DECISION

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

FILE: B-215283 **DATE:** August 20, 1984

MATTER OF: American Management Systems, Inc.

DIGEST:

Where offeror's proposal indicates a unit charge for tape storage of $2.50 per tape/per day in one area of its proposal and the price for tape storage in other areas of its proposal reflects a unit charge of $2.50 per tape/per year, contracting officer is on notice of a material discrepancy which should have been resolved by conducting appropriate discussions.

American Management Systems, Inc. (AMS), protests the award of a contract to Litton Computer Services (LCS) (formerly Informatics General Corporation) under request for proposals (RFP) No. DLAH00-83-R0285 issued by the Defense Logistics Agency (DLA) for teleprocessing services to support the Department of Defense Recruit Market Network System. DLA awarded the contract to LCS on the sole basis that LCS's evaluated systems life costs (ESLC) were lower than those of AMS. AMS contends that the award to LCS was improper since AMS's overall cost is in fact $700,000 lower.

We sustain the protest.

AMS's protest is based upon DLA's evaluation of the tape storage charges proposed by AMS. The RFP required that each offeror specify a price that would be charged for the physical storage of the magnetic tapes that would be used in performing the teleprocessing requirements of the contract. DLA estimated that 300 tapes would have to be stored per year and, since prices were evaluated over a 5-year period, the total cost for tape storage was based upon an estimated 1,500 tapes.

DLA determined that AMS's tape storage charge was $2.50 per tape/per day. Based on that unit charge, AMS's annualized cost per tape was $912.50 and its overall price for tape storage was evaluated at approximately $1.3

million. This amount was added to AMS's cost proposal to arrive at an ESLC of $6,775,000. Since LCS had an ESLC of $6,197,000, award was made to LCS.

AMS states that the unit charge listed in its initial proposal for tape storage was incorrect and that AMS actually intended to charge DLA $2.50 per tape/per month. Correction of this error results in an overall cost to the government of $45,000 for tape storage rather than the $1.3 million DLA added to AMS's cost proposal. Although acknowledging that the unit charge was listed in Table E-3 of its cost proposal as $2.50 per tape/per day, AMS argues that this price is contradicted in other areas of its proposal and that DLA should have requested AMS to clarify this matter during discussions. In addition, AMS argues that a unit charge of $2.50 per tape/per day is so unrealistic that this fact alone should have put DLA on notice that AMS had made a mistake in its cost proposal. AMS states that no company charges anything that even approaches the amount which DLA added to AMS's proposal and that it was unreasonable for DLA to accept this figure without further inquiry. AMS points out that under the General Services Administration Multiple Award Schedule Contract (MASC), AMS is obligated to provide tape storage to all federal agencies at $2.50 per tape/per month. AMS contends that DLA was aware of this agreement and, given the discrepancies in its proposal, DLA should have verified AMS's unit charge for tape storage. By not raising this issue, AMS argues that DLA failed to conduct meaningful discussions with AMS.

AMS also contends that DLA should have reopened negotiations after best and final offers to take advantage of AMS's lower price, since DLA was advised, prior to award, that its evaluation of AMS's tape storage charges was incorrect. By preaward letter, DLA requested offerors to verify that the government's cost summary was correct and, in that letter, DLA indicated that $2.50 per tape/per day was used to evaluate AMS's tape storage charges. AMS advised DLA that the correct charge should have been $2.50 per tape/per month. Taking into account this change and one additional minor adjustment, AMS calculated its ESLC to be $5,466,936. Since this figure is approximately $700,000

lower than LCS's price, AMS argues that DLA should have reopened negotiations.

DLA contends that AMS's protest is untimely. DLA argues that AMS was aware that DLA had evaluated the tape storage charges on a per-day basis because DLA's notification that award was made to LCS noted the ESLC of $6,197,000. Concerning the inadequacy of the discussions which were conducted, DLA contends that AMS's proposal was not ambiguous and that it clearly set forth a unit charge of $2.50 per tape/per day. DLA argues that the unit charge by itself was not unreasonable and that, as a result, the contracting officer was not obligated to discuss the matter with AMS.

Also, DLA states that since the procurement was conducted under the Basic Agreement acquisition method, the Multiple Award Schedule price provides no basis for comparison since AMS would only be bound to that price for orders against its MASC. DLA contends that AMS's response to its preaward letter was nothing more than a late modification to its proposal which could not be permitted without reopening negotiations with all offerors. DLA argues that it was under no obligation to reopen negotiations and that it would be "unsound" procurement policy to permit such a revision after the submission of best and final offers. Finally, DLA argues that AMS was not prejudiced because, even if the price reduction had been accepted, AMS would not be in line for award.

Regarding the timeliness of the protest, we do not find that the notification to AMS of the award to LCS was sufficiently detailed to apprise AMS of the basis of its protest. The contracting officer's letter merely indicated that award was being made to LCS and the price. Since, under the RFP, the technical proposal was 20 percent of the evaluation, AMS was not informed that its proposal had been rated technically equal to LCS and that award was being made solely on the basis of price. Further, there was no indication that DLA had refused to correct the pricing error identified by AMS. Accordingly, we find that AMS had no knowledge of the specific basis of its protest until the debriefing. Because the protest was filed within 10 days of the debriefing, the protest is timely. R.H. Ritchey, B-205602, July 7, 1982, 82-2 C.P.D. ¶ 28.

Where there are deficiencies or ambiguities in initial and revised proposals, attempts should be made to resolve the problem with meaningful discussions which point out the deficiency and give the offeror the opportunity to revise its proposal. Mil-Air Engines & Cylinders, Inc., B-203659, Oct. 26, 1981, 81-2 C.P.D. ¶ 341. We have indicated that where a contracting officer is on actual or constructive notice of a possible error in proposals, the error must be called to the offeror's attention and resolved--generally in the conduct of written or oral discussions. See Autoclave Engineers, Inc., B-182895, May 29, 1975, 75-1 C.P.D. ¶ 325; Defense Acquisition Regulation, § 3-805.5(c), reprinted in 32 C.F.R. pts. 1-39 (1983). Where an agency fails to resolve an ambiguity during discussions which it should have reasonably detected and which materially prejudices an offeror, the agency has failed in its obligation to conduct meaningful discussions.

Based on our review of the cost forms submitted by AMS, which were utilized by DLA in the evaluation process, we find that a clear pricing discrepancy for tape storage exists which should have led DLA to suspect that an error existed in AMS's proposal. We recognize that nothing in AMS's proposal substantiates its contention that its actual intended charge was $2.50 per tape/per month. However, we need not resolve what AMS actually intended to charge since we find that this question should have been raised during discussions. In our view, AMS's proposal does not clearly indicate that the intended unit charge was $2.50 per tape/per day as argued by DLA. On cost form M-CF-42, AMS listed an annual cost of $375 for the storage of 150 tapes. While the unit charge listed on Table E-3 was $2.50 per tape/per day, implicit in AMS's calculations on cost form M-CF-42 is a unit charge of $2.50 per tape/per year. In addition, under the Schedule of Supplies, Services and Prices, we note that AMS listed a price of $2.50 per tape/per year for the storage of magnetic tapes. Finally, we note that on cost form M-CF-46, AMS indicated that its overall ESLC was $5,472,149 which is clearly inconsistent with DLA's determination that AMS's ESLC was $6,775,000. While DLA may not have actually discovered the pricing discrepancy, we find that there is sufficient evidence which demonstrates that DLA should have reasonably detected this ambiguity during its evaluation of AMS's proposal. Given the magnitude of the impact on AMS's cost evaluation, we conclude DLA should have raised this issue with AMS during discussions. Because of the clarity of the defect requiring discussions here, we need not address the remaining issues raised.

Accordingly, the protest is sustained. With respect to DLA's argument that AMS was not prejudiced by the agency's failure to conduct meaningful discussions, we find that to be without merit. The cost analysis DLA refers to in arguing that AMS would not be in line for award was merely done for the purpose of determining whether AMS's proposal was materially unbalanced and was not used in determining which proposal was lower priced. In addition, a review of the record indicates that even under the alternate analysis proposed by DLA, AMS's total proposed price is still lower than that of LCS.

We recommend that DLA reopen price negotiations with AMS and LCS. We recognize that to reopen negotiations at this juncture could create an auction situation. However, in our view, the importance of correcting this error through further negotiation overrides any harmful effect on the integrity of the competitive procurement system. If AMS is evaluated as low, DLA should consider the feasibility of terminating the existing contract for the convenience of the government.

This decision contains a recommendation that corrective action be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

Milton J. Socolar

Acting Comptroller General
of the United States