



Comptroller General
of the United States

4433100

Washington, D.C. 20548

Decision

Matter of: Netrix Corporation

File: B-258146

Date: November 16, 1994

Pat Deeley for the protester.
Nilza F. Velazquez, Esq., Department of Transportation, for the agency.
Katherine I. Riback, Esq., and Paul E. Jordan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly determined not to consider protester's non-compliant offer submitted in response to Commerce Business Daily synopsis setting forth the agency's intent to place an order under another firm's non-mandatory schedule contract.

DECISION

Netrix Corporation protests the decision of the Department of Transportation, Coast Guard, to issue a delivery order to Telematics International for packet assembler/disassemblers (PAD) under Telematics's non-mandatory automatic data processing (ADP) equipment schedule contract with the General Services Administration (GSA). This ADP apparatus will be used by the Coast Guard to connect equipment at remote sites that make up the Coast Guard's Differential Global Positioning Systems with two central control stations. Netrix argues that by placing an order against Telematics's GSA schedule contract, the agency failed to obtain "full and open competition" for the requirement.

We deny the protest.

The use of GSA's non-mandatory schedule to acquire ADP resources is governed by the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. § 201 et. seq. (1993). The FIRMR permits an agency to place an order against non-mandatory ADP schedule contracts when certain conditions are met. One condition is that the agency synopsise, in the Commerce Business Daily (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).

Here, as required by the FIRMR, on July 1, 1994, the agency published the notice in the CBD announcing its intent to issue a delivery order against the Telematics GSA schedule contract for PADs. The synopsis specified FOB Destination and required delivery 30 days after receipt of the order. The CBD notice listed the equipment by Telematics model number and provided:

"Comparable configurations will be considered only if clear and convincing documentation including technical and pricing information is furnished within 15 days of this synopsis and the proposed equipment meets the Government's requirements and it is advantageous for the Government to consider other such configurations."

The agency received three responses to the CBD synopsis, including that of Netrix. In a letter dated July 6, Netrix submitted specification sheets for the Netrix Series 100 and the Netrix BRX, and claimed that both products met or exceeded the capabilities of the Telematics equipment which the agency intended to purchase under the GSA schedule contract.

The contracting officer evaluated the protester's responses and determined that Netrix could not satisfy the Coast Guard's requirements under the terms and conditions of its GSA schedule contract. In particular, the contracting officer found that Netrix's response did not offer to meet the delivery requirement detailed in the CBD synopsis. The contracting officer also concluded that Netrix failed to provide clear and convincing pricing information as specified in the CBD synopsis. Because Netrix failed to include a sample cost configuration, the agency calculated Netrix's prices by using a price list provided by Netrix under a different GSA schedule. From its calculations, the agency concluded that Netrix's prices were higher than Telematics's schedule contract prices.

On July 22, the agency placed an order under Telematics's schedule contract and then notified Netrix that their equipment did not provide the lowest overall cost to the government. Unaware that the agency had already placed the order, by letter of August 2, Netrix submitted a sample cost configuration for the Netrix Series 100 and offered a 45-percent discount from the previously offered prices.¹

The contracting officer evaluated Netrix's second response and concluded that while Netrix's sample cost configuration was lower than the Telematics GSA schedule price, the sample configuration proposed by Netrix did not meet the agency's technical requirements. Specifically, the agency required one synchronous port and eight asynchronous ports. The sample cost configuration proposed by Netrix included the cost of a base unit (table top) and the cost of an 8-port interface package. This configuration did not provide the agency with the required number of ports. When the price of either of Netrix's available additional port interface packages was added in, Netrix's price substantially exceeded Telematics GSA schedule price. The agency concluded that Netrix's proposed sample configuration did not meet the government's stated requirements. Netrix then filed this protest.

Netrix contends that, by placing an order against the Telematics GSA schedule contract, the agency failed to obtain "full and open competition" for the requirement. According to Netrix, the agency should have sent the performance specifications in the form of a solicitation, to each party that responded to the CBD notice. We disagree.

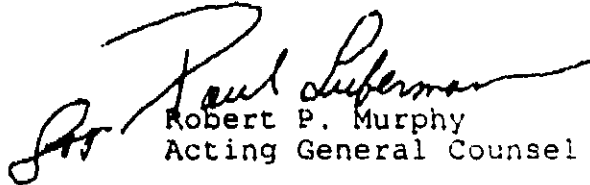
The agency was not conducting a competitive procurement; it was testing the PAD market to determine whether the propriety of placing an order under an existing non-mandatory schedule contract in accordance with 41 C.F.R. § 201-39.803-1. By its terms, the synopsis was not a solicitation intended to lead to a contract award; rather, it was a FIRMR-prescribed market testing procedure intended to provide a basis to determine whether technically compliant PADs could be supplied by nonschedule vendors, such as Netrix, at an overall lower cost than the system available from Telematics under its GSA schedule. AGEMA Infrared Sys., B-247976, July 15, 1992, 92-2 CPD ¶ 27. The

¹Netrix's August 2 letter mentioned a 40-percent discount, but its sample cost configuration used a 45-percent discount. The agency calculated Netrix's prices using the 45-percent discount.

agency was required to conduct a formal competitive procurement only if it determined, as a result of the market test, that nonschedule vendors could supply items which met the government's stated needs at competitive prices. Id.

Here, Netrix's response to the CBD synopsis did not provide the lowest overall cost to the government and failed to address the stated delivery requirements. Accordingly, there is no basis to object either to the agency's rejection of the protester's submission or to the agency's placing an order under the Telematics schedule contract. National Customer Eng'g, B-251190; et al., Mar. 16, 1993, 93-1 CPD ¶ 237; TriCom, Inc., B-220590, Jan. 15, 1986, 86-1 CPD ¶ 47.²

The protest is denied.


 Robert P. Murphy
 Acting General Counsel

²While it does not appear that the agency was even required to consider Netrix's second (and untimely) response, Netrix's lower price thereunder is not relevant since the response did not meet agency minimum needs. Berkshire Computer Prods., B-241393, Feb. 11, 1991, 91-1 CPD ¶ 145. The protester does not challenge the agency's determination of its minimum needs; nor does Netrix challenge the agency's determination that Netrix's proposed configuration failed to meet those needs.