



Comptroller General
of the United States

Washington, D.C. 20548

Morrow
144(0)2

Decision

Matter of: Integrated Measurement Systems, Inc.

File: B-243037.2

Date: August 2, 1991

William C. Campbell, Esq., Ater, Wynne, Hewitt, Dodson & Skerritt, for the protester.
Robert J. Chwaliszewski, Esq., for Hewlett-Packard Company, an interested party.
Steve D. Brumley, Esq., Superconducting Super Collider Laboratory, for Universities Research Association, Inc., the prime contractor.
L. James Tillman, Department of Energy, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prime contractor acting for the government reasonably canceled brand name or equal procurement, where the contractor determined that none of the offerors' quotes would meet the government's requirements and that the specifications were ambiguous and additional requirements were necessary; agency is not required to accept specified brand name product simply because the solicitation erroneously indicated that the brand name would meet the specifications.

DECISION

Integrated Measurement Systems, Inc. (IMS) protests the failure of Universities Research Association, Inc. (URA) to make award to IMS under request for quotations (RFQ) No. SSC-91-A-8308, for a digital integrated circuit evaluation system.

We deny the protest.

URA is an operations and management contractor of the Department of Energy (DOE) responsible for operating the Superconducting Super Collider Laboratory.^{1/} The RFQ was issued on December 6, 1990, on a brand name or equal basis, for a digital integrated circuit evaluation system. The Hewlett-Packard Company (HP) 82000 D100, the HP 82000 D200, and IMS' XL100 were identified in the RFQ as brand name products. The RFQ's specifications also set forth certain minimum requirements, i.e., salient characteristics, to be met by the digital integrated circuit evaluation system, and provided that award would be made to the responsible offeror whose offer conformed to the RFQ and was the most advantageous to URA, cost/price and other factors as specified in the RFQ considered.

On December 21, URA received four quotes in response to the RFQ. HP and IMS furnished quotes on their brand name products; the former proposed the HP 82000 D100 and the latter, IMS XL100+.^{2/} The other two quoters proposed "equivalent" products. URA determined that all proposed systems, except HP's, failed to meet the RFQ's minimum requirements, and thus rejected those quotes as technically unacceptable and made award to HP.

On January 22, 1991, IMS filed a protest at URA against URA's decision to reject IMS' proposal and make award to HP. On February 12, URA denied the protest. On February 25, IMS then protested to our Office. During the course of the protest, URA determined that HP's system also did not meet all of the RFQ's minimum requirements. On March 15, URA advised this Office that HP's subcontract had been terminated and the requirement would be resolicited. Further, URA reported that after reevaluating its requirements, it needed to revise the specifications in order to clarify ambiguities and add additional minimum requirements. Consequently, on March 18, we dismissed IMS' protest as academic.

^{1/} Our Office generally does not review the award of subcontracts except, where, as in this case, a government prime contractor is acting on behalf of the government. We review the procurement to assure that it was conducted consistent with the "federal norm," i.e., fundamental principles of federal procurement as set forth in the statutes and regulations. See Beco Corp., B-219651, Nov. 26, 1985, 85-2 CPD ¶ 601.

^{2/} IMS states that the XL100+ is an improved version of the XL100.

IMS argues essentially that URA improperly evaluated its quote, since it proposed to furnish the brand name product, which it argues was technically acceptable by definition since the brand name's model number was designated in the RFQ. IMS contends that since its proposal was acceptable, the RFQ cancellation was improper. This is the issue which we decide in this decision.^{3/}

URA determined that IMS' system was technically unacceptable because it did not comply with a number of the RFQ's minimum requirements. For example, while the RFQ specifications under "pin drivers" called for at least 256 kilobits (k) at 100 Megahertz (MHz) memory per pin, the IMS proposal stated its system had a memory per pin of "64k, internal 500 [Megabyte (Mbyte)] hard disk [that] allows for reloading of pattern memory to handle large vector files." Also, the RFQ under "comparators" called for data forms of "high, low, in between, glitch," whereas the IMS' proposal stated the data forms were "high, low, in between detectable by making a dual pass, glitch . . . detectable by multiple sampling of output." Further, the RFQ specifications under "serial input" required a maximum frequency of at least 63 MHz, while the IMS proposal indicated its system's maximum frequency was 60 MHz. Finally, URA determined that IMS' quote was unacceptable because it proposed to furnish used, instead of new, equipment.

While IMS does not dispute that its system did not meet the specifications as set out above, IMS argues that these deficiencies constituted design features and that its machine would meet URA's functional requirements. URA disagrees and asserts IMS' system's deviations are material.

For example, IMS argues that by utilizing a backup memory base, the IMS system in functional capability, provides far in excess of 256k per pin of memory. However, IMS proposed only 64k per pin of memory and URA reports that the backup memory, which IMS' system employs, does not perform the same function as the real memory required. URA advises that after real memory is exhausted an interruption may occur in the test sequence while new test vectors are being loaded, which will not meet URA's requirement to test mixed analog/digital chips.

Also, URA reports that the IMS comparators' multiple pass approach to identifying glitches, besides not complying with the stated salient characteristic, may be unacceptable because of the circuits (for example, analog to digital converters), which URA must test, may not make identical passes. In addition, although IMS, in its comments, states that its

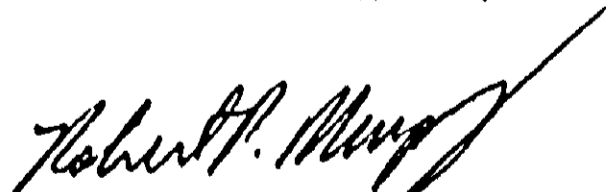
^{3/} Although IMS claims that the resolicitation will be based solely on HP's product, it does not yet protest that procurement.

system is equipped with an error margin that will allow it to operate at the required 63 MHz, IMS' quote indicated that the system only operated up to 60 MHz. Finally, while IMS contends that the RFQ permitted the use of its used equipment that was fully warranted and functionally equivalent to new equipment, the RFQ specifically required all equipment, other than circuit boards, to be new. Since IMS' system did not meet stated material RFQ requirements, IMS' quote was properly rejected.

A government prime contractor conducting a negotiated procurement by or for the government need only have a reasonable basis to cancel a solicitation. See Union Natural Gas Co., B-224607, Jan. 9, 1987, 87-1 CPD ¶ 44. While IMS argues that its quoted system was functionally equivalent to the minimum requirements specified in the RFQ and would meet URA's needs, a solicitation that specifies salient characteristics, which are not in fact features of the brand name product, is defective. See General Hydraulics Corp., B-181537, Aug. 30, 1974, 74-2 CPD ¶ 133. If the solicitation does not clearly state where requirements are beyond those of the brand name product, offerors may be misled, and the requirement must be resolicited if the competition is prejudiced or the government does not obtain its actual requirements as a result of the defect. Id.

Here, none of the quotes received by URA, including those offering the brand name products, met URA's minimum requirements. We are not aware of any law or regulation that would require an agency to accept a specified brand name product, simply because the solicitation erroneously indicated the brand name would meet the specifications. Further, URA has noted that the specifications needed to be revised because they were ambiguous in some respects and should reflect additional URA requirements. We therefore find that URA had a reasonable basis to cancel the solicitation.

The protest is denied.


James F. Hinchman
General Counsel