Ashen

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Honeywell Federal Systems, Inc.; Martin Marietta Corporation; Department of the Air Force--Request for Reconsideration

File: B-233742.5; B-233742.6; B-233742.7

Date: May 14, 1990

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William W. Goodrich, Jr., Esq., Arent, Fox, Kintner, Plotkin & Kahn, for the interested party, Martin Marietta Corporation.
John P. Janeck, Esq., Office of the General Counsel, Department of the Air Force, for the agency.
David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Decision finding that awardee's proposal was noncompliant with solicitation requirements, and recommending that negotiations be reopened under revised specifications, is affirmed where reconsideration request is based on mere disagreement with prior decision or arguments that could have been, but were not, raised during consideration of protest, and record does not otherwise show error of fact or law warranting reversal or modification of decision.

2. Recommendation to reopen negotiations under revised specifications is affirmed notwithstanding potential for additional cost to the government where any such cost would be due in large measure to the agency having placed a substantial order under the contract after the protest conference, at which the awardee's compliance with the specifications was in issue, and only 1 month prior to the due date for the General Accounting Office's decision.

DECISION

Honeywell Federal Systems, Inc., Martin Marietta Corporation and the Department of the Air Force request reconsideration

of our decision in Martin Marietta Corp., B-233742.4, Jan. 31, 1990, 69 Comp. Gen. ____, 90-1 CPD ¶ 132. In that decision, we sustained Martin Marietta's protest against the Air Force's award of a contract to Honeywell under request for proposals (RFP) No. F19628-88-R-0038, for microcomputer workstations for the World-Wide Military Command and Control System's Information System (WIS). We sustained the protest on the basis that Honeywell failed to satisfy the RFP requirement for a multi-tasking capability.

We affirm the decision.

The WIS specification generally required that the workstations "be capable of executing correctly a multi-tasking operating system that meets the requirements of 3.1.4.2.1" of the specification. That paragraph defined the required multi-tasking capability as the ability to suport the concurrent execution of a minimum of 10 "tasks," and specifically stated that the multi-tasking operating system must be capable of providing at least 10 windows on the computer screen. Honeywell offered an Apple Corporation Macintosh IIx computer with an A/UX operating system, Apple's implementation of the UNIX operating system. It proposed to meet the specification requirements in the user support services area (one of the four broad classes of required application software) for wordprocessing, spreadsheet and graphics capabilities with Macintosh operating system (MAC/OS) applications running under the A/UX operating system. Although multiple, non-MAC/OS applications could be executed simultaneously on this system, only one MAC/OS software application could be run at a time in the required secure operating mode; multiple MAC/OS applications could not be launched. (Honeywell proposed to supply after award an upgrade which would enable the operating system to launch multiple MAC/OS applications.)

In its protest of the subsequent award to Honeywell, Martin Marietta contended that Honeywell's proposed workstation failed to comply with the solicitation requirement for a multi-tasking operating system because it lacked the current capability to initiate and simultaneously execute multiple user support services applications. The Air Force and Honeywell, on the other hand, argued that since the detailed definition of the required multi-tasking capability was found only in a subsection of the specification section describing one of the other broad classes of required application software, that is, the system and applications development support services, the multi-tasking requirement only applied to that class of software applications.

We disagreed with Honeywell and the agency. We found that their interpretation ignored the general provisions of the specification requiring "a multi-tasking operating system that meets the requirements of 3.1.4.2.1" and those providing that the required user support services software shall execute "within, and under the control of the native environment supplied by the Target [Required] Workstation multi-tasking operating system." In our view, the specification, when read as a whole, generally required the operating system offered for the initial deliveries to be capable of initiating and simultaneously executing up to 10 of the proposed software tasks or applications; the specification did not envision that the overall requirement for multi-tasking could be frustrated by allowing an offeror to propose a class of software that does not permit multi-tasking. Accordingly, we concluded that Honeywell's proposed system was noncompliant with the multi-tasking requirement. We sustained the protest on this ground and recommended that the agency reopen negotiations with the offerors in the competitive range, clarify its actual minimum needs with respect to multi-tasking, and then request a new round of best and final offers (BAFOs).

MULTI-TASKING

Honeywell contends, and the Air Force concurs, that our prior decision erroneously failed to take into consideration the fact that the specification defined the required multi-tasking capability in terms of the concurrent execution of a minimum of 10 "tasks," that is, units of work to be accomplished within a particular software application, rather than in terms of software applications or programs themselves, which may consist of one or more tasks. Honeywell concludes that since its system is capable of executing 10 tasks under one application, it met the multi-tasking requirement. In addition, Honeywell contends that our decision failed to distinguish between the operating system and the software applications. According to Honeywell, since the specification by its terms required a "multi-tasking operating system" and Honeywell proposed an operating system capable of multi-tasking given appropriate software, the fact that multiple MAC/OS applications could not be simultaneously executed on the operating system at time of award due to the lack of appropriate software at that time is irrelevant; in Honeywell's view, the multi-tasking requirement extended only to the operating system, and not to the software.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our decision was founded on an error of either fact or law, or specify information not

previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Our Regulations do not permit a piecemeal presentation of evidence, information or analyses, since a piecemeal presentation could disrupt the procurement process indefinitely; accordingly, where a party raises in its reconsideration request an argument that it could have, but did not raise at the time of the protest, the argument does not provide a basis for reconsideration. See FAA Seattle Venture, Ltd.--Request for Reconsideration, B-234998.4, Oct. 12, 1989, 89-2 CPD ¶ 342; Daylight Plastics, Inc.--Request for Recon., B-225057.2, Apr. 28, 1987, 87-1 CPD ¶ 440.

Honeywell clearly could have argued at the time of the protest that the task/application distinction was significant for purposes of defining the multi-tasking requirement; neither it nor the agency did so, and the issue thus was never presented for our consideration. Indeed, during the protest conference, a technical expert called by Honeywell described the multi-tasking requirement as a requirement for "system multi-tasking with 10 active tasks or applications. And that is the key word, applications." Conference Transcript 335. When asked by our Office whether he was distinguishing between tasks and applications, the Honeywell technical expert replied "No." Id. This argument therefore is not now a basis for reconsidering our decision.

In any case, we find Honeywell's task/application argument unpersuasive. The specification defined the required multi-tasking capability in broad terms; no solicitation provision restricted the requirement to providing only for the simultaneous execution of tasks running under a single application. In the absence of a specific exclusion from the broad sweep of the language regarding multi-tasking, we think the only reasonable interpretation of the requirement is that the proposed operating system must be capable of supporting the simultaneous execution of any reasonable combination of up to 10 tasks, including those combinations of tasks running under more than one application.

Regarding Honeywell's second argument, as noted above, we specifically rejected in our prior decision the position that the RFP created a distinction between the operating system and the proposed applications for purposes of defining the extent of the multi-tasking requirement. Again, given the broad, unrestricted definition of the requirement for a multi-tasking operating system, it is our view that the specification did not envision that the overall requirement for multi-tasking could be frustrated by allowing an offeror to propose a class of software that does not permit multi-tasking. Honeywell's mere disagreement

with our decision in this regard does not serve as a basis for us to reconsider the decision. Id.

Honeywell maintains that the solicitation is subject to more than one reasonable interpretation; according to Honeywell, "reasonable minds can certainly differ over exactly what [the specification] requires in terms of multi-tasking." We disagree. As stated above and in our original decision, we read the multi-tasking provision as applicable to tasks from different applications. In any case, even if we shared the view now advanced by Honeywell (the same view as adopted by the agency's evaluators), our decision would be the same. Specifications must be free from ambiguities and must describe the minimum needs of the procuring activity accurately. See T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435. Where it is clear that offerors have responded to a solicitation requirement based upon different reasonable assumptions as to what the requirement was, the competition was conducted on an unequal basis and the requirement generally must be resolicited. See Reflect-A-Life, Inc., B-232108.2, Sept. 29, 1989, 89-2 CPD ¶ 295. Thus, since Honeywell's reading of the multi-tasking requirement, as experienced here, is different than Martin Marietta's, the competition should be reopened.

REOPENING NEGOTIATIONS

In their requests for reconsideration, Martin Marietta and the Air Force question our recommended remedy. In our prior decision, we recommended that the agency reopen negotiations with the offerors in the competitive range, clearly state what capabilities are necessary to satisfy its actual minimum needs with respect to multi-tasking (and any other provisions that should be clarified to assure that offerors are provided with an opportunity to compete on a common basis), and then request a new round of BAFOs. (In addition, we found Martin Marietta to be entitled to recover protest costs.)

Both Martin Marietta and the Air Force assert that it would not be in the best interest of the government to reopen negotiations. The Air Force contends that our recommendation would result in substantial cost to the government, and a significant delay in fielding new WIS workstations and developing specialized software for them, in the event reopening negotiations ultimately resulted in acquisition of a workstation that was not 100 percent compatible with the Honeywell workstations already purchased. According to the agency, it has placed orders with Honeywell for hardware, software and services totaling $19,270,000; the equipment

reportedly would have a residual, resale value of between only $6,343,000 and $9,684,000. In addition, the agency estimates that award to another offeror would result in the loss of $1,873,000 already expended by the agency for contract administration, $2,570,000 expended for software development, and $100,000 expended for training, and would require the expenditure of $2,000,000 to reopen the source selection process. In sum, as detailed by the agency, the costs of acquiring an incompatible workstation could total between $16,129,000 and $19,470,000 1/. The Air Force also is concerned that there would be a lengthy delay in fielding an improved communications network in the event that implementation of our recommendation resulted in award for an incompatible WIS workstation. The agency concludes that it would be more appropriate to limit the remedy here to a finding that Martin Marietta is entitled to recover the cost of preparing its proposal (in addition to its protest cost).

Martin Marietta, on the other hand, reiterates its previous request, which we denied in our prior decision, that we recommend the immediate termination of Honeywell's contract, and direct that award be made to Martin Marietta. Martin Marietta argues that it would be prejudiced by a reopening of negotiations because information concerning its proposed approach and prices has been revealed during the course of the protest, and Honeywell has gained additional time in which to remedy its system's multi-tasking deficiencies and other alleged deficiencies with respect to the specification requirements (concerning a database management system and access to the mainframe computers which form the core of the WIS network). In addition, Martin Marietta questions the reported impact on the agency of terminating Honeywell's contract, asserting that: (1) the agency's estimate of the cost of terminating Honeywell's contract is overstated; (2) award to Martin Marietta would save the government money because of its lower stated BAFO price, notwithstanding any termination and transition costs; (3) software developed pursuant to the "open" software standards in the specification should be fully portable--transferable--to Martin Marietta's workstation; and (4) that it can immediately supply a large number of workstations, thus minimizing any delay in fielding new WIS workstations.

1/ At one point in its request for reconsideration, the Air Force refers to a potential cost impact of $25,333,000. This figure, however, apparently does not account for the residual, resale value of the ordered equipment as estimated by the agency.

equipment already ordered also is unsupported and thus is only speculative. The Air Force's position also ignores the potential cost savings that may be realized from reopening the competition; Martin Marietta offered a lower fixed price than Honeywell in its BAFO for the evaluated quantity (which was approximately 25 percent of the maximum quantity), and relaxation of the specifications to reflect the agency's actual minimum needs may result in lower prices.

To the extent that implementation of our recommendation may result in a net cost increase to the government, we point out that this is due in large measure to the agency having placed an order under the contract for supplies in the amount of $15,300,000--81 percent of all hardware, software and services ordered--on December 29, 1989; this was after the protest conference, and only 1 month before the due date for our decision. Although we recognize that the protest was not filed soon enough after award to bring into effect the stay provisions of the Competition in Contracting Act of 1984, 31 U.S.C. § 3553 (Supp. V 1987), nevertheless, in our view, the agency assumed the risk that by issuing a substantial delivery order after the conference and 1 month prior to the due date for our decision, its actions would result in additional cost to the government. We are not inclined to alter our otherwise appropriate recommendation based on costs incurred by the Air Force at that juncture in the protest process. Finally, the potential for delay appears to be mitigated by the fact that Martin Marietta states it has a significant number of workstations available for delivery to the agency should it receive an award.

The decision is affirmed.

Acting Comptroller General
of the United States