



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

072217

B-177278

April 19, 1973

Telex/Computer Products Division
Suite 222
6110 Executive Boulevard
Rockville, Maryland 20852

CNG 01831

30832

Attention: Mr. F. D. Venture
Vice President, Eastern Region

Gentlemen:

We refer to your letter dated October 16, 1972, and subsequent correspondence, protesting against the award of a contract for the lease with option to purchase of peripheral automatic data processing equipment (ADPE) to International Business Machines Corporation (IBM), under RFP DAHC26-72-R-0006, issued by the United States Army Computer Systems Support and Evaluation Command. CNG 00921
AGC 00852

AGC 00017

Pursuant to a "Delegation of Procurement Authority" from the General Services Administration (GSA) the solicitation was issued on October 13, 1971, requesting offers on ADPE to be compatible on a plug to plug basis with already installed equipment at various locations in the continental United States, Alaska, and Panama. The solicitation permitted multiple awards based on five geographic areas. Offerors were required to submit prices on each of three bases; for purchase, for a 3-year lease period, and for a lease with an option to purchase after one year. Prices for maintenance of the equipment were also required. The principal basis for award was to be the lowest overall cost to the Government.

On the closing date of December 13, 1971, offers were received from 10 firms. At the culmination of negotiations all offerors were advised that best and final offers were due on May 19, 1972. Four offers were received and evaluated resulting in the award on August 30, 1972, to IBM of a contract covering all five locations, providing for the lease of the subject equipment with an option to purchase after one year at an evaluated cost of \$7,313,057.

The agency informs us that it received a message on September 6, 1972, advising it of your firm's "intent" to protest the subject procurement. Pursuant to a request from your firm, a debriefing was then held on September 7, 1972. Several communications between the agency and Telex followed, resulting in your firm's formal protest to this Office.

[Protest of Army Contract Award for ADP Equipment]

715-853 BEST DOCUMENT AVAILABLE

You argue that the solicitation was defective in not specifying evaluation factors and the methodology to be used in selecting an offer for award. You specifically protest against the Army's failure to include a definition of "residual value" and a statement as to its application in the solicitation.

It is the Army's position that section D of solicitation in conjunction with the written questions and answers supplied to all offerors provided sufficient notification of the factors to be used in the evaluation of proposals. In this connection, it is pointed out that section D of the RFP provided, among other things, that offers would be evaluated on the basis of a "uniform costing technique" and that award would be made to the offeror proposing the lowest overall cost to the Government. In addition, the RFP provided that written questions submitted and answers thereto concerning the RFP would be furnished to all offerors and incorporated into the specifications. The answer to question No. 26 submitted by an offeror established that in the "uniform costing technique" evaluation would include actual equipment cost and maintenance over a 3-year life cycle, for lease, purchase, and lease with option to purchase after 1 year. Offerors were also informed in the answer to question No. 27 that the "value of money" definition to be used in the evaluation is set forth in Army Regulation (AR) 18-1, appendix L. Finally, offerors were informed by the answer to question No. 28 that a "residual dollar value" would be used in determining the cost of purchased equipment.

We agree that the solicitation statement of evaluation factors was less than adequate. As a result, certain questions were propounded by various offerors. By the terms of the solicitation these questions and the answers thereto were furnished to the offerors and became a part of the RFP. As noted above, both "value of money" and "residual value" were included in the questions and answers. Although copies of the questions and answers were furnished to the offerors on November 24, 1971, and proposals were not due until December 13, 1971, it appears that neither you nor any other offeror requested any further clarification or otherwise objected to the statement of the evaluation factors until after award of the contract. It is our view that the appropriate time to seek clarification of the evaluation factors, particularly "residual value" of which you now complain, was prior to the closing date for receipt of proposals. See 50 Comp. Gen. 565, 576 (1971). In these circumstances, we do not consider any deficiency in this respect a sufficient basis to disturb the award to IBM.

You also contend that the Army's evaluation of the Telex proposal erroneously deprived your firm of approximately \$1.6 million of residual

value credit. In support of this position you assert that the Army incorrectly concluded that all the equipment offered by Telex was 18 months old, which when added to the system's life of 36 months as specified in the RFP resulted in the application of 54 months of depreciation to the prices offered by Telex. You assert that only a portion of the equipment offered under the lease with option to purchase section of the RFP was 18 months old. Further, it is your contention that in addition to the Army's improper evaluation of equipment age, the Army failed to consider the discounted prices offered by Telex on its used units and erroneously used the new equipment price. You further state that the Army's evaluation of the IBM proposal resulted in an overstatement in the amount of \$6 million in the residual value credit attributed to the IBM equipment.

Our review indicates that the Army determined residual value for each proposal in the following manner: The offeror's purchase price for new equipment as it appeared in the respective proposal was multiplied by a factor representing the terminal value (value of the equipment at the end of the contract period) and by a factor representing the present value (actual value of money) at the end of the 36 months contract period. As so evaluated, the residual values under the lease with option to purchase portion of the RFP were \$1,856,604 for your firm's equipment and \$2,708,306 for the IBM equipment. Furthermore, the evaluation was based upon the same percentage factors for present value and terminal value, as well as an 18-month age factor and the purchase price of new equipment from both your and IBM's proposal.

With respect to your objection to the Army's assumption that the equipment your firm offered was 18 months old, we are informed by Army procurement personnel that representatives of Telex indicated during negotiations that the average age of the equipment which would be provided was to be 18 months. Accordingly, in computing the residual value of this equipment the agency added the 36 months system life to the 18-month figure supplied by Telex to arrive at an equipment age of 54 months at the end of the contract period. Although you now assert that much of the equipment offered was to be new, you do not dispute the agency's contention that during negotiations your firm's equipment was represented as being, on the average, 18 months old. In view of the above, we do not feel that the agency acted arbitrarily or unfairly in using the average age supplied by your representative in its evaluation of the Telex proposal. Furthermore, we do not believe that you were prejudiced by the use of your new equipment price as IBM's offer was evaluated on the same basis.

Concerning your complaint that the residual value of IBM's equipment was overstated by \$6,000,000, the record indicates that the

Army calculated the total residual value of IBM's equipment to be only \$2,708,306. Further, our review indicates that the residual value figure was not the result of calculations based on Federal Supply Schedule (FSS) prices as you contend, but was based on purchase prices for new equipment as set forth in schedule A of the IBM proposal. In regard to your contention that the equipment offered by IBM is substantially older than that offered by your firm, we are informed that Army inventory records have substantiated the representations of IBM that the average age of the equipment was 18 months.

Based upon our review of the record, we cannot say that the procedures used by the Army in evaluating the offers were arbitrary. Nor does the record indicate that these procedures were applied in other than an impartial and uniform manner. However, we believe it would have been preferable if the method of determining the residual value had been explained in the RFP and if the proposers had been requested to indicate in their proposals the average age of the equipment offered.

You also contend that the Army's evaluated cost of \$7,313,057 for the contract award to IBM is too low. You assert that under the IBM contract rental payments for 1 year will be \$7.2 million and that the additional cash purchase price for the equipment will be \$7.8 million. The record indicates that the lease cost for the 1 year, including maintenance, is \$3,191,195 (not \$7.2 million), and the actual purchase price after 1 year is to be \$5,864,354.86, based upon application of the prepayment amount factor contained in schedule D of part II, section F of the IBM contract. Although it is true that the actual cost (raw dollar cost), as indicated by the prices taken from the IBM contract, is above the \$7.3 million evaluated cost, other evaluation factors were considered (i.e., residual value), thereby reducing the raw cost to the evaluated cost figure of \$7,313,057.

You argue that the subject procurement was conducted improperly because independent solicitations were not issued for the IBM 2804-2 tape controller, or the IBM 2540 card read punch. It is your position that the single solicitation put Telex at a competitive disadvantage because of its inability to bid on such items. The Army advises that because it recognized that all offerors would not be able to offer all items, multiple awards were permitted under the subject solicitation to broaden competition as much as possible. As we noted previously, any question concerning the validity of the requirements contained in the solicitation should have been raised prior to the closing date for receipt of proposals. See 50 Comp. Gen. 565, 576 (1970), supra.

In regard to your contention that the IBM contract permits that firm to deviate from the 95 percent effectiveness level requirement

contained in the subject solicitation to a 90 percent effectiveness level of their PSS equipment in Panama and Alaska, we note that the contract provides that all equipment must meet the requirements of the acceptance provisions of section I of the contract which requires a 95 percent effectiveness level before such equipment may be accepted by the Government. The reference to equipment in Panama and Alaska and a 90 percent effectiveness level relates to maintenance only and not to the acceptance period.

You further assert that the time lapse between the issuance of the solicitation on October 13, 1971, and the contract award date in August 1972 afforded IEM an opportunity to install equipment at various locations thereby qualifying for additional purchase option credits. In this regard, we are informed that the length of the procurement cycle which culminated in award to IEM on August 30, 1972, did not afford IEM an opportunity to better its position by the installation of additional equipment because purchase option credits for installed equipment were not considered in the evaluation of proposals.

Finally, you assert that the Army failed to negotiate with your firm. In this regard, we are informed that oral negotiations were conducted on several occasions with representatives of Telex. We also note that the record indicates that as a result of oral discussions you submitted several written communications and your firm's proposal was modified several times. Contrary to your contention, the record clearly indicates that there were negotiations with your firm.

In view of the above, we must conclude that the award to IEM is legally sufficient and should not be disturbed.

Sincerely yours,

For the
PAUL G. DEMBLING
Comptroller General
of the United States