



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comcraft, Inc.
File: B-232258
Date: December 15, 1988

DIGEST

1. The contracting agency reasonably determined that the protester offered a private branch exchange (PBX) system in response to a procurement to replace existing, leased telephone equipment, where: (1) the protester specifically stated that it was offering a "PBX/Integrated Data Voice switch" in its best and final offer; (2) there were many references to a PBX switch in the protester's proposal and attached descriptive literature; and (3) the protester admits that the distinction between PBX and key systems has become blurred and stated that it referred to its proposed switch as a PBX switch as a "sales answer" to the contracting agency in its proposal.
2. Where the General Services Administration (GSA) authorized the contracting agency to procure new telephone equipment, but the authorization specifically excluded purchase of a private branch exchange (PBX) system, the contracting agency properly referred the protester's proposal of a PPX system to GSA for a delegation of procurement authority (DPA). When GSA denied the contracting agency's DPA request, award could not be made to the protester because it was not authorized.
3. Protest that it was unreasonable for the General Services Administration (GSA) to deny the procuring agency a delegation of procurement authority (DPA) to purchase the protester's private branch exchange telephone system will not be reviewed by the General Accounting Office as the decision whether to issue a DPA is committed by law to GSA, subject to review by the Director of the Office of Management and Budget.

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DECISION

Comcraft, Inc., protests the Corps of Engineers' award of a contract for the design and installation of a telephone system to ISOETEC Communications, Inc., pursuant to request for proposals (RFP) No. DACW41-88-R-0003. Comcraft contends that the Corps improperly rejected its offer even though it received the highest technical evaluation score and was significantly lower in price than ISOETEC's offer. Comcraft also contends that ISOETEC's offer should have been rejected as unacceptable, because ISOETEC is not a small business and it proposed to supply a telephone system manufactured in a foreign country.

We deny the protest.

The RFP, issued on December 31, 1987, solicited offers for replacing the telephone equipment currently leased from AT&T and used by the Corps' Kansas City District Office, and, as amended, required that initial proposals be submitted by February 8, 1988. The RFP contemplated award of a firm fixed-price, indefinite delivery supply contract for design of a telephone system and supply of assorted telephone equipment and related services such as maintenance for the basic 1-year contract period, and contained options for 2 additional years. The RFP set out a number of performance specifications that the telephone system had to meet and indicated that technical factors would be considered more important than price for evaluation purposes.

The statement of work required installation of electronic station units and related equipment in four buildings in which the District Office is located. Because most of the District Office is housed, along with several other federal agencies, in a building managed by the General Services Administration (GSA), the solicitation required that the telephone system be compatible with a consolidated private branch exchange (PBX) switch previously procured by GSA to meet the voice and data transmission needs of the tenant agencies. The RFP did not specify whether the proposed system had to be an electronic key system or a PBX system; either type was acceptable to the Corps so long as the telephone system could meet all of the RFP's performance requirements. The RFP required that the telephone wire be able to receive and transmit data and interface with a local area network system (LAN), but did not require data networking capability or equipment.

At a preproposal conference on January 14, 1988, the Corps informed potential offerors, including the protester, that they were free to propose whatever type of telephone system (electronic key or PBX) they chose, but, if a PBX system were proposed and selected for award, the Corps would have to request a delegation of procurement authority (DPA) from GSA, because GSA had not authorized the Corps to replace its existing telephone system with a PBX system without specific approval from GSA.^{1/} This information was subsequently incorporated into the solicitation.

Four proposals were submitted by the closing date, and the Corps held negotiations with all four firms. Best and final offers were received by March 25. A technical evaluation panel evaluated the proposals and determined that Comcraft's proposal was the best technical proposal overall when compared to the RFP's requirements; the evaluators also determined that Comcraft proposed to provide a PBX system. The evaluators gave ISOETEC's proposal the second-highest technical rating, based upon its offer of an electronic key system. The evaluators recommended that the contract be awarded to Comcraft if the award properly could be made under the Federal Information Resources Management Regulations (FIRMR), 41 CFR Part 201. On the other hand, the evaluators recommended that the contract be awarded to ISOETEC if the contract had to be made on the basis of an electronic key system. The contracting officer agreed that Comcraft's proposal was the best overall proposal, and, because Comcraft proposed to supply a PBX-type system, requested a DPA from GSA.

Ultimately, GSA denied the Corps' request for a DPA, primarily because Comcraft's PBX system would duplicate the services already available to the Corps through GSA's existing consolidated PBX switch. In other words, GSA determined that a PBX system that included data networking capabilities, such as Comcraft's, represented an unnecessary duplication of PBX capabilities that had already been purchased by GSA for the Corps' use.

^{1/} Pursuant to the Statement of Areas of Understanding Between the Department of Defense (DOD) and GSA, communications services for DOD activities occupying property controlled by GSA generally are to be procured or provided by GSA. However, GSA subsequently authorized agencies to purchase telecommunications equipment to replace existing leased equipment and key systems; this authorization specifically excluded purchases of PBXs.

The contracting officer determined that, because GSA had denied the Corps a DPA for a PBX system, the Corps had no authority to award a contract to Comcraft. Therefore, the contracting officer decided to make award to ISOETEC on the basis of its second-highest technical evaluation score, even though its evaluated costs were higher than Comcraft's. Because ISOETEC's proposed system was an electronic key, rather than a PBX system configuration, the contracting officer did not request a DPA from GSA. ISOETEC was awarded the contract on July 27, 1988, and Comcraft protested to our Office on August 11.

Comcraft argues that the Corps acted improperly in making award to ISOETEC instead of Comcraft in view of Comcraft's technical superiority and lower price. The Corps contends that it lacked authority to make award to Comcraft because GSA denied its request for a DPA to purchase Comcraft's system. The underlying issue on which the propriety of the decision not to award to Comcraft turns is whether the Corps properly decided that Comcraft proposed a PBX system for which a DPA from GSA was required. As explained below, we find that the Corps' determination that Comcraft offered a PBX system and a DPA was required was reasonable. Accordingly, in light of GSA's denial of the DPA, the Corps was not authorized to make award to Comcraft.

It is neither our function nor practice to conduct a de novo review of technical proposals and make an independent determination of their acceptability or relative merit. The evaluation of proposals is the function of the procuring agency, requiring the exercise of informed judgment and discretion. Our review is limited to examining whether the agency's evaluation was fair and reasonable and consistent with the stated evaluation criteria. We will question contracting officials' determinations concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. System Development Corp., and International Business Machines, B-204672, Mar. 9, 1982, 82-1 CPD ¶ 218.

At the preproposal conference, the Corps specifically told potential offerors, including Comcraft, that its authority to replace its existing telephone equipment did not extend to PBX-type systems and that, if a PBX system were offered, a DPA would have to be obtained from GSA before award could be made based upon the PBX system proposal. These statements were ultimately incorporated into the RFP. Accordingly, after the Corps concluded that Comcraft's proposal was for a PBX system, it requested a DPA from GSA. GSA denied the request because in its view Comcraft's

proposed system would duplicate the services available from and the costs associated with GSA's existing PBX switch.

The protester contends that it did not propose a PBX system and that, therefore, no request for a DPA had to be made. According to the protester, the system it proposed was an electronic key system even though it had many of the features generally attributed to a PBX system. The protester states that it proposed a Cyber Digital MSX switch that is configured in such a way that it does not meet the generally accepted definition of a PBX. According to the protester, for example, a PBX system must be connected directly to the network; Comcraft contends that its system is connected to the network by means of an NT D-3 Channel Bank, rather than directly. Thus, Comcraft argues that, by definition, the configuration it offered cannot be a PBX system. Essentially, Comcraft contends that the Cyber Digital MSX switch is a product that can be used in a variety of ways, including as a PBX switch. However, the protester argues that it did not intend to use the Cyber Digital MSX switch as a PBX switch in the configuration it proposed.

We find that the Corps' determination that the Comcraft system used a PBX switch was reasonable. There were several references to the use of a PBX switch in Comcraft's proposal and in the descriptive literature included with the proposal. For example, during discussions the Corps asked Comcraft to clarify a number of points, including the question: "Is the switch proposed registered as a data switch?" In its best and final offer, Comcraft answered: "The switch is registered as a PBX/Integrated Data Voice switch." There are also a number of references to the Cyber Digital MSX switch's PBX capabilities in the descriptive literature supplied to the Corps by Comcraft with the proposal. Among the references that support the Corps' determination that a PBX switch was being offered is this statement from Comcraft's literature concerning linking phones to the Cyber Digital MSX switch: "From that moment on you have a fully featured voice PBX with data capability."

We believe the Corps justifiably concluded from the many references to a PBX switch in Comcraft's proposal that Comcraft was in fact offering a PBX system. Comcraft states that the distinctions between a PBX and a key system have become blurred; Comcraft further states that it only referred to its switch as a PBX as a "sales answer . . . to offer the [District Office] the biggest bang for their buck." However, a technical evaluation must be based upon the information contained in a proposal, and an offeror

risks being excluded from the competition if its proposal is not adequately written. Pharmaceutical Systems, Inc., B-221847, May 19, 1986, 86-1 CPD ¶ 469. Even assuming that Comcraft did not intend its system to be configured as a PBX, it failed to communicate its intention in its proposal and in fact led the Corps to the opposite conclusion by using the term PBX switch throughout its proposal without sufficient explanation.

Finally, GSA agreed with the Corps' conclusion that the Cyber Digital MSX switch proposed by Comcraft is a PBX switch. GSA reported to our Office that the proposed switch is not a key or hybrid switch, but is considered by the Federal Communications Commission to be a PBX switch. In our view, the Corps was entitled to rely on GSA's finding. See Ship Analytics, Inc., et al., B-230647, July 12, 1988, 88-2 CPD ¶ 37. Accordingly, because GSA refused to issue a DPA to the Corps based on Comcraft's proposal, the Corps had no authority to award the contract to Comcraft and properly rejected Comcraft's offer. See Plus Pendetur Corp., et al., 65 Comp. Gen. 258 (1986), 86-1 CPD ¶ 107.

Comcraft also argues that it was unreasonable for GSA to deny the Corps' request for a DPA because Comcraft's proposed system will result in significant cost savings to the Corps. In response, GSA states that it had insufficient information on which to compare the costs associated with Comcraft's and ISOETEC's proposed systems.

To the extent Comcraft challenges GSA's judgment as to what system the Corps should purchase, the issue is not for our review. Specifically, the Brooks Act, 40 U.S.C. § 759(e) (Supp. IV 1986), provides in pertinent part:

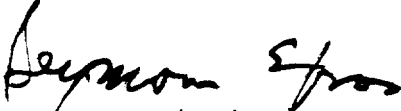
"If [GSA] denies an agency procurement request such denial shall be subject to review and decision by the Director of the Office of Management and Budget, unless the President otherwise directs."

In view of this provision, it is clear that the decision whether to issue a DPA is committed to GSA, subject to review by the Office of Management and Budget (OMB), not our Office. Similarly, any disagreement between the Corps and GSA as to what kind of system the Corps should purchase constitutes an interagency dispute subject to resolution by OMB.

Finally, Comcraft contends that ISOETEC was not eligible for award because it is not a small business and because it offered a foreign-made product. These arguments are without

merit because the RFP was not restricted to small businesses and did not prohibit offerors from proposing foreign-made products.

The protest is denied.

for 
James F. Hinchman
General Counsel