



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

40084

October 19, 1973

D-178302

The Honorable James O. Fletcher
Administrator, National Aeronautics and
Space Administration

Dear Dr. Fletcher:

This is in response to reports DRP-3 dated May 16 and July 19, 1973, submitted by the Director of Procurement concerning a protest by Singer Business Machines against the award to GTE Information Systems of a contract for a "Stand-Alone Mini" computer system under invitation for bids No. IFB W-10-12959.

On October 17, 1972, as the first step of a two-step formal advertising method procurement, the NASA Headquarters Contracts Division issued a request for technical proposals for an independent computer system capable of performing designated business and administrative functions. Technical proposals were received from three firms: Singer, GTE and Burroughs Corporation. All technical proposals were considered acceptable. On February 14, 1973, the second step, the invitation for bids, was issued to each of the three firms. All three responded by the bid opening date, February 23, 1973, with prices as disclosed in the abstract of bids as follows:

<u>Firm</u>	<u>Cost - Computer</u>	<u>Maint.</u>	<u>Total</u>
Burroughs	\$84,155.00	\$4,620.00	\$88,775.00
GTE	72,000.00	4,332.00	76,332.00
Singer	29,970.72	5,473.60	35,444.32

A Singer representative present at bid opening immediately voiced concern that the invitation contemplated lease rather than purchase of the computer system. The contracting officer advised the representative that, although leasing had not been intended, the matter would be reviewed prior to award. Upon a further review of the facts and upon the recommendation of counsel, the contracting officer determined that Singer's bid was nonresponsive, and an award was made to the second low bidder, GTE, on March 19, 1973. We have been informally advised that the computer system was delivered on June 15, 1973.

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Singer contends that its bid should be considered responsive since the subject invitation was vague and ambiguous as to whether NASA was to acquire the system by lease or purchase. In response to the second step, Singer submitted a cover letter with the bid, which stated, in part, as follows:

"Singer Business Machines will make installation, subject to the terms and conditions of our GSA Contract #GS-008-11329, on or before April 30th 1973, subject to receipt of firm purchase order on or before March 15, 1973. * * *

The cover letter is considered to be part of a bid. See 48 Comp. Gen. 93, 95; B-174678, May 21, 1972. Since GSA contract No. GS-008-11329 imposes a different set of legal obligations upon the contractor with regard to warranty coverage, inspection and acceptance, and payment than the subject invitation imposes, the incorporation of the GSA contract was a material qualification of the invitation. Consequently, Singer's bid was properly determined to be nonresponsive. Therefore, it is immaterial to the resolution of the protest whether Singer was authorized to bid on a lease basis rather than a purchase basis.

However, we do make the following observations. The opening paragraph of the request for technical proposals stated:

"You are invited to submit to the National Aeronautics and Space Administration a technical proposal for a 'Stand-Alone Mini' Computer System and Maintenance in accordance with the Specifications included with the proposed Contract Document, Enclosure C."

Further, it did not state that NASA intended to purchase the computer system, nor did it contain any language which clearly and unequivocally evidenced that fact. Consequently, it was not specific as to the method of procurement to be utilized.

The technical proposal submitted by Singer contained the following provision under the section entitled "Delivery and Acceptance Test":

"The acceptance test will then run until the system has an average uptime of over 90% for 30 consecutive days, at which time the system will be formally accepted by NASA. The first day of rent will be retroactive to the first day of the successful test period." (Emphasis added.)

Neither the contracting officer nor his technical advisors noticed the word "rent" during their evaluation of Singer's technical proposal or at any time prior to contract award.

We realize that the reference to rent was somewhat obscured by virtue of its placement in the "Delivery and Acceptance Test" section of the technical proposal and that the contracting officer and his technical evaluators were focusing their attention primarily upon the technical aspects of the proposals submitted. However, these circumstances do not negate the fact that the contracting officer is charged with having knowledge of the entire contents of each technical proposal submitted. Furthermore, Singer's proposal was found acceptable by the contracting officer.

The first step of a two-step formally advertised procurement is a negotiation process and, as such, lends itself to discussion and clarification of provisions of the technical proposal by the potential contractor. See 40 Comp. Gen. 40, 41 (1960); 50 *id.* 866, 868 (1971); and 51 *id.* 85, 88 (1971). Had the contracting officer been aware of Singer's use of the word "rent," he would have, in all probability, realized that Singer was offering a lease arrangement and could have requested a clarification by Singer on that point. If Singer had been offered the opportunity to amend its technical proposal in accordance with NASA's intent to purchase rather than lease the computer system, the misconception with regard to the method of procurement intended by NASA could have been corrected in the first step of the procurement process rather than carrying over into the second step.

We suggest that appropriate steps be taken to prevent a recurrence of the circumstances noted above. We are returning the enclosures to the May 16, 1973, letter as requested.

Sincerely yours,

R.F. KELLER

Deputy Comptroller General
of the United States

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