



Comptroller General
of the United States

3161110

Washington, D.C. 20548

REDACTED VERSION

Decision

Matter of: SRS Technologies

File: B-254425.2

Date: September 14, 1994

Alan M. Grayson, Esq., and Hugh J. Hurwitz, Esq., for the protester.

Keith L. Baker, Esq., and Sean P. Morgan, Esq., Eckert Seamans Cherin & Mellott, for IMS Services, Inc., an interested party.

Robert M. Jusko, Esq., and Anita M. LeBlanc, Esq., Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency conducted prejudicially misleading discussions with the protester where the agency considered the protester's initial proposal to be deficient for proposing cost discounts without adequate supporting information and the agency failed to advise the protester of this deficiency during discussions; but instead instructed the offeror not to discount costs, the amount of which, if accepted, would have resulted in the protester's offer being the lowest evaluated cost.

DECISION

SRS Technologies protests the award of a contract to IMS Services, Inc. under request for proposals (RFP) No. N68936-93-R-0172, issued by the Department of the Navy for support services for its telecommunications/computer network at the Naval Air Warfare Center, Point Mugu, California. SRS contends that the Navy conducted misleading discussions.

We sustain the protest.

The version dated September 14, 1994, contained confidential source selection sensitive information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

The RFP contemplated the award of a cost-plus-fixed-fee, indefinite-delivery/indefinite-quantity, level-of-effort contract for maintenance and operational support services of the agency's telecommunications/local area network systems at Point Mugu for 1 base year and 2 option years. The contract services include requirements analysis; design and installation of new communications equipment and networks; and management, maintenance, and operational support--for digital and audio systems and subsystems, for the video teleconferencing system, for the intrusion alarm system, for security electronic access systems, and for electronic mail systems.

Minimum and maximum quantities were set forth for the total man-hours per year that could be ordered under the contract. In addition, the RFP stated, for each year of the contract, the agency's estimated man-hour level of effort for required labor categories and its estimated cost for materials; equipment; and tools.¹ Offerors were informed that:

"[These] estimates are provided to assist in proposal preparation. The offeror is responsible for inclusions of all other estimates of elements of cost deemed necessary to perform the required work."

Technical evaluation factors and subfactors were identified, and detailed proposal preparation instructions provided. Regarding cost proposals, offerors were informed that the agency would assess the realism of offerors' proposed costs and "the degree to which the cost proposal reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered costs." The RFP provided for award to the offeror submitting the technically acceptable proposal with the lowest evaluated cost.

Ten proposals were received by the closing date for receipt of proposals. [Deleted] proposals, including those of SRS and IMS, were determined in the competitive range as being susceptible of being made acceptable. SRS proposed the lowest total cost of [deleted], while IMS proposed the second-lowest total cost of [deleted].

In its cost evaluation of initial proposals, the agency questioned SRS's proposed costs for equipment. SRS estimated that its costs to provide equipment, which it proposed to wholly obtain from one of its subcontractors, would be [deleted] less than the government's stated

¹For convenience, we will refer to "materials, equipment, and tools" as "equipment."

estimate. SRS stated that "[deleted]² [deleted]."³ The Navy's evaluators ignored SRS's estimated lower cost for the equipment based upon its conclusion that:

"[s]ince the [g]overnment estimate for [equipment], provided in the solicitation, was meant to be the same for all offerors, the total cost for [equipment] will be added back into [SRS's and its subcontractor's] cost proposal."

The contracting officer accepted the evaluators' recommendation to upwardly adjust SRS's proposed equipment costs to the government's estimate because, in the contracting officer's view, SRS did not adequately support its lower proposed equipment costs. Also, the contracting officer concluded that SRS's asserted discounts should be available to all offerors. The contracting officer decided that all offerors' proposed equipment costs should be normalized to the government's stated estimate.⁴

Written discussions were conducted, and the [deleted] competitive range offerors were given an opportunity to submit revised proposals. SRS was informed, among other things, that:

"[t]he amounts shown for [equipment] [c]osts represent the Government's estimate (not-to-exceed amount) for performance of the contract and should be proposed as stated without any discounting." [Emphasis added.]

²[Deleted]

³For example, the government's estimate for equipment costs for the base year is \$753,760. SRS proposed equipment costs for the base year is [deleted] lower than the government's estimate.

⁴Normalization is a technique sometimes used within the cost adjustment process of a cost realism analysis in an attempt to arrive at a greater degree of cost realism. It involves measuring offerors against the same cost standard or baseline in circumstances where there are no logical differences in approach or in situations where insufficient information is provided in the proposals, leading to the establishment of a common "should have bid" estimate by the agency. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183; Dynalelectron Corp. et al., 54 Comp. Gen. 562 (1975), 75-1 CPD ¶ 17.

SRS responded:

"SRS has proposed the most probable cost for materials, equipment, and tools based upon the discounts . . . stated in our proposal. However, SRS understands the [g]overnment's wish to normalize bids and will therefore use the [government estimated] amounts shown in the solicitation for Other Direct Costs (material/equipment/tools) when submitting any future cost proposal."

The Navy determined that all [deleted] offerors' revised proposals were technically acceptable. Best and final offers (BAFO) were requested and received. The BAFOs of all [deleted] offerors, including SRS and IMS, were determined to be technically acceptable. IMS submitted the lowest proposed BAFO cost of \$7,087,911, while SRS submitted the second lowest proposed cost of [deleted]. In a cover letter to its BAFO, SRS informed the agency that although it proposed the government estimated amounts for equipment, as directed, it still contemplated that its equipment costs would be less than the government's estimate because of the firm's intent to obtain the equipment from its identified subcontractor, whose industry discounts would result in significantly lower equipment costs. The agency concluded that the offerors' proposed BAFO costs were realistic and made no further cost realism adjustments.⁵

Award was made to IMS, as the offeror with the lowest evaluated cost, technically acceptable offer. SRS requested and received a debriefing, at which it learned that its evaluated BAFO costs would have been lower than IMS's had the Navy accepted SRS's estimated equipment costs.⁶ The contracting officer states that he explained his rationale for normalizing SRS's proposed equipment costs--that is, that in the absence of "substantive supporting rationale" for SRS's lower estimated costs, the contracting officer could not accept SRS proposed costs. The contracting officer also states that he informed SRS that the firm could have continued to propose its lower equipment costs and was

⁵The Navy did note that SRS had not proposed any labor rate escalation for its Service Contract Act employees in the option years. The agency states that any adjustment for this would be only several thousand dollars and insignificant.

⁶SRS's estimated equipment costs were [deleted] lower than the government's estimate for the base and option years of the contract.

surprised to learn from SRS that the firm had understood his written discussions as indicating that it was required to propose the government's stated estimate for equipment.⁷

SRS protested to our Office within 10 calendar days of the award, asserting that the Navy conducted prejudicially misleading discussions with SRS. Performance of IMS's contract has been suspended pending our decision in this matter. 31 U.S.C. § 3553(d)(1) (1988); 4 C.F.R. § 21.4(b) (1994).

As an initial matter, the Navy and IMS argue that SRS's post-award protest is actually an untimely challenge to the agency's determination to normalize all offerors' proposed equipment costs, which the parties assert should have been protested prior to the closing date for receipt of revised proposals. We do not agree that SRS's protest is untimely. The record makes clear, as the agency itself stated at the debriefing, that the contracting officer's determination to normalize was only based upon his determination that SRS had not provided sufficient support to demonstrate that its asserted equipment cost savings would be realized by the agency.⁸ This rationale, and SRS's opportunity to respond to it, was not communicated to SRS until the debriefing. The gravamen of SRS's protest is its complaint that the Navy's direction to only use the government's stated

⁷The parties have conflicting accounts as to exactly what the contracting officer said at the debriefing. We have accepted the contracting officer's version of the statements set forth above. The parties agree, however, that SRS would have had the lowest total evaluated BAFO cost if its equipment "discounts" had been accepted in the agency's cost realism evaluation.

⁸The agency has offered no other persuasive explanation as to why offerors' equipment costs should be normalized to the government's estimate. While the agency suggests, without any support, that all offerors would have the same equipment costs, the costs would not necessarily be the same unless the other offerors were proposing to use the same subcontractor as SRS, [deleted]. In this regard, we disagree with the agency's suggestion that the RFP required offerors to propose the government's estimate as its equipment costs. As noted above, the RFP stated that the government's estimates were provided to "assist" in preparing proposals and that offerors were "responsible for inclusions of all other estimates of elements of costs" considered necessary to perform the contract. Also, the RFP stated that the agency would analyze proposed costs in terms of the "risk that the offeror will provide the supplies or services for the offered costs."

equipment cost estimate misled SRS and prevented that firm from supporting its proposed equipment costs. Since SRS protested to our Office within 10 working days of learning the basis of this protest, its protest is timely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2).

Discussions, when they are conducted, must be meaningful and must not prejudicially mislead offerors. Ranor, Inc., B-255904, Apr. 14, 1994, 94-1 CPD ¶ 258; see Federal Acquisition Regulation (FAR) § 15.610(c); DTH Management Group, B-252879.2; B-252879.3, Oct. 15, 1993, 93-2 CPD ¶ 227. Although discussions, to be meaningful, need not be all-encompassing, they must generally lead offerors into the areas of their proposals requiring amplification or correction, which means that discussions should be as specific as practical considerations permit, especially where proposal defects are largely informational in nature, in which case it is incumbent upon the agency to be as clear and precise as possible in informing an offeror of informational gaps in its proposal. Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424. An agency may not inadvertently mislead an offeror, through the framing of a discussion question, into responding in a manner that does not address the agency's concerns; or that misinforms the offeror concerning its proposal weaknesses or deficiencies; or the government's requirements. Id.; Ranor, Inc., supra; see Price Waterhouse, B-254492.2, Feb. 16, 1994, 94-1 CPD ¶ 168; DTH Management Group, supra.

We find from our review of the record that SRS was prejudicially misled during discussions. As described above, the contracting officer decided to normalize SRS's initially proposed equipment costs to the government's estimate because SRS failed to sufficiently support its proposed costs. In this regard, the contracting officer states that he would have considered SRS's proposed equipment costs had they been sufficiently supported. The Navy did not inform SRS during discussions that its proposed equipment costs were not supported; rather, the Navy instructed SRS to use the government's equipment costs estimate for its proposed equipment costs.

The agency now asserts that since this is a negotiated procurement, SRS was "free to propose in any manner." This is belied by the agency's written direction to SRS to use the government's equipment estimate "without any discounting." Moreover, SRS indicated in both its revised proposal and BAFO that the firm understood the Navy's direction as requiring it to propose the government's equipment estimate. Since the agency knew that SRS was only proposing the government's estimate because of the agency's direction, it was required to advise SRS when requesting BAFOs that the firm could propose lower equipment costs if

sufficient support was provided for the proposed costs. See Price Waterhouse, supra.

In sum, we find that the Navy misled SRS when the agency informed that firm that it could only propose the government's equipment estimate, when in fact the agency would have accepted lower proposed costs for the equipment, if the costs were properly supported. As a result of the agency's misleading instructions, SRS did not provide further information supporting its proposed equipment costs. If SRS's lower proposed equipment costs had been accepted, as they might if properly supported, SRS's evaluated costs would be [deleted] lower than that of IMS.

We recommend that the Navy reopen discussions and request a new round of BAFOs from competitive range offerors consistent with this decision. If an offeror other than IMS is selected for award as a result of the agency's reevaluation, the Navy should terminate IMS's contract for the convenience of the government. We also find that SRS is entitled to recover its costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1). SRS's claim for such costs detailing the expenses and costs incurred must be submitted directly to the Navy within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

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