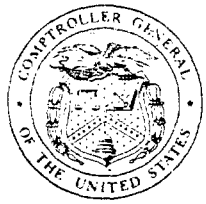
P2-1

DECISION



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

9690

FILE: B-192632 DATE: April 5, 1979

MATTER OF: Harris Corporation

CASG01147 [Contract Award Protest]

DIGEST:

1. Regardless of whether contracting agency should have responded to protester's request made more than month after best and final offers were received as to which of two evaluation methods would be used, explanation would have had no bearing on outcome of procurement, since protester was not low offeror on any basis.

2. Failure to confirm in writing either oral changes to solicitation or oral request for best and final offers is violative of regulations and improper procurement practice. However, since no prejudice has been shown, award will not be disturbed.

3. Whether computer system furnished under contract has met contract requirements is matter of contract administration which is responsibility of procuring activity, not GAO.

The Harris Corporation (Harris) has protested the award made to Honeywell Information Systems, Inc. (Honeywell), of a 1-year lease of a remote job entry computer system under Corps of Engineers request for quotations (RFQ) No. DACW49-78-Q-0050.

In its letter of November 28, 1978, Harris stated the "essence" of its protest as follows. First, prior to award, it sent a mailgram to the Corps inquiring whether a 1-year or a 5-year life cycle cost would be used in the evaluation of offers, that it never received a reply, and that its best and final offer contained a 3-year lease with option-to-purchase plan and a purchase plan, both of which evaluate better over a 5-year life cycle than over a 1-year system life evaluation. Second, it never received any written confirmation of the oral changes that were made to the RFQ. Third, the Honeywell System cannot meet RFQ specification requirements F.2.1 and F.3.5. Harris states that these three "procurement breaches" require the award to Honeywell to be reversed.

~~004826~~

As to the first point, although the Harris proposal of June 9, 1978, stated "Purchase option at end of 36 months equal to 6% of total purchase price," that provision was not included in the best and final offer of June 27, 1978. The latter offer contained alternate proposals: one at $251,460 purchase, $10,544.56 monthly rental, and $2,515 monthly maintenance and another at $224,450 purchase, $9,412.36 monthly rental, and $2,155 monthly maintenance. Honeywell's best and final offer was $206,702 purchase, $6,412.37 monthly rental, and $2,049 monthly maintenance. Since Honeywell's best and final proposal was low on each and every pricing aspect, Harris has not proposed any purchase or lease arrangement or life cycle cost in the best and final offers which is better than Honeywell's.

The Corps has denied that there was any indication made that life cycle costs would be an evaluation factor. However, even if such indications were given and regardless of whether the Corps should have responded to the Harris mailgram of July 31, 1978, any clarification requested and furnished more than a month after best and final offers were received would not have had any bearing on the outcome of the procurement, since, as indicated above, Harris would not have been low on any basis.

On the second point, the Corps admits that oral amendments to the RFQ were made; however, it states that Harris had actual knowledge of all the changes and submitted its best and final offer in accordance with the Government's requirements. The only matter over which there is some dispute as to what the oral representations were is the life cycle evaluation. However, as indicated above, no prejudice to Harris resulted from any misunderstanding in that regard.

Defense Acquisition Regulation § 3-805.3(d) and § 3-805.4 (1976 ed.), respectively, permit an oral request for best and final offers and oral changes to a solicitation provided the oral request and oral changes are confirmed in writing. While the Corps' failure to issue subsequently a written request for best and final offers or written amendments to the solicitation affords no grounds for reversing the award

since no prejudice has been shown, we view the Corps' failure as an improper procurement practice which is violative of the procurement regulations. Alton Iron Works, Inc., B-179212, March 6, 1974, 74-1 CPD 121; AII Systems, B-181729, February 27, 1975, 75-1 CPD 117. By a letter of today to the Secretary of the Army, we are recommending that appropriate steps be taken to preclude a recurrence of this deficiency in future procurements.

With respect to Harris' contention that the Honeywell System cannot meet the RFQ requirements, the Corps has indicated that the requirements of F.3.5 were relaxed and modified orally during negotiations with the parties and Honeywell has taken no exception to the modified requirement or to F.2.1. Whether the system furnished under the contract by Honeywell actually complies with F.3.5 as modified and F.2.1 is a matter of contract administration which is the responsibility of the procuring activity, not GAO. Masoneilan Regulator Company, B-188980, February 24, 1978, 78-1 CPD 154. In this regard, the Corps has indicated that the computer system furnished by Honeywell under the contract has met the contract requirements.

Based on the foregoing, the protest is denied.

Deputy Comptroller General
of the United States