



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

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December 6, 1973

Digilab, Inc.
237 Putnam Avenue
Cambridge, Massachusetts 02139

Attention: Dr. S. Thomas Dunn
President

Gentlemen:

We refer to your telex dated October 10, 1973, and subsequent correspondence, protesting against the award of a contract to another firm under RFP 2-18540(MT-10), issued by the National Aeronautics and Space Administration (NASA), Ames Research Center, California.

The RFP, issued on August 4, 1972, was for the procurement of an interferometer-spectrometer system to be in accordance with specifications. The RFP provided, however, for the consideration of "equipment with a different approach but which will meet performance requirements." Data to support alternate approaches was to be submitted with the offer. The following offers were received:

ECON Corporation		\$111,104 (basic offer)
		62,063 (alternate)
Digilab, Inc.		\$113,221 (basic offer)
		90,421 (alternate)
Advanced Kinetics, Inc.		\$ 68,907
	plus	5,230 (alternate)
	plus	7,130 (alternate)
Idealab, Inc.		\$ 94,201

The offers of both Advanced Kinetics and Idealab were technically unacceptable and were not considered. Discussions were held with your firm and ECON, the two offerors determined to be in the competitive range.

According to the procuring activity, your alternate offer was based on furnishing an "off-the-shelf" type system which did not contain the amount of memory storage required by Paragraph D(3), "Data Acquisition

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and Processing System," at page 3 of the specifications. Your basic offer was also based on furnishing an "off-the-shelf" type system with a mini-computer to achieve the required memory storage. EOCOM's basic offer was based on furnishing a system which included a mini-computer to perform the storage of the spectrum required by paragraph D(3), "Data Acquisition and Processing System." EOCOM's alternate offer was based on furnishing a system that records the spectrum on magnetic tape. As we understand it, EOCOM's alternate offer would require recording the data obtained from the interferometer on an intermediate recording device which would generate magnetic tape compatible with the NASA computers located at Ames, and that the final processing would be accomplished by these computers rather than the mini-computers which are a part of your equipment as well as the system offered by EOCOM in its basic offer.

It was the procuring activity's view that EOCOM's alternate offer was innovative and technically responsive within the meaning of Paragraph "A," "Data to be Submitted with Offer," wherein it states "This is not to discourage offering equipment with a different approach but which will meet performance requirements." Since the overall system output was to be paper tape which could not be done with Ames' 360 programs, EOCOM was asked to generate a software package for the Ames IBM 360 that would be compatible with the Ames SEL 810-A system in the Astrophysics Branch where the required interferometer-spectrometer system would be installed. EOCOM agreed to do this at an additional cost of \$2,140.

On October 10, 1972, ten days before close of negotiations and over a month prior to completion of the evaluation of proposals, you protested the award of a contract to any other firm under the RFP on the basis that no other company could satisfy the technical requirements of the RFP. We are advised that the technical evaluation of your offers resulted in a determination that the equipment offered by your firm did not meet the specification requirement that the resolution be at least 0.1 cm^{-1} in all spectral ranges and that the instrument cover all wavelengths from 1 microneter ($10,000 \text{ cm}^{-1}$) to 1 millimeter (10 cm^{-1}), whereas EOCOM's alternate proposal met all of the RFP's technical requirements.

On January 30, 1973, we received the administrative report from NASA, a copy of which had been sent to you. On February 23, 1973, we received your response to the report. In our judgment your submission raised certain questions which called for a response by NASA. We, therefore, by letter of February 28, 1973, forwarded your submission to NASA requesting a supplemental report, which we did not receive until September 7, 1973. In this regard, we have by letter of today, copy enclosed, advised the Administrator of NASA that appropriate steps should be taken to prevent the late submission of supplemental reports.

We were advised by letter of April 5, 1973, that the interferometer-spectrometer system being procured was required for use in experiments related to the Pioneer 10 space probe scheduled for December 4, 1973, and it was determined that award would have to be made promptly in order that pertinent experimental data could be obtained and analyzed prior to that event.

In your response to NASA's administrative report, you argued that your equipment did meet the resolution requirements of the specifications, notwithstanding claims to the contrary by NASA and that, in fact, EOCOM had not demonstrated that its equipment could meet the resolution requirement. You also raised several questions in connection with EOCOM's alternate offer. It was contended that the language in the RFP encouraging bidders to offer equipment with a different approach did not mean that an "interferometer with data acquisition capability and an off-line data analysis system" could be offered rather than a complete interferometer-spectrometer system. Also, it was argued that EOCOM's offer must be considered an off-line system which is not a complete system, but merely an interferometer with a data acquisition package. In your protest it is stated that the RFP does not provide for the use of Government-furnished equipment; i.e., the IBM 360 and the SEL 810A, located at the Ames facilities, and that had you known that NASA would accept a partial system, you could have offered several off-line systems equivalent to the system offered by EOCOM in its alternate offer. Also, you contend that the cost of EOCOM's alternate offer will exceed the cost of the proposed on-line systems.

In regard to the procuring activity's determination that the equipment offered by your firm did not meet the resolution requirements of the specifications while EOCOM's equipment did meet these requirements, both you and the procuring activity advanced extensive technical arguments in support of your respective positions. Our Office has consistently taken the position that the administrative agencies have the primary responsibility of determining whether the product offered meets specifications stating the minimum needs of the Government, 44 Comp. Gen. 302, 304 (1964); 38 Comp. Gen. 190 (1958); 35 Comp. Gen. 174 (1955). While the equipment offered by your firm is on the Federal Supply Schedule, we have been informally advised by the General Services Administration (GSA) that your equipment is listed as off-the-shelf or commercial equipment and, as such, was never tested by GSA.

Concerning your contention that the solicitation did not provide for the use of Government-furnished equipment, we are of the view that this argument has merit. While we were advised by the procuring activity

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that you were aware of the Ames computer facilities and we have no reason to doubt this, the fact remains that the use of these facilities as Government-furnished equipment was not provided for in the solicitation. It is obvious that if any offeror is permitted the use of Government-owned equipment, the contracting officer should advise the rest of the offerors that use of such equipment is permitted. Apparently, this was not done in the present case. See 46 Comp. Gen. 578 (1966). However, it does not appear that your firm was prejudiced by the Government's failure to notify you of the availability of the Ames computer facilities. Your offer would not have been accepted in any event since your equipment was found not to meet the resolution requirements of the specifications.

Regarding your contention that the cost of EOCON's alternate proposal will exceed the cost of the proposed on-line systems, you estimate that each spectrum will cost \$250. The procuring activity estimates that the cost per spectrum will only be \$30. However, since the operational costs of a system depend on the number of spectra processed and neither you nor the procuring activity knows the exact number of spectra that will be processed each month, a cost comparison of the respective systems would appear to be extremely difficult, if not impossible. However, since the procuring activity did not consider your offer acceptable due to its failure to meet the resolution requirements of the specifications, we do not believe that the procuring activity was required to make a cost comparison of the respective systems. See 52 Comp. Gen. 382 (1972).

For the above reasons, your protest is denied.

Sincerely yours,

R.F. KELLER

Deputy Comptroller General
of the United States