

**DECISION**



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

**FILE:** B-215048 **DATE:** December 26, 1984

**MATTER OF:** NCR Corporation

**DIGEST:**

1. An agency is not required to disclose factors that will be used in evaluating responses to a Commerce Business Daily (CBD) announcement of its intent to issue a delivery order under a nonmandatory automatic data processing (ADP) equipment schedule contract, because the CBD notice itself is not a solicitation.
2. The need for ADP equipment compatibility is justified when the contracting activity provides essential services that would be impaired by using equipment from an alternative vendor, and when compatibility can only be achieved through an extensive software conversion effort.

NCR Corporation protests the Marine Corps' issuance of a delivery order to Datagraphix, Inc. under that firm's nonmandatory automatic data processing (ADP) equipment schedule contract with the General Services Administration (GSA). The order was for a Computer Output Microfilm (COM) system required by the Regional Automated Services Center at Camp Lejeune, North Carolina. NCR complains that the contracting activity improperly determined that the NCR system did not meet its needs, and that the use of the Datagraphix schedule contract would result in the lowest overall cost to the government. We deny the protest.

Background

The contracting activity conducted a survey of nonmandatory GSA schedule contractors to identify those vendors offering COM systems that would meet its microfilm processing requirements and also be compatible with other Marine Corps ADP equipment. The contracting activity was currently using an earlier model Datagraphix COM system

which, because of its age and obsolescence, required frequent repairs, suffered from lack of parts availability, and did not have the technical capability to accommodate the activity's increasing microfilm processing demands. Only Datagraphix and NCR were identified from their schedule contracts as offering COM systems which would meet the activity's requirements.

Sales representatives from the two firms were invited to the activity to discuss the technical features of their products and anticipated costs in relation to the activity's needs. The Marine Corps states that data conversion costs were discussed at that time with the NCR representative, since the activity's existing software would have to be rewritten if the NCR system were selected. According to the Marine Corps, the NCR representative advised the activity that such conversion costs were not included in NCR's schedule contract, but would have to be provided for separately. Also, the Marine Corps asserts that NCR's representative stated that the NCR microfilm output was fairly fragile and light-sensitive, and thus that it would not retain its original sharpness with the passage of time.

The activity prepared an economic analysis of available COM system alternatives: retain the old system, lease the newer Datagraphix system, or lease the equipment from NCR. As a result of the analysis and these discussions, the contracting activity determined that the newer Datagraphix system was the best alternative. Although the Datagraphix and NCR COM systems both were considered functionally compatible with other existing ADP equipment at Camp Lejeune, the activity found the Datagraphix system technically superior because it would produce better quality microfilm. The activity also determined that selection of the Datagraphix system would allow it to continue to provide backup microfilm processing services to other Marine Corps Regional Automated Service Centers in the area, as these other activities were also using Datagraphix equipment. In addition, the economic analysis indicated that Datagraphix's system would be less costly than NCR's system.

The Marine Corps announced its intent to place an order for the Datagraphix system in the Commerce Business Daily (CBD). The CBD notice provided that:

"No contract award will be made on the basis of offers/proposals received in response to this notice. Any vendor who can provide the same or equivalent equipment must respond in writing within 20 days of this notification. Written responses must contain complete pricing information for lease, lease to ownership plan, lease with option to purchase, purchase, maintenance, installation charges, or any other charges that may be applicable; sufficient literature to verify compliance with stated requirements . . . and a copy of current GSA schedule contract, if applicable. . . . The government shall be the sole determiner regarding the equipment and support required to meet minimum needs. Offerors will not be considered responsive unless they provide clear and convincing documentation that the hardware offered meets the stated requirements. . . ."

Datagraphix and NCR responded to the CBD notice, offering use of their GSA schedule contracts. The firms' responses provided their respective lease and purchase prices, and monthly maintenance charges. Although the economic analysis previously prepared was based on leasing a new COM system, the activity subsequently determined that it would be preferable to purchase the system. The purchase price was \$128,500 for the NCR system, and \$129,269 for the Datagraphix system. The comparative purchase price analysis was based solely upon those two figures; the activity did not factor the costs for maintenance and supplies into the analysis as it had done when comparing the 5-year lease prices.

Although NCR's system was \$769 less than Datagraphix's, the contracting activity determined that selection of the Datagraphix system would result in the lowest overall cost to the government, since this small difference in price in NCR's favor would clearly be offset by the necessary software conversion costs--which NCR did not provide for in its response to the CBD notice. Additionally, the activity noted that selection of NCR would necessitate more training time and expense since the equipment would be new to the personnel involved, and would impair the

activity's ability to provide backup microfilming services ~~to other activities in the area due to a lack of equipment~~ compatibility. Accordingly, the Marine Corps determined that award to Datagraphix would be more economical and issued a delivery order to Datagraphix under its GSA schedule contract.

NCR contends that the contracting activity improperly found its COM system to be technically inferior to Datagraphix's system. NCR denies that its microfilm is delicate and would eventually lose its original sharpness. NCR also believes that software conversion costs should not have been considered because they were not called for in the CBD notice, and indicates that such costs, if any, would not be significant enough to make the Datagraphix system less costly than NCR's system. In addition, NCR questions the Marine Corps' need for the selected COM system to be compatible with the equipment of other activities so as not to impair backup microfilming services. NCR asserts that other military activities involved in similar work perform effectively even though using equipment from multiple vendors. Lastly, NCR complains that the contracting activity did not consider maintenance charges and supply costs when comparing purchase prices, as it had done when comparing lease prices.<sup>1/</sup>

#### Analysis

From discussions with NCR's sales representative, the contracting activity determined that NCR's microfilm output was inferior to Datagraphix's because it would not retain its original quality over time. The firm disputes this conclusion and states that its representative was referring to a dry thermographic system that NCR did not in fact offer when responding to the CBD notice. The agency states, however, that if NCR was describing a dry system during the discussions, this was not made clear to the activity's personnel. The Marine Corps also asserts

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<sup>1/</sup>NCR also contends that the evaluation of its lease costs was erroneous. We need not address this issue because the agency decided to purchase the system rather than lease it.

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that its conclusions concerning the quality of NCR's ~~microfilm were based on a comparison of the system NCR~~ actually offered with the system offered by Datagraphix.

The protester has the burden of proving its case. When the only evidence on an issue is the conflicting statements of the protester and contracting officials, that burden is not met. Office Products International, Inc., B-209610, Apr. 5, 1983, 83-1 CPD ¶ 363. Moreover, NCR has failed to demonstrate that the microfilm output of its wet silver halide system, which the firm actually offered and which the contracting activity technically evaluated as being inferior, is in fact equal to Datagraphix's in terms of its retentive quality. Systonetics, Inc., B-209425, Aug. 25, 1983, 83-2 CPD ¶ 247. We therefore find no merit to NCR's contentions concerning the quality of its microfilm.

NCR also argues that the Marine Corps improperly considered software conversion costs in evaluating responses to the CBD notice. NCR points out that the notice did not mention conversion costs, and that a cost quotation for such conversion was never requested from NCR.

Component agencies of the Department of Defense are authorized to place delivery orders for ADP equipment under GSA schedule contracts when certain conditions are satisfied. The agency must publish its intent to issue a delivery order in the CBD, must consider all responses to that notice, and must determine that the use of a schedule contract will result in the lowest overall cost to the government, price and other factors considered. Defense Acquisition Regulation (DAR), § 4-1104.4, reprinted in 32 C.F.R. pts. 1-39 (1983).

We have held in this context that the agency is not required to disclose in the CBD notice those factors that will be used in evaluating responses, since the CBD notice itself is not a solicitation. CMI Corporation, B-210154, Sept. 23, 1983, 83-2 CPD ¶ 364. Therefore, we do not think that the Marine Corps was precluded from considering software conversion costs in its evaluation simply because those costs were not called for in the CBD notice. NCR does not deny that software conversion would be necessary

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in order for the agency to utilize its equipment, nor, more importantly, does it deny that it was so informed during the discussions which were held between its representative and the contracting activity. See Masstor Systems Corporation, B-215046, Dec. 3, 1984, 84-2 CPD ¶ \_\_\_\_\_. In addition, given the technical aspects of the procurement, we think the contracting activity could reasonably conclude that these costs would exceed the \$769 difference between the purchase prices for the two systems.

NCR asserts that the contracting activity unjustifiably sought compatibility of the COM system being procured with the Datagraphix systems in use by other activities so as not to impair backup microfilming services. According to NCR, other military activities in similar backup situations operate effectively with multiple-vendor equipment.

The Marine Corps states that in order for NCR's equipment to be used compatibly, extensive software conversion would be necessary. The agency contends that, even if NCR had provided data conversion at no charge, it nonetheless would be impracticable to perform any conversion when Camp Lejeune was providing backup microfilming services to the other Regional Automated Service Centers. We do not think that the Marine Corps' position is unjustified since the contracting activity provides essential services that would be impaired by using equipment from an alternative vendor. Cf. Bell & Howell Company, Inc.; Pitney Bowes, Inc., B-213122 et al., May 25, 1984, 84-1 CPD ¶ 573 (in which a single-vendor equipment compatibility requirement was held to restrict competition unduly in the face of strong evidence, unrefuted by the agency, that components furnished by different manufacturers could satisfy the agency's need for assured compatibility).

Lastly, NCR complains that the contracting activity did not consider maintenance charges and supply costs when comparing purchase prices, as it had done when comparing lease prices. In this regard, we are unaware of any requirement in the regulations applicable to this procurement compelling the contracting activity to evaluate such charges and costs when comparing the system purchase prices to establish lowest overall cost to the government. Although the DAR, § 4-1102.10, defines lowest overall cost to include such elements as "maintenance and other related

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services," we read that definition in context with § 4-1104.4(a)(1) to mean that maintenance and supply costs must be considered when such services are in fact being acquired under the procurement. Here, the Marine Corps' administrative report states that the contracting activity decided to defer the acquisition of maintenance and supplies for a later procurement. Therefore, we cannot object legally to the contracting activity's determination, made on the basis of comparative purchase prices (and anticipated software conversion costs), that selection of the Datagraphix system would result in the lowest overall cost to the government.

The protest is denied.

*for* Milton J. Arnold  
Comptroller General  
of the United States