

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

50894  
97572

FILE: B-183532

DATE: August 8, 1975

MATTER OF: Information Consultants, Incorporated

**DIGEST:**

Proposal to supply computer timesharing services initially considered within competitive range was properly determined technically unacceptable and no longer within competitive range where it failed required benchmark/live test demonstration used to show that computer system would meet performance specifications as determination whether proposal is technically acceptable is matter of administrative discretion which will not be disturbed where, as here, there is not clear showing of abuse. Moreover, possible lower cost of proposal will not be controlling where unacceptable technical proposal involved.

On August 15, 1974, request for proposals (RFP) No. 5-35008 was issued by the United States Department of Commerce for the procurement of computer timesharing services to be used by the Social and Economic Services Administration (SESA). The closing date for submission of proposals was set for September 16, 1974. The procurement was reopened and the RFP amended on November 1, 1974, to provide for two changes in the specifications, and the closing date was extended to November 29, 1974, at which time three proposals were received. On January 23, 1975, a letter was issued reducing the number of terminals required and requesting that the best and final offers be submitted no later than January 31, 1975.

The RFP as amended required that a benchmark run (live test demonstration) be made on each offeror's system. Rehab Computer was scheduled for a benchmark, but withdrew its proposal and a benchmark was not conducted. The remaining two firms, First Data Corporation, and Information Consultants, Inc. (ICI), the protester here, were scheduled and had benchmarks conducted on their systems. On December 18, 1974, First Data Corporation was benchmarked successfully and was found to be in compliance with the RFP. The benchmark for ICI was scheduled and conducted on February 3, 1975. The report of the SESA technical committee dated February 24, 1975, recommended award to First Data Corporation and stated that ICI's deficiencies in meeting the requirement of the RFP, precluded its

further consideration for award. These deficiencies, six in all, were discussed with ICI at a debriefing held at the Department of Commerce on March 27, 1975. Meanwhile award was made to First Data Corporation on March 21, 1975.

Briefly stated, it is ICI's position that its proposal was technically adequate, notwithstanding the SESA's report to the contrary, and that consideration was not given to ICI for its offered discounts which may have provided a cost savings to the Government. Further, ICI contends that the benchmark was heavily weighted to favor the First Data Corporation system to the detriment of ICI.

The SESA's Technical Review Committee found that ICI failed the required benchmark run for the following reasons; (1) In spite of the specific requests and information provided in the letter for best and final offers requiring 18 ports of various mixes, ICI was only able to provide 16 ports. (In the request for best and final offers of January 23, 1975, the three offerors were notified that the number of required ports was reduced from 27 to 18, and ICI's originally scheduled benchmark on December 17, 1974, was delayed until February 3, 1975, because on the scheduled date ICI had only 12 ports available and said they would be able to comply by February 1, 1975); (2) None of the ports provided was at the specified 134.5 baud rate. (Because of this the committee states that it could not test those programs which generate reports on the wide carriage 2741's as required in section 4.2 of the RFP); (3) The disk storage offered by ICI did not comply with section 2.1.1 of the RFP, since the character capacity available for removable access storage was insufficient to meet the specification requirements; (4) ICI was unable to meet the "6 seconds" maximum response time required by section 4.3 of the RFP; (5) The 7 track tape capability stated in section 2.4.2 of the RFP was not available; and (6) The continuous mode tape cassette transmission capability required in section 2.2, as amended, was not available.

In an April 16, 1975, letter to this Office ICI refers to each area in which it was found to be deficient and contends either that its system was not deficient in these areas, or that the characteristics of its system are acceptable equivalents to the RFP specification.

Upon receipt of ICI's April 16 response regarding the finding of technical inadequacy SESA's Technical Review Committee once again examined ICI's system and issued a report in response dated April 29, 1975. While it is conceded in the report that ICI's

failure to supply the 7 track magnetic tape unit would not have been enough to disqualify ICI under the terms of the RFP, it is stated that the other areas found deficient were significant enough to disqualify ICI. In addition, the review committee found that ICI's response to deficiencies concerning continuous mode cassette transmission, adequate ports, and the 134.5 baud support requirement were based entirely on equipment added after the benchmark. In this regard, the office of Administrative Services and Procurement for the Department of Commerce reported on May 8, 1975 as follows:

"All firms solicited were notified on September 3, 1974 in Amendment No. 1 to the RFP that specification requirements with regard to hardware, software, and operating requirements 'must be in existence at the time proposals are submitted.' When certain requirements changed all firms were advised in November 1974 of such changes and requested to submit revised proposals. In January 1975 the number of ports was evaluated by SESA and the number specified in the RFP was reduced. At the time of the benchmark on February 3, 1975 ICI could not meet the continuous mode transmission, adequate number of ports, and 134.5 baud support requirements. Subsequently they may have achieved compliance on some of these points, but in this instance, a cut off date needed to be established and complied with. This ICI failed to do."

Furthermore, it is noted that ICI had been given more than a month delay in running the benchmark based upon its assurances in December 1974 that it would be compliant with the specification by February 1975.

The determination of whether a proposal is technically acceptable and within the competitive range is a matter of administrative discretion which will not be disturbed absent a clear showing that the determination was arbitrary or unreasonable. 52 Comp. Gen. 382, 385 (1972). Moreover, we have upheld administrative determinations to exclude firms initially determined to be within the competitive range from further award consideration after their revised proposals were found to be technically unacceptable and no longer within the competitive range. 52 Comp. Gen. 198, 208 (1972). ICI was aware that operating requirements were to be in existence at the time the proposals were submitted. Furthermore, offerors were advised of the requirement that all proposed systems be benchmarked to demonstrate their technical acceptability. Nevertheless, ICI did not successfully

run the benchmark, and it was no longer considered within the competitive range. Although ICI has made general assertions as to the technical acceptability of its system, it has failed to provide a convincing rebuttal to the agency's finding of specific deficiencies existent in its system at the time of the benchmark. Moreover, we find no support for ICI's contention that the benchmark was weighted to favor the other firm.

ICI also contends that most of these deficiencies in its system were cured between the time the benchmark test was conducted on February 3 and the time of award on March 21, 1975. However, we note that ICI previously had been given more than a month delay in running the February 3 benchmark based upon its assurances in December 1974 that it would be compliant with the specification by February 1, 1975, and apparently no delay in running the benchmark was requested on that date. Furthermore, it does not appear from the record that ICI advised the agency until after award that it had allegedly corrected the deficiencies in its system or requested an opportunity to again run the benchmark. In the circumstances, we see no basis for concluding that SESA's determination that ICI's proposal was technically unacceptable was unreasonable. Furthermore, in view of the technical unacceptability of ICI's proposal, we do not believe it would have been in the interest of the Government or the integrity of the competitive negotiation process to have reopened negotiations as requested by ICI to afford it another opportunity to run the benchmark on the basis of modifications to its system. 50 Comp. Gen. 547 (1971).

ICI also contends that since its system could be supplied to the Government at a cost savings, it was unreasonable for the Technical Review Committee not to recommend the ICI system. On February 5, 1975, the Technical Review Committee received a letter from ICI stating that, as a result of the benchmark, ICI wished to reduce its prices by 20 percent. It was concluded that with this reduction, many of the jobs run by the SESA would cost less on the ICI service; however, some jobs would continue to be more costly on the ICI system. Therefore, and in view of the technical unacceptability of the ICI proposal, the SESA determined that First Data Corporation should be awarded the contract.

We have held that both price and technical considerations are encompassed in "competitive range" and that price need not be considered controlling when an unacceptable technical proposal is submitted. See B-177637, July 5, 1973. In view of the fact that the Technical Review Committee had determined that ICI was technically unacceptable based on the February 3, 1975, benchmark, we conclude

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that the agency's determination was not arbitrary or unreasonable, notwithstanding the fact that ICI's computer system may have been supplied at a savings to the Government.

In view of the above, the protest is denied.

  
Deputy Comptroller General  
of the United States