



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

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## Decision

Matter of: MLC Federal, Inc.

File: B-254696

Date: January 10, 1994

Michael E. Geltner, Esq., for the protester.  
Ronald E. Cone and Richard Leotta, Department of Energy, for the agency.  
Glenn G. Wolcott, Esq., and Daniel I. Gordon, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where agency learns after award that a material solicitation requirement was susceptible of more than one reasonable interpretation and that the awardee's interpretation of the requirement was different from the agency's, the agency properly determined to terminate the awardee's contract, clarify the solicitation, and recompet the requirement.

**DECISION** In or before the July 6 closing date, EG&G submitted proposals for a management and operating (M&O) contractor for the Department of Energy's (DOE) Idaho National Engineering Laboratory (INEL), to terminate a contract awarded to MLC under request for proposals (RFP) No. C93-13391 and resolicit the requirement.<sup>1</sup> The RFP sought proposals to upgrade INEL's business computing system. MLC maintains

<sup>1</sup>EG&G is subject to our bid protest jurisdiction as an M&O contractor that effectively awards subcontracts "by or for" the government, United Tel. Co. of the Northwest, B-246977, Apr. 20, 1992, 92-1 CPD ¶ 374, and because DOE's regulations specifically provide for our Office to consider protests involving acquisitions by M&O contractors. Department of Energy Acquisition Regulation. 48 C.F.R. § 970.7101 (1992). Such contractors are not directly bound by federal procurement law, but must conduct procurements according to the terms of their contracts with the agency and their own agency-approved procedures. We will review such a procurement to determine whether it conforms to the policy objectives in the federal statutes and regulations. Chesapeake Laser Sys., Inc., B-242350, Apr. 8, 1991, 91-1 CPD ¶ 358.

that EG&G erroneously concluded that the solicitation contained an ambiguity and improperly terminated its contract.

We deny the protest.

# BACKGROUND

On June 6, 1993, EG&G issued request for proposals (RFP) No. C93-133911 to upgrade INEL's business computing system; the specifications were stated on a "make-and-model or equal" basis, and identified an IBM computer, model No. 9121-742, as the basis for considering equivalent models.<sup>2</sup> Under the heading "Salient Features," the RFP stated:

"2.1.2.1 System Architecture (MR). The system architecture shall be of the vendor's latest product line and the system shall be in current production at the date of proposal.

"2.1.2.6 System 390 (MR). The central processing system shall be capable of operating in system 390 mode."

On or before the July 6 closing date, EG&G received proposals from four offerors, including MLC. MLC's proposal offered to provide equipment manufactured by Amdahl Corporation, identified as model No. 5995-1400A. The proposals were subsequently evaluated and MLC was selected for contract award on August 4.

On August 18, two unsuccessful offerors filed protests with the contracting officer, asserting that MLC's proposal failed to comply with the RFP requirement that the proposed system be of the offeror's "latest product line." The protesters complained that Amdahl's "1400A" series equipment proposed by MLC had been introduced in 1990 and was "at least two generations" behind Amdahl's latest "M70" series product line, which had been introduced in February 1993. The protesters maintained that if they had known that EG&G would accept the "old technology" proposed by MLC, they could have prepared proposals offering similar equipment at substantially lower prices.

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<sup>2</sup>The RFP also specified certain peripheral equipment that the agency intended to acquire.

On August 19, EG&G sent the protest letters to MLC seeking its response to the issues raised. On August 23, the contracting officer conducted a telephone conference call with representatives of MLC and Amdahl to review the protests and MLC's response. During this conversation, the contracting officer learned that MLC had interpreted the RFP requirement that "the system architecture shall be of the vendor's latest product line" as not requiring that the hardware technology be that of the vendor's latest product line.<sup>3</sup> MLC elaborated that it interpreted the requirement at RFP Section 2.1.2.1 to require that the proposed system be capable of operating in the "system 390 mode."

MLC's interpretation of RFP Section 2.1.2.1 differed substantially from the contracting officer's interpretation of that section. Specifically, the contracting officer explained that she intended for this provision to require that the hardware proposed must be of the vendor's "latest computer hardware architecture," which she defined as "how the relationships of different components of the system relate to each other," and that she understood this requirement to extend to the processor technology of the systems that were proposed. According to the contracting officer, the intent of the requirement was to ensure that EG&G acquires "current state of the art hardware so that the system could support new hardware and software for the next 4 to 5 years."

Based on the protests and MLC's response, the contracting officer concluded that the solicitation contained a latent ambiguity which she was unaware of prior to award, and which led offerors to submit proposals on the basis of differing understandings of the solicitation requirements. Accordingly, by letter dated August 27, the contracting officer notified MLC that its contract was being terminated

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<sup>3</sup>MLC subsequently submitted the following definition of "system architecture" as the basis for its interpretation.

"The architecture of a system defines its attributes as seen by the programmer, that is, the conceptual structure and functional behavior of the machine, as distinct from the organization of the data flow, the logical design, the physical design, and the performance of any particular implementation. Several dissimilar machine implementations may conform to a single architecture. When the execution of a set of programs on different machine implementation produces the results that are defined by a single architecture, the implementations are considered to be compatible for those programs."

for the convenience of the government and that EG&G would clarify the solicitation and resolicit the requirement. On August 30, MLC filed this protest with our Office.

#### DISCUSSION

We generally will not object to a procuring agency's corrective action which places all offerors in the same competitive posture they enjoyed prior to the defect in the source selection process. D&M Gen. Contracting, Inc., B-252282.4, Aug. 19, 1993, 93-2 CPD ¶ 104; Henkels & McCoy, Inc., B-250875 et al., Feb. 24, 1993, 93-1 CPD ¶ 174. This is so because contracting officials have broad discretion to determine the corrective action necessary to ensure a fair and equal competition. Id.

MLC protests that the solicitation did not require that the technology in the proposed equipment be that of the vendor's latest product line. Further, MLC maintains that there was no ambiguity in the solicitation and, therefore, the agency's decision to terminate its contract and resolicit the requirement is improper.

MLC does not contest the fact that the processor technology in the Amdahl "1400A" processors it proposed (which were introduced in September 1990) is different from the processor technology in the Amdahl "70M" processors (which were introduced in February 1993). Rather, MLC argues that "[t]he RFP did not require, in Section 2.1.2.1 or any other section, that the proposed processor be the latest technology." MLC asserts that the Section 2.1.2.1 requirement that the system architecture of the equipment proposed be of the vendor's latest product line referred only to "the conceptual structure and functional behavior of the machine, as distinct from the . . . physical design." MLC further maintains that any other interpretation of this RFP section is unreasonable.

In contrast to MLC's interpretation of RFP Section 2.1.2.1, the contracting officer interpreted this section as requiring that the processor technology of the proposed system be the technology employed in the vendor's latest product line. As discussed above, this requirement was intended to ensure that the acquired system would be state of the art hardware that could support new hardware and software for several years. The contracting officer states that she first became aware of MLC's differing interpretation of the RFP after discussing the agency-level protests with MLC.


On the record here, we agree that an ambiguity existed in the solicitation specifications, since it is clear that the contracting officer and MLC interpreted the RFP requirements

differently. A solicitation contains an ambiguity where two or more reasonable interpretations of a specification are possible. Reflect-A-Life, Inc., B-232108.2, Sept. 29, 1989, 89-2 CPD ¶ 295; Wheeler Bros., Inc.; Defense Logistics Agency--Recon., B-214081.3, Apr. 4, 1985, 85-1 CPD ¶ 388. While MLC's interpretation of the RFP's system architecture requirement may have been reasonable, we do not find it unreasonable for the contracting officer to have interpreted that requirement as encompassing the hardware technology of the proposed processor in light of the agency's obvious need to ensure that the system acquired would support new hardware and software for several years. Accordingly, we do not find either MLC's or the agency's interpretation of Section 2.1.2.1 to be unreasonable.

Termination of a contract and resolicitation is proper when, subsequent to award, the contracting agency discovers that the solicitation did not properly describe the government's needs or that the solicitation contains ambiguous specifications which misled competitors and deprived the government of the full benefits of equal competition. Flow Tech., Inc., 67 Comp. Gen. 161 (1987), 87-2 CPD ¶ 633; FirstPage of Va., B-243747, Aug. 2, 1991, 91-2 CPD ¶ 121. Where a solicitation has a latent ambiguity that misleads one or more offerors, the appropriate remedy is cancellation and resolicitation. Bade Roofing & Sheet Metal Co., B-243496, June 25, 1991, 91-1 CPD ¶ 606.

Here, the agency learned after award that the RFP requirement regarding system architecture was ambiguous and that at least one offeror interpreted that requirement differently from the agency; thus, it appears offerors were not competing on an equal basis in that regard. Under these circumstances, the agency acted properly in deciding to terminate MLC's contract, clarify the solicitation, and recompute the requirement.

The protest is denied.

  
 for  
 Robert P. Murphy  
 Acting General Counsel

MLC's assertion that RFP Section 2.1.2.1 only required the proposed systems to be capable of operating in the system 390 mode is unpersuasive since, as noted above, RFP Section 2.1.2.6 contained that precise requirement; that interpretation of Section 2.1.2.1 would render Section 2.1.2.6 superfluous.