



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Federal Computer Corporation

File: B-223932

Date: December 10, 1986

DIGEST

1. Contracting agency acts improperly where, under step one of a two-step sealed bid acquisition, it rejects a technical proposal as unacceptable for failure to meet requirements that were either unstated in the solicitation or, at best, ambiguously stated.
2. Offeror's failure to request clarification or to protest regarding ambiguous specifications before the closing date for receipt of initial proposals does not preclude relief where the ambiguity was not apparent on the face of the solicitation.
3. Recovery of neither proposal preparation costs nor the costs of filing and pursuing a protest is appropriate where the remedy afforded the protester is the opportunity to submit a revised technical proposal and to be reevaluated on the basis of unambiguous specifications.

DECISION

Federal Computer Corporation protests the rejection of its technical proposal as unacceptable under step one of a two-step sealed bid acquisition conducted by the Department of the Navy, Automatic Data Processing Selection Office, under solicitation No. N66032-85-B-0013. The solicitation covered keyboard video display terminals (KVDTs), controllers, printers, associated components, software, training,

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and maintenance for eight shipyards. Federal Computer contends that the Navy improperly rejected its proposal for failure to meet requirements not set forth in the solicitation. Specifically, the protester contends that the solicitation did not require, and therefore it did not offer to provide, an information system in which certain operations (protection against unauthorized entry of data and two different tab functions) are performed independently within the terminal, rather than with the assistance of a controller.^{1/}

The Navy, which disputes this interpretation of the solicitation, on September 26, 1986, awarded a contract to Federal Technology Corporation, the low step-two bidder, whose evaluated life cycle cost was \$17,988,607.^{2/}

We sustain the protest.

BACKGROUND

As provided in the Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 14.501-14.503 (1985), two-step sealed bidding combines the benefits of sealed bids with the flexibility of negotiation. In step one, the agency requests technical proposals, evaluates them, and conducts discussions if necessary. In step two, which is conducted in accord with sealed bid procedures, the competition is limited to only those firms that submitted acceptable proposals under step one. See Midcoast Aviation, Inc., B-223103, June 23, 1986, 86-1 CPD ¶ 577.

The solicitation contemplated an indefinite quantity contract, specifying minimum quantities for the base year and maximum

^{1/} According to the protester, a controller is a device to which other components of the information system (terminals, printers, and the host computer) are connected through wire data links. As proposed by the protester, a controller directs the transmission of data over these links by directing operation.

^{2/} In making the award, the agency stated that urgent and compelling circumstances, significantly affecting the interests of the United States, prevented it from awaiting our Office's decision on the protest. The circumstances were that while the agency's fiscal year 1986 appropriation included funds for the replacement of leased automatic data processing equipment, the agency's budget for fiscal year 1987, beginning on October 1, 1986, did not include sufficient funds either to purchase new equipment or to continue to lease current equipment.

quantities for 4 succeeding years. As issued on August 15, 1985, it provided, under paragraph 6.1.1., General Operating Characteristics, that the "video terminals shall operate with or provide as a minimum" certain enumerated capabilities. These included "total compatibility with the Honeywell Information Systems implementation of the IBM 3270 bisynchronous communications protocol . . ." and a "protected field" command pursuant to which no data could be entered. In addition, under paragraph 6.1.2., Keyboard Characteristics, the solicitation required that the keyboard provide a cursor control key for moving to the next tab position and a back tab key for returning to prior fields on the screen.

On October 15, 1985, the Navy responded to offerors' inquiries concerning the solicitation by issuing a supplement to the solicitation. Shortly thereafter, on October 28, 1985, the Navy issued an amendment with a cover letter which cautioned offerors that, because of recent internal Navy decisions, the amendment might be contrary to or change the information in the supplement. Among the changes were the transfer of certain specifications for the controller, specifically those concerning data transmission speed and duplex and bisynchronous mode operation, from section 6.1, describing the required terminals, to section 6.3, describing the required controller. The amendment also changed paragraph 6.1.1., General Operating Characteristics, to provide that the "video terminals, all of which will operate from controllers proposed in paragraph 6.3, shall operate with or provide as a minimum" certain specified capabilities, adding the underlined language.

The Navy advises us that several offerors submitted multiple proposals in response to the solicitation. After an initial evaluation, the agency requested clarifications from 5 offerors, including Federal Computer, concerning 11 proposals that it had found susceptible of being made acceptable.

In the initial request for clarifications directed to Federal Computer, the Navy noted that it was not able to verify that its proposal satisfied the requirement for a protected field "in a mode compatible with the required Honeywell Information Systems implementation of the IBM 3270 bisynchronous communications environment," and it asked the firm to provide technical references that explained how this requirement was met. The agency likewise asked for clarifying information concerning the required next tab and back tab capabilities. In a subsequent request for clarifications, the agency, again referring to the compatibility requirement and to the controller specifications, requested that Federal Computer:

"provide clarifications and supporting technical references describing how the proposed KVDT provides the full IBM 3270 functionality. Also explain the distinction as to how the required KVDT features are performed in the KVDT vice the controllers."

Federal Computer responded that the proposed equipment satisfied the requirement for protected field, next tab, and back tab capabilities in a manner compatible with the Honeywell implementation of the IBM 3270 bisynchronous communications protocol. Federal Computer indicated that the protected field function "can be simulated in the controller, using an internal, transparent buffer,"^{3/} and that the "controller translates and maps the data and attributes as necessary to provide the proper full screen image." As for the next tab and back tab capabilities, it stated that the "actual internal (controller) treatment and handling of these attributes is the same as described for protected fields."

The agency, however, rejected these proposed solutions and found Federal Computer's proposal to be technically unacceptable. The contracting officer advised the firm that, as stated in the solicitation:

"the display terminal shall contain a local intelligence that permits it to perform the field protection function without communicating with any other device. In both cases [protected field and next tab/back tab], your proposed solution requires that the terminal be mapped to the IBM 3270 function by the emulation process in conjunction with the proposed controllers, not at the display terminal The proposed solution does not meet the Navy's requirement and is unacceptable."

The Navy then solicited sealed bids from the three offerors that had submitted technically acceptable proposals under step one of the procurement and, as noted above, on September 26, 1986, made award to Federal Technology Corporation.

FEDERAL COMPUTER'S PROTEST

Upon learning of the rejection of its proposal, Federal Computer first filed a protest with the agency, then with our Office. Federal Computer denies the contracting officer's

^{3/} A buffer is used for temporary storage of data.

assertion that the solicitation required the terminal to contain a "local intelligence" permitting it to perform the protected field, next tab, and back tab functions without communicating with any other device. Federal Computer maintains that, to the contrary, the solicitation, as amended, implicitly contradicts this by providing that the "video terminals, all of which will operate from controllers proposed in paragraph 6.3, shall operate with or provide as a minimum" certain enumerated functions. Even if the solicitation is construed as requiring such "intelligent" terminals, Federal Computer maintains, it was at least as reasonable for it to interpret the solicitation as not requiring the terminals to provide the protected field, next tab, and back tab functions without the assistance of the controllers. Federal Computer concludes that its technical proposal was improperly rejected, either on the basis of unstated requirements or as a result of ambiguous specifications.

The Navy responds that the language in the amendment cited by the protester was only intended to inform offerors that all the terminals would be connected to the host computer through the controllers and that this equipment must be compatible. The agency maintains that Federal Computer's interpretation of the amendment is inconsistent with the basic requirement in the "Scope of Contract" section of the solicitation for the terminals to provide:

"complete compatibility with the addressing sequence, command code structure, and line discipline employed by the IBM 3270 Information Display System"

The Navy maintains that the IBM 3270 type terminal is:

"an intelligent terminal which performs its functions based on attribute control codes received from a host application program and does not require intervention or communication with any other device or component."

Federal Computer disagrees; it maintains that the IBM 3270 Information Display System includes a number of different terminals, at least some of which operate in conjunction with the system's controller to provide the protected field, next tab, and back tab functions.

GAO ANALYSIS

It is a fundamental principle that an agency may evaluate offers only on the basis of the factors and requirements specified in the solicitation. 10 U.S.C. § 2305 (b)(1) (Supp. III 1985); see Cardkey Systems, B-220660, Feb. 11, 1986, 86-1 CPD ¶ 154. Moreover, solicitations must be sufficiently definite to permit competition on a common basis. Consequently, specifications must not be ambiguous. An ambiguity exists if the specifications are subject to more than one reasonable interpretation. Nasuf Construction Corp.--Reconsideration, B-219733.2, Mar. 18, 1986, 86-1 CPD ¶ 263. Rejection of a proposal for failure to satisfy only one interpretation of an ambiguous specification is improper. Rocky Mountain Trading Co., B-220925, Mar. 3, 1986, 86-1 CPD ¶ 214.

Here, our technical consultants confirm that the IBM 3270 Information Display System consists of a family of terminals and controllers, providing a standard set of functions in a variety of ways; according to our consultants, some of the terminals require controller assistance to perform the functions in question. Since there is no dispute that Federal Computer proposed using controllers for the protected field, next tab, and back tab functions, the question before us is whether Federal Computer's proposed solution is contrary to the mandatory, unambiguous requirements of the solicitation.

The Navy argues that in the supplement (question No. 19), it clearly stated that it is unacceptable for the controller, rather than the terminal, to supply the required "synchronous line protocol and terminal poll address," even though this would allow offerors to propose less expensive terminals. Also in the supplement (question No. 18), the Navy indicated that some terminals would be used in a "stand alone" mode, not connected through a controller, and that certain "specified functions" must be available for these terminals.

If Federal Computer found the specifications ambiguous, the Navy further maintains, Federal Computer was required either to make a written request for clarification or to file a protest based upon an alleged solicitation impropriety by the closing date for receipt of proposals. In any event, the agency argues that its requests for clarifications put the firm on notice of the Navy's interpretation of the specifications.

We find Federal Computer's interpretation of the solicitation reasonable. Nothing in the initial solicitation clearly required that the three functions in question--protected

field, next tab, and back tab--be provided by the display terminals without the assistance of the controllers.

Nor were the functions specified in questions 18 and 19 of the supplement those at issue here. Moreover, the cover letter to the subsequently-issued amendment cautioned offerors that the amendment might differ from the supplement, and the amendment itself provided that all terminals would operate from controllers. We find the argument that the agency's requests for clarifications also put the firm on notice of the Navy's interpretation of the specifications irrelevant, since the Navy did not afford offerors an opportunity to revise their proposals at that time.

We therefore do not believe that any ambiguity was reasonably apparent before the closing date for receipt of proposals, and Federal Computer's failure to request clarification or to protest by that date does not provide a basis for denying relief. Cf. Wheeler Brothers, Inc., et al.--Request for Reconsideration, B-214081.3, Apr. 4, 1985, 85-1 CPD ¶ 388.

Finally, 46 working days after this protest was filed and 14 working days after the submission of Federal Computer's comments on the agency report, the Navy filed a submission with our Office in which it claimed that the solicitation required offerors to propose terminals that operate in an "identical manner" to the leased systems being replaced. The solicitation, however, merely required compatibility with certain elements of the IBM 3270 Information Display System. The Navy has failed to cite, and we are unaware of, a particular provision in the solicitation requiring the terminals to operate in an "identical manner" to the leased systems being replaced. Since we consider the agency's argument to be without merit, we need not address the timeliness of the submission. Cf. Price Waterhouse, 65 Comp. Gen. 206 (1986), 86-1 CPD ¶ 54; 4 C.F.R. § 21.3(g) (1986).

We conclude that the Navy acted improperly in rejecting Federal Computer's proposal for failure to meet requirements that were either unstated in the solicitation or, at best, ambiguously stated.

REMEDIES

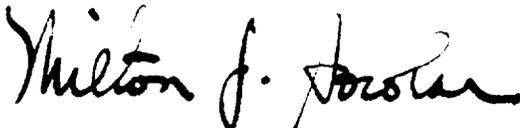
By letter of today, we are recommending that the Navy reopen negotiations with the offerors that responded to the initial solicitation, clearly and unambiguously inform them as to what is required to meet the agency's minimum needs, and afford them the opportunity to submit revised technical proposals.

Those whose proposals are acceptable should be invited to submit sealed bids. If appropriate, the Navy should terminate the awarded contract and award a new one. If Federal Technology remains entitled to the contract, but the price it submits is less than its current contract price, the contract should be modified accordingly. See Consolidated Bell, Inc., B-220425, Mar. 11, 1986, 86-1 CPD ¶ 238; see also Cardkey Systems, supra; but cf. Rocky Mountain Trading Co., supra.

As for Federal Computer's costs, the Competition in Contracting Act of 1984, 31 U.S.C. § 3554 (Supp. III 1985) and our Bid Protest Regulations, 4 C.F.R. § 21.6(d), provide authority for our Office to declare protesters entitled to proposal preparation costs and the costs of filing and pursuing a protest. We will, however, only allow the recovery of proposal preparation costs where the contracting agency unreasonable excluded the protester from the competition and no other remedy enumerated in sections 21.6(a)(2-5) of our regulations is appropriate. 4 C.F.R. § 21.6(e). One of the enumerated remedies is a recommendation that the contract be recompeted, which in effect we are making in this case. Accordingly, the recovery of proposal preparation costs is not appropriate here. Federal Properties of R.I., Inc., B-218192.2, May 7, 1985, 85-1 CPD ¶ 508; see also Greenleaf Distribution Services, Inc., B-221335, Apr. 30, 1986, 86-1 CPD ¶ 422; cf. Koehring Co., Speedstar Division, 65 Comp. Gen. 268 (1986), 86-1 CPD ¶ 135.

Our regulations permit recovery of the costs of filing and pursuing a protest where the protester had been unreasonably excluded from the procurement, unless we recommend that the contract be awarded to the protester and the protester actually receives the award. 4 C.F.R. § 21.6(e). Where, however, as a result of our recommendation, the protester, whose proposal was improperly rejected, is given the opportunity to compete for award, the unreasonable exclusion is thereby corrected. Thus, the recovery of the costs of filing and pursuing the protest would be inappropriate. The Hamilton Tool Co., B-218260.4, Aug. 6, 1985, 85-2 CPD ¶ 132.

The protest is sustained.


for Comptroller General
of the United States