

Schatz



Comptroller General
of the United States

246288

Washington, D.C. 20548

Decision

Matter of: Applications Research Corporation
File: B-260652.2
Date: August 28, 1995

DECISION

Applications Research Corporation (ARC) protests the award of a contract to Sabre Systems, Inc. under Department of the Navy request for proposals (RFP) No. N00140-95-R-K009, for computer operations support. ARC argues that the award to Sabre was improper because Sabre failed to submit resumes for all proposed personnel.

We dismiss the protest.

The RFP, issued on February 6, 1995, contemplated award of a fixed-price contract for a base period and 4 option years. The RFP's schedule required contract performance at Navy facilities in (1) Warminster, Pennsylvania for a base period (May 1, 1995 through September 30, 1995) and 4 option years; and (2) Patuxent River, Maryland for half of the second option year and the third and fourth option years. The statement of work (SOW) specified the total number of hours of support required for the base and option years at both facilities for each of six required labor categories. Award was to be made to the responsible offeror submitting the low, technically acceptable offer. Technical acceptability was to be based solely on personnel qualifications.

The Navy received proposals from four firms by the April 14 closing date, of which only ARC's and Sabre's were found technically acceptable. Since Sabre's proposed price (for base and option periods) was \$2,431,345, while ARC's was \$2,566,877, the Navy awarded the contract to Sabre as the low, technically acceptable offeror.

ARC argues that award to Sabre was improper because Sabre failed to provide with its proposal resumes for all proposed personnel, including the employees proposed for the option periods at Patuxent River; Sabre submitted resumes only for personnel proposed for the base period at Warminster. ARC points to several solicitation provisions which it believes support its argument that resumes are required for all personnel proposed for the option years.

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Our Bid Protest Regulations require protests to be filed no later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1995); Labat-Anderson Inc., B-246071.5, Aug. 31, 1992, 92-2 CPD ¶ 136. The Navy states that it advised ARC of its position--that resumes for option period personnel were not required--during a June 7 telephone conversation. ARC does not dispute this assertion; rather, it asserts that, since the Navy did not specifically state at that time that Sabre's proposal failed to provide resumes or letters of commitment for option period personnel, ARC was not on notice of this issue on June 7. While there indeed is no evidence that the agency ever specifically advised ARC that Sabre's proposal did not include option period personnel resumes, the agency's statements during the conversation made it sufficiently clear, we think, that this was the case.

First, the conversation was initiated, not to generally discuss the procurement, but for the specific purpose of discussing ARC's pending protest arguments concerning Sabre's proposal; it was against this background that the resume issue arose. ARC itself states that the Navy told ARC its "reading of the RFP [as requiring resumes for option period personnel] was unreasonable and that no offeror could be expected to provide all of the personnel information [ARC] suggested for work in the future." ARC also states in an affidavit that the Navy informed ARC during the conversation "that it was ridiculous to expect commitments from people to do work that would not begin until October 1996," and that it expressed to the Navy its position that "the RFP required this information." As indicated, timeliness is determined from the time the protester should have known the basis of protest. Even though the agency may never have stated that Sabre's proposal lacked the resumes, ARC should have known from this conversation that the agency had not applied the requirement--to Sabre's or any other offeror's proposal--as ARC interpreted it. There was no basis for ARC to wait to confirm this. Since ARC's submission raising this protest ground was not filed in our Office until June 22--11 working days after the June 7 conversation--it is untimely and will not be considered.¹

¹ARC also maintains that its argument concerning the option period resumes is timely because it was encompassed by its initial May 12 protest in our Office. This assertion is without merit. ARC argued in its May protest letter only that the award to Sabre was improper because Sabre failed to submit with its proposal letters of commitment from proposed personnel who were not currently employed by Sabre, as required by the RFP, and that Sabre did not intend to use

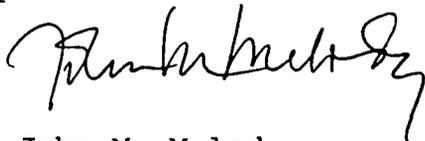
(continued...)

In any event, we agree with the agency's position. The RFP did state that resumes were required for "each of the persons" proposed for the six required labor categories and that the "[c]ontractor must have the personnel, organization, and administrative control necessary to ensure that the services performed meet all requirements specified" in the RFP. However, the RFP also required offerors to propose personnel "who the offeror reasonably expects, as of the date of the proposal, will be available for contract performance[,]" and required resumes for both contingent hires and current employees to be dated and signed by the individual no earlier than the date of the RFP but no more than 120 days prior to the closing date of the RFP; resumes that did not meet this requirement would be unacceptable.

It is clear, reading the RFP as a whole, that the agency was intent on obtaining resumes only from individuals who likely would actually be available to perform work under the contract. We think the agency is correct that assurances from personnel to begin work more than 1 year after contract award would have been inconsistent with this intent. Obviously, such assurances would have limited or no value due to the possibility of changed circumstances, such as acceptance of other employment. Thus, the agency reasonably interpreted and applied the relevant provisions as not requiring option period personnel resumes.

ARC provided option period personnel resumes, and states generally that the cost of submitting these resumes "may account in large part for ARC's price exceeding" Sabre's. However, it is not apparent to us how the mere submission of resumes could have had any significant effect on ARC's offered price and, more importantly, ARC has furnished no information--beyond its mere assertion--showing otherwise. Where prejudice can be relatively easily established by the protester and it fails to do so, we will not assume the existence of prejudice based on conclusory statements. See Labrador Airways Ltd., B-241608, Feb. 13, 1991, 91-1 CPD ¶ 167.

The protest is dismissed.



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¹(...continued)
all of the employees offered in its proposal. ARC did not raise the option period resume issue.