

# DECISION



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

26282

FILE: B-210154

DATE: September 23, 1983

MATTER OF: CMI Corporation

## DIGEST:

1. The regulations governing the evaluation of responses to a Commerce Business Daily (CBD) announcement of an agency's intention to place a delivery order against a nonmandatory automatic data processing (ADP) schedule contract do not require that the factors used in the evaluation be disclosed.
2. An agency must seek maximum practicable competition before placing a delivery order against a nonmandatory ADP schedule contract because such contracts are not awarded on a competitive basis.
3. Computation of the cost of owning a computer system which does not take into account significant items of cost cannot be relied on in cost comparison between system ownership and contracting for computer services.
4. In evaluating whether conducting a competitive procurement or placing a delivery order against a nonmandatory ADP schedule contract would be more advantageous to the Government, it may, in some cases, be appropriate to consider that anticipated savings will not be realized for the duration of the competition; however, because such a consideration has an anti-competitive effect, an agency must calculate this delay factor over the shortest period of time practicable.

CMI Corporation protests the Department of Agriculture's issuance of a delivery order to International Business Machine Corporation under IBM's nonmandatory automatic data processing (ADP) schedule contract No. GS-OOC-02900 with the General Services Administration. The order was

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for computer equipment to be installed and maintained at the Grand Forks Human Nutrition Research Center, Grand Forks, North Dakota. The protester contends that it was prepared to offer the required equipment for less than the IBM schedule price, but the agency failed to allow it to compete for the requirement. For the reasons discussed below, the protest is sustained in part and denied in part.

The regulations permit an agency to place an order against ADP schedule contracts like IBM's when certain conditions are met. See Federal Procurement Regulations (FPR) § 1-4.1104-1. One condition is that the agency synopsizes in the Commerce Business Daily (CBD) its intent to place an order against a nonmandatory ADP schedule contract at least 15 calendar days before placing the order. Id. § 1-4.1109-6(b)(3). The agency must then evaluate all written responses to the notice from responsible non-schedule vendors to determine whether the schedule contract represents the lowest overall cost alternative, price and other factors considered. This procedure is not a formal competition; rather, it is a device to test the ADP market to determine whether there are non-schedule vendors interested in competing for the requirement at prices that would make competition practicable. If evaluation of responses indicates that a competitive acquisition would be more advantageous to the Government, a formal solicitation normally would be issued, and all vendors, including schedule vendors, invited to compete. Id. § 1-4.1109-6(g).

On August 31, 1982, the agency announced in the CBD its intention to issue a delivery order under IBM's schedule contract for one IBM model No. 4331-J11 computer, related equipment and maintenance. The announcement invited vendors able to furnish the required equipment, or its equivalent, to submit written statements indicating exactly what equipment they would offer, and at what prices. The protester responded with a letter proposing to offer the IBM model No. 4331-J02 as an alternative to the model No. 4331-J11. It stated that the J02 has the same memory as the J11, but is a much faster machine with double the storage capacity. The protester stated that its price for all of the equipment would be \$123,686. It did not indicate that it would provide equipment maintenance. IBM's schedule price for all equipment and maintenance was \$186,925.

The agency evaluated the protester's submission, along with two others received in response to the announcement, against IBM's schedule price. In the course of the evaluation, the agency increased the protester's price to account for the following: (1) an IBM system engineer to integrate software, \$6,300 (80 hours at \$79.00 per hour); (2) IBM maintenance, \$6,400; and (3) physical planning by IBM for installation, \$500. In addition, the contracting officer reports that a cost-benefit analysis had shown that purchase of a computer system would save the Research Center approximately \$12,800 per month over its then current method of meeting its data processing requirements. Therefore, since these savings would not be realized during the estimated 6 months that a competitive procurement would require, the contracting officer added an additional \$76,800 (\$12,800 x 6) to the protester's price. These adjustments resulted in the protester's price being evaluated at \$213,686.<sup>1</sup> Because each of the three non-schedule responses was evaluated at an adjusted price at least \$26,000 higher than IBM's schedule price, the contracting officer determined that the schedule would provide the lowest overall cost to the Government and placed the delivery order with IBM. See FPR § 1-4.1109-6(g)(2)(i).

The protester raises essentially two issues with respect to the evaluation of its submission in response to the CBD announcement. The protester contends first that the regulations required prior disclosure of the factors used in the evaluation. Second, the protester argues that other agencies have conducted similar procurements in 1 or 2 months, implying that the agency added too much to the protester's price to account for the cost of the delay caused by conducting a competitive procurement.

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<sup>1</sup> Subsequent to the filing of this protest, the agency again evaluated the protester's response to the CBD announcement. The protester's price was increased further by \$16,460 for 11 features needed to make the J02 equivalent to the J11, and by \$11,960 for an item for which the protester did not quote a price. Had these additions been considered originally, the protester's price presumably would have been evaluated at \$242,106, or \$55,181 higher than IBM's schedule price.

We do not agree with the protester's contention that the regulations required prior disclosure of the factors used in evaluating responses to the CBD announcement. Although solicitations must include evaluation factors, there is no regulatory provision of which we are aware that requires the type of CBD notice involved here to disclose the factors the agency will use to evaluate responses. In any event, we need not dwell on this issue since we find the next issue raised by CMI to be dispositive of the protest.

The protester contends that the agency improperly evaluated its response to the CBD announcement in that too much was added to its price to account for the savings that would be lost if the agency were to delay the acquisition by issuing a formal solicitation. We agree with the protester.

The regulations provide that all purchases must be made on a competitive basis to the maximum practicable extent. FPR § 1-1.301-1. They also state that the existence of a nonmandatory ADP schedule contract does not excuse the procuring agency from seeking maximum practicable competition. FPR § 1-4.1109-6(a)(2). This requirement to seek competition before placing a delivery order against a schedule contract like IBM's arises because nonmandatory ADP schedule contracts are not awarded on a competitive basis. See Dictaphone Corporation, B-208836, August 2, 1983, 83-2 CPD \_\_\_\_; Defense Acquisition Regulation § 4-1104.4(b). We believe that the agency's evaluation of the protester's response to the CBD notice was inconsistent with the mandate to maximize competition.

The Research Center made the decision to buy a computer system based largely on the results of a cost-benefit analysis. That analysis had shown that the Research Center could save \$154,400 within 12 months of implementation of the in-house system by eliminating the need for several employees, relieving others of certain responsibilities, increasing the productivity of programmers, and eliminating the expense of contracting for computer time. Dividing the projected savings by 12, the contracting officer calculated that the savings would accrue at a rate of approximately \$12,800 per month and added \$76,800 to the protester's price to account for the deferral of these projected savings over the estimated 6-month period that a competitive acquisition would require. The contracting officer reports that the

estimate of 6 months was based on the average time required to conduct a negotiated procurement of this size.

We have two objections to the evaluation performed in this case. First, it appears that the contracting officer may have overstated the net savings that would result from purchase of a computer system. The record does not indicate that the projected 12-month savings of \$154,400, which the contracting officer used as the basis of his analysis, took into account the cost of purchasing the system or the expenses incident to its operation. Obviously, a cost analysis that ignores significant items of cost will yield an unduly inflated estimate of the advantages of the course of action being considered. See SMS Products Group, B-205360, April 27, 1982, 82-1 CPD 390. Under these circumstances, we believe the figure taken from the Research Center's study as an estimate of the net savings to be realized from purchase of a computer system was too high, and therefore, that the adjustment to the protester's price was excessive.<sup>2</sup>

Our second objection to the evaluation of the protester's submission concerns the use of 6 months as an estimate of the time required to conduct a competitive procurement. Assuming, arguendo, that purchase by the Research Center of a computer system would produce ascertainable savings, and that realization of these savings would be deferred for however long a competition might take, we believe that the use of 6 months as the estimate of the likely duration of a competition overstated whatever measurable advantage there might be to issuing a noncompetitive delivery order to the schedule vendor.

The purpose of the evaluation in this case was to determine whether issuing a delivery order against the schedule contract would be the lowest overall cost alternative, price and other factors considered. In making this determination, the effect of adding any amount to the protester's evaluated price to account for the deferral of anticipated savings was to decrease the likelihood that a competitive procurement would appear more advantageous.

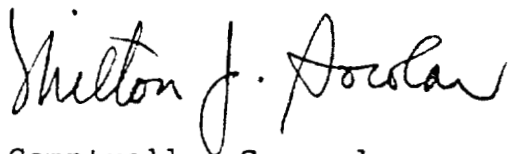
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<sup>2</sup> The record does not contain sufficient information for us to calculate a more accurate estimate of the amount that the Research Center would save through purchase of a computer system. Thus, we cannot determine the precise extent to which the addition of \$76,800 to the protester's price was excessive or whether it resulted in any prejudice to the protester.

We recognize that the addition of such an amount, where clearly ascertainable, might be appropriate in some cases; however, because such an adjustment has a decidedly anti-competitive effect, we believe it incumbent upon an agency to calculate the adjustment using the shortest time period practicable. In this connection, our cases acknowledge that circumstances may sometimes require that a competition be expedited through shortened response times, telegraphic or oral offers and negotiations, and other shortcuts. See, e.g., Las Vegas Communications, Inc.--Reconsideration, B-195966.2, October 28, 1980, 80-2 CPD 323. See also U.S. Financial Services, Inc., B-197082, August 7, 1981, 81-2 CPD 104 (approximately 2 months considered ample time for an agency to have completed the expedited procurement procedures it had begun with a CBD announcement). In this case, we believe the agency could have conducted an expedited competition in considerably less than 6 months. Had the agency used a period of 2 months, for example, as an estimate of the duration of an expedited competition, the protester's evaluated price would have been only slightly higher than IBM's schedule price (even using the inflated cost of delay used by the contracting officer) and the issuance of a competitive solicitation would have appeared to have been in order.

For the reasons stated above, we believe that the Research Center's evaluation of the protester's response to the CBD announcement was unreasonable and unduly restricted competition. We sustain this aspect of the protest. See SMS Data Products Group, *supra*. Although at this late date there is no corrective action we can recommend, we are bringing this matter to the attention of the Secretary of Agriculture and of the General Services Administration, the agency charged by statute, 40 U.S.C. § 759, with coordinating and governing the acquisition of ADP equipment by Federal agencies.

The protest is denied in part and sustained in part.

*for*   
 Comptroller General  
 of the United States