

L. Glass



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Diversified Computer Consultants
File: B-241764
Date: February 27, 1991

Paul G. Dembling, Esq., and Dennis A. Adelson, Esq., Schnader, Harrison, Segal & Lewis, for the protester.
Herbert F. Kelley, Jr., Esq., and Daria H. Rusyn, Esq., Department of the Army, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Award of a contract for maintenance of automatic data processing equipment under a nonmandatory, General Services Administration schedule is proper where agency has determined that the scheduled items provide the lowest overall cost alternative.
2. A contractor under a nonmandatory automatic data processing schedule contract may offer a price reduction at any time and by any method without approval by General Services Administration, and under the contract's terms the price reduction generally will remain in effect for the remainder of the contract.
3. An announcement in the Commerce Business Daily (CBD) of plans to procure an item under a nonmandatory ADP schedule contract is a device to test the market to determine whether the government's needs will be met at the lowest overall cost by procuring from the schedule. The agency is not "locked into" all the specific features of the product or service synopsized in the CBD.

DECISION

Diversified Computer Consultants (DCC) protests the Department of the Army's issuance of delivery order No. DAHC35-91-F-0095 to International Business Machine Corporation (IBM) for maintenance and repair services of government-owned automatic data processing (ADP) equipment under IBM's nonmandatory ADP schedule contract with the General Services Administration (GSA). The protester contends that its quote was improperly rejected and award was made on a basis not synopsized in the Commerce Business Daily (CBD). DCC also argues that its offered prices were lower than the IBM schedule prices.

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We deny the protest.

The use of GSA's nonmandatory schedule to acquire ADP resources is governed by the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. § 201 et seq. (1990). The FIRMR permits an agency to place an order against GSA's nonmandatory ADP schedule contracts such as IBM's when certain conditions are met. One condition is that the agency synopsizes in the CBD its intent to place an order against a nonmandatory schedule contract. The CBD announcement required before an agency makes a purchase from a GSA schedule must include sufficient information to permit the agency to determine from the responses whether ordering from the GSA schedule or preparing a solicitation document will meet its need at the lowest overall cost. FIRMR, 41 C.F.R. §§ 201-32.206(f)(g). This requires the agency to assure that available alternatives are brought to the agency's attention. See Racal-Milgo, B-225681, May 5, 1987, 87-1 CPD ¶ 472. Because the CBD synopsis is used to test the market, it need not describe, for example, the evaluation factors to be used by the agency in the detail required in a solicitation. Tricom, Inc., B-220590, Jan. 15, 1986, 86-1 CPD ¶ 47. If evaluation of the responses indicates that a competitive acquisition would be more advantageous than purchases from the schedule, an agency normally would issue a formal solicitation and invite all vendors, including schedule vendors to compete. 41 C.F.R. §§ 201-32.206(f)(2)(iv),(g). If, however, the contracting officer concludes that the synopsis contractor's schedule offering is the lowest overall cost alternative, the agency may place an order against the synopsis schedule contract. 41 C.F.R. § 201-32.206(g)(2)(i).

As required by the FIRMR, 41 C.F.R. § 201-32.206(f), on September 12, 1990, the agency published a notice in the CBD of its intent to issue a delivery order against the IBM GSA schedule contract for maintenance and service of certain IBM processors and peripheral equipment. The equipment was to be maintained for 1 year, and maintenance and repair coverage was for 7 days a week, 24 hours a day. The notice listed the equipment to be maintained in order to allow other firms that might be interested in supplying the required items to identify themselves and submit supporting technical and pricing information.

On September 18, four offerors, including IBM and DCC, submitted timely responses to the CBD notice. The Army evaluated the responses and although all firms responding initially were found not to meet agency needs, the Army also determined that DCC's overall price was not lower than IBM's quote which included a reduction to its 1990 schedule prices. The Army reports that they evaluated the prices provided by

DCC and IBM for 150 required line items. Because of the grouping of line items under categories of equipment, IBM's proposal indicated 78 line items and the protester's indicated 60 line items. After evaluation, the total price for DCC was \$230,382.95, while the total for IBM was \$228,396.17. Since IBM's quote met the agency's needs at the lowest cost, a delivery order was issued to IBM on October 17, 1990. This protest followed.

DCC maintains that its offered prices were lower than IBM's schedule prices and that the Army improperly allowed IBM to offer a discount from its schedule contract prices. DCC states that it specifically offered prices that were 15 percent below the IBM schedule prices.

Generally, a contractor may institute a general price reduction in its schedule contract at any time during the contract period, provided an equivalent reduction is applied to sales to all federal agencies for the duration of the contract. See Amperif Corp., B-240884, Dec. 21, 1990, 90-2 CPD ¶ 516; National Business Sys., Inc., B-224299, Dec. 17, 1986, 86-2 CPD ¶ 677. We have no basis to conclude that the acceptance of the price reduction offered by IBM on September 18, was improper. Both DCC's and IBM's quotes were received on the same day. The record contains no evidence that the agency used the protester's quote to negotiate a lower price from IBM, nor did the agency advise IBM of the protester's price or the relative price standing of offerors in an attempt to obtain lower prices.

DCC argues that the award to IBM was invalid because the actual award was different from what was advertised in the CBD notice. As previously stated, the CBD notice contained a list of the equipment to be maintained for a 12-month period. DCC contends that certain unlisted equipment models were included in the award while some models listed with one serial number were awarded based on other serial numbers and that at least several items for maintenance were awarded for less than 12 months.

The agency announced its intent to purchase maintenance of certain ADP equipment under the terms of IBM's schedule contract and listed the equipment, with model numbers to be maintained. A CBD announcement is not the equivalent of a formal solicitation, and, in our view, the agency is not obligated to procure in strict accordance with the CBD notice so long as the CBD announcement contains enough information to generate alternative proposals permitting the agency to determine whether buying off the schedule or preparing a solicitation will meet its needs at the lowest overall cost.

Cf. Kardex Sys., Inc., B-225616, Mar. 12, 1987, 87-1 CPD ¶ 280. The CBD notice did contain enough information, from which four detailed quotes were received by the agency, to determine how its needs could best be satisfied. There is no requirement that the award comply precisely with the CBD announcement.

We find that with respect to the model numbers, the discrepancies between the CBD notice and award document identified by the protester were immaterial to the evaluation. For example, the protester points out that the CBD notice lists certain IBM model and serial numbers, but the award document shows the same model, with a different serial number. These discrepancies appear minor in nature since the specific make and model to be maintained was described as required by the FIRMR and remained unchanged. See 41 C.F.R. § 20-132.206 (f) (2) (v) (A). The protester does not explain why the difference in serial numbers for the same model equipment is significant to the price evaluation of these models.

With respect to DCC's argument that certain equipment to be maintained was awarded for less than 12 months, the evaluation documents show that the price analysis was actually performed on the items as indicated in the award document. For example, where maintenance for certain items was awarded for less than 12 months, DCC's prices were adjusted to reflect this. It is clear from the record that DCC and IBM were evaluated on a common basis and that the evaluation gave the agency an opportunity to determine how best to meet their needs.

In its comments on the agency report submitted in response to this protest, DCC argues that after submission of quotes, the Army held a meeting with IBM concerning the acquisition and that this meeting unduly influenced the agency to award to IBM and constituted improper discussions. The record shows that on October 9, 1990, after the receipt of quotes from the vendors, the contracting officer met with IBM to ascertain whether third party vendors could provide 24-hour, 7-day technical support and parts for maintaining IBM's ADP equipment. At that meeting, IBM stated that it had no agreements with other vendors to provide weekend maintenance support and that the Model 9370, included in the CBD notice, was new and most vendors did not carry repair parts for it. The agency reports that this meeting was part of its fact finding/market survey conducted by the Data Service Directorate, which was used to determine if any third party vendor had a support agreement with IBM to provide maintenance support during the period other than IBM's normal business hours. The Army also contacted references provided by the protester and another offeror concerning their performances on similar type contracts. Additionally, the Army had information concerning the current performance of this requirement by an offeror who

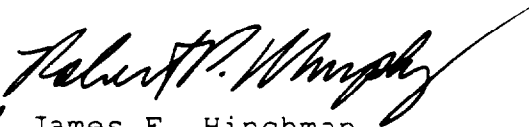
did not have a third party agreement with IBM. Under that contract, the Army was experiencing many instances of extended system downtime. The information obtained was for use by the Army procuring officials in making its determination of how their needs may best be met.

We find no evidence of the Army being unduly influenced by IBM in this procurement and do not find improper IBM's participation in the October meeting. There is no prohibition of discussions between the ordering agency and a GSA schedule contractor in the contemplation of placing an order under the contract. Information Mktg. Int'l, B-216945, June 28, 1985, 85-1 CPD ¶ 740. Moreover, the record shows that the agency's finding that IBM's quote was low was based on the information furnished in the quotes submitted more than 2 weeks prior to this meeting.

Based on our review of the evaluation documents, we conclude that notwithstanding the difference between the CBD notice and the award document, DCC and IBM were evaluated on the same basis. The record also shows that whether the offers are evaluated using the equipment as listed in the CBD notice or as listed in the award document, DCC's total price is not lower than IBM's revised 1990 schedule prices. The record shows that the price analysis was actually performed on the items listed in the award document and DCC and IBM were evaluated for the same work.

We therefore find that at the time of award, the contracting officer reasonably determined that the IBM quote represented the lowest overall cost to the government, and that a decision to place an order against the GSA schedule was reasonable.

The protest is denied.^{1/}


for James F. Hinchman
General Counsel

^{1/} The record shows that the Army's evaluation found that all offerors other than IBM could not meet the agency's needs and that the Army also justified the delivery order on the basis that the requirement was available from only one responsible source. In view of our decision that DCC was not low, we need not review this determination.