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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Decade Computer Services, Inc.

**File:** B-261405

**Date:** September 21, 1995

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Anthony N. Reed for the protester.

Riggs L. Wilks, Jr., Esq., and Thomas J. Duffy, Esq., Department of the Army, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest that agency improperly ordered requirements from General Services Administration (GSA) mandatory-for-consideration contract is denied where record shows that purchasing agency had a legitimate basis for its decision that obtaining the required services under the GSA contract was in the best interest of the government.

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## **DECISION**

Decade Computer Services, Inc. protests the actions of the United States Property and Fiscal Officer for Arizona (USPFO) in connection with its acquisition of computer hardware maintenance services for four Sperry computers. Specifically, Decade protests actions involving the issuance and cancellation of request for quotations (RFQ) No. DAHA02-95-Q-0018 and subsequent acquisition of the services under a preexisting General Services Administration (GSA) contract; Decade maintains that the agency should have obtained the services using full and open competitive procedures rather than using the GSA contract.

We deny the protest.

The RFQ was issued on April 5, 1995, under the small purchase procedures of part 13 of the Federal Acquisition Regulation (FAR) and called for fixed-price quotes to perform hardware maintenance on four Sperry series 5000 computers and peripheral equipment for a 1-year base period and a 1-year option. In response to the solicitation, the USPFO received two quotes, both of which exceeded the \$25,000 ceiling for using small purchase procedures. See FAR § 13.101.

After issuance of the RFQ, but before receipt of the quotes, the agency became aware of the availability of a General Services Administration (GSA) contract known as the world-wide mini/microcomputer support program (the W2M2S contract). Under the W2M2S contract, GSA makes available to the USPFO various computer hardware and software maintenance services, including those required here.<sup>1</sup> The USPFO sought and obtained pricing information from GSA by sending a copy of the RFQ to GSA and having that agency submit prices for the particular equipment to be serviced. GSA responded to the USPFO's request by submitting a completed copy of the RFQ including prices for not only hardware but also software maintenance services.

Based on the two quotations received and the pricing obtained from GSA, the USPFO decided that it was in the government's best interest to obtain the required services using the W2M2S contract. The USPFO therefore canceled the RFQ, terminated the existing software contract for the convenience of the government and ordered its requirements under the W2M2S contract.

Decade maintains that the agency acted improperly by obtaining its requirements under the W2M2S contract. Specifically, Decade argues that the USPFO was required to conduct a procurement using full and open competition rather than fulfill its needs under a preexisting GSA contract.

The W2M2S contract is a mandatory-for-consideration automatic data processing equipment (ADP) contract awarded by GSA pursuant to its exclusive authority under the Brooks Act, 40 U.S.C. § 759 (1988), to conduct ADP acquisitions on behalf of the federal government. In conducting Brooks Act acquisitions, GSA generally is obligated to acquire goods or services using the competitive procedures outlined in the FAR and the Federal Information Resources Management Regulation (FIRMR). See FIRMR § 201-3.102. Because GSA generally uses competitive procedures to make awards for its mandatory-for-consideration program contracts, user agencies are authorized to order from those contracts without again employing full and open competitive procedures, provided they determine that their requirements can be met through the contracts available, and that acquiring goods or services under these contracts is in the best interest of the government. FIRMR §§ 201-20.203-1(a)(3)

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<sup>1</sup>Under the W2M2S contract, GSA receives funding from the requiring activity through the use of a military inter-departmental purchase request and deposits the funds into an account established for the purchasing agency. GSA then provides the required services through contracts previously awarded and bills the activity's account on a monthly basis.

and 201-24.001(b).<sup>2</sup> In this latter regard, the regulation does not limit agencies to consideration of relative cost or any other particular factors in determining whether ordering under a mandatory-for-consideration contract is in the best interest of the government.

The USPFO found that the requirements, as defined by the terms of the RFQ, could be met by the services available under the W2M2S contract, and that using this contract would result in a net overall savings when compared to the earlier approach of having two separate contracts for hardware and software maintenance. The monthly cost of using the W2M2S contract is \$4,246, whereas the monthly cost of the software contract plus the lowest monthly quote received under the RFQ was \$4,418.

The USPFO also considered the potential savings that would arise from the elimination of the other two contracts, finding that it would save approximately \$500 in contract administration costs. Finally, the USPFO considered the potential impact of having to conduct a new procurement using full and open competition after cancellation of the RFQ, concluding that new procurement could not be completed before a lapse in maintenance under the existing contract (which had only another 1.7 months before final expiration) would occur, and that a lapse in maintenance, in addition to disrupting operations, could potentially require payment of a fee to have the equipment recertified as fully operational by the new contractor.

Decade maintains that, even if the agency's actions were otherwise permissible, its best interest determination was nonetheless flawed because of a faulty cost comparison; the protester takes issue with numerous aspects of the agency's cost comparison. We have reviewed all of Decade's contentions in this respect and find them without merit. For example, Decade contends that the USPFO's cost analysis was flawed because it was based on GSA's prices which included maintenance on certain components that would not be performed because the order was not placed until 2 months after the period of time contemplated for performance under the RFQ. We fail to understand why this would have adversely affected the USPFO's cost analysis since, if these costs are factored out of GSA's pricing, those prices become still more favorable. Decade's other contentions relating to the agency's cost comparison similarly fail to undermine the USPFO's essential conclusion that the cost of using the W2M2S contract was less than the cost of using the other two contracts.

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<sup>2</sup>In fact, the FIRMR requires agencies to use GSA's mandatory-for-consideration contracts where these conditions are present. FIRMR § 201-24.001(b).

Decade also contends that the services under the W2M2S contract differ materially from those solicited under the RFQ. According to the protester, either all requirements--as outlined in the RFQ--are not being met under the W2M2S contract, or the W2M2S contract was impermissibly modified beyond its scope so that the USPFO's requirements could be met. Decade therefore concludes that the W2M2S contract--and the pricing submitted by GSA--did not provide for an accurate comparison of the relative costs of acquiring the services under the W2M2S contract versus the other two contracts.

We are not persuaded by Decade's argument in this respect for two reasons. First, as already noted, the agency is not precluded from considering matters beyond the cost of the services to be obtained in deciding whether using the W2M2S contract is in the best interest of the government; here, the agency considered, among other things, the potential disruption to operations, the cost of having its maintenance services lapse, and the administrative savings and convenience associated with not having two separate contracts to oversee. Thus, even if Decade were correct regarding the nature of the comparison, this would not necessarily provide a basis for objecting to the USPFO's determination.

Second, Decade's position is simply incorrect. Decade relies on a document entitled "The W2M2S Ordering Guide" (an informational publication that does not contain all of the terms of the actual W2M2S contract) to support its position that the terms of that contract differ materially from the terms of the RFQ. We have reviewed the entire W2M2S contract, as well as GSA's pricing information and related materials, and conclude that the terms of the RFQ could be--and are being--satisfied by the services available under the W2M2S contract. For example, Decade maintains that the response time<sup>3</sup> of 4 hours called for under the RFQ cannot be met by the terms of the W2M2S contract. Our review of the W2M2S contract shows that, in fact, an array of response time options from 2 hours to 60 hours are available. There thus was no need either for the USPFO to relax its requirement or for GSA to modify the W2M2S contract in order to meet the 4 hour response time. We have reviewed Decade's additional contentions concerning other aspects of the W2M2S contract and find that its arguments are similarly misplaced. We note as

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<sup>3</sup>Response time is the amount of time allowed between when the ordering activity makes a request for service and the contractor's personnel arrive at the installation.

well that, in formulating pricing for the USPFO, GSA used the actual RFQ and agreed to all of the terms of that solicitation. The record therefore shows that the USPFO will obtain its requirements as outlined in the RFQ by using the W2M2S contract.

In light of the above, the USPFO's actions here,<sup>4</sup> including the decision to use the W2M2S contract rather than conduct a new acquisition using full and open competitive procedures, are unobjectionable.

The protest is denied.

/s/ Ronald Berger  
for Robert P. Murphy  
General Counsel

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<sup>4</sup>Decade also contends that the USPFO's decision to proceed under the W2M2S contract was improper because it was a consequence of the USPFO's lack of adequate advance planning. According to the protester, the agency erred in concluding that it could fulfill its requirement using small purchase procedures because it either knew or should have known that maintenance for the agency's suite of hardware could not be performed for less than \$25,000. In support of this contention, Decade states that during the preceding year, the agency added certain equipment to its hardware configurations, and the USPFO should have known that the cost of maintaining this added equipment, along with its other equipment, would exceed the small purchase threshold. We dismiss this aspect of Decade's protest as untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1995), require that protests concerning alleged solicitation improprieties be filed no later than the deadline for submission of bids or offers. The RFQ at all times included the additional equipment, and Decade knew or should have known no later than when it completed preparation of its quote that the cost of the requirement would exceed the \$25,000 ceiling for small purchases. Decade was therefore required to raise this protest allegation no later than the deadline for submitting quotes.