



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Severn Companies, Inc.

File: B-275717.2

Date: April 28, 1997

William M. Rosen, Esq., Kendrick C. Fong, Esq., and Robert J. Moss, Esq., Dickstein, Shapiro, Morin & Oshinsky, for the protesters.

Jay P. Urwitz, Esq., Barry J. Hurewitz, Esq., and James L. Quarles, Esq., Hale and Dorr, for LA Systems, an intervenor.

Robert Goff, Esq., Defense Information Systems Agency, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against termination of delivery order issued against protester's General Services Administration, Federal Supply Schedule contract for direct access computer storage device is denied where protester's response to request for pricing (RFPr) indicated noncompliance with RFPr's specifications.

DECISION

Severn Companies, Inc. protests the action of the Defense Information Systems Agency (DISA), Defense Information Technology Contracting Organization (DITCO), in terminating for the convenience of the government the delivery order (DCA200-97-F-0991) issued to Severn against its General Services Administration (GSA), Federal Supply Schedule (FSS) contract under a request for pricing (RFPr) for a direct access storage device (DASD) system for the DISA Continuity of Operations and Test Facility (DCTF) at Slidell, Louisiana (DCTF-Slidell). DISA terminated the delivery order after concluding, in response to a protest filed by LA Systems, that the RFPr was ambiguous.

We deny the protest.

The RFPr, as amended, requested pricing for items available on GSA schedules, existing indefinite delivery, indefinite quantity contracts, or other agency contracts to which DITCO is an authorized ordering activity. Specifically, the RFPr required offerors to quote a price for one terabyte (TB) of redundant array of inexpensive disk (RAID) storage to support IBM multiple virtual storage (MVS) operating system computers and one TB of RAID to support UNIX operating system computers, in either "a single box or multiple box solution." The specifications required that the

solution “[p]rovide channel interfaces between the disk subsystem and the host computer or computers to which it is attached.” In this regard, the specifications provided that: “Support for 32 channels per box is required for growth. The channel configuration required at initial delivery is 8 parallel channels, 8 ESCON and 8 SCSI.” The parties agree that the parallel and ESCON channels will work with the MVS operating system, while the SCSI channels will work with the UNIX operating system; thus, 16 channels were required at initial delivery for the MVS operating system and 8 channels for the UNIX operating system. Offerors were required to furnish pricing, delivery and contract administration data, but not technical literature or a technical proposal. DISA received four responses that it considered acceptable, including Severn's and LA Systems's.

Upon learning that DISA had issued a delivery order to Severn as the low, technically acceptable respondent, LA Systems protested to our Office that Severn's response was technically unacceptable. Subsequently, on January 8, 1997, DISA terminated Severn's delivery order on the basis that the specifications were ambiguous in that the meaning of certain terms--such as box, subsystem, system and architecture--was unclear, and in that “the exact number and configuration of the channels required for MVS and UNIX portions of the DASD are still unclear.” DISA intends to resolicit its DASD requirement under revised specifications.

Severn denies that the specifications were ambiguous and maintains that its solution complied with the specifications as reasonably interpreted. Severn concludes that its delivery order should be reinstated.

Our Office generally will not review an agency's decision to terminate a contract for the convenience of the government; such decisions are a matter of contract administration which is not within our bid protest function. However, we will review such a termination, where, as here, it is based upon an agency determination that the initial contract award was improper. Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-2 CPD ¶ 667 at 2.¹

¹DISA maintains that our consideration of Severn's protest is precluded by 10 U.S.C. § 2304c(d) (1994), which provides that “[a] protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.” However, we do not find its position persuasive, since we find no evidence that that provision is intended to preclude protests with respect to the placement of orders against GSA FSS contracts. In this regard, we note that the legislative history for the provisions of the Federal Acquisition Streamlining Act of 1994 (FASA), § 1004, Pub. L. No. 103-355, 108 Stat. 3243, 3252 (1994), which added the above restriction on protests as part of FASA's treatment of task and delivery order contracts, indicates that the
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Whether or not the solicitation contained ambiguities, termination of Severn's delivery order was proper since Severn's response to the RFPr reasonably indicated noncompliance with the clear specification requirement to support 32 channels. In this regard, the Deputy Director, DCTF-Slidell, reported on February 19 that the government conducted "extensive research" on Severn's proposed equipment after receiving LA Systems's protest; according to the Deputy Director, "[t]his examination of [Severn's] solution against the salient characteristics and our actual needs indicated that the Severn solution, as proposed, could not meet our requirement for 32 channels for the UNIX operating system portion of the DASD requirement." As the Deputy Director explained during April 15 and April 16 conference calls conducted by our Office, Severn's UNIX solution included 16 controllers; according to a letter from the manufacturer of the controllers furnished to DISA by Severn after submission of its pricing but prior to issuance of the delivery order, each controller "supports one 16 bit differential Wide Ultra SCSI host interface," such that "[t]he proposed configuration will support up to 16 host connections." The Deputy Director indicated that he considered each "host interface" or "host connection"--that is, each interface or connection between the storage system and a host computer--to be equivalent to a "channel." (Severn has not shown that the agency's conclusion that the term "connection" in this context equates with "channel" was unreasonable.) Thus, while Severn's proposed UNIX configuration met the requirement for 8 SCSI channels at initial delivery, its proposal of 16 controllers, each of which supports one SCSI host interface, such that "[t]he proposed configuration will support up to 16 host connections," reasonably indicated that the proposed solution would be unable to meet the requirement to support growth to 32 channels without the addition of equipment not included in Severn's price.

A proposal which fails to comply with one or more of a solicitation's material terms and conditions is technically unacceptable and cannot form the basis for an award. Harris Corp., B-274566; B-274566.2, Nov. 27, 1996, 96-2 CPD ¶ 205 at 5. Thus, by

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order provisions were intended to encourage the use of multiple award order contracts, rather than single award order contracts. H. R. Conf. Rep. No. 103-712, 103rd Cong. 2d Sess. 178 (1994), reprinted in 1994 U.S.C.C.A.N. 2607, 2608; S. Rep. No. 103-258, 103rd Cong. 2d Sess. 15-16 (1994), reprinted in 1994 U.S.C.C.A.N. 2561, 2575-2576. However, no such incentive was required with respect to the FSS, since it already afforded users a choice of multiple contractors. Further, subpart 16.5 of the Federal Acquisition Regulation (FAR), which includes the restriction on protests, supports the interpretation that the restriction was not intended to apply to the FSS since it treats FSS contracts as separate from other indefinite delivery contracts. FAR § 16.500 (FAC 90-41); see 10 U.S.C. § 2304a(g) (1994); 41 U.S.C. § 253h(g) (1994).

taking exception to the 32-channel growth requirement in its response, Severn rendered its proposal unacceptable.

As noted by Severn, the Deputy Director indicated during the conference calls that information supplied in Severn's March 19 comments altered his view of Severn's solution. According to DISA, Severn's March 19 comments provided the Deputy Director with "the information necessary to show how the Severn solution would have met his actual needs." (It is unclear from the record why the information in Severn's March 19 comments has convinced the agency that the Severn solution would meet its "actual needs.") However, the fact that Severn, in developing its protest, has now explained how it would meet the agency's "actual needs," does not retroactively render its response acceptable; it remains that Severn's response to the RFPr, as clarified by the letter from the manufacturer of the controllers, took exception to the specifications. See generally Lyudmila Franke et al., B-275164 et al., Dec. 18, 1996, 96-2 CPD ¶ 231 at 5. Under these circumstances, Severn was not entitled to the award, and the agency therefore properly terminated Severn's delivery order.

The protest is denied.

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