



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Computer Products, Inc.

File: B-271920

Date: August 9, 1996

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DIGEST

1. Substitution of 3 of 13 proposed key personnel after award is not improper where the offeror provided resumes, authorizations, and firm letters of commitment for its proposed individuals, 3 of whom subsequently became unavailable, and nothing in the record suggests that the names were submitted other than in good faith.
 2. Cost realism analysis of the awardee's proposal was reasonable where agency considered the realism of the awardee's proposed direct and indirect labor costs, overhead rates, general and administrative costs, materials and travel costs, and subcontractor costs and the protester has not pointed to any specific costs that it contends are unrealistic.
 3. Protest that awardee is ineligible for award because firm did not meet eligibility requirement is denied where protester has not demonstrated any plausible indication that it was prejudiced by imprecise wording in solicitation.
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DECISION

Computer Products, Inc. protests the award of a contract to Digital Control Systems, Inc. under request for proposals (RFP) No. N00140-95-R-2205, issued by the Department of the Navy as a competitive section 8(a) set-aside for automated data processing and information management support services in support of the Metrology System for Uniform Recall and Reporting (MEASURE) Program for the Naval Aviation Depot Operations Center (NADOC), Patuxent River, Maryland. Computer Products alleges that the awardee engaged in "bait and switch" tactics by proposing key personnel it did not intend to provide, and that the agency performed

an improper cost realism analysis. Computer Products also contends that Digital's proposal should have been rejected as unacceptable because Digital is not serviced by the Small Business Administration's (SBA) Washington district office as required by the solicitation.

We deny the protest.

The solicitation, issued June 30, 1995, contemplated the award of a cost-plus-fixed-fee contract for a base year with three 1-year options and required offerors to submit both a technical and cost proposal. The RFP specified that offers were being solicited only from small business concerns expressly certified by SBA for participation in SBA's 8(a) program which, among other things, have an approved business plan on file with and are serviced by "SBA Washington." The RFP stated that award would be made to the offeror whose proposal represented the combination of technical merit and cost most favorable to the government. The RFP advised that cost proposals would be evaluated for realism.

In their technical proposals, offerors were to submit detailed resumes of 13 key personnel under 6 labor categories.¹ Offerors were required to propose key personnel that the offeror reasonably expected, as of the date of the proposal, would be available for contract performance. In this regard, the solicitation set forth several requirements aimed at ensuring that the personnel proposed would be those performing the contract and limiting personnel substitutions. For example, the resumes were to indicate whether proposed personnel were currently employed by the offeror; for personnel not currently employed by the offeror, the resumes were to include signed statements that the individual authorized the use of the resume. Offerors submitting best and final offers (BAFO) were also to certify that each individual proposed was contacted after the date of the request for BAFOs and confirmed that he or she was available for contract performance. Failure to provide the certification would make the BAFO unacceptable. The RFP also provided that, during the first 90 days of contract performance, the offeror could make no personnel substitutions unless such substitutions were necessitated by an individual's sudden illness, death, or termination of employment.

Six offerors submitted proposals by the September 8 closing date. The proposals were evaluated by a technical evaluation committee and three proposals, including those submitted by Computer Products and Digital, were determined to be in the competitive range. The three competitive range offerors were advised of the

¹Specifically, the RFP required that each offeror submit one resume for the program manager position, two resumes for operations site manager, two resumes for programmer IV, two resumes for analyst IV, two resumes for analyst III, and four resumes for senior data analyst.

deficiencies in their proposals and asked to submit revised technical proposals. All three revised technical proposals were rated as acceptable on each subfactor with the exception that Digital's proposal was rated by the contracting officer as being "in the high end of the acceptable range" on the personnel experience subfactor.² Offerors were also advised of areas in their cost proposals considered to be understated and were requested to submit BAFOs. Each offeror submitted revised cost proposals but made no additional changes to its technical proposal.

Based on its cost realism analysis, the agency made no adjustments to Computer Products's proposed costs of [deleted]; Digital's proposed costs of [deleted] were adjusted upward [deleted] in the areas of [deleted] for a total of [deleted]. When the proposed fees were added to the proposed costs, Computer Products's total costs were [deleted]; Digital's total costs were \$5,622,148.90. Based on Digital's slightly higher technical rating and its low evaluated cost, the agency determined that Digital's proposal represented the best value to the government and awarded the contract to Digital on April 24. By letter dated April 30, Digital requested approval to substitute three of its proposed personnel. Resumes for the proposed replacement personnel were submitted and the substitutions were approved by the contracting officer. This protest followed.

Computer Products alleges that Digital engaged in improper "bait and switch" tactics by proposing key personnel it did not intend to provide during contract performance. Specifically, Computer Products alleges that, after award, it learned that representatives of Digital "had approached all the key personnel [the protester] had proposed and offered them positions on the contract. However, of the 13 key employees offered positions, 9 were offered significant pay cuts." Based on this information, and the RFP's prohibition against personnel substitutions within the first 90 days after contract award, the protester argues that Digital never intended to use the key personnel it proposed in its proposal.

Offeror "bait-and-switch" practices, whereby an offeror proposes the use of personnel that it does not expect to use during contract performance, have an adverse effect on the integrity of the competitive procurement system and generally provide a basis for proposal rejection. Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577. This does not mean that an offeror must use the personnel it proposed or risk losing the contract for which it is competing in every case; the substitution of personnel after award is not objectionable unless the offeror intentionally misrepresented the availability of personnel or was aware prior to submission of

²The technical evaluation committee assigned a rating of highly acceptable to Digital on the personnel experience subfactor. The contracting officer disagreed with this rating, revising it to a rating in the high end of the acceptable range.

BAFOs of the unavailability of personnel. Robocom Sys., Inc., B-244974, Dec. 4, 1991, 91-2 CPD ¶ 513; Unisys Corp., supra.

Here, as noted above, the RFP required the submission of resumes for current employees, signed resumes for contingent hires, and confirmation in the BAFO that each proposed individual was available for contract performance. Digital provided signed and dated resumes and certifications for all 13 key personnel it proposed. Additionally, Digital provided letters of authorization for its current employees and letters of commitment for its contingent hires. Finally, in its BAFO, Digital certified that, subsequent to the date of the letter requesting BAFOs, it had contacted each individual proposed and that each individual had confirmed that he or she was available for contract performance.

The record shows that Digital requested the three substitutions because in two instances the employees had accepted employment with other firms and in the third instance the employee was unable to relocate as planned. Digital's April 30 substitution request indicated that although Digital was "still negotiating" with one employee who had accepted other employment, the employee had relocated, while a second employee had recently accepted another position that the employee considered more favorable to his needs and goals, and a third employee was unable to relocate at that time because of pressing family requirements. In its comments on the agency report, Computer Products did not respond to this information and explanation. Based on this record, therefore, we have no basis to conclude that the awardee misrepresented its intent to hire certain individuals or the availability of those individuals or otherwise engaged in improper "bait-and-switch" tactics.

Computer Products next contends that the agency failed to conduct a reasonable cost realism analysis of Digital's proposal, alleging that Digital's "overall evaluated price is unreasonably low compared with industry standards" and with the protester's overall cost. Computer Products also argues that the awardee's labor rates are too low to attract and maintain quality personnel.

When agencies evaluate proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not controlling because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 15.605(c) (FAC 90-31). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.--Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the

agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Management Sys., Inc.; Department of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Here, the record demonstrates that the Navy performed an extensive analysis of the different cost elements for each proposal. As part of its cost analysis, the Navy asked the Defense Contract Audit Agency (DCAA) to verify each offeror's cost elements and generally considered the results of DCAA's audit in its report. Specifically, the contracting officer reviewed each offeror's proposed direct and indirect labor rates, overhead rates, materials and travel cost, and G&A costs. As to overall costs, the record shows that Digital's overall costs are only [deleted] percent lower than the protester's costs and only [deleted] percent lower than the protester's proposed cost-plus-fixed-fee. As to labor rates, the agency considered the realism of the individual rates that the awardee and its two subcontractors, Seacor and Semcor, proposed. [Deleted].

As to the proposed direct labor rates of its subcontractors, the Navy found, with only one exception, that Semcor's direct labor rates for the base contract period were realistic, based on DCAA recommended rates. One proposed rate was adjusted [deleted] based upon the current salary of the individual proposed. Since Semcor did not [deleted], the contracting officer upwardly adjusted the unadjusted rates by the [deleted] DCAA recommended adjustment.

Similarly, the direct labor rates proposed by Seacor were determined realistic [deleted]. Seacor [deleted] did not escalate non-exempt labor. Therefore, the contracting officer upwardly adjusted the SCA non-exempt categories by the DCAA recommended escalation rate for the option periods.

In our view, the agency's analysis here was adequate to ensure that Digital's proposed cost was realistic. Indeed, Computer Products does not point to anything specific in the labor costs as evidence of the unreasonableness of the agency's cost realism analysis. Similarly, as noted above, while Computer Products complains that Digital's overall costs are unrealistically low, it has not indicated or explained what aspect of Digital's proposed cost is unrealistic. Despite access to the entire cost proposal under a protective order issued by our Office, the protester has not identified any specific component of Digital's labor rate, overhead rate, G&A, or other costs that it contends are unrealistically low. We conclude that the agency reasonably determined that Digital's evaluated costs were realistic.

Finally, Computer Products argues that Digital's proposal should have been rejected because Digital is not serviced by the SBA Washington office. As noted above, Digital is serviced by the SBA Philadelphia office.

The agency concedes that the language in the solicitation was incorrect and should have stated that competition was limited to firms serviced by district offices within SBA Region III. Indeed, documentation from the SBA to the Navy confirms that the SBA intended to limit competition to 8(a) firms serviced by the SBA Region III district offices, which are located in King of Prussia, Pennsylvania, and that the SBA provided a source list to the Navy listing eligible firms. The Navy states that the RFP was sent to all the 8(a) firms listed on the SBA's source list. Because Digital is listed on the SBA source list, the Navy argues that Digital is eligible for contract award and that, even if the RFP's eligibility requirement was imprecisely worded, Computer Products was not prejudiced.

The protester asserts that it was prejudiced because had it known that the field of competitors would include firms in the Philadelphia region, it would have offered a much lower price to increase its chance of award and would have enhanced its technical approach to make its technical proposal more competitive. Computer Products also argues that it "may have teamed with [Digital] or a number of other firms" had it known that firms serviced by other than the Washington office were eligible for award. In fact, the protester states that, early in the competition, Digital approached the protester concerning a teaming effort but that Computer Products rejected the offer because the protester believed that Digital was not eligible for award.

Although the agency admits, and we agree, that the wording of the eligibility requirement was incorrect, we will not sustain Computer Products's protest on this basis since we do not find that Computer Products has established any plausible possibility that it was prejudiced by the agency's actions. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54. In attempting to demonstrate that it was prejudiced, Computer Products argues that it would have lowered its price and/or improved its technical proposal had it known that its competition would include firms other than those serviced by the SBA Washington office. However, an offeror in any competition should provide the government with its best price and its best technical offer regardless of its anticipated competition and should not be "gaming" its cost or technical proposal based on which firms it anticipates will compete. In the circumstances at hand involving a technical misdesignation in describing the field of eligible competitors an offeror's speculation that the price it offered may have been affected is insufficient to show prejudice; rather, we require specific information showing adverse impact. Cf. Karl Bros., Inc., B-270603, Mar. 29, 1996, 96-1 CPD ¶ 179.

Computer Products's assertion that it "may have" teamed with the awardee or with another firm also fails to establish any prejudice. Although Computer Products's president states that it considered joint venturing with another firm and that Digital had approached the protester concerning joint venturing, the protester provides no additional information to support the likelihood of Computer Products's joint

venturing with any other offeror and no specific information on how such an arrangement would have enabled it to improve its proposal. Further, nothing in the RFP prohibited the protester from teaming with other firms, not serviced by the SBA Washington office, so long as the protester was the primary offeror. On this record, there is simply no showing that competitive prejudice, an essential element of a viable protest, exists with respect to Computer Products.

The protest is denied.

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of the United States