DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES

29589

WASHINGTON, D.C. 20548

FILE: B-214409.2

DATE: October 18, 1984

MATTER OF:

Comdisco, Inc.

DIGEST:

1.   Untimely protest against the evaluation of
      the cost of "technical support services" in
      reviewing responses to the agency's
      announced intention to place an order with a
      nonmandatory Automatic Data Processing
      Schedule contractor will be considered on
      the merits as a significant issue, since the
      matter is one of widespread interest that
      GAO has not considered before.

2.   Contracting agency's decision to issue a
      delivery order for automatic data process-
      ing (ADP) equipment and "technical support
      services" to a nonmandatory ADP Schedule
      contractor is improper where a response to a
      Commerce Business Daily notice of the
      agency's intention to place the order would
      have indicated a less costly alternative but
      for the agency's unreasonable evaluation of
      the costs for the support services.

3.   The evaluation of offers, or responses to a
      contracting agency's announced intention to
      place an order with a nonmandatory Automatic
      Data Processing Schedule contractor, should
      not include the consideration of speculative
      advantages to the government, but should be
      confined to matters that are reasonably
      quantifiable.

      Comdisco, Inc. protests the Army's issuance of a
delivery order under the General Services Administra-
tion's Automatic Data Processing Schedule to Inter-
national Business Machines Corporation (IBM) for the
lease, installation, maintenance, and technical support
of certain IBM automatic data processing (ADP) equip-
ment. The crux of the protest involves the Army's

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requirement for technical support services over a 2-
year period at Fort Polk, Louisiana, which the contracting
activity assumed IBM would provide at no cost under its
Schedule contract, and for which the activity imputed a
significant cost factor to Comdisco's quotation. The
protester objects to the addition of this factor to its
quoted prices, and further argues that the Army failed to
define its requirement for support services in a manner
that permitted fair competition.

We sustain the protest.

This acquisition was initiated pursuant to the
Defense Acquisition Regulation, §§ 4-1104.4 and
4-1104.6 (Defense Acquisition Circular No. 76-42,
Feb. 28, 1983). The regulation basically provides that
a contracting agency may not place an order against a
nonmandatory ADP Schedule contract, as here, without first
considering the availability of other sources by publish-
ing in the Commerce Business Daily (CBD) a synopsis
announcing the agency's intent to place the order, and
then determining whether placing the order would be the
least costly alternative based on the responses of non-
Schedule vendors interested in meeting the agency's
requirements. If evaluation of the responses indicates
that placing the order would not be the least costly
alternative, but that a competitive acquisition would be
more advantageous, then the contracting agency normally
should issue a formal solicitation and invite all vendors,
including Schedule contractors, to compete. These
requirements for seeking competition before placing a
delivery order against a Schedule contract like IBM's
arise because nonmandatory ADP Schedule contracts are
not awarded on a competitive basis. CMI Corporation,
B-210154, Sept. 23, 1983, 83-2 CPD ¶ 364.

In accordance with the synopsizing requirement, the
contracting activity had a notice published in the CBD
announcing its intention to place the order against
IBM's Schedule contract for certain specified require-
ments, including "local technical assistance to the
government in system configuration and installation
planning." The notice also advised interested sources
that their responses would be evaluated regarding "local
technical assistance and support." The activity had
determined that it would require 40 days annually of local
technical support, although the record fails to specify
the precise nature of the support. Whatever the nature,
the activity assumed that the support could be acquired

from IBM at no cost under Special Item 132-1, paragraph 10.c. of IBM's Schedule contract, which provided:

"As part of its technical support activity, IBM conducts marketing presentations, executive briefings, product exhibitions and demonstrations and seminars to conceptually familiarize customers and potential customers with IBM solutions to information processing problems. Also as part of its technical support activity, IBM provides certain planning, installation evaluation and improvements, and other advisory activities which serve to facilitate the utilization of IBM products and services. In accordance with established IBM practice, these activities are provided at no charge. Contact your IBM Representative for further information."

Comdisco submitted a price quotation for the Army's requirement except for the support services, which Comdisco stated it could not provide and suggested the Army procure separately from IBM. The contracting activity then asked IBM to quote a price for the support services alone and added the amount with which IBM responded, $24,000, to Comdisco's quotation. The addition of $24,000 for the duration of the lease caused Comdisco's quotation, which otherwise included lower prices than IBM's Schedule prices, to be more costly than IBM's Schedule contract. The agency therefore placed the delivery order against IBM's contract.

Initially, there is a timeliness issue in this case. The protester admits it filed the protest in an untimely fashion,[1] but requests that we consider it under our exception for issues which are significant to procurement practices or procedures. 4 C.F.R. § 21.2(c) (1984). To be significant, the protest issue must involve a principle of widespread interest to the procurement community, and

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[1]/Comdisco did not protest either the Army's announced intention to evaluate technical support or the Army's actual evaluation of Comdisco's response within 10 working days after the basis of protest was known, or should have been known, as required by our Bid Protest Procedures. 4 C.F.R. § 21.2(b)(2).

not involve issues the merit of which this Office has previously reviewed. E.g., Kearflex Engineering Company, B-212537, Feb. 22, 1984, 84-1 CPD ¶ 214. We consider the issue raised by Comdisco here to fall within the significant issue exception.

In reviewing an agency's evaluation of responses to its announced intention to place an order against a nonmandatory ADP Schedule, our concern is whether there was a reasonable basis for the evaluation and whether the evaluation was consistent with the mandate for competition. See CMI Corporation, supra.

Here, the record simply fails to identify any specific support services for which cost was evaluated. As a result, we have no way of knowing whether the services the Army expects IBM to provide at no additional cost under its Schedule contract are the same as those IBM told the Army it would provide for $24,000 if Comdisco received the contract. For the same reason, we have no way to determine the reasonableness of the activity's assumption that IBM would supply needed services at no cost, or decision to impute $24,000 to Comdisco's quotation.[2]/

Indeed, there appears to be an inherent contradiction between the Army's depictions of the services; the CBD notice states a requirement for configuration and installation planning whereas the Army's report on the protest cites an ongoing requirement for 40 days annually of technical support. Moreover, each description of the required services is vague on its face, and nothing in the record indicates that such a requirement is understood by the industry, or even by IBM, to represent a specific type of service. IBM itself has stated with respect to this protest that the exact type and amount of technical

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[2]/ We have held that a CBD notice should identify required services in sufficient detail to permit intelligent competition. See Lanier Business Products, Inc., 60 Comp. Gen. 306 (1981), 81-1 CPD ¶ 188. Although it is clear that the failure to specify the services did not prevent Comdisco from competing, since Comdisco stated it could not provide local technical support in any event, so specifying obviously would have assisted us in reviewing the evaluation.

support provided to a user agency under this paragraph "varies based on individual circumstances and requirements, for example, customer experience and sophistication."

Further regarding the Army's assumption that it could order any needed services from IBM at no cost, a reading of IBM's Schedule contract in its entirety discloses that paragraph 10.c. obligates IBM to provide user agencies few, if any, support services of significant value. Paragraph 10.c. only provides user agencies with opportunities to attend presentations and obtain information aimed at promoting future sales by IBM, and with "advisory activities which serve to facilitate the utilization of IBM products and services."

In contrast, substantive technical support, which we believe it is most likely that the Army requires, is addressed in paragraphs 10.a. and 10.b., which describe training and technical services that expressly are excluded from the scope of the contract. Those paragraphs stipulate that training and technical services are not within the scope of the contract except as provided under special item 132-30. Special item 132-30, in Appendix C, provides for the services of IBM systems engineers, upon the government's request, to assist in the installation and use of IBM equipment offered under the contract, including "special studies, programming and application design and development, system analysis and design, conversion and implementation planning, and installation evaluation." The contract provides that the government agrees to pay charges for these services in accordance with hourly rates set forth in the contract. This special item also states that software development and the maintenance of products are not offered under the contract. Given these provisions expressly excluding virtually any type of functional technical assistance, it appears that the services paragraph 10.c. encompasses basically are marketing services and demonstrating of products and are not likely to include substantive technical support.

Even assuming that paragraph 10.c. might afford the activity some needed support services, we regard any cost advantage accruing from them to be entirely speculative since the record does not indicate what the needed services are, as discussed above, and thus what the advantage might be. The evaluation of the most advantageous

offer in any procurement should be confined to matters that are reasonably quantifiable. See Continental Cablevision of New Hampshire, Inc., and Satellite Systems Corporation, B-178542, July 19, 1974, 74-2 CPD ¶ 45.

In sum, Comdisco's response was less costly than IBM's contract price but for the imputation, based on IBM input, of the cost of separately securing support services from IBM. The record, however, contains no indication of what services were desired, so that there can be no sub-stantive support, in our view, for either the presumption that they were available from IBM at no cost, or for IBM's offered price for them if the equipment were ordered from another vendor. We therefore believe that the Army lacked a valid basis for the evaluation of technical support services and for awarding the delivery order to IBM.

We do not recommend corrective action for this pro-curement, however, since the protester failed to protest in a timely manner either the Army's announced intention to evaluate local technical support or the method of the Army's evaluation, and because we understand that a termination of the lease would subject the government to significant termination costs under IBM's ADP Schedule contract. We nevertheless are recommending to the Secretary of the Army that he take appropriate action to prevent the recurrence of these deficiencies in future cases.

The protest is sustained.

For Comptroller General
of the United States