



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: KYBE Corporation

File: B-232746

Date: January 19, 1989

DIGEST

1. Purchase under non-mandatory automatic data processing schedule contract from firm which agency reasonably determines to be only source available to supply the desired product is not objectionable where procurement was conducted in accordance with applicable regulations and protester has not shown that there is no reasonable basis for the sole-source award.
2. A contractor under a General Services Administration (GSA) non-mandatory automatic data processing schedule contract may offer a price reduction at any time and by any method without approval by GSA, and under the contract's terms the price reduction generally will remain in effect for the remainder of the contract.

DECISION

KYBE Corporation protests the Department of the Navy's issuance of delivery order No. N66032-88-F-0060 to Computer-Link Corporation for 21 Computer-Link Model 3800-6 Magnetic Tape evaluator/cleaners under Computer-Link's non-mandatory automatic data processing (ADP) schedule contract No. GS-00K-86-AGS-5308 with the General Services Administration (GSA). The protester contends that the Navy improperly placed a sole-source order with Computer-Link, that the Navy's technical requirements that were used to select the Computer-Link product were not essential to meet the needs of the agency, and that the Navy improperly accepted a discount from the list price stated in Computer-Link's GSA schedule contract.

We deny the protest.

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The Navy states that as a result of an audit of aviation supplies aboard aircraft carriers it determined that it required the procurement of magnetic tape evaluator/cleaners for regular tape maintenance to promote reliable performance in its magnetic tape system. In April 1988, the Navy conducted a market survey in which it evaluated models of tape evaluator/cleaners available from four different vendors, including the protester. Based on the results of the evaluation, the Navy intended to procure the Computer-Link Corporation Model 3800-6, which it determined best met its requirements.

The market survey was based on 54 technical requirements which Computer-Link met. Computer-Link was the only firm which could meet several of the requirements, including the following: detect tape errors at 800, 1600 and 6250 bits per inch (bpi) (the density with which data is packed); print by data block locations; and print eight types of errors at 6250 bpi.

As required by the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. § 201-32.206(f) (1987), the Navy published a notice in the Commerce Business Daily (CBD) on August 23 announcing its intent to purchase from Computer-Link's GSA schedule twenty model 3800-6 Magnetic Tape evaluator/cleaners.^{1/} The CBD notice also stated that "through a market survey it was determined that this model would best satisfy the requirement." On August 30, a representative from KYBE and another firm called to express interest in the market survey and to inquire about whether their respective products had been included. The Navy states that the firms were advised that their products were considered but that they did not fully meet the technical requirements. Both firms resubmitted technical literature and current pricing data for their respective magnetic tape cleaners which were then reevaluated. The prices submitted by both firms were based on their current GSA non-mandatory schedule contracts, and the firms did not offer any discount from the schedule prices. The Navy again determined that neither company could fully comply with the technical requirements.^{2/} Moreover, the Navy on September 9, also

^{1/} The quantity was subsequently increased to twenty-one units.

^{2/} In its response to the agency's report, the protester concedes that its product does not meet many of the technical requirements, including the ones set forth above.

conducted a price analysis of the comparable products of the three firms, including Computer-Link's and KYBE's. Because Computer-Link offered a discount from its schedule contract, while the others did not do so, its Model 3800-6 had the lowest evaluated overall cost.

In accordance with FIRMR § 201-32.206(a)(2), which provides that the use of a GSA non-mandatory ADP schedule contract for requirements available from only one responsible source shall be certified, justified, and approved in accordance with Federal Acquisition Regulation (FAR) §§ 6.303 and 6.304, the Navy executed a justification for other than full and open competition which was certified by the contracting officer and approved by the competition advocate. Also, as stated above, in accordance with the FIRMR provision, the agency conducted a price analysis and determined that the Computer-Link Model 3800-6 provided the lowest overall cost alternative. A delivery order was issued to Computer-Link on September 9, 1988. This protest followed.

The record shows that the Navy did justify the delivery order on the basis that the requirement (a tape cleaner meeting its technical needs) was available from only one responsible source. We note that the prices obtained from all three firms after the publication of the CBD notice on August 23, clearly showed that KYBE's product was not the lowest priced. Indeed, KYBE only argues that its product would have been the lowest priced if Computer-Link's undiscounted schedule contract prices had been evaluated.^{3/} (KYBE also objects to the Navy's acceptance of Computer-Link's discount from its schedule contract as unauthorized.) Since KYBE did not propose a product that was the lowest priced, it does not appear that relaxation of the allegedly unduly restrictive technical requirements would have resulted in the selection of KYBE for award. See generally Whittaker-Yardney Power Systems, B-227831, Sept. 10, 1987, 87-2 CPD ¶ 232.

In any event, the record indicates that the award was proper under the applicable regulations. Where the agency has substantially complied with the procedural requirements for the written justification for, and higher-level approval of, the contemplated sole-source action and publication of the requisite CBD notice, we will not object to a sole-source award unless it is shown that there is no reasonable basis for it. See Abbott Laboratories, B-230220, May 18, 1988, 88-1 CPD 468.

^{3/} This assumes that KYBE's product was technically acceptable and that selection was based on price alone.

Here, the record indicates that the Navy complied with all the procedural requirements for placing an order under a non-mandatory ADP schedule contract for requirements available from only one responsible source, and the protester does not allege otherwise. As stated above, the Navy contends, and KYBE does not refute, that only Computer-Link can meet the requirements that tape errors be detected at 800, 1600 and 6250 bpi and that the evaluator/cleaner print eight types of errors at 6250 bpi.

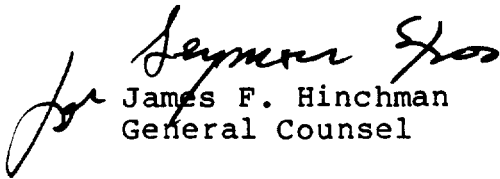
The Navy's justification for other than full and open competition stated that only the proposed Computer-Link equipment meets the government's critical requirement for the certification of tapes at extremely high densities. The Navy has explained that because of an increase in data required to be maintained, the Navy added a newer technology using high density disk drives. It states, however, that higher speeds and higher recording densities increased the requirement for ensuring the quality of the magnetic tapes. The Navy has informed our Office that recording densities of 800 bpi and 1600 bpi are the primary densities used when sending data to or from a ship, and a recording density of 6250 bpi is used primarily for back-up systems. Because all these recording densities are used daily, the Navy states that the tape evaluator/cleaner must be capable of detecting errors at 800, 1600 and 6250 bpi and printing them by data block locations and also be capable of printing eight types of errors at 6250 bpi. Aside from bare allegations, the protester has not presented evidence that the Navy's stated requirements do not reflect the agency's minimum needs and that the agency's decision to award to Computer-Link, the only supplier of a product meeting these requirements, was clearly unreasonable. Thus, since only Computer-Link can meet the requirement, we think that the award to that firm must be viewed as proper.

KYBE also alleges that the purchase will exceed the maximum order limitation prescribed by the GSA schedule or that the procurement will not utilize the GSA contract pricing. The record shows that the purchase of 21 Computer-Link model 3800-6 tape evaluator/cleaners does not exceed the maximum order limitation. However, the record also indicates, as KYBE contends, that the purchase order price, as a result of the discount, is lower than the price listed in Computer-Link's authorized ADP Schedule Price List.

Generally, a Federal Supply Schedule such as the one here lists contracts between the GSA and suppliers of commercially available items commonly used by the government, under which federal agencies may acquire the items at the

prices contained in the contracts. 41 C.F.R. § 101-26.402-1(a) (1987). The contracts include a clause stipulating that if a contractor sells the contract items either commercially or to a federal agency at a reduced price, the equivalent price reduction shall apply to the contract for the remainder of its duration. 41 C.F.R. § 101-26.408-5. Under the clause, a contractor may offer a price reduction at any time and by any method without prior or subsequent approval by GSA. See National Business Systems, Inc., B-224299, Dec. 17, 1986, 86-2 ¶ 677. Thus, the award to Computer-Link at a price lower than its listed price does not provide a basis to disturb the award.

The protest is denied.


James F. Hinchman
General Counsel