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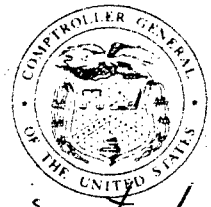
DECISION



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

[Protest Against Issuance of Purchase Order]

FILE: B-197776 DATE: February 18, 1981

MATTER OF: SMS Data Products Group

DIGEST:

1. Where prime contractor, acting for Government, adequately advised offeror of informational deficiency in required documentation in oral discussion and in writing, offeror's subsequent failure to satisfy informational requirement in revised response resulted in proper determination that its response was unacceptable without affording third opportunity to submit clearly required information.

2. Since protester's response to announcement for procurement of computer equipment was unacceptable, prime contractor acting for Government properly did not consider protester's lower proposed costs in determining source for equipment; moreover, issuance of order for equipment to schedule contractor appears to have complied with "lowest cost" requirement of GSA Temporary Regulation No. 46.

SMS Data Products Group (SMS) protests the issuance of a purchase order to International Business Machines Corporation (IBM) under IBM's schedule contract GS-00C-01889 by the Planning Research Corporation (PRC) acting "for" the National Aeronautics and Space Administration (NASA). Since PRC was admittedly

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acting "for" NASA in making the award, we will consider the protest. See Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

The procurement was conducted under the procedures set forth in the General Services Administration's Temporary Regulation No. 46, Supp. 1, found in 41 C.F.R. chapter I, appendix (1979), which has recently been extended to September 30, 1981. See FPR Temp. Reg. 46, Supp. 3, 45 Fed. Reg. 62986, September 23, 1980. Pursuant to these procedures, the solicitation was issued in the form of an announcement in the Commerce Business Daily (CBD) and called for the delivery of one IBM central processor unit Model No. 4341, or an equivalent system meeting certain specified performance characteristics. The announcement stated that written responses "must contain * * * technical documentation sufficient to verify compliance with all above stated requirements * * * and information on current installation of equivalent equipment for reference purposes."

SMS's timely written response offered equivalent equipment but it did not indicate the make and model, it did not provide the required technical documentation, and it did not provide the requested information on current equipment installations.

PRC reports that it considered SMS's response to be incomplete, so a PRC employee called SMS and advised that the information in the SMS response was not responsive to the announcement. PRC gave SMS 6 days to provide additional materials to be responsive to the requirements of the announcement. PRC confirmed the telephone message with a letter to SMS. SMS's timely revised response indicated that it could provide an equivalent system to the IBM 4341, repeated certain of the characteristics called for in the CBD announcment, but again failed to identify the unit to be supplied; moreover, the proposal did not contain current installation information. PRC determined that SMS's revised response was unacceptable and, with NASA's approval, issued the order to IBM.

SMS essentially protests the order on the basis that it proposed an equivalent system at a system's life cost substantially below IBM's, and that PRC was obligated to give SMS an opportunity to satisfy the

inadvertent informational deficiencies before ordering from IBM. SMS contends that PRC's representative did not ask for descriptive literature and that SMS was not aware that a technical brochure was required. Moreover, SMS alleges that PRC did not comply with the award evaluation procedure described in § 1-4.1107-6 of the Temporary Regulation, discussed below.

We believe that the announcement in the CBD adequately advised potential offerors of the requirement that written responses contain technical documentation sufficient to verify compliance with the stated user needs. It is clear that SMS's initial and final responses failed to satisfy that requirement. There is a clear dispute on whether PRC pointed out SMS's specific informational deficiency. PRC reports that it did and SMS contends that it did not. It is clear that SMS was told that the information it provided was not responsive to the requirements of the announcement. In our view, PRC's written notice to SMS concerning its failure to comply with the CBD announcement should have reasonably notified SMS that, at a minimum, it should specifically identify the unit to be furnished.

In sum, we conclude that PRC adequately advised SMS of the informational deficiency in its proposal; that SMS failed to satisfy the clear requirements of the announcement; and that PRC was not obligated to give SMS a third opportunity to clarify its response. Therefore, PRC was not required to consider SMS's response as an acceptable "affirmative response" under section 1-4.1107-6 of the Temporary Regulation which provides:

> "Use of GSA schedule contracts.
>
> "(a) * * * For each acquisition of ADPE from this source, the requirement shall be synopsized * * *. If affirmative response is received * * * and the FSS schedule is used, the procurement file shall be documented with evidence

> that use of the FSS schedule contract * * * is the lowest cost alternative available * * * price and other factors considered. * * *"

Consequently, SMS's lower proposed costs were properly not considered.

On this score, NASA-PRC reports that, although a "[technically] conforming proposal was received from another offeror[,] lease of the IBM unit in the schedule was found to be less costly." Thus, it appears that the order to IBM did comply with the "lowest cost" requirement of the Temporary Regulation.

Therefore, SMS's protest is denied.

Acting Comptroller General
of the United States