

Ashton



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Unisys Corporation

File: B-230019.3

Date: March 29, 1989

DIGEST

Where agency reopens negotiations after terminating a contract improperly awarded to the protester; calls for submission of new proposals that include costs for performance only during 1989 and 1990 and advises offerors of anticipated January 1, 1989 performance start date, protester should have known that, even though its prior contract provided for a 1988 base period, the evaluation and contract award would be based on a 1989 base year; any protest that the solicitation was unclear in this regard is untimely where not filed prior to the closing date for receipt of proposals.

DECISION

Unisys Corporation protests the award of a contract to VSE Corporation under request for proposals (RFP) No. N00123-86-R-0246, issued by the Department of the Navy, for engineering and technical services in support of combat system programs. Unisys alleges that the award improperly was made for a performance period other than that for which proposals were solicited.

We deny the protest.

As originally issued in February 1986, the solicitation requested proposals to supply engineering and technical services for a base period of August 1, 1986 to July 31, 1987, plus 2 option years. On September 4, 1987, the contracting officer sent a mailgram to all offerors informing them that the agency anticipated that the period of performance for the base year would run from October 1, 1987 to September 30, 1988. The contracting officer subsequently made award to Unisys on the basis of its best and final offer (BAFO) on December 16; the contract provided

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for a base period of December 1, 1987 to November 30, 1988, and for 2 option years (December 1, 1988 to November 30, 1989, and December 1, 1989 to November 30, 1990). In January 1988, the Navy modified the contract to provide for a base period of January 1, 1988 to December 31, 1988 and for 2 modified option years (1989 and 1990).

The Navy subsequently determined that the award to Unisys was improper because the solicitation evaluation criteria did not adequately describe the criteria actually used in evaluating proposals. As corrective action, the agency proposed to amend the evaluation criteria, reopen negotiations, and request a second round of BAFOs. Unisys protested the reopening of negotiations, but we denied its protest, finding that the solicitation had failed adequately to advise offerors of the actual basis for award, and that the proposed corrective action was unobjectionable. Unisys Corp., B-230019.2, July 12, 1988, 67 Comp. Gen. ___, 88-2 CPD ¶ 35.

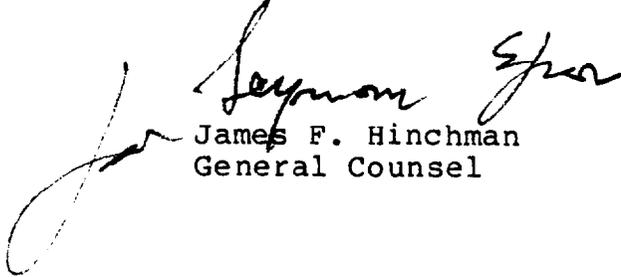
The Navy then reissued the RFP with amendments revising the evaluation criteria and requesting all offerors in the original competitive range, including Unisys, to submit new BAFOs, to be evaluated independently of previous proposals, by November 14. The amendments also set forth the agency estimate of the required labor hours for three time periods: (1) "Base Year Hrs."; (2) "Jan. 89 - Dec. 89, First Option Hrs."; and (3) "Jan. 90 - Dec. 90, Second Option Hrs." The amendments advised offerors, however, that the "Base Year" hours were provided for "information only"; they stated that "for proposal preparation, offerors should assume a start date of 01 Jan. 89," and that "costs should be proposed for Jan. 89 - Dec. 89 and Jan. 90 - Dec. 90 only." Although Unisys submitted a BAFO in response to the amendments, the Navy reports that its proposal was received 1 hour after the scheduled closing time, and for that reason was not evaluated. Based upon its evaluation of the timely BAFOs submitted by VSE and Raytheon, the Navy made award to VSE. Unisys thereupon filed this protest with our Office.

Unisys contends that the award to VSE was improper because the contract provided for a performance period different from that upon which BAFOs were solicited; the contract awarded to VSE provided for a base period of January 1 to December 31, 1989, and for 1 subsequent, 1990 option year, even though, Unisys argues, the amendments reopening negotiations did not actually change the base year from 1988 to 1989. Unisys points out that, in setting forth the required labor hours, the amendments identified 1989 as the first option period and distinguished it from a separate, prior base year, with different, less extensive labor hour

requirements. Unisys maintains that offerors' unawareness of the Navy's intent to award a contract with a 1989 instead of a 1988 base year may have misled the offerors in the preparation of their proposals.

The record here indicates that Unisys was, or should have been, fully aware of the Navy's intention to make 1989, rather than 1988, the base year under the reopened competition. Although the revised RFP still characterized 1989 as the first option year (apparently inadvertently), the RFP called for proposed costs covering only 1989 and 1990, stated that 1988 estimates were being provided only for information purposes, and specifically informed offerors that a January 1, 1989 start date was anticipated. Read as a whole, then, we think the RFP informed offerors with sufficient clarity that 1989, not 1988, would be the base year of performance. To the extent Unisys nevertheless considered the RFP unclear or ambiguous in this regard, it was required to protest this alleged solicitation deficiency prior to the November 14 closing date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); see Southern Air Transport, 64 Comp. Gen. 128 (1984), 84-2 CPD ¶ 637.

The protest is denied.



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General Counsel