

DECISION



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

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FILE: B-192550

DATE: March 5, 1979

MATTER OF: Sperry Rand Corporation

CNG 00699

DIGEST:

1. Protest seeking termination of contract for computer hardware awarded on basis of total evaluated cost for hardware and optional software conversion services, as announced in solicitation, is denied. While protest is ostensibly based on cancellation of related RFP for software conversion services due to Government decision to perform work itself, in final analysis protest is directed toward original procurement method utilized by agency, which has been sanctioned by prior GAO decision.
2. Good faith evaluation made at time of award, based on belief that award would be made for software conversion services, is not invalidated by subsequent good faith agency determination to perform services in-house.

Sperry Univac Division of Sperry Rand Corporation (Sperry) protests the March 3, 1978 award of United States Department of Agriculture (USDA) contract 53-3142-8-1355 to Honeywell Information Systems, Inc. (Honeywell) under request for proposals (RFP) 00-77-R-41. Sperry bases its protest on the July 26, 1978 cancellation of RFP 00-77-R-44, a related solicitation for software conversion services.

The purpose of the procurement under which Honeywell was awarded the contract was to update computer hardware at USDA's computer center in New Orleans, Louisiana. Because the proposed change in computer hardware to "third generation" equipment would necessarily result in substantial conversion of existing software, the RFP contained a mandatory software conversion option which required hardware vendors to include in their proposals an offer to complete the software conversion at a stated price.

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[Protest of RFP Cancellation]

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A separate RFP (00-77-R-44) was also issued for software conversion only. Award of the hardware contract was to be made first, based on technical acceptability and lowest overall cost for both hardware and the software conversion effort (the "total system cost"). After technical evaluation of the software conversion proposals, either a separate contract was to be awarded for the software conversion under the second RFP, or the option in the hardware contract was to be exercised. A ceiling price for the software only solicitation was to be determined by subtracting the low hardware vendor's total cost less its software conversion cost from the second low offeror's total system cost. Award was to be made under the software RFP only if the cost was less than the ceiling price established. The ceiling price was not to be disclosed until after award of the software contract.

After award of the Honeywell contract, USDA performed a cost analysis on the software conversion effort and concluded that it would be less costly to the Government to perform the conversion effort in-house; it then canceled the software RFP and did not exercise the software conversion option in the Honeywell hardware contract.

Sperry asserts that the cancellation of the software conversion procurement "removes any justification for award of the hardware contract based on a total cost of both hardware and software conversion." In other words, Sperry seeks termination of the Honeywell contract awarded on the basis of announced evaluation criteria 5 months prior to the cancellation of the software solicitation because of that cancellation--it states that termination is appropriate because an evaluation based on hardware costs alone might have resulted in an award to a firm other than Honeywell.

Sperry asserts a number of bases for its protest, but in the final analysis, we view Sperry's protest as directed towards the procurement method and the evaluation factors which resulted in the Honeywell award. For example, Sperry does not dispute USDA's finding that

Honeywell was the low acceptable offeror for the total system under the RFP and does not suggest that the award, when made, was not in accordance with the stated evaluation factors. Thus, in its initial filing Sperry asserts that "[t]he precedent set by award of the contract to Honeywell based on total [evaluated system] cost even after cancellation of the conversion effort, if allowed to stand, does not bode well for future procurement * * *." And, in its summary statement submitted after the bid protest conference, Sperry claims:

"This type of requirement imposes a significant burden on hardware vendors who do not ordinarily supply software in bidding on such contracts.

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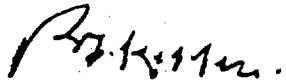
"Continued procurements using the same solicitation format invite bidding practices that evade the onus of preparing unwanted software proposals. * * * If the Government wants to foster legitimate competition for its hardware and software requirements its interests are ill served by the method of procurement used in this case." (Emphasis added.)

These two procurements were the subject of a prior protest at this Office, see Burroughs Corporation, 57 Comp. Gen. 109 (1977), 77-2 CPD 421, and as an offeror under the hardware/software RFP, Sperry was invited to participate in the proceedings but declined to do so. The procurement method utilized by USDA was considered in Burroughs and sanctioned as a legitimate approach to satisfying the agency's requirement; the decision also recognized the potential drawbacks to competition but stressed that the final cost to the Government was an overriding factor. 57 Comp. Gen. at 112.

With the exception of the Government's determination to perform the software conversion effort itself to reduce costs, we find nothing material in the Sperry

protest that has not been considered in Burroughs. Moreover, the Government's later decision to perform the software conversion work itself does not, in our view, materially alter the validity of the basis upon which evaluation and award of the Honeywell contract was made, since the evaluation scheme envisioned the possibility of a hardware award to a firm that was not low solely on the basis of the hardware requirement. While it is possible that a "hardware only" procurement (without the need to consider the mandatory option for software conversion) would have resulted in differing hardware price proposals, USDA reports that the Honeywell price for hardware only was the lowest received, and in any event, hindsight would not invalidate a good faith judgment made in accordance with stated evaluation factors at the time of award. Cf. Teledyne Ryan Aeronautical, 56 Comp. Gen. 635 (1977), 77-1 CPD 352 (dealing with cost evaluation).

The protest is denied.


Deputy Comptroller General
of the United States