

DECISION



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

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FILE: B-193817

DATE: March 7, 1979

MATTER OF: ADP Network Services, Inc.

[Rejection of Proposal For Failure to Offer Rental-to-Purchase Conversion Privil.]

DIGEST:

1. Policy of General Services Administration to award automated data processing (ADP) schedule contracts only to those offering rental-to-purchase conversion privilege is not abuse of discretion since Administrator of General Services is vested by statute with broad authority to determine policy and methods for procuring ADP equipment.
2. Rejection of proposal for failure to comply with requirement made known during negotiations is not improper, notwithstanding absence of requirement in solicitation, and since offeror was on notice of agency's requirement it declined to comply at its own peril.

ADP Network Services, Inc. (Network) protests the rejection of its offer submitted in response to request for proposals (RFP) No. GSC-CDPP-S-00011-N-6-12-78, issued by the General Services Administration (GSA) for the Fiscal Year 1979 automatic data processing (ADP) schedule of contracts.

Network offered equipment on a rental basis only; it did not offer a rental-to-purchase conversion privilege. Network's offer was rejected for this reason. In Network's opinion, the rejection of its offer was improper because a rental-to-purchase conversion privilege was not required by the RFP and GSA's insistence upon it constituted unfair treatment of Network because on other occasions GSA has awarded contracts on a rental basis only.

We find no merit to this protest. GSA has broad authority to develop and implement policies regarding the award of ADP schedule contracts. Federal Leasing, Inc., B-191489, November 14, 1978, 78-2 CPD 343; Comdisco, Inc., B-181956, February 13, 1975, 75-1 CPD 96. As we have previously pointed out:

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" * * * the Administrator of GSA is 'vested with the authority and responsibility for determining the policy and methods of procurement' under the Federal Property and Administrative Services Act, as amended, * * * 40 U.S.C. 471; 40 U.S.C. 481; 41 U.S.C. 251 et seq., and * * * 'there is no basis for our Office to substitute our judgment for that of the Administrator in determining GSA's policy * * *.' B-163971, May 21, 1969. * * * Furthermore, just as procuring activities have considerable discretion to determine the reasonableness of services offered, e.g., B-177426, May 14, 1973, we think GSA necessarily must be regarded as having similar discretion to determine the economic benefit to the Government of discounts and other terms and conditions offered by would-be Federal Supply Schedule suppliers." (Emphasis added.) Digital Equipment Corporation, B-180833, July 19, 1974, 74-2 CPD 2; Interdata Incorporated, B-187455, April 22, 1977, 77-1 CPD 277.

We are aware of no legal or policy basis for finding unreasonable GSA's insistence on having purchase conversion options in ADP schedule contracts. Certainly, GSA's willingness to accept rental only offers in the past does not, by itself, preclude a change in policy. In short, we find no basis for concluding that GSA abused its discretion by insisting on purchase options as a condition for award of an ADP schedule contract. See Federal Leasing, Inc., supra.

Moreover, the fact that the RFP itself did not impose the requirement did not preclude GSA from insisting on it during negotiations. In this respect, the documents submitted by Network clearly indicate that GSA made its requirement known to the protester and that the protester chose not to comply. For example, a letter from GSA which Network received on November 7, 1978 states in part:

"During our meeting on July 25, 1978, you were advised that a complete offer with purchase prices was needed to evaluate your offer. Several follow-up telephone conversations were made also. Your revised offer of November 2, 1978, is unacceptable since you failed to [provide for a purchase option].
* * *

"In order to receive further consideration for award, the offer must include purchase prices which are reasonable. * * *"

GSA then advised Network that unless a best and final offer including reasonable purchase prices was received within 10 days, Network's offer would be evaluated as it then stood. Network's response to this letter, received by GSA on November 17, 1978, essentially confirmed Network's prior offer notwithstanding GSA's position that its terms were unacceptable.

Under these circumstances, we can only conclude that Network was aware of GSA's requirement and that it elected not to comply with that requirement at its own risk. See The Ohio State University Research Foundation, B-190530, January 11, 1979, 79-1 CPD 15.

The protest is summarily denied.



Deputy Comptroller General
of the United States