is upheld where the protester has not shown that the amendment substantially changed the RFP requirements so as to require the solicitation of new offers.

Burroughs Corporation, Inc. (Burroughs), protests the Automatic Data Processing Selection Office's (ADPSO), Department of the Navy, decision to refuse to consider its revised group III technical proposal under request for proposals (RFP) No. N66032-81-R-0022. Burroughs alleges that by amendment No. 0019, the Navy made substantial changes to the RFP's requirements, after the closing date for receipt of initial proposals. Burroughs contends that the amendment permits the Navy to accept the proposal, even though initially it was rejected as late.

We deny the protest.

On September 21, 1981, ADPSO issued the RFP to acquire hardware, system software, and related support services to augment and/or replace peripheral devices at various Uniform Automatic Data Processing System-Stock point sites, while retaining the mainframes and associated software. As originally issued, the RFP was divided into four separate groups. Offerors were required to submit technical and cost proposals on each group. The groups were:

"Group I - Mainframe Peripherals, consisting of:

- Magnetic Tape Systems
- Random Access Storage Systems (Disks)
- Line Printer Systems
- Card Reader/Card Punch Systems

Group II - Operator Console Station and Local.
Console Printer Equipment

Group III - Modems & Line Monitoring Equipment

Group IV - Terminal Computers, Video Display
Terminals and Remote Printers."

After the RFP's issuance, ADPSO issued several amendments. Amendment No. 0005, issued February 18, 1982, added group V, which listed additional printers plus the equipment designated under group IV. Amendment No. 0011, issued on April 8, 1982, extended the due date for the receipt of the group III technical proposals to May 3, 1982. Burroughs submitted its proposal on May 4, 1982. ADPSO rejected the proposal as late, which rejection Burroughs protested to our Office. We denied the protest and found the rejection proper. Burroughs Corporation, B-207660, June 23, 1982, 82-1 CPD 622; affirmed, Burroughs Corporation--
Reconsideration, B-207660.2, October 28, 1982, 82-2 CPD 377.

By letter dated September 28, 1982, ADPSO again amended the RFP by amendment No. 0019. Offerors who had submitted initial proposals on any of the five groups were furnished the amendment, including Burroughs. The letter advised offerors that amendment No. 0019 incorporated all the previous amendments and also changed many of the requirements, especially the maintenance requirement. Also, it advised them to carefully review the entire solicitation as amended because in order to be considered, all offers had to be completely revised and resubmitted. In Burroughs' letter, ADPSO advised Burroughs that it would not consider a revised technical proposal on group III, because the initial proposal was late. However, it was encouraged to submit proposals on the other groups.

Burroughs asserts that amendment No. 0019 makes substantial changes to the RFP; therefore, the Navy may accept its revised group III technical proposal. Burroughs contends that the ADPSO decision violates Defense Acquisition Regulation (DAR) § 3-805.4(b) (Defense Acquisition Circular No. 76-17, September 1, 1978), since a substantial change either mandates cancellation of the RFP or consideration of its proposal. The regulation provides:

"(b) The stage in the procurement cycle at which the changes occur and the magnitude of the changes shall govern which firms should be notified of the changes. If proposals are not yet due, the amendment should normally be sent to all firms solicited. If the time for receipt of proposals has passed but proposals have not yet been evaluated,

the amendment should normally be sent only to the responding offerors. If the competitive range has been established, only those offerors within the competitive range should be sent the amendment. However, no matter what stage the procurement is in, if a change or modification is so substantial as to warrant complete revision of a solicitation, the original should be canceled and a new solicitation issued. In such cases, the new solicitation should be issued to all firms originally solicited, any firms added to the original mailing list and any other qualified firms."

Burroughs' position essentially is that the revisions to the group III portion of the RFP constitute a new procurement because ADPSO in effect is purchasing different products and services. To support its position, Burroughs cites the following examples of the changes made regarding group III.

Initially, Burroughs points to the fact that ADPSO requested that completely revised proposals must be resubmitted. ADPSO responds that the reason this was done was that amendment No. 0019 incorporated all prior amendments to avoid confusion and resulted in one summary document. Further, by having revised proposals submitted, the ADPSO would not have to amend the previously submitted proposals, which would have increased the chance for error in amending the proposals.

Next, Burroughs states that the amendment deleted the requirement for RS449 interface capability for the modems and only required RS232 capability. Both numbers signify an industry standard and both were originally required. The contracting activity advises that the deletion of RS449 merely removed the more restrictive of the two methods of interfacing between the modems (the items being procured under group III) and the host computer equipment. ADPSO further points out that this capability was actually deleted by amendment No. 0016 and was merely physically removed from the specifications in amendment No. 0019. Third, as regards maintenance, Burroughs states that the amendment raised the maintenance requirements from 95 percent to 99 percent effectiveness level for modems and line monitoring equipment and changed the on-site and on-call maintenance to a per-call basis, the latter reducing the contractor risk. Finally, Burroughs contends the automatic data processing maintenance credit provisions have been elevated to

unusually stringent standards, exceeding those required under General Services Administration contracts or other Navy contracts. ADPSO disagrees, contending that while effectiveness levels are higher, the terms and conditions are the same as the other enumerated contracts.

We agree with the Navy's decision to refuse to consider Burroughs' group III technical proposal. While the amendment to the RFP may be technically characterized as a completely revised solicitation, the fact of revision, in itself, is not the prerequisite under the regulation which requires cancellation of the solicitation and a reprocurement. Rather, the magnitude of the change in relation to the original RFP governs whether a solicitation should be canceled and reissued. Where the contracting agency determines that the changes are unsubstantial and the RFP is amended, only the responding offerors are entitled to participate in the procurement. See DAR § 3-805.4(b), supra. Our review of agency decisions concerning cancellation of solicitations is limited to whether the exercise of agency discretion is reasonable. Therefore, the protester has the burden of affirmatively proving that the contracting agency's decision that the changes are not so substantial as to warrant cancellation and resolicitation is without a reasonable basis. See, e.g., Cardion Electronics, B-193752, June 8, 1979, 79-1 CPD 406; PRC Government Information Systems, division of Planning Research Corporation, B-203731, September 23, 1982, 82-2 CPD 261.

Burroughs asserts the substantiality of the change is established by the fact that the cost of its proposal for group III alone increased by 81 percent. However, we find judging the magnitude of changes from an individual prospective offeror's perception of the increase in cost to its own proposal inappropriate. When a solicitation is issued, the Government does not guarantee that each offeror will be confronted with the same cost considerations; rather one offeror due to superior resources and experience is very likely to enjoy cost advantages over another. We, therefore, see little merit in the idea that the magnitude of the change should be judged from an individual offeror's perception of their effect on the cost of performing the change in the RFP. While Burroughs may have to supply more expensive equipment to meet the reliability requirements, other offerors may not have been so affected. Additionally, we have found that the scope of changes permitted in an RFP before cancellation is required is broader than the scope of changes permitted to an existing contract. See Cardion Electronics, supra.

Regarding the deletion of one of the two previously required interface capabilities, Burroughs argues that by this change in the specifications a completely new configuration of equipment could be offered. While following the issuance of the amendment (which as noted earlier was a restatement of amendment No. 0016), an offeror could propose different configuration if it desired, we find the contracting officer's decision not to cancel, which was reviewed and concurred in by the Navy Source Selection Evaluation Board and the Source Selection Advisory Council, has not been shown to be without a reasonable basis. The deletion of a feature from one of the items being procured under group III (the other item being line monitoring equipment) is not so substantial as to render the contracting officer's decision unreasonable.

We are unpersuaded that the amended RFP's stricter effectiveness levels for modems, modification of on-site and on-call to per-call maintenance, and stricter maintenance credits result in the Navy purchasing different services and products. While these changes clearly have affected the requirements, we find the basic fundamental purpose or nature of the RFP, including group III, has remained unchanged.

Although Burroughs cites our decision in 50 Comp. Gen. 547 (1971); Tyco Incorporated, B-173665, April 4, 1972; and Hotpack Corporation, B-196729, April 2, 1980, 80-1 CPD 246, for the proposition that the Navy may properly accept its proposal, these cases are distinguishable. In the first decision, after an amendment changed quantities and delivery rates, we did not question the propriety of considering two proposals, one from a firm whose late offer had been rejected and the other from a firm which did not submit an initial offer, because the contracting officer had permitted the two offerors to expend considerable time and effort competing for the procurement. We did not receive the matter until award was being made and the agency posited that the amendment was in the nature of a new procurement. In the second case, the contracting agency considered, after amendment, a proposal from a late offeror because it concluded that the change in the procurement was substantial, which we found not to be unreasonable. See also Tyco Incorporated--reconsideration, B-173665.2, July 13, 1972. As for Hotpack, our holding, concerning the contracting agency's decision not to cancel and resolicit, was withdrawn upon the agency submitting information that the amendment did not have the competitive impact we initially found. See Hotpack Incorporated--reconsideration, B-196729.2, June 16, 1980, 80-1 CPD 416.

Finally, during the pendency of this protest, Burroughs has submitted additional comments which allege that the Navy again has significantly changed the requirements under group III by amendment No. 22 issued on February 22, 1983. In particular, Burroughs points out that this amendment divides modems into multiplex and multipoint types when the RFP previously required only multipoint modems. The Navy has responded to these comments stating that the amendment merely clarified the original RFP which required both types. Based on our review of the amendment, we find no basis to question the Navy's explanation of the changes in that amendment. Therefore, our prior conclusion that Burroughs has not established conclusively that the changes were substantial must stand.

We deny the protest.

for *Milton J. Fowler*
Comptroller General
of the United States