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DECISION



Wm. H. Thompson
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189410

DATE: December 15, 1977

MATTER OF: QED Systems, Inc.

DIGEST:

1. RFP requiring that offerors furnish detailed resumes of proposed personnel to be used under proposed contract and that personnel be either current employees or committed to employment, but not explicitly requiring evidence of commitment of these personnel to work on resulting contract, is subject to only one reasonable interpretation--that personnel proposed are not required to be committed to contract--and therefore RFP is not ambiguous.
2. Since RFP does not require commitment of proposed personnel to resulting contract, protest alleging that personnel proposed by awardee were not committed and that awardee was not using personnel proposed and that, therefore, proposal was nonresponsive and awardee is nonresponsive is denied.

The Naval Regional Procurement Office (NRPO), Long Beach, California issued request for proposals (RFP) No. N00123-77-R-0124 on November 17, 1976, for Planned Maintenance Systems (PMS) documentation services (preparation of the data necessary to perform preventive and corrective maintenance). Offers were received from Columbia Research Corporation, QED Systems, Inc. (QED), and the Stanwick Corporation (Stanwick). Upon evaluation, the technical proposals of QED and Stanwick were determined to be acceptable and discussions were held with each. Best and final offers were submitted, and Stanwick was selected for award on the basis of its lower price.

By telex filed in our Office June 23, 1977, QED protested the award of a contract to Stanwick. QED alleges that Stanwick has contacted QED personnel experienced in PMS and has offered them employment on this contract. QED argues that the RFP provisions requiring detailed personnel resumes and that these personnel be current employees or have signed employment agreements should be interpreted as requiring that the personnel whose resumes are provided in the proposal be committed to work on the contract. QED contends that

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Stanwick's alleged recruiting of QED personnel is evidence showing that the personnel whose resumes were provided with Stanwick's proposal were not committed to work on this contract and are presently unavailable. Therefore, QED argues Stanwick's proposal was nonresponsive and Stanwick is nonresponsible, as well. Award was made to Stanwick, notwithstanding this protest, on July 29, 1977.

The Department of the Navy (Navy) responded to QED's protest by a report to our Office, dated August 18, 1977. In that report, in paragraph 10 of his Statement the contracting officer states:

"* * * The use of resumes in proposals does not bind the contractor to provide the specific personnel shown but is only exemplary of the level and nature of qualifications that will be provided."

In its comments on the agency report, QED alleges further grounds for its protest based on the above statement, which QED characterizes as a misinterpretation of the plain requirements of the RFP. QED argues that sections "C" and "F" of the RFP, prescribing the qualifications required of proposed personnel, both explicitly and implicitly require that the personnel proposed be committed to performing any resulting contract. QED quotes two sentences from the RFP that, it feels, explicitly require such commitment. The opening sentence of the section requiring resumes states: "Resumes for the personnel you propose to furnish under the proposed contract. * * *" Additionally, section F-5, describing the minimum requirements for technical personnel, states, in pertinent part, that:

"Each of the four (4) personnel must be current full-time employees. The remainder may either be current employees or show evidence of an employment agreement that clearly commits said personnel pending contract award." (Emphasis added by protester.)

QED also contends that the great detail required of each resume implies that the personnel proposed are to be committed to the contract.

QED maintains that at the time the proposal was being prepared it employed approximately 250 persons having technical experience relevant to the RFP, but that the apparent requirement for commitment to any resulting contract severely limited the personnel that it could propose to use because many employees had other commitments or conflicting personal matters. Consequently, QED states that it could not offer personnel whose technical qualifications would have enhanced its technical proposal and whose financial expectations would have permitted its price proposal to be significantly lower.

QED argues that its interpretation of the RFP is correct, and that the agency's evaluation of the technical proposals on the basis that the personnel proposed need not be committed resulted in a lack of competition and severe prejudice to QED, as described above. Additionally, QED contends that even if the contracting officer's interpretation of the requirements was reasonable, QED's interpretation was also reasonable. The susceptibility of the RFP to more than one reasonable interpretation renders it ambiguous, QED maintains. In either case, QED asks that the Navy be directed to terminate the contract with Stanwick and resolicit with clear statements of the agency's requirements concerning commitment of proposed personnel to the resulting contract.

While QED consistently maintains that Stanwick did not propose personnel committed to the contract, it stresses that this is not a necessary element to the above arguments. The Navy's alleged misinterpretation of the RFP and the possible ambiguity of the RFP are sufficient to require termination and resolicitation regardless of Stanwick's response to the RFP, according to QED. QED does, however, make the alternate argument that Stanwick is nonresponsible because it lacks the ability to perform the contract with the specific personnel proposed to meet these definitive requirements of the RFP. This argument is, of course, dependent on whether Stanwick met the alleged requirements of the RFP.

A careful examination of the RFP does not support QED's contention that the personnel proposed must be committed to perform under any resultant contract. There is no explicit, specific requirement that an offeror show evidence that proposed personnel are committed to the resulting contract. The provisions relied on by QED, quoted above, require that the personnel listed in the offer: (1) be personnel that the offeror proposes to furnish under the contract, (2) be current full-time employees, or (3) if they are not current full-time employees, the offeror must show that they have entered into employment agreements committing them to work for the offeror in the event it is awarded the contract. Apparently, the Navy felt that if the personnel proposed were either current employees, or had executed employment agreements, they were likely to be provided for work on the contract, and that this was sufficient.

The requirement for detailed resumes does not require the conclusion that the personnel whose resumes are submitted must be committed to the contract. In Hewlett Co., Incorporated, B-183040, April 18, 1975, 75-1 CPD 239, the protester objected to provisions of the RFP which required that a successful offeror agree to assign to any resulting contract the personnel whose resumes were submitted with the proposal, and that if substitution is desired during the contract, the Government has the right to approve or disapprove the substitute. The Navy stated, and we found,

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that the resumes were required only to facilitate evaluation of the proposals for technical competence, and to ensure that the offeror would be able to meet the level of expertise required. The substitution requirement was found to be only a way of allowing the Government to maintain the level of competence once the contract was awarded. See also Kirschner Associates, Inc., B-187623, June 15, 1977, 77-1 CPD 426.

Q&D cites three of our decisions, I Systems, Incorporated, B-186513, January 27, 1977, 77-1 CPD 65; Serv-Air, Inc., B-179065, April 22, 1974, 74-1 CPD 206, and Programming Methods, GTE Information Systems, Inc., B-181845, December 12, 1974, 74-2 CPD 331, as standing for the general proposition that requirements for resumes require commitment of the named personnel to resulting contracts. We disagree with Q&D's reading of these decisions.

In I Systems, the RFP stated that "[i]f the individual proposed is not currently employed by the offeror," the proposal must include "a clear statement of commitment from the individual that he will be available for work if a contract is awarded to the offeror." The issue presented was whether the requirement for a commitment to work for the offeror from individuals not currently employed could be satisfied by an unsupported statement in the proposal, or whether signed statements had to be submitted. We found only that the RFP should have made this requirement more clear. Nothing in this decision indicates that currently employed individuals whose resumes are submitted in a proposal must be committed to work on a resulting contract. Even those individuals who are not current employees were only required to be committed to employment by the offeror. We interpreted similar requirements in the same manner in Serv-Air.

Our decision in Programming Methods, GTE Information Systems, did indicate that personnel whose resumes were submitted were required to be committed to the contract, but apparently in that case there was an explicit requirement for such a commitment, as evidenced by the statement:

"According to NASA, PMI did not clearly indicate which personnel it was committing to the contract and that its SEB [Source Evaluation Board] reasonably looked for that definite commitment * * *"

There is certainly no general rule requiring that personnel whose resumes are included in proposals be committed to any resulting contract. In the absence of a specific requirement for such a commitment,

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no general principle may be derived from our decisions requiring that such personnel must be committed to the contract.

Stanwick, in its proposal, offered more than the required number of individuals that met the experience and expertise requirements. While two of the listed personnel were proposed hires, there were a sufficient number of qualified individuals listed who were current employees, so the issue of evidence of employment commitments need not be addressed. Stanwick's proposal was clearly responsive to the RFP.

Since we have determined that offerors are not required to actually commit and provide the specific individuals proposed, there is no issue concerning the application of definitive responsibility criteria for us to review as urged by QED. Whether Stanwick actually provides personnel that the Navy feels are capable of performing the contract at the level of technical expertise indicated in its proposal is a matter of contract administration and not for our determination.

Regarding QED's contention that its interpretation of the requirements was reasonable, and that the RFP was, at least, ambiguous, we cannot agree that QED's interpretation was reasonable. As we discussed above, nothing in the RFP required that personnel be committed to perform the resulting contract, and the requirement for detailed resumes does not generally require that these individuals be committed. While QED asserts that the personnel it proposed were committed, its proposal did not contain specific commitment agreements. In fact, in that respect it was no different than Stanwick's proposal. Since no specific commitment agreements were required or offered, either offeror could have substituted personnel after award subject only to providing the required level and areas of competence and experience.

In summary, we find that the RFP did not require commitment of proposed personnel to any resulting contract, that it was clear in this regard that neither proposal offered evidence of such commitments, that both proposals were evaluated on the basis that the personnel were not committed, and that, consequently, QED was not prejudiced.

Accordingly, the protest is denied.

Deputy


Comptroller General
of the United States