

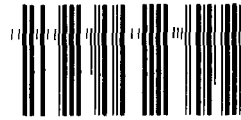
GAO

Report to the Chairman, Committee on
Government Operations, House of
Representatives

April 1987

ADP ACQUISITIONS

OCC's Procurement of Laser Printers Is Proper but ADP Statutes Apply



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**Information Management and
Technology Division****B-225959****April 9, 1987**

The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

In response to your October 15, 1986, request (see appendix I), we have reviewed the Office of the Comptroller of the Currency's (OCC) \$1.3 million procurement of laser printer equipment to support its field offices that was awarded on October 17, 1986. You asked us to determine whether OCC had a valid rationale for placing more weight on technical rather than on cost considerations in selecting the winning vendor. Your question was prompted by a letter you received from the Federal Computer Corporation—an unsuccessful offeror. Federal Computer maintained that cost should have received more weight than technical factors because OCC was simply acquiring off-the-shelf equipment.

In addition, on December 15, 1986, your office asked us to determine whether OCC is bound by the Brooks Act and the Competition in Contracting Act of 1984. These statutes outline procurement procedures that agencies must follow when acquiring data processing equipment. OCC, which was established to ensure the safety and soundness of the National Banking System, maintains that it is not covered by these acts.

We have determined that OCC (1) had a valid rationale in establishing the technical evaluation criteria used in acquiring its laser printers, (2) reflected this rationale in its evaluation criteria, and (3) is subject to the Brooks Act and the Competition in Contracting Act.

**Objectives, Scope, and
Methodology**

To answer your two questions, we performed our work at OCC's headquarters office in Washington, D.C., from October 1986 to December 1986 and reviewed all pertinent documentation involving the laser printer procurement. These documents included the Request for Proposals, statement of work and justification documents, and the technical evaluation worksheets used to evaluate and score vendor proposals. We also interviewed OCC officials to clarify issues concerning the evaluation method used.

In reviewing the evaluation worksheets, we checked for consistency between (1) the written proposal and equipment demonstration scores and (2) the criteria stated in the Request for Proposals. We also obtained OCC's rationale for the assigned point scale and for weighing the technical evaluation higher than the cost evaluation.

We determined the applicability of procurement statutes to OCC and reviewed OCC's authorizing legislation. We also interviewed members of OCC's Office of General Counsel. Our work was performed in accordance with generally accepted government auditing standards.

OCC's Procurement of Laser Printers Is Proper

The Competition in Contracting Act states that in negotiated procurements, like the one conducted by OCC, both technical and cost factors may be considered in selecting the awardee. In addition, agencies are granted a large degree of latitude in establishing the relative weights given to each factor. Furthermore, we have held that in negotiated procurements, there is no requirement that award be made on the basis of the lowest cost. (Corporate Health Examiner, Inc., B-220399.2, June 16, 1986, 86-1CPD ¶552). The procuring agency has the discretion to select at higher cost, a more highly rated technical offer, if doing so is consistent with the evaluation scheme in the solicitation, and if the procuring agency determines that the technical difference outweighs the cost or price difference.

On June 20, 1986, OCC issued a Request for Proposals for 48 laser printers to support 23 field offices and the headquarters office—two printers for each office. The Request for Proposals required that one of the printers in each office operate with OCC's existing microcomputers, using OCC-approved software. The second printer in each office would need to communicate with OCC's mainframe telecommunications network. The Request for Proposals also required that the vendor provide a method of allowing a minimum of four microcomputers within an office to share access to the first printer, and in an emergency, that the two printers be interchangeable.

Because of these requirements, OCC decided to weigh vendor proposals more on technical merits than on cost. OCC had determined earlier that operating the printers with its microcomputers and software, sharing the laser printers between several microcomputers, and connecting the printers to its existing mainframe telecommunications network, could not be accomplished simply by acquiring off-the-shelf equipment. During the planning stages of this acquisition, OCC tested an off-the-shelf

laser printer and a device that would allow its microcomputers and telecommunications network to jointly access the printer. After 3 weeks of intensive testing, OCC and the equipment supplier were unable to successfully operate the equipment in OCC's environment.

As a result, OCC determined that an off-the-shelf, commercially available printer and a sharing device would probably not satisfy its requirements without some modification. Therefore, OCC concluded that a competitive procurement, using an evaluation strategy more heavily weighed toward technical factors, would ensure that the equipment acquired would both function within OCC's current environment and satisfy its need for systems integration. Furthermore, OCC recognized that few, if any, vendors would have had the opportunity to test their equipment in an environment similar to OCC's. Therefore, OCC concluded that an evaluation of written technical proposals, followed by technical demonstrations to rate the offerors' ability to perform, was the best method to determine whether an offeror's equipment was responsive to OCC's requirements.

OCC followed a two-phased approach in evaluating vendor proposals. In the first phase, evaluation panels scored the written proposals according to a 70-percent technical, 30-percent cost evaluation scheme, as stated in the Request for Proposals. On the basis of these evaluations, the top three qualified vendors were selected for the second phase—a 4-day, "hands-on" demonstration conducted by OCC personnel. After the demonstration, the technical requirements were rescored. A final technical score was then calculated by taking 25 percent of the first technical score and 75 percent of the second; this final score was then added to the cost score to determine the winning vendor.

In our opinion, OCC's rationale and evaluation methodology were reasonable because OCC's requirements could not be met solely by off-the-shelf equipment, and more than one technical solution could be proposed. Following OCC's evaluation methodology, Federal Computer was selected as one of the three demonstration finalists, essentially because it submitted the lowest offer and a written technical solution that appeared to be reasonable. However, Federal Computer was not selected as the winning vendor because OCC scored its technical solution substantially lower than the other two as a result of the 4-day demonstration.

Procurement Statutes Apply to OCC

In response to your second question, OCC believes that the Federal Property and Administrative Services Act (FPASA) of 1949, and its amendments—the Brooks Act (40 U.S.C. §754 *et seq.*) and the Competition in

Contracting Act (P.L. 98-369), do not apply to nonappropriated fund agencies. OCC maintains that the intent of these statutes is to obtain savings in appropriated funds through increased efficiency in government procurement practices. Since OCC raises its own revenue through assessments and fees collected from national banks for performing examinations of their activities, OCC does not believe it is bound by these procurement statutes.

We have researched the Brooks Act and the Competition in Contracting Act and have determined that the applicability of these statutes depends on whether an entity meets the definition of an "executive" or "federal" agency as set forth in different parts of FPASA. We see nothing in either statute that would exempt an agency from its provisions because of the nature of the funds used in a particular procurement

Except for specifically listed exceptions, FPASA applies to procurements by most civilian executive agencies (see 41 U.S.C. §252(a), and 40 U.S.C. §474). The term "executive agency" is defined in FPASA as "any executive department or independent establishment in the executive branch of the government. . . ." The legislation creating OCC states that it is a bureau in the Department of the Treasury charged with the execution of all national currency laws (12 U.S.C. §1). Since the Department of the Treasury meets the definition of an executive agency under FPASA, it and OCC are subject to the Competition in Contracting Act, which in part amends FPASA.

Like the Competition in Contracting Act, the Brooks Act amends FPASA and applies to the purchase, lease, and maintenance of automatic data processing equipment by federal agencies. The FPASA definition of "federal" agency (see 40 U.S.C. §472(b)) includes "executive" agencies like the Department of the Treasury and OCC. Therefore, the Brooks Act applies to OCC's data processing equipment procurements as well.

Conclusions and Recommendation

On the basis of our review and evaluation of relevant documentation, as well as discussions with OCC procurement personnel, we believe that the rationale used by OCC in establishing and implementing its technical evaluation criteria was valid. In addition, our review disclosed that OCC reflected this rationale in its evaluation criteria contained in the Request for Proposals. Federal Computer Corporation's combined cost and final technical score was not the highest; therefore, it was not awarded the contract. If Federal Computer wants to know how it was evaluated it should request a debriefing from OCC.

On the basis of our review of applicable procurement statutes, we believe that OCC is subject to the Competition in Contracting Act and the Brooks Act. Therefore, to avoid any confusion given its nonappropriated status, we recommend that the Comptroller of the Currency direct his procurement staff to specifically cite the applicability of these statutes in any future Requests for Proposals they issue.

Agency Comments and Our Evaluation

As required by the Federal Banking Agency Audit Act (31 U.S.C. §718), we provided a draft copy of this report to OCC for comments. In its comments (see appendix II), OCC disagrees with our findings, conclusions, and recommendation concerning the applicability of the Brooks Act and the Competition in Contracting Act. OCC states that “. . . because of its independent procurement authority and nonappropriated status, the Brooks Act and the Competition in Contracting Act, as well as the underlying statutes which they amend, are not applicable to the OCC.” OCC also states that it would be incorrect and misleading to the public to cite the applicability of these statutes in future Requests for Proposals.

As discussed in our report above, the applicability of FPASA, and its amendments, does not depend on the agency's appropriation status, but rather on whether it meets the definition of an “executive” or “federal” agency. Furthermore, most agencies have independent procurement authority, but FPASA governs how they will exercise this authority. We still believe that OCC meets the definition of both an executive and federal agency, and is therefore subject to the Brooks Act and the Competition in Contracting Act. Since OCC's comments consisted solely of discretionary statements with no legal citation, we still recommend that OCC specifically cite the applicability of these statutes in any future Requests for Proposals it issues.

In its comments, OCC also expressed a concern that the intent of our review may have been the consideration of an untimely bid protest from an unsuccessful bidder, and reaffirmed its opinion that we do not have authority to consider an OCC bid protest. This concern was not the case. Our review was performed at the request of Chairman Brooks, and was not the result of a bid protest, since none was received. Nevertheless, since we believe that OCC is subject to the Brooks Act and the Competition in Contracting Act, we would have the authority, along with the General Services Administration, to consider bid protests filed against OCC.

Based on other OCC comments, we have made technical corrections to the report where appropriate.

As arranged with your office, unless you release the contents of this report earlier, we plan no further distribution of the report until 30 days from its issue date. We will then send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in black ink that reads "Ralph V. Carlone". The signature is written in a cursive style with a large initial "R".

Ralph V. Carlone
Director

Request Letter

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October 15, 1986

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The Honorable Charles A. Bowsher
 Comptroller General of the United States
 Washington, D.C. 20548

Dear General:

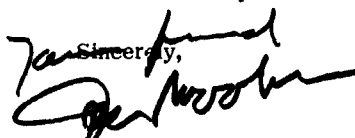
As you know, Congress passed the Competition in Contracting Act of 1984 recognizing that significant cost savings could be achieved through competitive procurements. Nevertheless, Federal agencies continue to devise acquisition strategies which, while appearing to be competitive, greatly reduce or even eliminate these benefits. A case in point is the excessive use of subjective technical evaluation criteria in the purchase of standard off-the-shelf computer equipment.

In this regard, it recently came to my attention that the U.S. Comptroller of the Currency used such criteria in selecting the winning vendor on a procurement for laser printer equipment (Contract Number CC-86-09). I understand that, as a result of the agency's subjective evaluation of vendor proposals (70 percent technical versus 30 percent cost), the contract was awarded to the high bidder at a cost of \$1,317,792--over \$700,000 more than the offer made by the low technically qualified bidder. While it may be desirable to emphasize technical capabilities in some cases, it seems to me that a more rational approach for this type of procurement would be to determine which offers meet the agency's minimum requirements, and then award the contract based on price.

Therefore, I request that you undertake a review of this procurement to determine whether there was any valid rationale for the excessive use of subjective evaluations in purchasing this off-the-shelf equipment. Since delivery on this contract will soon begin, I would appreciate receiving your findings, conclusions and recommendations within 45 days.

Your expeditious handling of this request is greatly appreciated.

With every good wish, I am

Sincerely,

 JACK BROOKS
 Chairman

Comments From the Office of the Comptroller of the Currency



Comptroller of the Currency
Administrator of National Banks

Washington, D C 20219

March 20, 1987

Craig A. Simmons, Associate Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Simmons:

We are pleased to respond to your letter of February 20 in which you requested comment on your draft report entitled "ADP Acquisition: OCC's Procurement of Laser Printers Is Proper but ADP Statutes Apply." The report is the result of your audit of a contract award made by the Office of the Comptroller of the Currency (OCC) for laser printer equipment. The report concluded that the procurement was proper and that the OCC is subject to the Brooks Act and the Competition in Contracting Act of 1984 (CICA). Accordingly, the report recommends that the Comptroller of the Currency direct his procurement staff to specifically cite the applicability of these statutes in any future Requests for Proposals.

It is and has always been the position of the OCC that, because of its independent procurement authority and nonappropriated status, the Brooks Act and the CICA, as well as the underlying statutes which they amend, are not applicable to the OCC. As a matter of policy, OCC complies with the spirit and intent of federal procurement statutes. We believe that it would be incorrect and misleading to the public to cite the applicability of these statutes in future Requests for Proposals. In general, however, we anticipate that our future procurements will be as appropriate as the contract award you analyzed.

Appendix II
Comments From the Office of the
Comptroller of the Currency

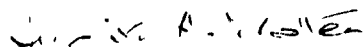
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We wish to express our concern about a related issue. We provided your auditors our contract records to be audited in accordance with provisions of the Federal Banking Agency Audit Act. The intent of your review, instead, may have been the consideration of an untimely bid protest on an individual OCC procurement contract, since the Congressional request was the result of a complaint from an unsuccessful bidder. For the reasons set forth in the preceding paragraph, it is OCC's opinion that GAO does not have authority to consider OCC bid protests.

We would also like to clarify some statements made in the section of the report headed "OCC's Procurement of Laser Printers is Proper." In the second paragraph on page 3, it may be noted that the Technical Evaluation Panel scored only the written technical proposals; the written cost proposals were separately and independently evaluated. In addition, the functional test demonstrations were conducted for four days. Finally, our preferred wording of the first sentence in the third paragraph is "...requirements could not be met solely by off-the-shelf equipment..." in order to convey the proper meaning.

Thank you for the opportunity to comment on the draft report.

Sincerely,



Judith A. Walter
Senior Deputy Comptroller for Administration

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