

DECISION



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

31889

FILE: B-218458

DATE: August 6, 1985

MATTER OF: Information Handling Services

DIGEST:

1. Agency's issuance of an RFQ only to identify alternative Federal Supply Schedule (FSS) source for microfilm subscription services did not constitute a procurement under which protester, also an FSS source, was entitled to compete.
2. Absent a showing of unreasonableness, contracting agency's determination that services of one FSS contractor were equal to those previously ordered from another will not be disturbed. Having made this determination, agency is required to order the services from the FSS contractor offering the lowest price.

Information Handling Services (IHS) protests the Department of the Army's issuance of a delivery order for microfilm subscription services to Information Marketing International (IMI). IHS contends the Army issued the delivery order without obtaining adequate competition as the underlying request for quotations (RFQ), No. DAAK10-85-Q-1418, was only issued to IMI and contained an unnecessary brand name or equal requirement. IHS also contends that the services ordered from IMI were not equal to the services specified in the RFQ. We deny the protest.

Both IHS and IMI currently hold multiple-award, mandatory Federal Supply Schedule (FSS) contracts for microfilm subscription services (FSC Group 76, Part II). On September 30, 1982, the Army issued a delivery order to IHS for one year with two option years. At that time, the Army reports that only IHS offered microfilm subscription services. When the Army subsequently learned of IMI's FSS contract for comparable services, it issued the RFQ in question on November 14, 1984, seeking product code numbers from IMI

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which corresponded to the services which the Army had previously ordered from IHS. The Army issued a delivery order on January 31, 1985, to IMI for those services which IMI offered at a lower price than did IHS under the FSS contracts.

IHS protested to the Army, by letter dated February 26, 1985, that the order placed with IMI was improper, contending that the services ordered from IMI were not equal to those previously furnished by IHS, and that the order constituted a new procurement under which IHS was not given an opportunity to compete lower-priced products. The Army denied IHS' protest.

In addition to the matters raised in its agency protest, IHS protests here that the issuance of the RFQ to IMI was in violation of the Federal Acquisition Regulation (FAR), which prohibits contracting agencies from soliciting price quotations solely for the purpose of seeking alternative sources to Federal Supply Schedules, 48 C.F.R. § 8.404 (1984), and that the RFQ improperly utilized a "brand name or equal" clause which prevented IHS from offering alternate products at lower prices.

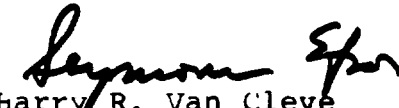
Based on our discussion below, we conclude that, contrary to IHS' allegations, the Army's use of the RFQ did not constitute a new procurement; rather, the Army was merely attempting to identify other vendors that could meet its needs from the FSS.

In this regard, in its initial protest to the Army, IHS specifically stated:

"IHS does not take issue with soliciting price quotations to verify that honoring the third year of the three-year order is the lowest cost alternative available."

Furthermore, the Army emphasizes and the RFQ confirms that IMI was asked only to furnish product code numbers, not prices, since IMI's prices were already available by virtue of its FSS contract. In view of this, the above-cited regulation was not violated by the issuance of the RFQ and IHS was not improperly excluded from consideration under the RFQ.

IHS' contention that the IMI services ordered were not in fact equal to the IHS services specified in the RFQ raises a question of technical acceptability, the overall determination of which is primarily within the reasonable discretion of the procuring agency. Harding Pollution Controls Corp., B-182899, July 3, 1975, 75-2 CPD ¶ 17. Such a determination will be questioned by our Office only upon a clear showing of unreasonableness, an arbitrary abuse of discretion or a violation of the procurement statutes and regulations. Marine Electric Railway Products Co., Inc., B-189929, March 9, 1978, 78-1 CPD ¶ 187. There is no such showing here as the Army reasonably determined, based on user surveys, that the IMI services were equal to those offered by IHS. Having made this determination, the Army was required under the FAR to order the services from the FSS contractor offering the lowest price. 48 C.F.R. § 8.405-1(a). The Washington Management Group, Inc., B-211847, Mar. 20, 1984, 84-1 CPD ¶ 329. In this regard, the protester does not assert that the lower-priced services it would have offered under the RFQ were on the FSS. Therefore, this portion of IHS' protest is denied.

for 
Harry R. Van Cleve
General Counsel