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W. Wolkman
Proc I

DECISION



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

FILE: P-191133

DATE: October 18, 1978

MATTER OF: Amdahl Corporation

DIGEST:

1. Cancellation of negotiated procurement because all prices were unreasonable is proper, even though determination of price reasonableness is based partially on "nonresponsive" offer, since offer did not differ substantially from terms and conditions in RFP.
2. Sole-source award justified by urgency is proper where only one source can supply item by required delivery date.

Amdahl Corporation (Amdahl) has protested the cancellation of request for proposals (RFP) No. GSC-CDPR-DOO025, for automated data processing equipment (ADPE) for the Department of the Air Force (Air Force), issued by the General Services Administration (GSA). Amdahl has also protested the subsequent sole-source award of this requirement to the International Business Machines Corporation (IBM).

I. Background

On April 18, 1977, GSA issued the RFP to all vendors that had signed the Master Terms and Conditions (MTC). The MTC program is used by GSA when procuring brand name ADPE that is available from sources in addition to the original equipment manufacturer (OEM). Participants in the MTC program (approximately 95) are required to agree in advance to the terms and conditions of the MTC.

A total of nine amendments was issued to the RFP for the purpose of enhancing competition. The RFP closing date was June 8, 1977, at which time GSA began to evaluate offers received. In July, however, the Air Force had GSA hold the procurement in abeyance pending

a review of funding. The "hold" was lifted on October 11, 1977. During this period, a determination was made to delete a requirement. Subsequently, an amendment was issued to reopen the RFP, to extend the closing date, and to change the delivery date to December 31, 1977.

The RFP originally specified two acceptable central processing units (CPU): the IBM 370/168 and the Amdahl 470 V/6. Proposals were received offering the IBM 3032 and the Amdahl 470 V/5 as equivalent alternatives. The Air Force and GSA determined that those CPU's were acceptable alternatives and issued an amendment permitting them to be offered and extending the closing date to December 31, 1977, with a firm installation date of February 1, 1978.

Nine proposals were received from four vendors who had executed the MTC. An additional proposal was received from IBM. While IBM has consistently refused to execute the MTC, it is on the MTC mailing list and normally submits proposals consistent with the terms and conditions of its ADP schedule contract. The IBM proposal price was substantially lower than the proposals offered under the MTC. The contracting officer (CO) determined that the terms and conditions offered by IBM were not significantly different from those required by the MTC and, therefore, used IBM's offer as an aid in judging the reasonableness of the MTC offers. The CO also compared the MTC offers with established prices in the ADP schedule contracts. The CO made findings and determinations that all prices offered under the MTC were unreasonable and canceled the solicitation. The CO then determined that the February 1, 1978, installation date was critical and that only IBM could meet that deadline at a reasonable price. Therefore, a sole-source award was negotiated with IBM.

II. Propriety of RFP Cancellation

Amdahl argues that GSA's use of IBM's "nonresponsive" proposal as an aid in determining the reasonableness of prices received in response to the MTC was improper. According to Amdahl, IBM's offer differed from the MTC in ways that permitted IBM to offer a lower price. Amdahl alleges that IBM's proposal did not include a performance bond and did not account for chilled

water installation, electric power consumption, interim system installation and deinstallation and site preparation costs. Amdahl also argues that GSA permitted IBM to meet the installation date by installing an interim CPU.

GSA stated that Federal Procurement Regulations (FPR) §§ 1-2.404-2(c), 1-2.407.2 and 1-3.807-2(b)(iv) require it to compare MTC prices with existing OEM ADP schedule contract prices to determine whether the equipment requirement can be satisfied from an existing and available source of supply at a lower price. The IBM offer was also used in this case for comparison. GSA contends that the IBM offer did not differ enough to offset the substantial price difference for comparison purposes.

The authority to cancel a formally advertised procurement is contained in FPR § 1-2.404-1 (1964 ed. circ. 1), which, in pertinent part, provides:

"(a) Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.
* * *

"(b) Invitations for bids may be cancelled after opening but prior to award, and all bids rejected, where such action is consistent with § 1-2.404-1(a) and the contracting officer determines in writing that cancellation is in the best interest of the Government for reasons such as the following:

* * * * *

"(5) All otherwise acceptable bids received are at unreasonable prices."

Our Office has long recognized that these principles also apply to negotiated procurements. Infodyne Systems Corp., B-185481, July 12, 1976, 76-2 CPD 33; B-178282, July 27, 1973. Contracting officers are

clothed with broad powers of discretion in deciding whether a negotiated procurement should be canceled. 50 Comp. Gen. 50, 52 (1970). We will not interfere with such determinations unless they are arbitrary, capricious or not based upon substantial evidence. B-178282, supra.

Additionally, the determination of price reasonableness is a business judgment requiring the exercise of broad discretion on the part of the CO. See Park Manufacturing Company, Century Tool Company, B-185330, B-185331, B-185776, April 16, 1976, 76-1 CPD 260. The determination will not be disturbed by our Office absent an abuse of discretion. California Stevedore and Ballast Company, B-186873, January 24, 1977, 77-1 CPD 47. The use of "nonresponsive" offers to aid in price reasonableness determinations is permissible in the absence of a showing that to do so would be unreasonable. See, e.g., Stacor Corporation; Isles Industries, Inc., B-189987, January 26, 1978, 78-1 CPD 68; McCarthy Manufacturing Company, B-186550, February 17, 1977, 77-1 CPD 116. It is our opinion that Amdahl has not shown that the determination to cancel the RFP because all MTC prices were unreasonable was unreasonable or arbitrary. While there were differences between the MTC and the IBM offer, the differences do not appear to be substantial enough to render use of the IBM price as a comparison unreasonable. Contrary to Amdahl's allegation, IBM did execute a performance bond. Also, while other specific differences were alleged by Amdahl, Amdahl has provided no evidence regarding these alleged differences, and has not shown that they would substantially affect price.

III. Propriety of Sole-Source Award

Amdahl has argued that the sole-source award to IBM on the basis of urgency was improper because GSA knew of the IBM proposal for approximately 70 days during the procurement and allowed IBM to offer an "interim" machine in order to meet the urgent delivery date. We assume that these allegations are meant to imply that the urgency was not real or was caused by GSA to justify a sole-source award.

FPR § 1-3.210(a)(1) (1964 ed.) permits sole-source awards where property or services can be obtained from only one person or firm. Due to the general requirement

that procurements must be competitive to the maximum degree practicable, agencies must adequately justify determinations to procure on a sole-source basis. Such determinations will be upheld if there is a reasonable or rational basis for them. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402; Winslow Associates, 53 Comp. Gen. 478 (1974), 74-1 CPD 14.

Amdahl has not shown that the sole-source award to IBM was unreasonable or irrational. The determination by GSA that only IBM could supply an acceptable machine by the delivery date appears reasonable for the following reasons.

While GSA did know of the IBM offer for some time before the RFP was canceled and the urgency determination issued, most of that time was spent in issuing a series of amendments which attempted to enhance competition. Therefore, even though GSA had the IBM offer, it apparently did not know that it would cancel the RFP based on the IBM price until the attempts to enhance competition failed. It appears that GSA did not cause the urgency, as Amdahl implies.

The CPU characterized by Amdahl as an "interim" machine was, in fact, technically acceptable under the terms of the original RFP. Therefore, IBM did install an acceptable machine by the urgent delivery date. The fact that that machine was replaced at some later time does not affect the question of whether IBM delivered an acceptable machine on time.

Accordingly, the protest is denied.



Deputy Comptroller General
of the United States