Protest Against Bid Rejection as Nonresponsive

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

FILE: B-196380　　　　　DATE: August 6, 1980

MATTER OF: Sage Systems Software Products, Inc.

DIGEST:

> IFB for computer software package
> did not express key minimum need for
> "automatic production" (without use
> of manual control cards) of three
> specific reports; moreover, IFB's
> descriptive literature requirement
> may have been overstated. Neverthe-
> less, protester's package does not
> meet key need; in any event, because
> requirement has been performed, re-
> solicitation of requirement under
> proper IFB is not possible as
> practical matter.

Sage Systems Software Products, Inc. (SAGE),
protests the award of a contract to CGA Software
Products Group (CGA) for computer software packages
by the District of Columbia Department of General
Services (DC) under invitation for bids (IFB)
No. 0682-AA-74-0-9-BM. The procurement was funded
by the United States Department of Labor (DOL) with
the aim of upgrading the computer capabilities of
State public employment offices. Both DC and DOL
evaluated bids received under the IFB which required
bidders to submit descriptive literature on the
software packages to be supplied.

GROUNDS OF PROTEST

SAGE has two principal grounds of protest:
(1) SAGE's low bid was improperly rejected as non-
responsive; and (2) DC and DOL were biased in favor
of CGA. Based on our review, we conclude that the
IFB was defective because it failed to set forth
specifically DC/DOL's minimum needs for "report
generating capability"; moreover, the agencies'
"interface" requirements may have been overstated.

At bid opening three bids were received:

SAGE $240,800 ($228,760 net)
CGA 383,990 no discount
McCleery 831,835 ($806,879.95 net)

SAGE's low bid was subsequently determined to be nonresponsive. As explained by DC/DOL:

"Overall, the bid evaluation team believes that SAGE did not respond to all items in the IFB. They did not produce evidence that they could furnish the desired reports, nor did they produce documentation that supported development for other than IBM systems. These requirements are mandatory to meet our needs."
(Emphasis supplied.)

Specifically, DC/DOL found that SAGE's bid did not contain required descriptive literature showing compliance with the following specifications: (1) "[a] wide range of report generating capability shall be provided" (here DC/DOL found that SAGE's software produced "only seven program-level reports and one system-level report" and did not produce three specific reports at the "systems level"); and (2) "[t]he selected software system must interface unmodified with IBM/OS (MFT through MVS), IBM/DOX-VS, IBM/DOS, UNIVAC 1100 series, UNIVAC T/DOS, and HONEYWELL 6000 & 60 series computers" (here DC/DOL criticized the failure of SAGE's literature to reference "any instructions other than IBM-OS and IBM-DOS").

SAGE believes that DC/DOL's first ground for rejection of its bid actually constitutes DC/DOL's attempt to improperly introduce, after bid opening, a requirement for the three specific reports at the system level. SAGE reports that both CGA's package and SAGE's package use control cards to produce documentation (reports) at the program and system level with one exception. The exception is

that CGA's package furnishes three specific reports
at the system level which do not require the use of
control cards. SAGE argues that the IFB did not
explicitly seek these particular reports.

DC/DOL respond to SAGE's allegations by
contending that all specifications were applicable
to both the system and program levels unless other-
wise stated and that control cards should not be
necessary for the three specific reports in question.
Although DC/DOL admit that the IFB does not require
a specific number of reports, the agencies contend
that the requirement for a "wide range of report
generating capability" necessarily entails the three
desired reports. Moreover, DC/DOL point out that
SAGE's descriptive literature never specifically
established that the company's software could pro-
vide the desired specific reports even with the use
of control cards.

We believe that the IFB constituted an ineffec-
tive expression of DC/DOL's minimum needs. The IFB
requires packages that "automatically" produce COBOL
documentation (i.e., reports); however, the scope of
the term automatic is never explicitly defined and
is only somewhat clarified by the requirement that
"[a] wide range of report generating capabilities
shall be provided." A requirement for automatic
production of a "wide range of reports" is not
equivalent, in our view, to an expression that the
Government's minimum needs require the furnishing
of three specific reports without the use of control
cards.

Concerning the lack of descriptive literature in
SAGE's bid for packages destined for use in systems
other than IBM/OS and IBM/DOS, SAGE argues that the
documentation furnished DC/DOL for the IBM/OS and
IBM/DOS showed how its package "* * * would operate
on any computer system since it is a passive product
and simply documents a standard language (COBOL)."

DC/DOL's position is that SAGE failed to "produce
documentation [descriptive literature] that supported

development for other than IBM systems." Nevertheless,
the record shows that DC/DOL accepted CGA's bid which
stated that the company was still developing and/or
modifying its descriptive literature for HONEYWELL
computers--one of the required non-IBM systems covered
by the "interface" requirement, noted above. Thus,
it appears that the agencies may have overstated their
requirement for descriptive literature. See, for
example, 46 Comp. Gen. 315, 318 (1966).

REMEDIAL ACTION

SAGE, alternatively, urges remedial action with
respect to this procurement in two regards. The first
concerns termination of the extant CGA contract and
award of the requirement to SAGE. The second concerns
the maintenance agreements which are corollaries to the
extant CGA contract; SAGE insists that it be permitted
to furnish maintenance on some of the purchased software.

Neither remedy is feasible. Admittedly, the
agencies did not adequately express what they consid-
ered to be a key minimum need, namely: the automatic
production of the three specific reports without the
use of control cards; moreover, the agencies may have
overstated their "interface" need. Nevertheless, the
protester admits that its software packages currently
do not meet this key need--a need which we cannot
question based on our review of the record. In these
circumstances, therefore, the only theoretically avail-
able remedy here would be a resolicitation of the re-
quirement rather than an award to SAGE. Cf. Tri-Com,
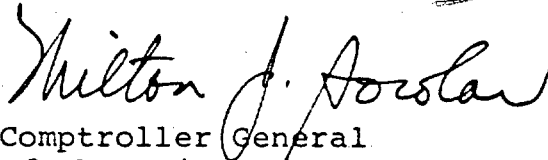Inc., B-186429, November 10, 1976, 76-2 CPD 398.

However, we understand that the packages have
all been delivered and paid for. Notwithstanding
SAGE's contrary arguments, we are unaware of any legal
basis for the company's belief that DC/DOL can return
delivered packages to CGA for credit and recover any
amounts paid CGA over and above CGA's direct costs so
as to enable remedial action. Therefore, we believe
recompetition is precluded as a practical matter even
as to the maintenance aspect of the requirement.

BIAS

SAGE's argument concerning bias initially revolved around specifications allegedly favoring CGA, but this argument appears to have been abandoned. Now the argument is based primarily on what SAGE contends was disparate evaluation of the bids. As noted above, in addition to questioning the adequacy of the specifications, we do not believe the descriptive literature of the respective bidders was evaluated in an evenhanded manner. However, we find no evidence in the record to support the charge of bias.

CONCLUSION

Although the protest is sustained on the merits, remedial action is not practical as noted above.

For The Comptroller General
of the United States

B-196380   August 6, 1980

The Honorable Joseph L. Fisher
United States House of Representatives
450 West Broad Street
Room 416
Falls Church, Virginia 22046

Dear Mr. Fisher:

     We refer to your letter to our Office dated
June 30, 1980, in regard to the protest of Sage
Systems Software Products, Inc., concerning the
award of a contract under solicitation No. 0682-AA-
74-0-9-BM issued by the District of Columbia and
the United States Department of Labor.

     By decision of today, copy enclosed, we have
sustained the protest on the merits. However,
remedial action is not, in our view, practicable
at this time.

                         Sincerely yours,

                    For The Comptroller General
                         of the United States

Enclosure