



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Western Data Entry Systems, Inc.

File: B-255796

Date: April 5, 1994

Andrew Mohr, Esq., Cohen & White, for the protester.
Percival D. Park, Esq., Department of the Army, for the agency.
Behn Miller, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest contending that awardee failed to offer required manufacturer's warranty for used components and subcomponents is denied where agency reasonably interpreted the solicitation's use of the term "manufacturer" in a nonrestrictive manner to include--in addition to the original equipment manufacturer--those vendors which would substantially revise used components and subcomponents to comply with the technical specifications in the solicitation.

DECISION

Western Data Entry Systems, Inc. protests the award of a contract to Level 6 Systems, Inc., under request for proposals No. DAHC94-93-R-0008, issued by the Department of the Army for various computer component items. Western Data contends that the awardee does not comply with the solicitation's used component and used subcomponent warranty provision.

We deny the protest.

The RFP was issued on April 27, 1993, and contemplated the award of an indefinite quantity, fixed-price contract for a base year and up to four 1-year option periods. The purpose of this procurement is to replace aging Sperry System 5000 computer components on an as-needed basis. Because only certain brands of software and hardware are compatible with the existing systems, this procurement was

conducted as a limited competition. See 10 U.S.C. § 2304(c)(1) (1993).

As initially issued, the RFP contemplated an all-or-none award for a combination of software and hardware components; however, after determining that most of the software could only be provided by one vendor--Unisys Corporation²--the agency restructured the solicitation into two award groups. Award Group I required offerors to propose a variety of hardware components with various levels of specified revisions or mechanical changes; Award Group II was limited to Unisys software items. Although Award Group I limited offerors to the exact brand and model numbers specified in the solicitation, the RFP permitted offerors to propose used components and used subcomponents, so long as these items were "warranted by the manufacturer as being equivalent to new in performance, certified for maintenance by the manufacturer, and free of cosmetic defects." Of significance to this protest, the RFP required offerors to provide "documentation of prior arrangements or definite commitments with the components['] manufacturers/suppliers to meet the requirements herein." With respect to contract award, the solicitation provided that award would be made to the lowest-priced, technically acceptable offeror for each award group.

By the July 7 closing date, four offers were received for Award Group I; as expected, only Unisys submitted a proposal for Award Group II. On July 22, the Army issued clarification and deficiency questions to three of the Award Group I offerors including the awardee and the protester; on July 26 and 27, oral discussions were conducted with each of these three offerors.³ On August 24, the agency issued a request for best and final offers (BAFO) to the Award Group I offerors. On September 3, after completing an extensive pre-award survey of both Level 6 Systems and its proposed subcontractor--National Computer Dynamics (NCD)--the agency awarded the contract for Award Group I to Level 6 Systems as the lowest-priced, technically acceptable offeror.

¹The General Services Administration delegated procurement authority to the Army to acquire these items on May 4, 1993, as required by 40 U.S.C. § 759 (1988).

²Unisys owns exclusive rights in the Sperry software here because in 1986, the Sperry Corporation merged with the Burroughs Corporation to form Unisys Corporation.

³The fourth offeror for this group was excluded from further consideration since it failed to submit a technical proposal.

On September 22, the agency conducted a debriefing with the protester, and on September 30, Western Data filed this protest with our Office.

PROTESTER'S CONTENTIONS

Western Data contends that the awardee does not comply with the solicitation's manufacturer warranty requirement. As noted above, firms proposing used components, or components comprised of used subcomponents, were required to provide parts that were "warranted by the manufacturer as being equivalent to new in performance," and "certified for maintenance by the manufacturer." According to Western Data, Level 6 Systems does not comply with the RFP's warranty requirement since it did not provide a warranty for these items from Arix Corporation--the firm that is now the original equipment manufacturer (OEM) for most of the required components and subcomponents specified in Award Group I.⁴

The Army responds that the manufacturer's warranty here can be provided by firms other than the OEM, and can encompass firms which will refurbish the components and subcomponents and provide their own warranty for the revised items.

DISCUSSION

Western Data's challenge to the agency's award to Level 6 Systems focuses on the awardee's reliance on NCD as the source of used subcomponents, and on NCD's ability to provide a manufacturer's warranty for the components it provides.

NCD obtains used subcomponent parts--originally manufactured by Sperry, Unisys, or Arix--and performs the necessary repairs and engineering changes to convert the used item into a revised subcomponent so that the resulting part is equivalent to new. Upon completion of this process, NCD provides a warranty to the buyer under which it will correct any problems or deficiencies with the subcomponents or components.

The record also shows that NCD is an authorized Unisys equipment certification center, and a certified dealer of Unisys products. Before NCD releases a subcomponent or component on which it has worked, Unisys performs a final certification and inspection test of the item on NCD's premises. Upon successful completion of this procedure,

⁴Arix, not Unisys (Sperry), is the OEM for most of this equipment since Unisys has sold to Arix the exclusive rights to manufacture these items.

Unisys places a seal on the part certifying that the item is eligible for independent Unisys maintenance.

The protester concedes that NCD, based on its arrangement with Unisys, satisfies the RFP requirement for a certification for maintenance by the manufacturer. With regard to the warranty requirement--specifically, the requirement that used parts be "warranted by the manufacturer as being equivalent to new in performance"--the protester argues that NCD's offer to provide the warranty itself does not satisfy the RFP requirement because NCD is not a manufacturer. According to the protester, the solicitation requires that the warranty be provided only by the OEM. Thus, the issue is whether the RFP's warranty requirement had to be met by the OEM, or whether another entity can provide a "manufacturer's" warranty within the meaning of this RFP.

Where a dispute exists as to the actual meaning of a solicitation requirement, we will resolve the matter by reading the solicitation as a whole and in a manner which gives effect to all of its provisions; we will not read a provision restrictively where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. Aero Realty Co., B-250985, Mar. 2, 1993, 93-1 CPD ¶ 191; MAR, Inc., B-242465, May 6, 1991, 91-1 CPD ¶ 437.

In this case, none of the solicitation clauses which discuss the required manufacturer warranty for used equipment parts specify obtaining this warranty from an OEM; instead, these provisions--paragraphs C.3.1.6.1 and C.3.1.6.2--merely require the warranty to be obtained from a "manufacturer."⁵

⁵In analogous situations we have interpreted this term broadly. The Buy American Act, 41 U.S.C. §§ 10a-10d (1988), and its implementing regulations, provide a preference for domestic items in government procurement by requiring the application of a percentage factor to the price of a foreign end product; to determine whether an item is domestic or foreign, the Act focuses on whether manufacturing takes place in the United States. See General Kinetics, Inc.; Cryptek Div., 70 Comp. Gen. 473 (1991), 91-1 CPD ¶ 445. In Buy American Act cases, we have defined "manufacture" as completion of the article in the form required for use by the government, as opposed to creating an article from raw materials. See A & D Machinery Co., B-242546; B-242547, May 16, 1991, 91-1 CPD ¶ 473. Likewise, the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1988), and the implementing Federal Acquisition Regulation (FAR) provision at § 22.606-1(d), permit assembly operations--such as the refurbishing

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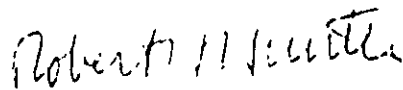
In addition, paragraph C.3.3 of the RFP--which requires a minimum 90-day warranty--suggests that the agency intended a broader interpretation than urged by the protester. This provision states that "[w]hen the original equipment manufacturer (OEM) or part supplier provides a longer warranty, the extended warranty shall also transfer to the Government." [Emphasis added.] By means of amendment No. 0002, the agency further clarified the intent of this paragraph by specifying that "[t]he vendor is to provide its normal commercial warranty practice for servicing failed or malfunctioning components during the warranty period." [Emphasis added.]

Finally, in the instructions to offerors section of the RFP, section L, the agency again uses language that does not suggest a narrow reading of this clause. Specifically, paragraph L.20 states that "[t]he contractor shall include documentation of prior arrangements or definite commitments with the component manufacturers/suppliers to meet the requirements herein."

In sum, we see no basis in the solicitation for restrictively interpreting the term "manufacturer" as referring only to a component or subcomponent's OEM.

Given our conclusion that the RFP does not require that the warranty be provided only by the OEM, the next issue is whether NCD properly may be considered a manufacturer within the meaning of the warranty clause. The record shows that the used components or subcomponent items called for here must be substantially altered in form and technical capacity to render them compliant with the technical specifications, identified in the RFP as "Revision Level" modifications. Given the extent of changes a provider of used parts like NCD makes to the components and subcomponents, we think the agency reasonably concluded that NCD could be considered a manufacturer for purposes of complying with the used equipment warranty clause here. Consequently, we see no basis to object to the award to Level 6 Systems.

The protest is denied.


 Robert P. Murphy
 Acting General Counsel

⁵(...continued)
 performed by NCD--to be considered manufacturing. See Morey Machinery, Inc., B-233793, Apr. 18, 1988, 88-1 CPD ¶ 383.