

DECISION



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

FILE: B-219668

DATE: December 12, 1985

MATTER OF: SEI Information Technology

DIGEST:

1. Protest is considered timely where the protester asserts that the protest was filed within 10 working days of receiving denial of initial protest to agency and agency has provided no evidence to contrary.
2. GAO does not object to cancellation of a solicitation where the contracting agency needs to modify the scope of work and has decided to perform some of the work in-house.
3. There is no legal basis for recovery of proposal preparation costs where GAO does not find the cancellation of a solicitation improper.

SEI Information Technology (SEI) protests the cancellation of request for proposals (RFP) No. SSA-RFP-85-0196 by the Social Security Administration (SSA). SSA canceled the RFP because it determined that none of the offerors were technically acceptable. SEI contends that SSA improperly applied different evaluation criteria from those stated in the RFP and that the latter determination therefore was improper. We deny the protest.

Initially, we point out that our Office recently issued a Report of the Comptroller General to the Chairman, Committee on Government Operations, House of Representatives, entitled "Social Security Administration's Computer Systems Modernization Effort May Not Achieve Planned Objectives," GAO/IMTEC-85-16. We have considered relevant sections of this report in our evaluation of SEI's protest, consistent with the provisions of § 3555 of title 31, United States Code, as added by the Competition in Contracting Act of 1984, title VII of Pub. L. 98-369, 98 Stat. 1175 (1984).

This acquisition was part of a larger effort, known as the Systems Modernization Plan, to upgrade and improve SSA's data processing capabilities. Under an earlier contract, SSA acquired a target design for a data base architecture to allow the integration of SSA's currently fragmented data bases, eliminate problems associated with redundant data, and provide easier and more consistent access to data. This RFP was to acquire a contractor, on a cost-plus-fixed-fee basis, for the detailed design and development of the computer programs needed to implement the target design. The RFP prescribed schedules for the development of each software module. The contractor would also assist with the migration of selected applications and data to the target data base environment. All deliverables under the contract were to conform to SSA's "Software Engineering Technology" guidelines and standards.

As described in the RFP, SSA's current software inventory includes more than 8,000 application programs (these are the programs which use the data to produce information, reports, etc.) with a total of about 6.5 million lines of programming code. SSA estimated that its data comprised hundreds of billions of characters, with an annual growth rate of about 13 percent. Our report, cited above, indicates that much of SSA's data is fragmented, with frequent duplicate entries, which impairs efforts to assure data accuracy. SSA's processing volume approximates 2.5 million transactions per day.

The RFP provided that technical factors would be more important than cost in SSA's evaluation of proposals and that technical proposals would be evaluated on the basis of the following factors listed in descending order of importance:

"a. Related Organizational Experience

"Offerors will be evaluated on previous relevant organizational experience in the performance of work of similar size, complexity and scope. Experience in the development of large, complex data base systems and the transition of automated systems to data base systems will be assessed and will receive high ratings. [balance omitted];

"b. Staff Personnel Qualifications [detail omitted];

"c. Technical Approach [detail omitted];

"d. Project Management and Staffing Plan
[detail omitted]."

SSA evaluated technical proposals using an evaluation plan which assigned 40 points (out of a total of 100) to each of the first two criteria and 10 points to each of the latter two. With respect to organizational experience, the plan stated that:

"Offerors will be evaluated on previous experience in conducting similar assignments. For example, a similar assignment would be one which entailed the centralized system integration of data stored at multiple sites, managed by dissimilar DBMS's [data base management systems--special programs to handle large collections of data], with millions of entity occurrences, interactive transaction rates in the tens of thousands per day, and included batch processing; however, a project which entailed a central data base accessed by multiple terminals with limited local storage would not be considered comparable."

In its proposal, SEI described briefly, using SSA's resume format, its prior work developing "large, complex data bases." One of these data bases, a commercial credit reporting and inquiry system containing more than 110 million records, is described by SEI as the largest existing commercial data base using the same basic technology as required by the RFP.

Technical evaluation scores for the five offerors ranged from SEI's high score of 16.44 to a low score of 0 out of the maximum 100 points. SEI's technical evaluation scores from individual members of SSA's technical evaluation panel ranged from a low of 0.8 to a high of 29.6. Based on this evaluation, SSA determined that none of the offerors were technically acceptable and canceled the procurement.

SEI contends that SSA's evaluation plan amounted to the unannounced imposition of a requirement for prior experience in the development not just of "large" and "similar" systems, but in the development of systems virtually identical in size and scope to that contemplated under the RFP. SEI states that because it was based on this improper evaluation, SSA's decision to cancel was improper. SEI requests that the RFP be reinstated and the contract awarded to it or, alternatively, that it be allowed to recover its proposal preparation costs.

SSA challenges the timeliness of SEI's protest under our Bid Protest Regulations, 4 C.F.R. part 21 (1985). In this respect, SSA points out that SEI first protested the cancellation to SSA, which issued a decision dated July 23, 1985, denying SEI's protest. SSA contends that SEI's subsequent protest with this Office therefore was untimely because it was not filed until August 12, 1985, more than 10 working days after SSA's denial of SEI's protest. See 4 C.F.R. § 21.2(3). SEI states that it did not receive SSA's denial of its protest until July 29, 1985, and argues that its protest therefore was filed within 10 working days of when it received notice of SSA's denial.

We resolve doubts regarding questions of timeliness in favor of the protester. See, e.g., Air Flight Service, B-216996, Apr. 12, 1985, 85-1 CPD ¶ 420. Here, SEI states that it first received notice of SSA's denial of its protest exactly 10 working days prior to the filing date of SEI's protest with our Office, and SSA has presented no evidence to the contrary. In these circumstances, we find that SEI's protest is timely. Grumman Aerospace Corp., B-216068, May 26, 1985, 85-1 CPD ¶ 596.

Regarding the merits, SSA cites the "performance of work of similar size, complexity and scope" language in the RFP's organizational experience criterion to support its contention that the evaluation plan was within the scope of the RFP. Based on SEI's deficiencies in this area, as well as other deficiencies in SEI's proposal, SSA asserts that its evaluation and decision to cancel were, therefore, both reasonable.

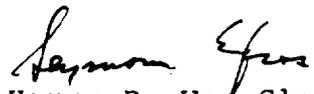
Our review of the comments on individual evaluators scoresheets persuades us that SSA's evaluation applied a requirement for experience with prior projects virtually identical in scope and size to that contemplated under the RFP. We note, for instance, that at least one evaluator gave SEI no points for either organizational experience or personnel qualifications for the sole reason that SEI's previous data bases had not been as big as SSA's data base. In our view, this was a considerably more stringent requirement than vendors might reasonably have anticipated, particularly when the qualifying "experience in the development of large, complex data bases . . . will receive high scores" language of the RFP is considered. As discussed above, SEI had experience in the development of a large data base using similar technology. SEI, however, received a technical score of only 16.44 out of a possible 100. In our judgment, this low score was substantially attributable to the

this low score was substantially attributable to the application of a single criterion--affecting 80 percent of the technical evaluation--which was inconsistent with the RFP's stated evaluation scheme.

We believe, however, that the RFP was properly canceled. As we pointed out in our report, cited above, SSA had not performed much of the underlying work needed to support the effort contemplated by this RFP, and the scope of work will have to be changed. This provides a reasonable basis for canceling the procurement without regard to the propriety or impropriety of the evaluation. Parkey and Partners Architects, B-217319, Mar. 22, 1985, 85-1 CPD ¶ 336. Our report also points out that SSA has reassessed its approach, has determined to perform some of the work in-house, and is preparing a new RFP reflecting these considerations. We will not question the cancellation on this basis, since the decision whether work should be performed in-house or by a contractor is a matter of executive branch policy that is not within our bid protest function. Research, Analysis & Management Corp., B-215712.2, Jan. 18, 1985, 85-1 CPD ¶ 54.

Since we do not find that SSA lacked a proper basis for the cancellation of this procurement, there is no legal basis upon which SEI might be allowed to recover its proposal preparation costs. Parkey and Partners Architects--Claim for Costs, B-217319.2, Apr. 22, 1985, 85-1 CPD ¶ 457.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel