



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sperry Corporation
File: B-224351; B-224351.2
Date: September 26, 1986

DIGEST

1. Protest that agency relaxed specifications without notifying protester is denied where the protester does not demonstrate it was prejudiced by the agency's actions.
2. Protest concerning awardee's actual compliance with its contract obligations concerns a matter of contract administration, which is not within the General Accounting Office's bid protest function.

DECISION

Sperry Corporation protests a contract award to IBIS Corporation by the Small Business Administration (SBA) under request for proposals (RFP) No. 86-6. Sperry asserts that the SBA accepted equipment that did not comply with the requirements of the RFP and that Sperry was denied an equal opportunity to compete for the contract.

We deny the protest.

The RFP, issued on January 24, 1986, requested offers to upgrade a Sperry Univac Automatic Data Processing System 1100/82 to a model number 1100/84, and provided that the award would be made to the offeror whose proposal complied with all mandatory specifications at the lowest overall cost to the government. As issued, the RFP also required offerors to submit costs to provide maintenance for the system. On February 12, the SBA issued amendment No. 1 to the RFP, which changed the maintenance requirements. On February 24, amendment No. 2 was issued which, as relevant to this protest, provided, "NOTE The contractor shall deliver a machine with proof that . . . the equipment manufacturer would accept maintenance responsibility after installation and government acceptance."

The SBA received offers from Sperry and IBIS, evaluated them, and requested both firms to submit best and final offers

(BAFOs). As evaluated in the BAFOs, the costs proposed by Sperry and IBIS were \$1,031,409 and \$994,878, respectively, and the agency therefore awarded the contract to IBIS. Sperry filed protests with this Office against the award to IBIS on June 13 and July 25.

Sperry asserts that the contract award to IBIS is improper because neither the proposal submitted by IBIS, nor the equipment delivered by IBIS under the contract, meets the requirements of the RFP. Specifically, Sperry contends that the equipment delivered by IBIS does not comply with the Federal Information Processing Standards (FIPS) publications numbers 60 and 61;^{1/} that IBIS did not offer to provide maintenance; and that IBIS delivered equipment with a defective "certificate of maintainability," which is a document evidencing that used equipment has been recently maintained. The certificate is required by Sperry before the firm will agree to maintain its used equipment.

The SBA responds that the solicitation did not request or require the equipment to comply with the FIPS publications and, consequently, the equipment delivered by IBIS does meet the requirements of the RFP. The agency further reports that the equipment IBIS offered to supply in its proposal did comply with the FIPS publications in any event. After the contract was awarded, however, the agency determined that there was no reason for the new equipment to be FIPS-compliant because the existing equipment with which it will be used is not FIPS-compliant. The agency therefore informed IBIS that the equipment need not be FIPS-compliant, and subsequently accepted delivery of equipment that was not in compliance with the FIPS.

Concerning maintenance, the SBA reports that the equipment acquired under the present RFP will be utilized with previously-acquired Sperry equipment that is maintained by Sperry under a separate and existing contract. The agency desired that Sperry also maintain the new equipment under that contract, and consequently included the note in

^{1/} FIPS publications contain standards issued by the Department of Commerce, National Bureau of Standards, in accordance with the Secretary of Commerce's responsibility to improve the federal government's utilization and efficiency regarding automatic data processing equipment. FIPS PUB 60-2 concerns input/output channel interface, and 61-1 concerns channel level power control interface. See 41 C.F.R. part 201-8 (1985).

amendment No. 2 to delete the requirement for maintenance from the RFP. The agency states that its Assistant Administrator for Information Management informed Sperry of this change a number of times and advised Sperry to contact the contracting officer if the firm had any questions. The agency further reports that when it evaluated the cost proposals, it subtracted Sperry's proposed maintenance cost from its proposed total cost and, thus, Sperry was not prejudiced even if Sperry did not know that the maintenance requirement was deleted from the solicitation.

Finally, the SBA states that amendment No. 2 did not require the successful contractor to deliver a certificate of maintainability with the equipment. Rather, the contractor had to show upon government acceptance of the equipment that the equipment manufacturer would maintain the equipment. The agency reports that IBIS agreed in its proposal to meet this requirement and that on August 20, before the agency accepted the equipment, Sperry did agree to maintain the equipment under its existing contract.

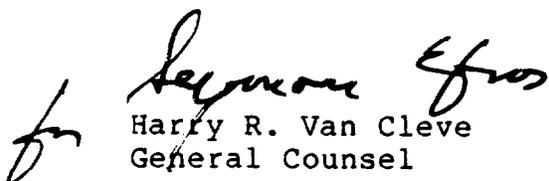
Sperry disputes the agency's position on all three issues. Sperry maintains that FIPS-compliance was required by the RFP and that under the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. §§ 201-8.101-1, 201-8.101-2 (1985), a federal agency may not purchase automatic data processing equipment that does not so comply, unless it obtains a waiver, which the SBA did not do. Sperry also argues that it learned for the first time in a letter dated June 2 that the SBA believed amendment No. 2 deleted the maintenance requirement, and in a meeting on June 9 that IBIS had been previously informed of the SBA's position. Sperry disagrees that the note in amendment No. 2 deleted the maintenance requirement. Sperry argues in the alternative that if the amendment did delete the maintenance requirement than Sperry was denied an equal opportunity to compete for the procurement because the agency informed IBIS of the change but not Sperry. Finally, Sperry insists that the note in amendment No. 2 required the successful contractor to deliver a certificate of maintainability when it delivered the equipment.

Before we will sustain a protest alleging that the government relaxed specifications without advising the protester of the change, the protester must demonstrate that it was prejudiced by the agency's actions. See South Central Bell Advanced Systems, B-216901, Aug. 19, 1985, 85-2 C.P.D. ¶ 188. In the present case, even if we accept Sperry's position that both maintenance and FIPS-compliant equipment were required by the RFP, we do not find that Sperry has demonstrated that it was prejudiced by the SBA's acceptance of IBIS' proposal.

As noted above, the award was based on cost and the proposal submitted by IBIS was, as evaluated, \$36,531 less than the proposal submitted by Sperry. In evaluating Sperry's best and final cost offer to determine the price difference between the proposals, the SBA subtracted Sperry's proposed maintenance costs from its proposed total cost; the two offers thus were evaluated on the same basis in that respect. Further, concerning FIPS compliance, Sperry does not allege that the FIPS-compliant equipment involved here is more expensive than non-compliant equipment or that if it had known that FIPS-compliant equipment was not needed it could have or would have lowered its cost proposal. In fact, IBIS offered FIPS-compliant equipment for the same price as non-FIPS-compliant equipment. Consequently, we cannot conclude that if Sperry had known that the requirements were changed, the outcome of the competition would have been different. We deny this basis of Sperry's protest.

Finally, Sperry's protest that IBIS delivered a defective certificate of maintainability to the SBA concerns a post-award obligation; the solicitation required only that the contractor, after award, show that the equipment manufacturer would maintain it. Such post-award matters involve contract administration, which is the responsibility of the procuring agency and is not encompassed by our bid protest function. Right Away Foods Corp.--Reconsideration, B-219676.4, Mar. 24, 1986, 86-1 C.P.D. ¶ 287. In any event, we note that on August 20, Sperry agreed to maintain the new equipment.

The protest is denied.


Harry R. Van Cleve
General Counsel