



DECISION

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

CNG000247

10,487

FILE: B-192506

DATE: June 18, 1979

MATTER OF: Astronautics Corporation of America

[Protest Alleging Issuance of RFP Was Improper]

DIGEST:

1. *[* Competitive procurement of remote terminals is not a breach of protester's requirements contract ^{if the} where protester cannot show that terminals available under ^{the} requirements contract would meet all of ^{the} agency's needs at time of submission of initial offers under competitive solicitation. It is not sufficient that protester proposes to have such equipment available under requirements contract by delivery date in solicitation. *]*
2. Solicitation for four remote terminals which contains option to increase quantity to 50 units is within terms of delegation of procurement authority (DPA) which specifies 17 units since base quantity is within the DPA quantity. If option is exercised so that quantity exceeds 17 units additional delegation authority must be obtained.

Astronautics Corporation of America (ACA) objects to the issuance of RFP DCA 200-78-R-0016 on June 23, 1978, by the Defense Communication Agency (DCA) for leasing of four (with an option to increase the quantity to 50) Autodin remote terminals for use by the Navy. Autodin is a Department of Defense communications network which switches message traffic. An Autodin remote terminal is a device which receives and transmits messages through Autodin.

ACA is the current holder of contract GS-OOC-50167 awarded in 1975 by the General Services Administration (GSA) which provides that ACA is the mandatory source of supply, when it meets agency requirements, for remote terminals and other related equipment. This

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contract contains option provisions which provide for a potential duration of this contract of up to 96 months. GSA has delegated the administration of the contract to the Army.

ACA contends that the RFP is improper as it can supply equipment which will fulfill the Navy's needs under the requirements contract.

We have received a submission from Sperry Univac in support of DCA's position and correspondence from the project manager DCS (Army) Communications Systems in support of ACA's protest. We have considered these communications in reaching our conclusion that the issuance of the RFP did not constitute a breach of ACA's requirements contract.

The RFP specifies a remote terminal which will interface directly with Autodin and which has the following characteristics: (1) day clock, (2) station logs, (3) specific audio alarm, and (4) tape formats BB and II. The requirements contract as originally awarded seems to have provided for remote terminals which, except for emergency situations, required an automated multimedia exchange (AMME) between the terminal and Autodin. However, both ACA and DCA appear to agree that as a result of engineering change proposals accepted under the contract DCA could have ordered remote terminals which interfaced directly with Autodin under the ACA contract at the time the RFP was issued.

However, DCA maintains that it cannot now, nor could it when the RFP was issued, order a remote Autodin terminal which incorporates the day clock, station logs and audio alarm features along with the required tape formats under the ACA contract. The agency does indicate that the Army is working on a firmware project under the ACA contract which will upgrade ACA's equipment so that it can meet all DCA's requirements. However, we are informed by DCA that this project, which was scheduled for completion in March 1979, is not expected to be ready until July 1979. Even if ACA can meet all of DCA's requirements under the contract the agency

questions the propriety of expanding, without competition, the subject matter of the contract from relatively simple remote terminals to complex stand alone Autodin message processors.

ACA insists that it can provide a remote terminal which will meet all DCA's needs under the requirements contract. ACA argues that the provisions of the mandatory requirements contract envision the changes in control logic needed to meet DCA's needs.

We agree with ACA's position that the contract permits continuing development of control logic. There are numerous provisions throughout section C of the contract which emphasize this feature. For example, paragraph 1.12 provides "the contractor shall furnish the software (Control Logic) listed in section F and shall support and maintain such software, as well as any modification thereof * * *. The support provided will consist of * * * the provision of modifications and improvements that the contractor may develop * * *"; paragraph 1.12.3 states "In addition, the contractor will make available any other software which he has announced or may announce in the future for general use * * *"; and paragraph 1.15.4c provides "[the contractor shall] develop, document and implement changes to the control logic proposed by the Government * * *."

It is true, as DCA argues, that we have held that modified requirements under an existing contract must be recompeted when the alteration is not within the scope of the competition as initially conducted. American Air Filter Co.--DLA Request for Reconsideration, 57 Comp. Gen. 567 (1978), 78-1 CPD 443. Nevertheless, we do not believe recompetition is required here, where the contract as originally awarded contains numerous provisions which permit the expansion of control logic characteristics.

Although ACA maintains that it can supply equipment which has all the required features its statements are vague regarding their availability date. ACA states that the contracting officer issued a task order under

the contract for control logic for station logs and the required tape formats and cites a September 14, 1977, letter to ACA requesting the development of these features. There is no further documentation indicating when or if these features have been incorporated into the ACA contract. Further ACA states it developed and made available to the Government the control logic necessary for a day clock. Again, there is no indication when this was made available under the contract. Also ACA notes that the original contract provided for an audio alarm.

Moreover ACA continues by stating "the Contracting Officer under the mandatory contract has confirmed that these items will be available from the Army before the middle of March * * *." ACA further argues that since the Army software will be available by March there is no justification for not ordering the equipment from ACA under the requirements contract.

Therefore it appears that ACA is not able to show that as of June 23, 1978, when the RFP was issued, or August 2, 1978, the date initial proposals were due or November 27, 1978, the date best and final offers were received, it could have provided equipment meeting all of DCA's needs under its requirements contract. This conclusion is in part supported by a message from the Army contracting officer dated February 2, 1978, which states that equipment under the ACA contract did not, at that time, meet all the cited requirements. Based on that assurance on February 13, 1978, GSA issued a modification to an existing delegation of procurement authority (DPA) under which DCA issued the subject RFP.

ACA argues that it proposed the same equipment available under its requirements contract in response to the subject RFP and notes that it was considered by DCA to be technically acceptable. Accordingly ACA concludes it can supply the equipment under its requirements contract at the desired delivery dates.

Several offerors, including ACA have submitted proposals under the subject RFP which, as amended

contained desired delivery dates ranging from February 1979 to May 1979. Award has been withheld pending resolution of this protest.

ACA will be able to fully meet DCA's needs if and when the Army firmware project is completed. However the fact that ACA indicated in its proposal that equipment available under its requirements contract would meet DCA's needs at a future date (the delivery date) does not prove that ACA's requirements contract covered such equipment at the time the RFP was issued, or when the proposal was submitted or, in fact, would ever cover equipment which will meet DCA's requirements. If awarded a contract under the RFP, ACA would be obligated to supply conforming equipment whether or not its requirements contract with GSA ever includes such conforming equipment.

We have held that the time for resolving the applicability of a requirements contract is when the Government is in possession of a binding offer that could be accepted for the equipment in question. Pulaski Furniture Corporation, B-188440, August 10, 1977, 77-2 CPD 107. In a situation such as the instant one concerning a negotiated procurement the critical time for determining whether the equipment available under the requirements contract could meet DCA's needs would normally be the date of submission of initial offers, assuming, as was the case here, that at least one of those offers was acceptable. We have found that ACA has not been able to show that, as of the date of submission of initial offers under the subject RFP (August 2), equipment meeting all of DCA's needs was available under the terms of ACA's requirements contract. Therefore DCA's competitive procurement of this equipment is not a breach of ACA's contract with GSA which only obligates the Government to use ACA as a source of supply for remote terminals when the equipment offered under that contract "meets agencies' requirements."

ACA also complains that since the RFP contains an option to increase the quantity by up to 50 units it exceeds the terms of the February 13 DPA which

calls for the acquisition of 17 terminals. In view of the fact that the RFP provides for a base quantity of four terminals it is within the terms of the DPA. However, if DCA seeks to exercise the option for an additional quantity so that a total of more than 17 units is to be acquired it will have to obtain appropriate authority from GSA. In addition, we believe DCA should consider the possible availability of conforming equipment under the ACA requirements contract prior to ordering any of the option quantities.

The protest is denied.


Acting Comptroller General
of the United States