

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

79-2 CPD 306

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FILE: B-194497(1)

DATE: October 30, 1979

MATTER OF: Interscience Systems, Inc. ✓

## DIGEST:

1. Portion of protest alleging insufficient time to furnish proposals, an unrealistically short delivery schedule and other solicitation defects should have been filed before closing date for receipt of quotations and is untimely.
2. When agency "tests the market" through issuance of request for quotations to determine if it is advantageous to exercise contract purchase options, but does not solicit incumbent or otherwise place incumbent on notice of market test, Government should not be precluded from evaluating more advantageous option price offered by contractor after deadline for receipt of quotations since unlike situation in formal advertising, competitive pricing is not exposed and contractor did not otherwise have opportunity to meet competition of market test.
3. When additional price reduction properly is taken into consideration, making incumbent's option prices more favorable than protester quotation, agency decision to exercise options is rationally founded and not subject to legal objection.
4. Suggestion is made to General Services Administration that it require agencies to include incumbent contractor as a participant whenever market is to be tested through solicitation.

PUBLISHED DECISION  
59 Comp. Gen. ....

Interscience Systems, Inc. (Interscience) protests the purchase of certain computer equipment leased by the Environmental Protection Agency (EPA) from the Sperry-Univac Division of the Sperry Rand Corporation (Univac) under contract No. 68-01-1732. Specifically, Interscience complains that EPA's exercise of certain of the Univac contract purchase options was based on an improper evaluation of proposals furnished EPA in response to a market test initiated through EPA Request for Quotations (RFQ) GS-005-00067. The protester also believes the procedures followed violated Federal competitive procurement standards and were otherwise improper. For the reasons discussed below, we have concluded that Interscience was not entitled to award and that the exercise of the Univac contract option was proper.

The RFQ was issued on March 19, 1979, following EPA's receipt on March 15, 1979, of a "special purchase offer" from Univac. Univac offered to reduce by \$2,028,135 the purchase option prices in Univac's contract for equipment installed at EPA's National Computer Center. Univac required EPA to exercise the option at the reduced price and on an "all or none" basis by the close of business on March 29, 1979.

EPA's contracting officer reports that subsequent to the receipt of Univac's price reduction:

"An evaluation of the Univac offer indicated that approximately \$4,000,000 could be saved, by purchase, over the estimated 5-year life cycle of the equipment. As a result, EPA requested a Delegation of Procurement Authority (DPA) from the General Services Administration (GSA) to purchase the equipment. GSA, by letter dated March 21, 1979 [confirming oral approval given March 15, 1979], authorized EPA to procure the equipment competitively on a

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make/model or plug compatible basis. \* \* \*  
The DPA, as a minimum, required EPA to solicit six specified firms in order to determine whether the UNIVAC offer represented the lowest cost to the Government. The solicitation was to allow offerors to bid all or a portion of the equipment list and to provide that EPA would compute any partial list by adding GSA's schedule prices (or prices in the UNIVAC contract, whichever are lower) to configure a complete equipment list to determine the lowest overall cost \* \* \*."

Although described as an RFQ, the solicitation was referred to as a request for proposals in EPA's cover letter to potential suppliers, included evaluation and award criteria, and encompassed several equipment "subsystem groups" as well as "maintenance services." Prospective competitors were advised of EPA's "[intent] to purchase, subject to the availability of funds, the present Univac rental equipment and features" unless a more favorable proposal was forthcoming. March 23, 1979, was established as the closing date for receipt of proposals.

Proposals were received from Interscience and Amperif Corporation. The Amperif proposal was considerably higher in price than Interscience's. EPA first evaluated the Interscience proposal at \$4,456,368 and Univac's proposal at \$4,850,000. However, because EPA believed award to Univac for anything less than the entire computer center system would require the Government to enter into a separate contract with Univac for system engineering support, EPA added a factor of \$1,176,634 (based on Univac's commercial rates discounted for present value) to Interscience's evaluated costs. EPA then concluded it would be more advantageous for the Government to exercise the Univac option.

Interscience complains that the RFQ evaluation criteria were disregarded, that it had no notice that

system engineering support was an evaluation factor, and that it could have provided such support had it been asked to do so. It also objects to a \$38,000 cost factor for shipping, which it views as excessive, and to a factor representing continued rental of Univac equipment until Interscience's equipment could be installed. Interscience also believes its proposal was unfairly evaluated because EPA computed the cost of acquiring residual Univac equipment (not offered by Interscience) at the higher Univac contract option prices rather than at the reduced option prices.

Interscience further complains that EPA "designed" the procurement to justify what was "in fact, a sole-source award." In this regard, Interscience complains that EPA only allowed it 4 days to prepare and submit a proposal, required initial equipment deliveries within 30 days, based the evaluation factors on Univac's commercial pricing, and ignored other factors such as life-cycle maintenance costs which Interscience believes would show purchase of its equipment to be advantageous. Interscience points out that EPA failed to advertise the procurement in the Commerce Business Daily (CBD) as required by the DPA, states that it learned from an unidentified source following submission of its proposal that it was low in price but that EPA intended to find a way to prevent it from receiving an award, and contends it was not accorded an adequate debriefing.

We agree with EPA that several of the issues Interscience raises are untimely. Our Bid Protest Procedures state that a protest based upon an alleged impropriety in a solicitation which is apparent prior to the closing date for receipt of proposals must be filed prior to that date. 4 C.F.R. § 20.2 (b)(1) (1979). Interscience's concern that inadequate proposal preparation time was allowed, that delivery schedules were too tight, and that certain equipment rental charges and life-cycle maintenance costs listed in the RFQ should not have been assessed should have given rise to a protest prior to closing on March 23, 1979.

Regarding Interscience's complaint that the cost of acquiring necessary equipment not offered by Interscience was unfairly evaluated at Univac's higher contract option prices rather than at Univac's reduced prices, we point out that an offeror ordinarily is free to quote more favorable prices on an all or none basis if, as here, it chooses to do so. General Fire Extinguisher Corporation, 54 Comp. Gen. 416 (1974), 74-2 CPD 278. Univac chose to offer substantially reduced pricing on condition that the Government exercise its options to purchase all of the subject equipment at one time and therefore such pricing would not apply if a portion of the equipment were obtained from the protester.

Under the circumstances, we cannot object to this portion of EPA's evaluation because EPA had no basis for computing acquisition cost of the equipment not furnished by Interscience at anything other than the lower of Univac contract or GSA mandatory schedule pricing, as provided in GSA's DPA.

Further, the transportation charges, and by Interscience's admissions, the charges which Interscience believes should have been levied against Univac for maintenance, are inconsequential since in no event would they have affected the evaluation result which led to the decision to exercise the Univac purchase options. Also, Interscience was furnished a copy of the RFQ, and was not prejudiced by EPA's failure to publish a CBD notice. Moreover, the adequacy of Interscience's debriefing is a procurement matter which had no effect on the propriety of EPA's decision to exercise the Univac options.

The protester's remaining major concern is the propriety of the addition of the system engineering support cost factor to its evaluated costs. We find it unnecessary to resolve the issue, however, since we believe that in any event a proper evaluation would have shown the exercise of the Univac options to be less costly than purchasing from Interscience. While Interscience's proposal was being evaluated,

Univac reduced its purchase option price by an additional \$500,000. EPA determined that this:

"revised offer, although not submitted under the RFQ, was considered to be late \* \* \* [and] was not evaluated in making the [RFQ] source selection decision."

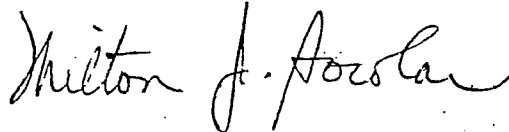
We disagree with EPA. In our view, the reduction should have been considered in determining the most advantageous method of satisfying EPA's requirements. Univac was not responding to a solicitation, Univac in fact had not been solicited, there had been no CBD announcement, and there was no late proposal clause applicable to Univac. Under the circumstances, we do not believe the concept of lateness applies here and do not believe that the Government should have been precluded from considering the offered reduction.

In so holding, we recognize that we would not reach the same result were the market test formally advertised. Obviously, to permit a contractor to modify its option price after it has had the opportunity to see, through a public bid opening, what pricing competition it faced, would be inherently unfair. See B-173504, September 12, 1972.

However, we see no such unfairness or compromise of the integrity of the competitive procurement system where a market test is conducted as a negotiated procurement, pricing is not exposed, and the contractor whose option prices are being tested is not invited to participate and may not know of the testing, and, indeed, is not otherwise provided an opportunity to meet the market test competition. Consequently, we believe the \$500,000 Univac supplemental discount should have been considered by EPA in the evaluation. When that additional discount is taken, of course, Univac's proposal is more favorable to the Government than Interscience's even if the engineering support factor is eliminated. Thus, the EPA decision that exercise of the options would be more advantageous than a purchase from Interscience is rationally founded and not subject to legal objection.

We recognize that, because Univac was not given the opportunity to participate in the market test and to meet whatever competition would result, Univac and those responding to the RFQ were not subject to the same rules. We think, to avoid even the appearance of impropriety, that it would be appropriate for the incumbent in this type of situation to be given the opportunity to respond to a market test solicitation so that all parties in competition are bound by the same procedures. We are therefore suggesting to GSA that it consider requiring agencies in similar situations to include the incumbent contractor as a participant whenever the market is to be tested through a solicitation.

The protest is denied.



For The Comptroller General  
of the United States