



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** National Customer Engineering

**File:** B-251190; B-251191; B-251192; B-251193;  
B-251194

**Date:** March 16, 1993

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Corporation, an interested party.  
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of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

In deciding whether to issue delivery orders for maintenance services for government-owned automatic data processing equipment under nonmandatory schedule contract with the General Services Administration, agency properly rejected responses submitted by protester where the agency reasonably concluded that the services offered by the protester did not meet the agency's minimum needs.

### DECISION

National Customer Engineering (NCE) protests the decision of the Department of the Navy to issue delivery orders to Computervision Corporation for maintenance of government-owned automatic data processing (ADP) equipment at five Navy shipyards,<sup>1</sup> under Computervision's nonmandatory ADP schedule contract with the General Services Administration (GSA). NCE argues that the Navy improperly rejected its lower priced responses to the Commerce Business Daily (CBD) announcements of the agency's intent to issue the delivery orders.

We deny the protests.

<sup>1</sup>NCE's protests concern maintenance services for computer hardware at Navy shipyards at: Mare Island, California; Portsmouth, New Hampshire; Philadelphia, Pennsylvania; Charleston, South Carolina; and Norfolk, Virginia.

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. (1992). The FIRMR permits an agency to place an order against nonmandatory ADP schedule contracts when certain conditions are met. One condition is that the agency synopsize in the CBD its intent to place such an order. The CBD announcement must include sufficient information to permit the agency to determine from the responses whether ordering from the GSA schedule will meet its needs at the lowest overall cost. 41 C.F.R. §§ 201-39.501-3, 201-39.803-1(b). This requires the agency to assure that available alternatives are brought to the agency's attention. See Racal-Milgo, 66 Comp. Gen. 430 (1987), 87-1 CPD ¶ 472. If the contracting officer determines that the GSA schedule offering is the lowest overall cost alternative that satisfies the government's needs, the agency may place an order against the schedule contract. 41 C.F.R. §§ 201-39.803-3(b) (2) (i) and (ii).

As required by the FIRMR, on September 21, 1992, the agency published five notices in the CBD announcing its intent to issue delivery orders against Computervision's GSA schedule contract for maintenance of certain Computervision equipment and software.<sup>2</sup> The required services were to cover the period from October 1, 1992, through September 30, 1993. Each of the five notices listed the various equipment to be maintained at each site, and invited all responsible firms to submit proposals with supporting technical and pricing information. The announcements called for documentation showing how the services offered were "equal" to those described, and specifically stated that it was the vendors' responsibility to provide sufficient technical detail to allow the Navy to evaluate the offerors' capability to meet its requirements.

In separate but virtually identical letters dated October 5, NCE expressed its interest in providing the maintenance services at each of the five locations. In each response, NCE proposed to perform the hardware maintenance services directly with personnel located at or near each of the five sites. The protester expressly made its offer subject to the terms and conditions of its GSA schedule contract, which it stated would satisfy "most of the computer maintenance requirements," while also offering to enter into a separate commercial maintenance agreement covering all "open market" items.

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<sup>2</sup>The announcements actually identified Prime Computer, Inc. as the GSA vendor. Because Prime has since changed its name to Computervision, we will refer to Computervision as the GSA schedule vendor throughout this decision.

The contracting officer evaluated the protester's responses and determined that NCE could not satisfy the Navy's requirements under the terms and conditions of its GSA schedule contract. In particular, the contracting officer found that NCE's GSA schedule contract did not meet the agency's response time and principal period of maintenance (PPM) requirements. Specifically, while the required PPM at each site was from 7:00 a.m. to 7:00 p.m. (12 hours), according to its GSA schedule contract NCE's PPM is from 8:00 a.m. to 5:00 p.m. (only 9 hours). Further, while the required response time was 2 hours at each site (except for Portsmouth, where the response time was 4 hours), NCE's response time under its schedule contract is 4 hours or more.<sup>3</sup>

The contracting officer determined that while NCE could not meet the agency's requirements under the terms of its schedule contract, NCE might be able to meet the Navy's needs through a competitive procurement. By letter dated October 21, the contracting officer informed NCE that competitive solicitations would be issued for the hardware maintenance portion of the requirement. That letter also advised NCE that while the competitive solicitations were developed, "interim" maintenance services would be procured from Computervision through delivery orders issued under that firm's GSA schedule contract.<sup>4</sup> These "interim" services were ordered from Computervision under its GSA schedule contract for a period of approximately 6 weeks, from October 1 through November 16; it is these orders which are the subject of NCE's protest.<sup>5</sup>

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<sup>3</sup>NCE's response time for Portsmouth is more than 4 hours.

<sup>4</sup>The Navy's letter also advised NCE that the software maintenance and update services would be separately acquired under Computervision's GSA schedule contract. NCE acknowledges in its protest documents that due to limited rights to restricted data, only Computervision can provide full software maintenance support, including updates and revisions on the Navy's equipment. Accordingly, NCE does not object to the issuance of delivery orders to Computervision for software maintenance services at the five locations.

<sup>5</sup>On November 6, subsequent to NCE's filing its protests, the contracting officer issued five requests for quotations (RFQ) for the hardware maintenance portion of its requirement covering the period of November 16 through December 31, 1992; a purchase order was issued to NCE for services at one site for this period. The agency then issued five RFQs for hardware maintenance covering the period of January 1 to January 31, 1993, resulting in purchase orders issued to NCE  
(continued...)

NCE contends that the agency improperly evaluated its offer with respect to response time and PPM. The protester also argues that since every item in NCE's GSA schedule contract for the required services is priced lower than the same items in Computervision's schedule, the Navy improperly issued the delivery orders to Computervision during the "interim" period before competitive solicitations were issued.<sup>6</sup>

The overall determination of the technical adequacy of a response to a CBD notice of a proposed delivery order against a schedule contract is primarily the responsibility of the procuring agency. Int'l Sys. Marketing, Inc., B-215174, Aug. 14, 1985, 85-2 CPD ¶ 166. We will not disturb the agency's technical determination unless it is unreasonable. See Compuserve; Comnet Corp., B-228286; B-228286.2, Jan. 20, 1988, 88-1 CPD ¶ 55. Here, we have no basis for objecting to the contracting officer's evaluation of NCE's responses to the CBD announcements.

The protester does not challenge the Navy's determination of its minimum needs upon which the agency based its rejection of NCE's offers (response time and PPM). Rather, NCE argues that, regarding response time, instead of using the information in NCE's GSA contract schedule, the contracting officer should have telephoned each of NCE's service centers, as he did with respect to Computervision, to more accurately calculate their geographic locations with respect to each site. Regarding PPM, the protester argues that its GSA schedule provides for extensions to PPM until 12:00 a.m. for a "20 [percent] uplift charge." According to the protester, that extension would have been available to the agency, but it "never asked."

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<sup>5</sup>(...continued)


for services at three sites. The agency subsequently issued five requests for proposals for services from February 1 through September 30, 1993, which also resulted in awards to NCE at three sites.

<sup>6</sup>In its original protest, NCE also argued that since Computervision's GSA fiscal year (FY) 1992 schedule contract had expired on October 31, 1992, the issuance of the delivery orders against a nonexistent contract was improper. The agency responded that Computervision's GSA FY 92 schedule contract was extended pending award of Computervision's FY 1993 schedule contract. In commenting on the agency's report, NCE did not take issue with the agency's response. We therefore consider NCE to have abandoned this issue. Ariay Elecs. Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3.

The protester's argument that the contracting officer should have telephoned NCE's service centers with regard to NCE's response times is without merit. NCE's schedule contract requires that the agency calculate distances (hence, response time) based upon the service centers listed in NCE's schedule, while Computervision's schedule contract provides telephone numbers for agencies to call and obtain the specific location of applicable service centers. Since NCE made its offer contingent upon the terms and conditions in its GSA schedule contract and provided no additional details regarding response time to each shipyard, the contracting officer reasonably relied on the service centers listed in NCE's schedule to determine whether NCE's response times were acceptable. To the extent that NCE argues that the agency could have requested extensions to NCE's PPM, even if such extensions were available under NCE's schedule contract, NCE was ineligible for award based on its failure to meet the agency's minimum response time requirements.<sup>7</sup>

Although NCE's offer was overall lower priced than Computervision's schedule contract prices, the contracting officer's review of the terms of NCE's GSA schedule contract revealed that those terms differed significantly from, and did not satisfy, the Navy's minimum requirements. Since NCE made award contingent upon the terms and conditions of its GSA schedule contract, and under those terms, NCE would not be able to satisfy the agency's needs, the contracting officer properly rejected NCE's offers in response to the CBD announcements. See Berkshire Computer Prods., B-241393, Feb. 11, 1991, 91-1 CPD ¶ 145.

The protests are denied.

  
for James F. Hinchman  
General Counsel

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<sup>7</sup>We note that NCE failed to provide a copy of its schedule contract showing the provision for extension of the PPM. Also, NCE made no showing that its price would remain low after application of the additional "uplift" charge associated with extending its PPM.