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

B-175469

May 17, 1973

30924

Covington and Burling
888 Sixteenth Street, NW.
Washington, D.C. 20006

Attention: Alexander W. Mackie, Esquire

Gentlemen:

This is in response to your protest on behalf of Sanders Associates concerning the World Wide Military Command and Control System (WWMCCS) contract (GS-00S-08323) which was awarded to Honeywell Information Systems, Incorporated (HIS), on October 15, 1971, by the General Services Administration under request for proposals F-19628-71-R-0003. The contract is for the acquisition of up to 35 computer systems to be used in the WWMCCS system. Responsibility for administration of the WWMCCS contract was transferred by GSA to the Air Force on October 19, 1971.

Essentially, your protest concerns the acceptance by the Air Force under the contract of terminal equipment different from that initially proposed by the contractor and which you contend it was bound by the contract to furnish. In this connection, you contend that HIS's failure to furnish certain Sanders equipment proposed and demonstrated as required by the RFP violates not only the subject contract but also an agreement between Sanders and HIS. Furthermore, you state that HIS was permitted to deliver and/or install the substituted equipment prior to the issuance of a change order permitting such substitutions and that the substituted equipment does not have the same capabilities as the Sanders' equipment.

The RFP specifications required that prospective vendors propose a configuration which would satisfy a particular workload level and which could process an appropriate benchmark problem within certain time constraints. Under the Mandatory Requirements section of the RFP, it was stated that: "Only the equipment and software proposed in response to this RFP will be employed at the Live Test Demonstration, unless otherwise stated." It also specified that "At the time of proposal submission the system proposed must consist of

091939

~~178289~~

components, hardware and software, selected from announced, off-the-shelf, commercially available EDP systems. Equipment must be a production model, or at least in an operational prototype."

In its proposal submitted February 1, 1971, HIS proposed a Sanders VIP 720 Display System to satisfy the Cathode Ray Tube (CRT) requirement. The Live Test Demonstration (benchmark) was conducted during March and April 1971, and HIS utilized the Sanders VIP 720 Display System to perform the benchmark. Therefore, we believe that it is clear that the contract contemplated utilization of the Sanders' VIP 720.

However, in January 1972, HIS advised the Air Force of its intention to substitute certain equipment, including its own CRT (VIP 785) for the Sanders VIP 720. HIS explained that the substitution represented significant benefits, the most important of which was an assured continuous source of supply. In this connection, HIS informally advised the Air Force of alleged contractual difficulties it was experiencing with Sanders which HIS indicated was affecting timely availability of the VIP 720s. On March 6, 1972, the Air Force advised HIS that approval of the equipment substitution was being withheld pending submission of technical data and an acceptance evaluation. It is reported that subsequent data submitted by Honeywell failed to provide sufficient justification of significant benefits, technical adequacy, and source of supply problems. The Air Force advised Honeywell on March 20, 1972, of these conclusions and that the CRTs proposed and demonstrated were required. The contracting officer reports that on March 23, 1972, Honeywell certified that the portion of the WWMCCS system at Offutt AFB was installed and ready for acceptance testing. The configuration of the system undergoing acceptance testing excluded any VIP CRTs as a part thereof. During the 30 days testing period, VIPs of other than Sanders manufacture were delivered at Offutt on April 11, 1972, for subsequent installation. In regard to the latter, the contracting officer further reports that:

* * * * *

"Honeywell was formally advised on 18 April 1972, of the discrepancy and that the contract requirements were for a VIP 720. Clarification was requested as soon as possible. The acceptance testing was completed at SAC on 24 April 72 without any VIP CRTs installed or tested as part of the SAC system. Upon completion of SAC acceptance testing, it was

determined that Honeywell had not met equipment, software and other related contractual requirements. As a result, Honeywell was advised that acceptance of the SAC system was being held up pending resolution of system deficiencies that included equipment substitution not contractually authorized. It is again stated that at no time was unapproved substitute CRT equipment installed at SAC and knowingly tested by the Government.

* * * * *

Again on 19 May 1972, Honeywell was formally advised that equipment ordered and delivered must be auditable with the contract items ordered and that all the discrepancies must be justified for technical and other reasons and that a formal reply be submitted by 23 May 1972.

On May 23, 1972, Air Force personnel met with representatives of HIS concerning these delivery discrepancies. Honeywell maintained that all the equipment changes that were made were within its contractual authority and that under the WWMCCS contract, HIS could make unilateral decisions with respect to equipment substitutions when deemed necessary to assure prompt performance of its overall obligation under the contract. The contracting officer states that the HIS position was categorically rejected by the Government and Honeywell was issued a verbal cure notice stating that the Government expects the exact equipment that was proposed, benchmarked and tested during the proposal evaluation time-period and as stipulated in the contract. The contractor was further advised that unless immediate action was initiated to provide the exact equipment contracted for, acceptance of the SAC system would be held up and remedial action initiated. HIS advised the Air Force that exact compliance with the contract and continued insistence on delivery of Sanders equipment would result in a major program impact and a delay of 6 to 12 months, whereas the equipment change was necessary and made in good faith based upon significant benefits accruing to the Government from a technical, program, and financial standpoint.

The requested changes were ultimately approved. In this connection, the contracting officer reports the following:

Negotiations were completed with Honeywell on 29 June 1972 resulting in a significant contract price

reduction of between $3 and $6 million depending upon the configurations of the 35 systems being ordered by the Government. The contract price for the VIP 786 substitutes was reduced by $1300 per item which resulted in a program reduction of between $520,000 and $1,270,000 depending upon the number of VIPs to be purchased by the Government. The technical considerations were fully justified against the RFP requirements, and documented accordingly. The program impact assessment was determined to be a realistic possibility and finding documented accordingly. Substitutions represented desireable system enhancement and configuration flexibility, and finally the agreement obviated a major program impact.

* * * The question of technical adequacy was throughly documented by Honeywell and evaluated against the RFP requirements. It was determined that the Honeywell VIP 785, 786 (including a stand) was not a newly developed item and was a catalog item at the time of contract award. The VIP was not a through-put requirement and had no bearing upon the benchmark timing aspects of the evaluation. A hardware functions demonstration was included as part of the technical justification at the conclusion of the negotiation.

* * * * *

The acceptability of the Honeywell equipment rather than the Sanders equipment was a determination being made on the basis of the best interests of the Government and included WWMCCS Program Schedule considerations in addition to the substantial cost savings to the Government offered by HIS.

* * * * * *

It is again reiterated that prior to definitization of P00021 no VIPs were installed at any WWMCCS sites, and prior to completion of negotiations, it was established that the substituted HIS equipment was at least equivalent to and capable of fulfilling the RFP requirements, and that advantages to the Government included substantial cost savings and precluded a major schedule impact.

In conclusion, installation of the HIS VIP was not made until the Government had evaluated and tested the substituted equipment, determined its acceptability and a formal contract change had been definitized, with advantages to the Government, and was in the best interest of the Government.

You state that any HIS statements with respect to Sanders unwillingness to negotiate a contract or inability to make timely deliveries are untrue. You contend that Sanders was at all relevant times ready, willing and able to negotiate a contract with Honeywell and make timely deliveries of the Sanders display units, and that these facts were known to HIS and confirmed in writing by Sanders.

In response to your denial that Sanders was a contributing cause of Honeywell's failure to reach a timely agreement with Sanders, the Air Force states that the record supports a conclusion that HIS experienced unresolvable difficulties in reaching agreement with Sanders on a timely basis. Further, the Air Force maintains that the available information clearly establishes that the delay anticipated in reaching an agreement would significantly and adversely impact the WWMCCS program schedule. The Air Force concludes that both from the delivery standpoint and from the very substantial contract price reduction, and for other benefits received, it was unequivocally in the Government's best interest to amend the contract to provide for the substitution of Honeywell for Sanders display units.

This case is illustrative of the fact that situations may arise subsequent to the award of a Government contract necessitating changes or modifications in the terms of the agreement. That is not to say, however, that the contracting parties may employ a change in the terms of the contract so as to interfere with or defeat the purpose of competitive procurement. In the present case, the facts show that the changes were administratively considered necessary because of the Air Force's determination after award that the use of Sanders' equipment would delay the WWMCCS schedule and in view of the prime contractor's assertion that it was having contractual difficulties with its potential supplier, Sanders. It was also noted that the changes were technically acceptable and would result in a substantial cost savings to the Government.

We do not therefore consider the changes undertaken in these circumstances to be improper or contrary to the contract or competitive procurement requirements.

Since the Government was not a party to any agreement between Sanders and HIS, it would not be appropriate for our Office to comment on this aspect of your contentions.

Accordingly, there is no basis for our Office to object to the administrative actions in this case.

Sincerely yours,

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