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DECISION



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

FILE: B-191013

DATE: May 31, 1978

MATTER OF: Information International, Inc.

DIGEST:

1. Protest that agency has underestimated value which use of Optical Character Recognition equipment could have in automatically processing forms is untimely raised because protester failed to protest to GAO within 10 days of initial adverse agency action.
2. Assertion that benchmark should have been structured to use "real" data is untimely. Solicitation indicated that agency would create test deck using forms specifically prepared for that purpose and protester failed to pursue its contentions in a timely manner.
3. Allegation that offset printed test deck was not adequately representative of type-written forms which agency expects contractors' equipment to read is timely. Protest was filed within 10-working days after protester learned that timely initial protest to agency was denied.
4. Formulation of test deck from which benchmark was performed required exercise of sound agency discretion. Use of offset printing process to produce test deck for benchmarking Optical Character Recognition equipment was not unreasonable notwithstanding possibility that protester might have received greater advantage had test been structured differently.

Information International, Inc. (III) protests the Social Security Administration's (SSA) refusal to amend SSA-RFP-78-0001 in certain respects. The solicitation calls for the procurement of multi-font optical scanning equipment to permit SSA to machine "read" W-2, W-2P and W-3 forms, converting the information contained on

them to magnetic tape. Automation of existing information processing is to be accomplished by the beginning of 1979, with resulting data being shared by SSA and the Internal Revenue Service. The protester subsequently raised other issues under the same solicitation which will be considered separately at a later date in accordance with our protest procedures.

The protester objects to the form and content of the Operational Capability Demonstration (OCD), a benchmark required by SSA as part of its evaluation of proposals. Principally, the protester claims:

"(1) The test is too simple to discriminate between optical scanning equipment since only the easiest 70% of the forms are to be read;

"(2) The test is unrepresentative of the real world data because it doesn't contain any actual forms; and

"(3) The test is composed of offset printed facsimilies of forms rather than actual type-written or computer printed forms."

As to protester's point (1) above, it is apparent that the objection does not concern the form of the test, per se, but concerns SSA's determination that the equipment to be furnished is required only to process approximately 70 percent of SSA's annual workload. As expressed by the protester,

"The original announcement of the procurement * * * as corrected on July 16, 1977, stated a workload of 158 million items or approximately 68 million documents. * * * it was not clear until issuance of the September 6, 1977, amendment that the solicitation provided for a workload of only 105.6 million items or 48 million documents-- a decrease of about 30%. Subsequently, SSA acknowledged that it would require automatic optical scanning of only 70% of the total workload. The OCD apparently was designed

to test only an easily read sample of documents so as to correspond to this reduced workload. * * * ."

The protester raised this issue in a letter dated October 3, 1977, which was submitted to SSA before the closing date for the receipt of initial proposals. SSA denied the protester's contentions in a letter dated December 1, 1977, in which SSA stated that:

"It is the Agency's prerogative to specify the workload for which an RFP is issued. In January 1977, 6 months prior to the release of the initial RFP, the planning assumption was established, for a variety of reasons, that 30 percent of the documents would not be considered as susceptible to scanning. That planning assumption has remained constant throughout the RFP processing. The 30-percent nonscannable assumption was inherent and specified in the justification reviewed by various organizations, internal and external to SSA, prior to the release of the RFP. In addition, all vendors, including [the protester] which had indicated an interest in the RFP were informed in a March 16, 1977, letter that part of the annual reporting workload would not be subjected to scanning."

Under our procedures a protest which is initially filed with and denied by the procuring agency must be pursued with GAO within 10 days of formal notification or actual or constructive knowledge of the initial adverse agency action.

The protester argues that this letter should not be considered as evidencing an initial agency decision, because SSA later requested its complaints regarding the benchmark be reduced to writing and the "70% limitation" was one of those complaints. In its view, SSA reopened the question within the 10-day period during which the protester would otherwise have been

required to file its protest and in the circumstances, it had no basis to "reasonably believe that the existing state of facts was not threatening." Moreover, the protester asserts, "GAO's underlying policy for insisting upon strict time limits [does not] compel dismissal of this issue, for it was not delayed beyond the time when another interrelated objection was protested."

Even though we agree that this issue is intertwined with the protester's timely objections to the benchmark test, particularly regarding the protester's perception of them, we find it difficult to believe that an offeror in such a position would have read SSA's December 1 response as leaving any doubt that SSA was rejecting its argument. The best that could be said is that the protester did not understand the impact of the 70 percent cut-off, an assumption which is belied by its arguments in its October 3 letter. Concomitantly, it is our opinion that the protester could not have concluded reasonably that SSA would allow it to reopen consideration of the 70 percent question, in conjunction with its discussion of objections to SSA's benchmark data.

Moreover, regarding the protester's contention that time is not of the essence because we are confronted by a protest on other issues, SSA's comments in its December 1 letter suggest the contrary. This case underscores the importance of maintaining strict time limits during which protests should be filed. Were we to favorably consider the protest regarding the composition of materials used in performing the benchmark, our decision could result in more than simply a recommendation that the test be rerun, disrupting much of SSA's program planning. In the circumstances we believe the protester is untimely as to this issue.

We turn, next, to the protester's complaint that the OCD should have been based on use of actual forms. The protester argues that the OCD would have been more representative of "real world" data had SSA used existing forms, because the full range of typefaces which

might be expected in practice would be likely to occur and because actual forms would have been handled and possibly torn and damaged.

The record shows that written questions and answers were incorporated in Amendment 3, dated September 23, 1977, which amended the RFP to reflect the following:

"The pages to be scanned will be 40 pound weight plus or minus 5 percent (substance weight 1,000 sheets 17x22 inches) OCR quality. Neither line print stock paper nor carbon imprinted pages will be used in the OCD. The pages will be prepared by commercial printing. SSA will supply a small quantity of filled-out pages, as part of the OCD Procedural Documentation package to represent a sample of the data conditions expected in the production environment."

As explained by SSA, it did not use actual forms because it did not have the forms which eventually will be used and it did not consider use of existing forms to be suitable. While the protester believes the test should have been constructed by using existing forms, the forms used to report similar data in the past are to be replaced when the transition to an OCR based system is completed. Operation of the OCR system is not to commence until January of 1979. Moreover, the new forms will not be completed until after the subject contract is awarded, because

"* * * a portion of * * * [the] printing specifications relate to the OCR dropout ink (an 'ink' which does not register in the scanning process and which, therefore, does not obliterate any data printed by the employer over that ink). The color of the OCR dropout ink requirements varies among the systems being proposed under this RFP."

The RFP included samples depicting the proposed layout of the new forms and other data relating to them. The protester also knew that only a limited number of typefaces would be used. In our view Amendment 3 put potential offerors on notice that SSA did not

intend to use actual existing forms but would produce an OCD test deck on forms which would be specifically printed for that purpose.

A protest of an alleged impropriety which is apparent upon the face of a solicitation or amendment to a solicitation must be filed initially before the next succeeding closing date for the receipt of proposals. 4 C.F.R. § 20.2(b) (1977). Even if a protest is filed with the procuring activity before that date, it must be protested in our Office not later than 10-working days after the protester has actual or constructive knowledge of initial agency action denying his complaint. 4 C.F.R. § 20.2(a). The most that can be said here is that the protester brought several of its concerns to SSA's attention and failed to follow-up its complaints by filing a protest with our Office after it learned that SSA would stand by its intentions.

Finally the protester objects to testing offerors' equipment with forms which contain information reproduced by offset printing rather than by a typewritten or computer printed process. The protester proposed a microfilm scanning process, as distinguished from paper scan processes proposed by others. Moreover, the protester claims that its combination of equipment and software has been specially designed to read the information to be provided by the user on the form by impact printing (typewriting). The protester's process utilizes supporting automatic data processing equipment, which permits it to capture information by reading some 500 differing shades of gray which could occur in the typewritten process.

The protester points out that in filling in the forms by offset printing processes the original images are distorted by reducing gray tones to either black or white. That portion of an offset printed image which is rendered white is lost, making it impossible for any kind of equipment to read it. That portion which is made black becomes more easily readable by all equipment. In the protester's view this affects the accuracy which can be achieved, the rate at which materials can be processed and the amount of equipment and number of personnel required to perform a stated task. Because

the equipment proposed by the protester is more expensive than other available equipment, it can hope to be awarded the contract only by showing that its process would prove to be more cost effective. To the extent, then, that the protester's comparative ability to read the test deck is reduced, its competitive position is adversely affected. Because award is to be made on the basis of lowest life-cycle cost of proposed equipment to the Government, failure of the OCD to properly reflect SSA's anticipated requirements would result in an unbalanced application of the evaluation criterion, preventing the Government from obtaining full and free competition. Cf., Southeastern Services, Inc. and Worldwide Services, Inc., 56 Comp. Gen. 668 (1977), 77-1 CPD 390.

Concerning the timeliness of this issue, SSA argues that the protester had early notice of SSA's intention to use offset printed materials because it had indicated in the RFP and reiterated in the OCD procedure package that the "test deck will consist of alpha (upper and lower case), numeric and special characters (- . , \$ ') preprinted on W-2 and W-3 forms in a variety of typewriter and line printer fonts * * *."

We agree that this may have been what SSA meant by the language quoted. Moreover, we believe that SSA's intention to use offset prepared copy in preparing the OCD test decks is reflected in the solicitation documents as early as Amendment 3, quoted earlier. Our difficulty with SSA's position results from our view that the terms used in the context of this procurement tended to be ambiguous. Printed material encompasses typewritten text, as distinguished from hand-written material which according to the protester its equipment can also be programmed to read. SSA's reference in Amendment 3 to use of "commercial printing" must be read in conjunction with its reference, also, to the "small quantity of filled-out pages" which it stated it intended to furnish with the OCD procedural package furnished each offeror at the closing date for receipt of initial proposals. The OCD procedural package further provided that:

"The OCD test deck will consist of approximately 20,000 pages (a page contains either three W-2's or one W-3) of W-3 and W-2 forms divided into four work units of approximately 5,000 pages each. These pages will be printed and typed on Government and Commercial line-printers and typewriters. They will be arranged to represent production work * * *." (Emphasis added.)

In the circumstances, we believe that the protester might not have known or had reason to know at least before December 1, 1977, that SSA would use forms on which information would be offset printed in constructing the test deck. The protester's OCD was originally scheduled for December 7. On that date, it refused to run the benchmark, orally objecting to the use of offset printed materials. It followed this up by submitting the reasons for its refusal in the December 9 letter referred to in SSA's December 23 telegram. Since the protest was filed in our Office on January 3, 1978, less than 10-working days following its receipt of SSA's adverse response, the protest of this issue is timely.

Turning to the merits of the protester's complaint, the parties agree that use of offset printing processes does distort the quality of the original impact printed characters. SSA maintains, however, that all systems are affected adversely, and argues that other gray tones are created so that equipment such as the protester proposes should still outperform its competition in a representative manner.

The protester argues however that the grays created by offset printing are spurious. Moreover, it asserts that:

"SSA fails to realize that the act of offset reproduction has virtually nullified its efforts at creating test variety. In offset reproduction (1) ribbon ink color differences are eliminated; (2) typographical errors corrected by the typist are inaccurately reproduced; (3) font characteristics such as line width and proportion are changed; and (4) impact variations due to poor alignment of printing devices or age and wear of ribbons are dropped out."

However, SSA also points out that it went to great effort to attempt to construct a test deck which it believed provided a fair test. The initial OCD--the one the protester first refused to take--was cancelled because SSA's technical adviser concluded that the degree of difficulty reflected in the original decks was not equal among offerors. The test decks finally run by all of the offerors (including the protester) were prepared by visually screening pages for uniformity and selecting them to assure as best SSA believes possible that the difficulty of reading the decks was evenly balanced.

Moreover, SSA indicates that it rejected use of original (as distinguished from printed or copied) materials, because the resource requirements (primarily personnel needs) and logistical problems which would have to be met to key and verify the data were considered excessive and because deterioration of typewriter ribbons, operator fatigue, and similar facts would have required considerable quality control to assure that each offeror's test deck contained a representative distribution of data characteristics. SSA was particularly concerned, as we have noted, that one or more vendors might later claim that the data it was required to use was not representative. Instead, SSA produced the decks from approximately 500 original documents including what it determined was a representative sample of the 26 most predominant printing fonts. It then used offset processes to produce the full deck by varying printing conditions.

As both sides in this dispute recognize, this Office will not substitute its judgment for that of procuring officials in matters involving the exercise of their discretion. In such cases, we will sustain a protest only if it is shown that the actions taken are not reasonably founded and thus, resulted in an abuse of discretion. In this regard, it does not matter that we might ourselves have acted differently, had the decision been ours to make. It would not matter, either, if the procuring activity's actions simply appear mistaken in retrospect, unless the agency were to hold to its error arbitrarily. The exercise of discretion by its nature includes the possibility that the action taken may be wrong.

We agree with the protester that use of offset printing can be expected to vary font characteristics and that regarding its process, those grays created incident to an offset printing process should be considered to be extraneous. Use of offset printing processes can be expected to result in distortion of the absolute ability of offerors to perform SSA's requirements. We find ourselves less convinced than is SSA that the differences will not result in at least some distortion of the offerors' comparative position. Perhaps it would have been wiser had SSA structured the OCD so as to at least include a control sample of documents with typewritten information from which it could have statistically evaluated the validity of its testing assumptions.

We recognize that the parties' position reflect their respective views regarding whether the scope of SSA's information processing needs should reflect 70 percent or 85 percent of its total requirements. If SSA is correct in its belief that all of the contenders' equipment should be expected to read well when only the easiest 70 percent of material procured is scanned, the relative importance of error rate calculations is reduced in comparison to the importance of equipment and manpower levels and similar considerations. Therefore, although SSA might have proceeded differently, it is our conclusion that it acted reasonably, given all of the circumstances involved.

This protest also concerns a number of incidental matters regarding changes made by Amendment 5, for purposes of the second OCD. However, these questions have not been pursued by the protester.

Accordingly, the protest is dismissed in part and denied in remaining part.

R. F. Kellum
Deputy Comptroller General
of the United States