

D. McArdle



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Unisys Corporation

**File:** B-237005

**Date:** January 5, 1990

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### DIGEST

Where solicitation placed heavy emphasis on initial order quantity in price evaluation, and where record contains no evidence that acceptance of low evaluated offer would result in other than the lowest ultimate cost to the government, protest against allegedly unbalanced offer is denied.

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### DECISION

Unisys Corporation protests the award of a contract under request for proposals (RFP) No. F04606-89-R-0104, issued by the Air Force for spare parts for microwave radio terminal sets. The protester contends that the offer of the awardee, Raytheon Company, is unbalanced.

We deny the protest.

The agency issued the solicitation on January 10, 1989 for a firm fixed-price indefinite quantity contract for 23 line items of spare parts for a period of three years. On June 30, the agency combined the solicitation with two other solicitations for similar spare parts, for a total of 48 line items. Each line item contained a minimum initial quantity, to be ordered upon award, and a maximum quantity that the agency could purchase over the 3-year period of the contract.

The amended solicitation required potential offerors to submit prices for the minimum initial quantity of each line item; each offeror also submitted prices in four quantity ranges for each line item, for each of the three years of the contract period; these 576 prices, applicable only if the agency should order parts in addition to the minimum initial quantity, were termed the "pricing matrix." The solicitation advised offerors that the agency would evaluate prices by adding the unit costs in the pricing

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matrix (quantity of 1 each) to the total cost of the minimum initial quantity (price multiplied by minimum initial quantity) and provided for award to the responsive, responsible offeror submitting the lowest evaluated offer. This scheme gave primary emphasis to the minimum initial quantity, which represented the agency's only firm requirement. The solicitation further provided that the government could reject any offer that was materially unbalanced as to prices for the minimum initial quantity and the matrix quantity ranges, defining unbalanced offers as any that were "based on prices significantly less than cost for some work and prices which are significantly overstated for other work."

The agency received two offers on July 20, 1989. Although the prices in the pricing matrix that the awardee submitted were generally higher than the prices in the matrix that the protester submitted, the awardee's prices for the minimum initial quantity were so low that when the agency applied the price evaluation criteria, Raytheon's evaluated price was low.<sup>1/</sup> In its proposal, the awardee provided a justification for offering a lower price for the initial quantity, explaining in essence that it was passing along the advantage of a reduction in material and labor costs due to a concurrent "production buy" of the radio terminals by the Air Force in a separate procurement. The agency considered this explanation and awarded a contract to Raytheon on August 16; it issued a delivery order for the minimum initial quantity on August 29. Unisys filed this protest after receiving written notification of the award.

The protester contends that the offer from Raytheon is mathematically and materially unbalanced and that acceptance of the awardee's offer will not result in the lowest ultimate cost to the government. The protester argues that the significant difference between the awardee's minimum initial quantity prices and its prices for additional

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<sup>1/</sup> For example, the awardee offered a higher price for line item 1 than did the protester in each quantity range (15-29, 30-64, 65-139 and 140-275), for each of three contract years; nevertheless, its price for the minimum initial quantity of 85, \$631 each, was considerably lower than the protester's price of \$746, so that its evaluated price for line item 1 (the 12 quantity range prices added to the price of the minimum initial quantity) was approximately \$8,000 less than the protester's.

quantities demonstrate that the awardee's offer is prima facie mathematically unbalanced. The protester points out further that at the prices in the awardee's pricing matrix, any purchase in excess of 18 percent of the remaining quantity that can be ordered under the contract will result in the agency paying a higher overall price to the awardee than it would if it accepted the protester's offer. The protester argues that the maximum quantities stated in the solicitation represent the agency's best estimate of its needs over the 3-year contract period and contends that, based on the production schedule for the radio terminal set, the agency is likely to order the maximum quantity. The protester concludes that since the awardee does not offer the lowest ultimate cost for the quantity that the agency is likely to order, Raytheon's offer is materially unbalanced and should be rejected.

The Federal Acquisition Regulation § 16.505 states that agencies may use indefinite quantity contracts when they cannot determine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period, and it is inadvisable for the government to commit itself for more than a minimum quantity.<sup>2/</sup> Here, the agency points out that having purchased the minimum initial quantity, it has no obligation to purchase additional quantities from the awardee. Further, the contracting officer has directed agency buyers, prior to issuing any further delivery orders under the contract, to review the abstract of offers to determine whether the contract offers the best price to the government or whether any new requirement should be recompeted to obtain a better price.

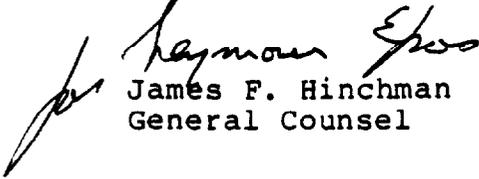
Absent any evidence that the agency intends to order any additional substantial quantities of spare parts from the awardee, we cannot conclude that an award to Raytheon is not likely to result in the lowest overall cost to the government. Apart from its contention that the awardee's offer is unbalanced, the protester has offered no basis for rejecting the awardee's offer. Since the agency has no obligation to order additional quantities from Raytheon, we

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<sup>2/</sup> Consistent with this regulation, we find no evidence that the maximum order quantity set forth in the solicitation intended to be an accurate estimate of the agency's requirements.

cannot question the agency's decision to place primary emphasis on the initial minimum quantity in determining the lowest cost.

The protest is denied.

  
James F. Hinchman  
General Counsel