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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Planning Systems Incorporated
File: B-260391; B-260391.2
Date: June 13, 1995

Gil Jacobs for the protester.
Kenneth S. Kramer, Esq., and Catherine E. Pollack, Esq.,
Fried, Frank, Harris, Shriver & Jacobson, for Computer
Sciences Corporation, an interested party.
Alden F. Abbott, Esq., Lynn Hawkins Patton, Esq., and
Jerry A. Walz, Esq., Department of Commerce, for the agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Where agency hired protester's key employee prior to conduct of discussions, protest that agency improperly prevented that individual from assisting protester in finalizing its proposal and otherwise prejudiced protester is untimely because protester was aware of protest grounds for more than 7 weeks prior to filing protest.
2. Under solicitation for cost reimbursement contract where awardee will be reimbursed on the basis of 2,080 hours per year for each full-time employee, regardless of whether hours are direct work or leave related, in the absence of any solicitation requirement that agency evaluate proposals on the basis of a common number of direct work hours, agency properly evaluated offerors' proposed costs without "normalizing" for slight variations in direct work hours proposed by the offerors.

DECISION

Planning Systems Incorporated (PSI) protests the award of a contract to Computer Sciences Corporation (CSC) under request for proposals (RFP) No. 52-(ANW-5-00901, issued by the National Oceanic and Atmospheric Administration, Department of Commerce, for technical services. PSI contends that the agency acted improperly in hiring the protester's engineering manager and miscalculated the offerors' proposed costs.

We deny the protest.

The RFP, issued August 8, 1994, contemplated the award of a cost-plus-award-fee contract for technical services at the National Data Buoy Center ("Center"). These services include operation, maintenance, and repair of environmental data collection platforms and networks, operation of the Center's facilities, testing of existing and new buoy systems, and engineering and scientific support for Center developmental and test programs.

Proposals were to be evaluated on three factors, mission suitability, cost, and other considerations. Mission suitability, which was numerically scored, and cost, which was not so scored, were approximately equal in importance, with other considerations being of significantly less importance. Under this cost contract, the agency was to pay for each full-time employee (FTE) on the basis of 2,080 hours per year whether the hours were direct (productive work hours) or overhead (leave and other benefit hours). No minimum number of productive work hours was specified in the RFP.

Cost proposals were to be evaluated for realism in terms of wage rates, overhead, general and administrative, and fee, to determine the "cost of doing business" with each offeror. Cost proposals also were to be evaluated in terms of the offerors' understanding of the technical requirements of the contract. Award was to be made to the offeror which the agency determined would be best able to perform the contract in a manner most advantageous to the government.

Two offerors, PSI and CSC, the incumbent, submitted proposals by the October 12, 1994, closing date. The agency evaluated the proposals, conducted discussions, and obtained best and final offers. CSC and PSI proposed the same number of FTEs, but PSI proposed to have each of its employees work approximately 40 more direct hours per year than CSC proposed. Based upon CSC's successful performance under the predecessor contract, the evaluators concluded that CSC could successfully perform the requirements with the lower number of hours. Of a possible 1,000 points, CSC's technical proposal was scored 712.4 and PSI's proposal was scored 601.6. At approximately \$30 million, CSC's proposed cost was approximately \$999,000 less than that proposed by PSI. The source selection authority determined that CSC's technically superior, lower-cost proposal, was most advantageous and selected it for award. After receiving notice of the award, PSI filed this protest. After receiving a debriefing, PSI also filed a supplemental protest which it subsequently withdrew.

PSI's first protest grounds concern the Center's hiring of one of its key employees, PSI's proposed engineering manager. Prior to working for PSI, this individual had

worked at the Center. When a replacement for the position of Chief, Engineering Division at the Center was advertised on October 13, PSI's manager applied. On Friday, December 9, he was offered and accepted the Center's position. On Monday, December 12, he informed PSI of his acceptance and requested immediate termination of his employment. The manager, as well as the contracting officer, were concerned that the manager do nothing which could compromise the integrity and fairness of the ongoing procurement. Accordingly, the manager declined to participate in any further work on the PSI proposal.

The protester contends that by hiring an employee proposed for the most critical position of the contract, the agency prevented PSI's employee from assisting it on the pending proposal, even while the manager was still employed by PSI. In PSI's view, the agency's hiring action effectively caused "detrimental technical leveling" of the proposals and ultimately influenced the source selection. The agency argues that these protest grounds are untimely. We agree.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1995). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc. -- Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

Here, the protester learned on December 12 that its proposed manager had been hired by the Center and did not intend to provide any more assistance in preparing PSI's proposal. Further, in a December 14 letter to the contracting officer, the protester made reference to the hiring, acknowledged the propriety of the employee's not participating in discussions, and stated that it was working hard to allow his early release. PSI did not protest at that time. Instead, it waited approximately 2 months after learning of this basis for protest, until February 9, to file a protest with our Office, well beyond the 10 working days set forth in our Regulations. Accordingly, we dismiss these protest grounds as untimely.

PSI also protests the cost evaluation. Noting that CSC proposed fewer direct work hours than PSI, the protester contends that CSC's lower proposed cost was attributable to this lower number of work hours. Thus, PSI argues that the

agency should have evaluated the offers on a common basis, i.e., the agency should have used the same number of direct work hours for each offeror in order to calculate the true cost of the contract.

It is not a function of our Office to reevaluate proposals; rather, we review the agency's evaluation of proposals only to ensure that it was fair, reasonable, and consistent with the evaluation criteria stated in the solicitation. VSE Corp., B-247610.2, Aug. 6, 1992, 92-2 CPD ¶ 81. With regard to cost reimbursement contracts, we will review challenges to the cost realism analysis on the basis of whether the evaluation was reasonable and not arbitrary. Clement Int'l Corp., B-255304.2, Apr. 5, 1994, 94-1 CPD ¶ 228. From our review of the record, we have no basis to object to the agency's cost evaluation.

Here, as part of its cost realism evaluation, the agency obtained audits of the offerors' and their subcontractors' proposals from the Defense Contract Audit Agency (DCAA). The DCAA audits identified issues which it suggested should be resolved, but did not question any other costs. The agency also analyzed the costs of both offerors and produced pricing reports, which identified no exceptions or questionable costs. In addition, the agency performed a technical analysis of the cost proposals and identified areas for further inquiry. In discussions, both offerors made changes to their cost proposals or otherwise explained their proposed cost methods to resolve the evaluators' questions. Based on the analyses, audits, and technical evaluation, the evaluators concluded that both offers were realistic. In this regard, while CSC proposed fewer direct hours than did PSI, the evaluators determined that there was no reason to adjust the direct hours proposed by CSC. Based on CSC's proposal, and its successful performance as incumbent, the evaluators concluded that CSC could successfully perform the contract requirements using its proposed work hours.

PSI does not argue that this conclusion was unreasonable and, in fact, concedes that the agency reasonably found CSC's technically superior, lower-cost proposal was most advantageous to the government. Instead, PSI alleges that the agency's evaluation was unreasonable because it did not normalize the number of proposed direct work hours in order to arrive at a common evaluation basis. We find this allegation without merit. The RFP did not set a minimum number of direct work hours which must be proposed and nothing in the RFP required the agency to normalize the number of productive work hours in order to determine cost realism. The agency analyzed the cost and technical proposals, as revised, and considered the relative experience of the offerors and reasonably determined that

the offerors' hours and costs were realistic as proposed without necessitating any normalization of the hours. While PSI believes that normalizing these hours is a better method, that alone does not establish that the evaluation was unreasonable. It is not enough that the protester can merely point to alternative methodologies available to the agency; rather, the agency's evaluation must be shown to lack a reasonable basis. Payco Am. Corp., B-253668, Oct. 8, 1993, 93-2 CPD ¶ 214. Here, the agency reasonably concluded that CSC could successfully perform the requirement using its proposed work force with the workers performing approximately 2 percent fewer hours of direct labor than PSI's employees. Since PSI does not question this determination, PSI has not provided any basis to question the agency's cost realism analysis.¹

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

¹Moreover, the agency did perform cost analyses after the filing of the protest which compare the offerors' cost proposals using three different methods of normalizing the productive work hours. In each instance, PSI's costs exceeded CSC's by more than \$880,000. Thus, under any circumstances, PSI was not prejudiced by the agency's cost realism analysis methodology, and in the clear absence of prejudice, we will not disturb a contract award. American Mutual Protective Bureau, Inc., B-229967, Jan. 22, 1988, 88-1 CPD ¶ 65.