



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

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Decision

Matter of: Vorum Research Corporation
File: B-255393; B-255394
Date: February 28, 1994

Carl G. Saunders for the protester.
Donna M. Borgmann for Prosthetics Research Study, an interested party.
Maura C. Brown, Esq., and William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.
C. Douglas McArthur, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly required offerors to provide communications software and training compatible with its existing software and hardware is denied where the record shows that the protester proposed alternate services and software that would have required the agency to abandon previously developed software for computer-aided design and manufacture of artificial limbs.

DECISION

Vorum Research Corporation protests the terms of requests for quotation Nos. M6-Q26-93 and M6-Q27-93, issued by the Department of Veterans Affairs (VA) for training and for communications software associated with the agency's decision to extend to additional VA medical centers the use of Shapemaker software for the automated fabrication of mobility aids (AFMA). The protester essentially argues that the agency could save money if it abandoned Shapemaker software (and instead used CANFIT-PLUS, software, offered at no-cost by Vorum), and replaced its Apple computers with new IBM-compatible computer platforms to use with the CANFIT-PLUS software.

We deny the protest.

In 1985, the VA began a program to use computers to aid in the design and fabrication of artificial limbs. As part of this program, the agency funded development of a software package, known as Shapemaker, with a series of research grants awarded to Prosthetics Research Study (PRS) in Seattle, Washington. The Shapemaker software is presently

in use at five VA orthotic laboratories, and was designed for use on Apple Macintosh personal computers.

In 1993, the agency decided to expand the program to an additional 12 host sites and 23 remote client sites; as a consequence, the agency identified needs for training on the Shapemaker software and for communication software to transfer data between sites. The agency prepared justification and approvals (J&A) for the use of other than full and open competition as required by the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(f) (1988).

The J&As stated that PRS, which had developed the Shapemaker software under a VA grant, was the only known source for training on Shapemaker, and that Bio-Logics, Inc. had a copyright on the only known communications software compatible with Shapemaker.¹ The J&As were approved to authorize the acquisition of training from PRS and communications software from Bio-Logics, citing 41 U.S.C. § 253(c)(1), which allows an agency to use other than competitive procedures when the property and services needed are available from only one responsible source and no other type of property or services will satisfy the agency's needs. The J&As also cited 38 U.S.C. § 8123 (Supp. IV 1992), which provides the VA broad statutory authority to procure prosthetic appliances and "necessary services required in the fitting, supplying, and training and use of prosthetic appliances" in any such manner as the Secretary may determine proper "without regard to any other provision of law."

On August 15, the agency issued RFQ No. M6-Q26-93, for training support, and RFQ No. M6-Q27-93, to provide software compatible with Shapemaker software for "communication between [h]ost and [c]lient AFMA facilities employing Shapemaker software and Apple Macintosh Centris 650 computers." Vorum requested copies of the solicitations,

¹Vorum challenges the agency's assumption that it has a paid-up license for Shapemaker under its contracts with PRS, arguing that if the agency had a license, it would not have to pay Bio-Logic for the communications software. These arguments essentially concern the administration of an unrelated contract, which our Office does not review. 4 C.F.R. § 21.3(m)(1) (1993). In any event, the agency states that it does have a license for Shapemaker, except to the extent that the software has been upgraded beyond what its contracts with PRS require. The agency explains that with regard to the communications software, although the program was developed by a PRS employee working with Bio-Logic, this development was done independently of its contracts with PRS.

based upon the synopses appearing in the Commerce Business Daily.

Vorum submitted proposals in response to both solicitations, offering a free copy of the CANFIT-PLUS software and offering to provide training in the use of that software to meet the needs of RFQ No. M6-Q26-93. In response to RFQ No. M6-Q27-93, Vorum offered to bundle communications software with a functioning version of CANFIT-PLUS. The protester acknowledged that CANFIT-PLUS would not operate on the VA's Macintosh computers, but suggested that the agency could save money by purchasing IBM-compatible computers, for which CANFIT-PLUS was designed. The agency rejected both proposals as unacceptable, and these protests followed.²

Vorum argues that the competition was unfair, in view of the VA's subsidization of PRS's development of the Shapemaker software. However, these procurements were not for the purchase of Shapemaker software; they were for training on the software and for communications software.

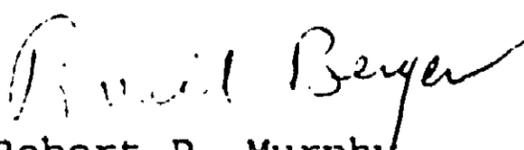
Vorum concedes that the communications software it offered in response to RFQ No. M6-Q27-93 is not compatible with Shapemaker as required by that solicitation, and that it did not offer training on Shapemaker; rather, it proposed the use of different software for which it would provide training. Likewise, the record supports the agency's determination that Vorum did not meet its needs, and the decision to reject the Vorum proposals was therefore reasonable. As a result, any possible competitive advantage of PRS is not an issue here.

Moreover, Vorum's proposed alternate approach would require the VA to replace its current system at five VA orthotic laboratories, requiring the agency to purchase new hardware and retrain its staff. The VA states that it has already purchased the Shapemaker software, and that its continued use is necessary for on-going research aimed at improving the use of AFMA in the case of above-the-knee amputations. While the protester essentially argues that it would be cheaper for the agency in the long run to purchase new hardware and to implement CANFIT-PLUS in place of

²After determining that the protester's proposals were unacceptable, the agency entered into negotiations with PRS, the only other offeror on RFQ No. M6-Q26-93, and with Bio-Logics, the only other offeror under RFQ No. M6-Q27-93. PRS lowered its price during negotiations based upon slightly modified requirements, but PRS's initial price was lower than the protester's offer under RFQ No. M6-Q26-93. Award was made to Bio-Logic at a price higher than the protester's proposed price under RFQ No. M6-Q27-93.

Shapemaker, the VA has primary responsibility for determining its minimum needs since it best understands the conditions under which solicited supplies and services will be used. Berkshire Computer Prods., B-246305, Feb. 28, 1992, 92-1 CPD ¶ 242. A protester can not insist that an agency abandon its well-established approach to satisfying its needs simply to allow the protester to sell to the government. See generally Dynalec Corp., B-248142, Aug. 3, 1992, 92-2 CPD ¶ 68 (protester's alternate products for replacement parts for ships were unworkable given the pre-existing stud configuration on the ships, and agency was not required to remodel the ships to accommodate the alternate product.)

The protest is denied.

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Acting General Counsel