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Case II*

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: D-189407

DATE: December 19, 1977

MATTER OF: SAI Comsystems Corporation

DIGEST:

1. Where request for proposals sets forth detailed provisions limiting reimbursement of travel costs and proposal of protester is submitted on assumption that all travel costs will be reimbursed, protester has qualified offer and award may not be made to it on basis of initial proposal.
2. Provision in solicitation requesting offerors to submit information pertaining to their proposed technical approaches, including a statement of any interpretations, qualifications or assumptions, does not permit offeror to take exception to pricing terms of RFP. Provision was intended to require offerors to explain technical assumptions of their proposals and not to permit deviations from RFP pricing terms.
3. Fact that individual task order prices are to be negotiated after contract is awarded does not make immaterial offeror's exception to RFP pricing terms. Task order prices are subject to Disputes clause whenever parties cannot agree on total price and therefore pricing provisions of contract are material.
4. Contracting officer may make award based on initial proposals without discussions if a fair and reasonable price results. Discussions need not be conducted in order to permit low offeror submitting deviant proposal opportunity to cure deviation where contracting officer reasonably determines that award to second low offeror is in best interest of Government.

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SAI Comsystems Corporation (SAI) protests the rejection of its proposal by the General Services Administration (GSA), Federal Supply Service, San Francisco, California, under request for proposals (RFP) No. 9PN-B-131-77/LN.

The solicitation invited proposals for data processing services to support GSA's automated data telecommunications service operations in six geographical regions. Offerors were advised that award could be made, without discussions, based on the initial proposals. Multiple awards were contemplated for the various regions and skill groups (I or II) set forth in the RFP. This protest concerns only the award for the Sacramento, Group II, region.

Three proposals for the Sacramento, Group II, region were received by April 27, 1977, the closing date for the receipt of initial proposals. The proposals were evaluated, and SAI was ranked first with a technical score of 35.5 and a price of \$83,531. Potomac Research, Inc. (PRI) was ranked second with a technical score of 33.6 and a price of \$84,393.50. The third offer was determined to be technically unacceptable. GSA awarded the contract to PRI on the basis of initial proposals after determining that SAI's proposal was "nonresponsive."

SAI contends that GSA improperly determined its proposal to be nonresponsive and that GSA should have conducted discussions with the firm. SAI also contends that it was entitled to the award of the contract as the most technically qualified offeror that submitted the lowest price.

SAI's proposal in the section entitled "Introduction" stated, in pertinent part, as follows:

"SAI Comsystems Corporation is pleased to submit its cost and contractual proposal in accordance with the requirements of Solicitation No. 9PN-B-B1/77/LN (NEG). * * * Our rates proposed herein (which include direct labor, fringe benefits, overhead and G&A costs plus profit) are based upon the following assumptions:

* * * * *

"(3) GSA will reimburse the contractor for travel and per diem expenses incurred by contractor's personnel in performing work under any task order."

The solicitation provisions regarding reimbursement for travel and per diem are set forth in paragraph 45 as follows:

"TRAVEL AND PER DIEM EXPENSES: The Contractor will be reimbursed by GSA for travel and per diem expenses incurred by Contractor's personnel specifically authorized to travel on official business by a GSA Project Manager. Reimbursement for travel and per diem shall not exceed the rates and expenses allowed by Government travel regulations to a Government employee traveling under identical circumstances. Conditions and limitations applying to travel associated with work under this contract are as follows:

"(a) Local Travel - Reimbursement will be allowed for all official business travel within the primary area (as defined in clause entitled "Place of Performance") when authorized. Neither commuting expenses (trips between residence and duty station) nor per diem will be allowed within the primary area.

"(b) Temporary Project Assignments - Any project or work planned to require continuous, full-time, on-site assignment of Contractor's personnel at locations outside of the primary area for less than six months will be considered a temporary project assignment. Travel and per diem expenses associated with GSA approved temporary project assignments may be billed to GSA.

"(c) Permanent Project Assignments - Any project requiring continuous, on-site assignment of Contractor's personnel for six months or longer will be considered a permanent project assignment. No relocation, travel,

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per diem expenses or travel time will be allowed by GSA for placing Contractor's personnel at permanent project assignments.

"(d) Temporary Duty Assignments - Some projects may require intermittent travel by Contractor's personnel. Travel and per diem expenses connected with GSA approved temporary duty assignments away from a regular duty station may be billed to GSA.

"(e) Relocation Expenses - GSA will not reimburse the Contractor for any costs associated with the relocation of Contractor personnel."

GSA's position is that SAI's "assumption" regarding travel reimbursement was a material deviation from the solicitation's provisions for travel reimbursement. In GSA's view, the protester's assumption called for "reimbursement of all travel and per diem," whereas the solicitation provided only for reimbursement of specified travel and per diem. Thus, GSA believes SAI's proposal was nonresponsive in that it deviated from the terms of the solicitation.

We agree with GSA that SAI's assumption regarding reimbursement of travel costs raises doubt whether SAI intended to be bound by the solicitation provisions for reimbursement for travel. While SAI argues that its statement regarding travel was intended only to paraphrase the solicitation's travel provisions, SAI clearly set forth a qualification distinct from the explicit solicitation provisions for travel reimbursement.

SAI notes, however, that the solicitation invited offerors to make "interpretations, qualifications, and assumptions." It therefore contends that even if its proposal was at variance with the RFP pricing provisions, it was unfair for GSA to invite offerors to qualify their proposals and then to disqualify an offeror for doing so. GSA responds by pointing out that the language cited by SAI appeared in the solicitation provision entitled "Technical Proposal and Evaluation," wherein offerors were instructed to provide information pertaining to their proposed technical approaches, including a statement "of any interpretations, qualifications or assumptions made by the offeror in regards to this requirement." GSA

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argues that the provision obviously called for an explanation of the technical assumption underlying the offeror's proposal and did not permit deviations from the RFP pricing provisions. We agree with GSA's position. It is unreasonable to read the provision as permitting an offeror to take exception to a material term of the solicitation without any risk that the offer might be rejected.

In this connection, SAI contends that the exception is not material in view of the fact that the RFP provides that the technical requirements, cost estimate and completion date of each task order is to be negotiated prior to its issuance. The protester argues that since the cost to the Government of each task order is to be negotiated, travel and per diem costs are subject to future negotiations in any event.

We do not agree with this argument. Although the solicitation provides that the cost of each task order is to be negotiated by the parties concerned, the solicitation provision in question (paragraph 28 of the RFP) further provides that if, for any reason, an agreement cannot be reached as to total price, the Government reserves the right to unilaterally establish the total cost of the task order subject to the Disputes Clause of the contract. In other words, if the contractor insisted upon including unallowable travel costs, the Government would have the right to unilaterally determine the price of performance, subject to the Disputes Clause. Under the protester's proposal, however, the Government could not properly refuse to allow any travel and per diem costs. For this reason, SAI's exception to the RFP pricing provisions was material.

Accordingly, we think that it was proper for GSA not to award a contract to SAI based upon its initial proposal.

Thus, the only question remaining is whether GSA should have conducted discussions with SAI. In negotiated procurements, discussions are generally required to be conducted with offerors within a competitive range except in certain specified instances. On this subject, Federal Procurement Regulations (FPR) § 1-3.805-1(a) (1964 ed.) states:

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"(a) After receipt of initial proposals, written or oral discussions shall be conducted with all responsible offerors within a competitive range, price and other factors considered, except that this requirement need not necessarily be applied to:

. * * * * *

(5) Procurements in which it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price * * *."


GSA states as its reason for not conducting discussions the fact that there was only an \$862.50 difference between the protester's proposal and the second low proposal. Considering the price differential of these proposals, the likelihood of achieving price reductions in negotiations, the expenses of negotiating, and the reasonableness of the prices proposed, GSA concludes that award to the second low offeror without discussion was a reasonable course of action. In support, GSA notes that of 12 possible awards under the RFP, SAI was evaluated as being the lowest priced/highest technical scored proposer in only one category (Sacramento, Group II). Yet, GSA notes, if the contracting officer had undertaken to conduct discussions with SAI for the purpose of removing the ambiguity with regard to its travel and per diem costs, under the rules of competitive negotiations the contracting officer would have been required to conduct discussions with all offerors in the competitive range for all 12 possible awards (GSA cites 50 Comp. Gen. 202, 205 (1970) in this regard.) We agree with GSA since SAI's proposal deviation applied to the other categories as well as to the Sacramento, Group II, category.

We believe that the GSA contracting officer acted reasonably. The prices received for Group II services

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indicated to the contracting officer that the second low offeror for Sacramento, Group II, proposed a fair and reasonable price. While the protester's price was somewhat lower than that of the second low offeror's, the protester's proposal appeared to be based on pricing terms which were more advantageous to the offeror and contrary to the terms of the solicitation. As GSA admits, the contracting officer could have given the protester the opportunity to cure its "deviant proposal through negotiations." However, as GSA also points out, the price/technical difference between the protester's and the second low offeror's proposals was relatively minor. In the circumstances we cannot say that the contracting officer had no basis for award without discussions. 47 Comp. Gen. 459, 461 (1968).

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States