

Pogony



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Convex Computer Corporation  
File: B-225583  
Date: March 17, 1987

## DIGEST

1. Award on an initial proposal basis, without discussions, is proper where the solicitation advises offerors of this possibility and the competition and prior cost experience clearly demonstrate that acceptance of an initial proposal will result in the lowest overall cost to the government.

2. Where the contracting agency decides to make award on an initial proposal basis, an initial proposal taking exception to a material solicitation requirement is unacceptable and must be rejected.

## DECISION

Convex Computer Corporation protests the rejection of its proposal as technically unacceptable under request for proposal (RFP) No. N60921-86-R-0127, issued by the Naval Surface Weapons Center, Silver Spring, Maryland. We deny the protest.

The RFP solicited offers for a Digital Equipment Corporation (DEC) VAX 8800 system, and associated items, or equal, including preventive and remedial maintenance and certain system software. The RFP stated that award would be made to a single offeror for all items and that offers for less than all items would be considered unacceptable. The RFP contained basic and optional requirements and provided that the government would evaluate offers by adding the total price for the basic requirement to the total price of all options. Thus, under the solicitation's scheme, competition was essentially based on price among offerors who proposed the brand name product or, alternatively, an equal product that met the solicitation's mandatory requirements and specifications ("salient characteristics").

In August 1986, prior to the amended closing date of October 10, 1986, Convex wrote to the agency, alleging that certain specifications were allegedly restrictive and

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therefore should be eliminated from the solicitation. Specifically, Convex challenged specification C.2.20.8, which required offerors to provide all hardware and software for a graphics work station that can execute compiled Fortran or Pascal programs. Further, Convex questioned specification No. C.2.2.c., which required the system to have no less than eight RS-232 asynchronous communications ports and one synchronous RS-232 port that were required to be compatible with certain equipment. Convex also wrote the agency's competition advocate in support of its position that these specifications, among others, were restrictive. The contracting officer and the competition advocate responded to Convex and informed the firm that these specifications were valid requirements which were needed by the using agency to conduct research and development tasks and that the specifications represented the minimum needs of the Navy. From a contemporaneous letter from Convex to the agency, it also appears that Convex also knew that the specifications, as a mandatory requirement, also called for a "battery backup" to provide an uninterruptible power source for the system. At that time, Convex considered this requirement to have "no functional value to the government."

Convex and four other offerors submitted proposals by the October 10 deadline. In its proposal, Convex stated that "Convex will not provide installation and maintenance of the interruptible power system and batteries, a component of CLIN 0001AA." Further, with respect to the communications ports, Convex stated that it "does not provide nor intend to provide software to support synchronous communications. . . ." The Navy determined that without this software, systems communications would be restricted and required graphics functions would be unsupported. Finally, the Navy also found that Convex failed to propose a work station capable of executing Fortran and Pascal programs. Subsequently, having decided to make award based on the initial proposals, without discussions, the Navy advised Convex that its proposal had been rejected as technically unacceptable and award was made to Digital Equipment Corporation, which was the only firm found to be technically acceptable and which offered the lowest price among all offerors which had submitted prices for all items as required by the solicitation.<sup>1/</sup>

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<sup>1/</sup> Convex was the only firm that was nominally lower in price than Digital. However, Convex failed to submit prices for various items in the schedule with the notation, "not proposed." The Navy tried to price certain of these omissions but, at least with respect to the uninterruptible power source, was unable to do so.

In its initial protest, Convex, among other things, challenged the solicitation's specifications as restrictive. However, in its comments on the agency report, Convex "rescinded" these allegations and now simply contends that its proposal was improperly rejected by the Navy without discussions.

As a general rule, a contracting agency may make an award on the basis of initial proposals, without holding discussions or requesting best and final offers, provided that (1) the solicitation advises offerors of this possibility, and (2) the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. 10 U.S.C. §§ 2305(a)(2)(B)(ii), 2305(b)(4)(A)(ii) (Supp. III 1985). Here, the Navy's RFP specifically advised offerors that discussions might not be held and that award may be made on the basis of initial proposals. Further, Digital was the low offeror for all items required by the solicitation. Moreover, the Navy had access to extensive cost experience with Digital's proposed prices and the Navy's price analysis of the commercial items proposed by Digital was based on published U.S. price lists and General Services Administration Schedule catalog price lists which supported the Navy's determination that award to Digital would result in the lowest overall cost to the government. Thus, we have no basis to question the contracting officer's determination to award the contract on the basis of initial proposals.

As for the rejection of Convex's initial proposal, we have repeatedly held that where the contracting agency decides to make an award based on initial proposals, it is proper to reject an offeror's initial proposal if it takes exception to a material solicitation requirement. Tiernay Manufacturing Co., B-209035, Dec. 20, 1982, 82-2 CPD ¶ 552; SAI Comsystems Corp., B-189407, Dec. 19, 1977, 77-2 CPD ¶ 480; Tracor Applied Sciences, B-219735, Sept. 26, 1985, 85-2 CPD ¶ 343. Here, at least with respect to the mandatory requirement concerning an uninterruptible power supply, Convex knowingly took exception to this requirement in its initial proposal and therefore the proposal was properly rejected. See generally Computervision Corp., B-224198, Nov. 28, 1986, 86-2 CPD ¶ 617.

The protest is denied.

*for Seymour E. Fros*  
Harry R. Van Cleve  
General Counsel