

1977 WL 37398 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 15, 1977

*1 Col. Charles H. Burr
Director
Division of Computer Systems Management
Post Office Box 11488
Columbia, SC 29211

Dear Col. Burr:

You have requested an opinion from this Office concerning the purchase of a computer by the Medical University of South Carolina. The facts, as explained to this Office, are as follows. In December of 1976, a Request For Proposal (RFP) was issued on behalf of the Medical University requesting bidders to submit bids on a computer the size of an IBM 3⁷⁰/₁₄₈ computer to replace a 3⁷⁰/₁₄₅ IBM computer. The Medical University opened bids on the computer and awarded the contract based on the RFP. MUSC has now discovered that its workload has increased so greatly beyond expectation that the RFP issued in December of 1976 asking for bids on the computer is not sufficient to meet MUSC needs. MUSC has requested that it be allowed to purchase an IBM 3⁷⁰/₁₅₈ computer on the basis of the RFP issued in December of 1976 without having to go out for bids again. This Office is of the opinion that MUSC, if it wants to purchase an IBM 3⁷⁰/₁₅₈, must go through the RFP process again.

First, the RFP did not call for a specific make of computer. It called for a computer which could meet specific minimum job requirements. The IBM 3⁷⁰/₁₄₈ can meet all the requirements of the RFP. A computer smaller than the IBM/148 could not meet these requirements. The bids on the REP had to include bids on a system large enough to meet all of the requirements of the RFP. However, in the RFP at Paragraph 2(g) MUSC allowed the vendor to install a smaller CPU and then swapped to the larger CPU (the one meeting the minimum requirements set forth in the REP) as MUSC's workload grew. But allowing MUSC to put in the smaller CPU did not relieve the vendor from the responsibility of supplying full details regarding the cost of the larger system and then putting in the larger system as the workload grew. All bidders therefore, had to bid on the larger CPU. It is only a matter of good business practice and common sense that when a bidder is trying to win a competitive bid, he will bid his least expensive machine which will meet the minimum requirements of the REP. The IBM machine which meets the minimum requirements of the RFP happens to be the 3⁷⁰/₁₄₈. It is true, as MUSC points out in its letter of June 22, 1977, that the IBM 3⁷⁰/₁₅₈ will also meet these requirements. However, the successful bidder in this situation bid on a 148 and did not bid on a 158. Therefore, the larger unit which the RFP refers to is the 148 and not the 158.

A second concern with allowing the Medical University to switch to the 3⁷⁰/₁₅₈ at this point is that the successful bid was for \$862,000.00. If MUSC is allowed to do what it is requesting at this point, the successful bidder would then be receiving a contract for \$1,460,000.00. This is almost double the amount of the bid submitted with all other bidders and would amount to a new contract. This is not a simple matter of slightly enlarging the scope of the contractual work. It is totally doubling the contract price and the contract work. Other than doubling the price, the 3⁷⁰/₁₅₈ does almost twice the amount of work than the 3⁷⁰/₁₄₈ does. Allowing the successful bidder to substitute a computer which is almost twice as expensive as the one it bid on and does twice the amount of work that the one it bid on does, without allowing other bidders to submit bids on the same size computer, would totally destroy the competitive nature of the bid and violate Section 1-1-440, CODE OF LAWS OF SOUTH CAROLINA, 1976.

*2 Therefore, it is the opinion of this Office, that if MUSC wants to purchase a computer with the capacity and cost of an IBM 3⁷⁰/158, it must draft a new RFP and receive bids on that RFP.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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