



Comptroller General
of the United States

327222

Washington, D.C. 20548

Decision

Matter of: Hornet Joint Venture
File: B-258430.3; B-258430.4
Date: February 22, 1995

Jacob B. Pompan, Esq., and Neil Ruttenberg, Esq., Pompan, Ruffner & Werfel, for the protester.
William B. Barton, Jr., Esq., and William T. Welch, Esq., Barton, Mountain & Tolle, for Rail Company, an interested party.
William T. Mohn, Esq., Department of the Navy, for the agency.
Paul E. Jordan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging "bait and switch" of proposed key personnel is denied where solicitation provided for substitution of key personnel under certain circumstances and, of more than 70 proposed key personnel, all but 4 were available or performing, and there was only 1 substitution.
2. Under solicitation which does not restrict substitution of non-key personnel, protest that one of awardee's team members had materially misrepresented the availability of its non-key personnel is without merit; virtually all of the proposed personnel remained available, and only three non-key personnel had been substituted.

DECISION

Hornet Joint Venture protests the award of a contract to Rail Company under request for proposals (RFP) No. N00019-93-R-0045, issued by the Department of the Navy for support services for the F/A-18 aircraft program office. Hornet contends that Rail and one of its team members materially misrepresented the availability of its proposed key and non-key personnel.

We deny the protests.

The RFP, issued March 16, 1994, contemplated award of an indefinite delivery, indefinite quantity, time-and-materials contract for a base year with four 1-year options. The successful contractor provides support services for the

F/A-18 aircraft program office including support for the production program, F/A-18 E/F development program, and foreign military sales. Award was to be made to the offeror whose proposal was most advantageous to the government, price and other factors considered.

Section L-14 of the RFP required the submission of resumes for all proposed personnel in 11 key personnel categories. Additional (non-key) categories were not used for evaluation purposes and offerors were not asked to submit resumes for those categories. Only personnel who met or exceeded the labor category requirements would be authorized to bill against the corresponding labor category hours. As part of its management plan, each offeror was also required to submit a manpower utilization matrix for the base year for all personnel proposed in all labor categories, key and non-key.

Special provision H-7 of the RFP stated that a requirement of the contract was to maintain the stability of the proposed personnel in order to provide quality services. For this reason, the contractor agreed to assign only those key personnel listed in its proposal whose resumes were approved by the Navy and who were necessary to fulfill the requirements of the effort. Offerors agreed that no key personnel substitutions or additions would be made unless necessitated by compelling reasons including, but not limited to, an individual's illness, death, termination of employment, declining an offer of employment, or maternity leave. The only RFP restriction on substitutions of non-key personnel was that offerors agree to assign only personnel who met or exceeded the applicable labor category descriptions. Similarly, substitutes of key personnel were required to meet or exceed the qualifications of the personnel for whom they were proposed to replace.

Four offerors, including Hornet and Rail, submitted proposals by the May 23 closing date. Based on the evaluation of initial proposals, Rail's proposal was considered to present a low performance risk in all areas, and was rated technically superior to Hornet's proposal. While Rail proposed the highest price, the source selection authority (SSA) considered this to be offset by the other proposals' evaluated high performance risk, based upon the lack of realism in their proposed prices. The SSA determined that Rail's proposal was most advantageous to the government, and the contracting officer awarded Rail the contract on September 1. When Hornet learned of the award and received a debriefing, it protested the evaluation of its proposal and the decision to award without discussions. We denied these protests. Hornet Joint Venture, B-258430.2, Jan. 27, 1995, 95-1 CPD ¶ _____. Subsequently, Hornet learned that the Rail team had hired employees terminated by a

Hornet team member. From this, Hornet inferred that Rail and one of its team members had engaged in a "bait and switch" proposal of key personnel and had materially misrepresented the proposed non-key personnel.

Offeror "bait and switch" practices, whereby an offeror's proposal is favorably evaluated on the basis of personnel that it does not expect to use during contract performance, have an adverse effect on the integrity of the competitive procurement system and provide a basis for rejection of that offerors' proposal. Meridian Management Corp., Inc.; NAA Servs. Corp., B-254797; B-254797.2, Jan. 21, 1994, 94-1 CPD ¶ 167; PRC, Inc., B-247036, Apr. 27, 1992, 92-1 CPD ¶ 396. This does not mean that substitution of employees after award is prohibited; such substitution is unobjectionable where the offeror acted reasonably and in good faith, Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577.

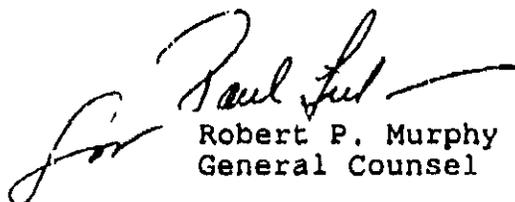
Here, there is no evidence that Rail or its team members engaged in bait and switch practices. Rather, the record shows that virtually all of the personnel, key and non-key, proposed by Rail and its team members are available and working on the contract. Rail proposed more than 70 key personnel and states that it intended to use them all in performance of the contract. The agency rejected four of Rail's proposed personnel.¹ Rail replaced one with a new employee who met or exceeded the position requirements, and resubmitted clarified resumes for the other three. These three were found acceptable based upon the resubmitted resumes. The remaining key personnel are working on the contract. The substitution, after contract award, of 1 key employee, out of more than 70 proposed, provides no basis to conclude that award to Rail was improper.

Hornet's other protest concerns the fact that Information Spectrum, Inc. (ISI), a Rail team member, which proposed more than 20 personnel to work in non-key positions and subsequently hired more than 10 Hornet team employees after Hornet laid them off. Hornet alleges that ISI's "wholesale hiring" of former Hornet employees "proves" that ISI did not have the required manpower to perform the contract, and that ISI intends to substitute these employees for those proposed. Hornet thus argues that ISI's proposal was based on a material misrepresentation, requiring termination of Rail's contract. We disagree.

¹A fifth employee resigned after submission of the proposals to accept a position with Hornet. Subsequently, the employee left Hornet's employ and was rehired by Rail.

First, there is no evidence to support Hornet's allegation. According to ISI, it intended to use all its proposed non-key employees in performance of the contract. Some six personnel left the employ of ISI through normal attrition, and, although ISI hired a number of former Hornet employees, only three of them are working on the current contract. ISI explains that the others are working on different contracts. Hornet's mere speculation that these employees will someday be used on this contract is insufficient to form the basis for a protest. Independent Metal Strap Co., Inc., B-231756, Sept. 21, 1988, 88-2 CPD ¶ 275. Second, the contract does not restrict the substitution of non-key personnel except with regard to qualifications, a matter which Hornet concedes. There is no evidence that any of the former Hornet employees are not qualified to perform on the contract and, in fact, Hornet represents that all are well qualified. Accordingly, the protest is without merit.²

The protests are denied.


Robert P. Murphy
General Counsel

²Hornet's speculation as to whether Rail will substitute more employees concerns a matter of contract administration which we will not review. 4 C.F.R. § 21.3(m)(1) (1994).