

DECISION



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

11857

FILE: B-194003

DATE: October 29, 1979

MATTER OF: Sperry Univac Computer Systems

[Protest Alleging Improper Rejection of Proposal]

DIGEST:

DLB 03206

Rejection of proposal for ADP system as violative of terms of RFP was improper because appendix to benchmark instructions of RFP, which agency finds was not complied with, cannot be read as mandatory specification as interpretation would be inconsistent with clause permitting re-design of system by offerors. Recommendation is made that protester be permitted to benchmark proposal or RFP be amended if agency believes it does not reflect minimum needs and offerors be permitted to submit revised proposals.

(Sperry Univac Computer Systems (Univac) protests the rejection of its proposal submitted under request for proposals (RFP) No. CDPA-77-4 issued by the General Services Administration (GSA) on behalf of the National Library of Medicine (NLM).)

GSA, in its report to our Office on the protest, has explained the relationship of NLM and GSA in this procurement as follows:

"In an effort to preclude an overlap of functions and, in part, to comply with the provisions of subsection 111(g) of the Federal Property and Administrative Services Act of 1949, 79 Stat. 1127, as amended (40 U.S.C. § 759), section 1-4.1105-1 of the Federal Procurement Regulations (FPR) was issued by GSA to establish

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the responsibilities of the user agency when GSA procures ADP equipment or related items for that agency. The responsibilities of the user agency [NLM] are clearly delineated in this section. Subparagraph (g) of the aforementioned FPR specifies that the requiring agency shall, "[d]etermine the technical capability of the items offered to meet the requiring agency's requirements, technical specifications, and systems or items life. This responsibility shall include determining those proposals that are technically acceptable. The results of these determinations shall be transmitted to the GSA contracting officer to enable the contracting officer to take appropriate action with the offeror."

(The RFP ^{was} is for the procurement of an automatic data processing system to replace the presently installed IBM 370/158 multiprocessor system which operates NLM's Medical Literature Analysis and Retrieval System (MEDLARS).) Through the use of outside computer terminals, the resources of MEDLARS are available to approximately 1,000 medical schools and organizations using the MEDLINE (MEDLARS ON-LINE) system.

The RFP was issued October ~~31, 1977~~, to over 40 firms and four of these firms, including IBM and Univac, subsequently requested the documentation programs and magnetic tapes for the Live Test Demonstration (Benchmark). Through a series of amendments to the RFP, the proposal due date was finally established as June 5, 1978. Only IBM and Univac submitted proposals.

The RFP, in section "F," paragraph F.6, advised offerors of the following regarding the benchmark:

"F.6 Live Test Demonstration (LTD).

This RFP requires that each Contractor demonstrate the requirements specified in this RFP using the software and equipment components proposed for the actual system and in accordance with these Live Test Demonstration specifications. The Live Test Demonstration is intended to validate the ability of the Contractor's proposed ADP system to meet the established requirements. Only those Contractors whose proposal meets all mandatory requirements, as determined by a preliminary technical evaluation, will be permitted to participate in the Live Test Demonstration. Extrapolation of results or simulation of performance will not be considered adequate measurement of the proposed systems capabilities. Contractors who do not participate in or do not successfully complete the Live Test Demonstration will not be considered for award.

Univac's benchmark was scheduled for September 25, 1978, and IBM's for October 16, 1978. NLM's technical evaluation team began evaluation of the proposals and negotiations were conducted with both offerors to resolve certain deficiencies in their proposals.

During this timeframe, various requests were made by Univac regarding delaying the performance of the benchmark, modifying certain portions of its proposal and the waiving of certain requirements in the solicitation. The date for the benchmark was rescheduled several times and some of Univac's requests were granted and others denied. (Univac submitted a revised proposal on October 6, 1978, which was subsequently evaluated by NLM.)

(Negotiations between NLM and Univac were held concerning the revised proposal and the benchmark was

eventually scheduled for December 11, 1978. On December 4, 1978, the NLM technical evaluation team discovered that Univac, in its revised proposal, had made changes to the implementation of the major benchmark program, ELHILL. Further discussions were held to attempt to resolve the NLM's difficulties with the ELHILL portion of the Univac proposal.) The benchmark of December 11 was canceled and on January 22, 1979, Univac submitted further documentation regarding the changes to the ELHILL benchmark. (Upon review of these documents, NLM remained convinced that Univac's implementation of the benchmark violated the specifications in the RFP and would negate the validity of the benchmark. On January 24, 1979, NLM advised Univac that its revised proposal was technically unacceptable) and the following day, Univac protested to our Office. No award has been made.

By letter of March 14, 1979, following several exchanges of correspondence between GSA and NLM, GSA advised Univac of the specific technical reasons its revised proposal was not acceptable and offered to attend a Univac benchmark if the ELHILL changes were removed.

The specific reasons given by NLM to GSA for the rejection of Univac's proposal and source statement program modification are as follows:

- "a. Sperry Univac developed a shared-work file concept wherein all copies of the ELHILL program share a single set of work files, as opposed to the NLM-distributed version of the program, which provides a separate set of work files for each copy of the program. This change does not comply with the provisions of the benchmark instructions on pages 18-19, Appendix E, which prohibit sharing of some non-data base files listed in Attachment 1.

- "b. Sperry Univac developed a single multi-server queue to service all users of the ELHILL program, as opposed to the NLM-distributed version of the program [Appendix E], which provides a separate queue for each copy of the program."

NLM states that because of the above implementation the benchmark results would be distorted and not reflect the true performance of the Univac system in an operational environment. Also, Univac would bypass many of the required input/output (I/O) operations.)

Univac argues that it has been improperly denied the right to perform a benchmark because NLM has misinterpreted both the Univac proposal and the RFP requirements. Univac states that the RFP permitted the redesign of existing programs and that appendix "E" of the RFP is not a mandatory requirement of the RFP and, therefore, it was improper to reject Univac's proposal for the above reasons because of a provision in appendix E.)

The RFP was composed of General Instructions to Offerors Governing Proposal Preparation, Terms, Conditions and Performance Specifications, and the Live Vendor Test Demonstration (Benchmark) Instructions with appendices A-Q.

The "Live Vendor Demonstration (Benchmark) Instructions" in section 3.2, quoted below, contain the conversion constraints on offerors:

"3.2 PL/I Conversion Constraints

"a. The application program OFFHILL provided is written in PL/I with approximately 1003 lines of ALC subroutines. However, the Vendor may convert this program (and the online version ELHILL) according to any of the following options.

- "1) The Vendor may take the existing PL/I programs and use them "as is" with the fewest possible modifications necessary to make them executable on the proposed system.

- "2) The Vendor may convert the existing PL/I programs to a standard higher-level language only (e.g., COBOL or PL/I), using the existing system and program designs converting as nearly as possible on a line-by-line basis between languages.
- "3) The Vendor may redesign the entire existing retrieval system and programs, reprogramming into a standard higher-level language only (e.g., COBOL or PL/I).

"b. Under all options the major constraint is that all conversion must be transparent to the end user. Under all options, NLM may require a substantially increased functional demonstration in order to test this constraint.

"c. The Vendor must specify which option for conversion he has selected for the LTD at system proposal time. NLM retains the right to seek outside assistance in evaluating any proposals for options 2) and 3), if such expertise does not exist inhouse.

"d. The PL/I source programs contained within the benchmark system were designed to minimize system dependencies. Source statement modifications may only be performed after written consent and approval from NLM. All source program modifications must be documented using Appendix C, Vendor Source Statement Modifications, and returned to NLM 8 weeks prior to the LTD. Additionally a program source statement listing of each modified program must also accompany Appendix C."

Univac takes the position that the above constituted the only constraints on conversion in the RFP and that its revised proposal complied with the above requirements. Univac alleges that sections "F" and "G" of the RFP entitled, "Mandatory Specifications" and "Mandatory Support Requirements," respectively, were the only mandatory specifications in the RFP and that its revised proposal complies with these two sections. To read

appendix "E" as a mandatory requirement would make option 3, above, the right to redesign the entire existing retrieval system, a meaningless option because of all the constraints in appendix "E." Appendix "E" is entitled "ELHILL Program Description" and, according to Univac, is a detailed description of the current manner in which IBM is performing the ELHILL function.

NLM states that the RFP is clear that appendix "E" is a mandatory requirement and violation of a portion of the appendix would render a proposal unacceptable. NLM points to the concluding page of the Benchmark Instructions which states:

"ATTACHMENTS A THROUGH Q

"ATTACHMENTS A THROUGH Q OF THE VENDOR LTD INSTRUCTIONS WILL BE PROVIDED TO THOSE CONTRACTORS REQUESTING THIS MATERIAL AS SPECIFIED IN PARAGRAPH F.6.1 OF THE TERMS, CONDITIONS AND PERFORMANCE SPECIFICATIONS."

In section "F" of the RFP, vendors were advised that they must request the Benchmark materials and since the Benchmark Instructions reference attachments A-Q (including appendix "E"), NLM argues that appendix "E" is clearly a mandatory specification. Further, appendix "I," which contained the scripts that all offerors had to use in performing the benchmark, also shows the mandatory nature of the attachments.

We believe NLM has misread the RFP to show appendix "E" is a mandatory specification. Initially, we note that the fact that appendix "I," the scripts to be run, is in the same group of documents as appendix "E," does not, in our view, require a finding that all attachments were mandatory.

Because of its role in this procurement, GSA has recommended that the protest be denied by deferring to NLM's technical evaluation that Univac failed to comply with appendix "E." However, GSA disagreed with the NLM interpretation that appendix "E" was totally

mandatory. (We believe GSA's reading of appendix "E" is the more reasonable interpretation of the document, when viewed in the context of the entire RFP. GSA believes appendix "E" contains a description of the NLM ELHILL implementation which had to be complied with in that all functions of the systems had to be retained and each offeror's implementation had to be transparent to the end user. The purpose of appendix "E" was to advise conversion vendors of the functions, inputs and outputs of ELHILL for use in their conversion. As GSA states, to read appendix "E" as mandatory would render the option given offerors to "redesign the entire existing retrieval system and programs" meaningless because line-by-line compliance would require offerors to propose the same system as currently utilized by IBM, the incumbent.)

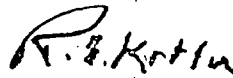
While NLM has pointed to numerous portions of appendix "E," which NLM contends are not descriptive but instructive, to show that compliance with the contents was required, we disagree. For example, "Before a single copy of ELHILL 3 can be run, it must be linked with two vendor supplied subroutines: SGET and SPUT." NLM argues this is not descriptive of the IBM implementation but requires a vendor to supply the subroutines. We do not believe the language of the above and the other cited examples from appendix "E" is strong enough to require a finding that all of appendix "E" was mandatory. NLM's lengthy argument for its position, we believe, shows only that no clear statement that appendix "E" is totally mandatory is in the RFP.

Finally, in support of its position, NLM has cited Sperry Univac; Control Data Corporation, B-183182, November 6, 1975, 75-2 CPD 280, as dispositive of Univac's protest here. The cited decision involved a similar factual situation and held that Univac's proposed changes to the benchmark violated certain guidelines in the RFP and would invalidate the results of the benchmark. In that case, the RFP stated "Substitution of sub-programs in the benchmark programs is not permitted.

However, suppliers can substitute their equivalent FORTRAN or COBOL statements where ANS FORTRAN or COBOL has not been used." There was no option to redesign the system, as here, and, therefore, we do not find the decision controlling.

Based on the foregoing, the rejection of the Univac proposal was improper. We recommend that Univac be permitted to benchmark its proposed system or, if NLM finds that the RFP has failed to state its minimum needs, the RFP should be amended to reflect these needs and offerors should be permitted to submit revised proposals.

The protest is sustained.



Deputy Controller General
of the United States