



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Computer Systems International, Inc.

File: B-276955; B-276955.2

Date: August 13, 1997

Thomas C. Pool for the protester.

John A. Evans, Esq., Naval Air Systems Command, Department of the Navy, for the agency.

Christine F. Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a solicitation requesting firm, fixed-price proposals for operation and maintenance services of submarine training devices, the agency reasonably found the awardee's low-priced proposal realistic in accordance with the evaluation criteria, where the awardee's price, though less than the anticipated contract costs, compared favorably with another offeror's price and with the prior contract price for the same services.

DECISION

Computer Systems International, Inc. (CSI) protests the award of a contract to Applied Data Technology, Inc. (ADT) under request for proposals (RFP) No. N61339-96-R-0056, issued by the Department of the Navy, Naval Air Systems Command, for contractor operation and maintenance of simulators (COMS) services.

We deny the protest.

The RFP sought COMS services for fire fighter training devices, submarine damage control training devices, and other training devices to be used at four Navy submarine training sites: the Trident Training Facilities at Kings Bay, Georgia, and Bangor, Washington, and the Naval Submarine Training Center Pacific facilities at Pearl Harbor, Hawaii, and San Diego, California. The RFP requested firm, fixed prices for a 2-month base mobilization period, four 1-year options, and an 8-month option. The pricing schedules for the base and option periods included contract line item numbers (CLIN) corresponding to specific training devices. Prices for each CLIN were to include the labor, supply support (i.e., spare and repair parts), and consumables necessary to maintain and operate the specified devices during the designated contract period. No cost data supporting the CLIN pricing was required by the RFP.

The RFP imposed a minimum manning requirement of 73 employees during the life of the contract, distributed among the four sites as specified in the RFP. The solicitation provided for application of the Service Contract Act of 1965, as amended, 41 U.S.C. §§ 351-358 (1994), which requires that employees be paid at least the wages set forth in Department of Labor (DOL) area wage determinations. 41 U.S.C. § 351(a)(1).

The RFP provided for award based upon the technically acceptable proposal offering "the lowest reasonable and realistic total evaluated price," including options. The RFP evaluation scheme listed seven, equally important evaluation factors: (1) Organization (Personnel), (2) Management Approach, (3) Technical Approach, (4) Mobilization Plan, (5) Technical Questions, (6) Corporate Experience/Past Performance, and (7) Price Realism.¹ The RFP described all factors as "critical" and stated that an unacceptable rating for any factor would render a proposal unacceptable.

The agency received five proposals by the January 24, 1997, due date. Four proposals were included in the competitive range. After two rounds of discussions, the Navy received best and final offers (BAFO) priced as follows:²

| | |
|-----------|---------------------------|
| ADT | \$16,136,057 |
| Offeror B | \$16,344,254 |
| CSI | \$19,341,484 |
| Offeror D | \$18,361,120 ³ |

Finding all proposals technically acceptable, the Navy awarded to ADT, whose lowest-priced offer was found reasonable and realistic.

CSI disputes the agency's determination that ADT's price was realistic.⁴ According to CSI, the Navy overlooked the fact that ADT's price was "below the actual known direct cost to operate the contract" and awarded the contract to a firm that "is not a

¹The RFP elsewhere stated that price realism would be reviewed as part of determining an offeror's responsibility.

²The two lowest-priced offerors raised their prices during discussions after the Navy advised that their prices appeared unrealistically low.

³CSI, a small disadvantaged business, received a 10-percent price evaluation preference pursuant to Defense Federal Acquisition Regulation Supplement § 252.219-7006, as incorporated in the RFP, which caused its proposal to displace Offeror D's in the competitive ranking.

⁴CSI also protested that the second lowest-priced offer was not realistic.

recognized player in the COMS business arena" and is blind to the risks of this contract.

Where, as here, the award of a fixed-price contract is contemplated, a proposal's "cost realism" is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. HSG-SKE, B-274769, B-274769.3, Jan. 6, 1997, 97-1 CPD ¶ 20 at 5. However, since the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals, an agency in its discretion may, as it did here, provide for a price realism analysis in the solicitation of fixed-price proposals. Volmar Constr., Inc., B-272188.2, Sept. 18, 1996, 96-2 CPD ¶ 119 at 5. The Federal Acquisition Regulation (FAR) provides a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including a comparison of the prices received with each other, FAR § 15.805-2(a); with prior contract prices for the same or similar services, FAR § 15.805-2(b); and with an independent government cost estimate, FAR § 15.805-2(e).⁵ The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Ameriko-OMSERV, B-252879.5, Dec. 5, 1994, 94-2 CPD ¶ 219 at 4; Ogden Gov't Servs., B-253794.2, Dec. 27, 1993, 93-2 CPD ¶ 339 at 7.

Here, the RFP stated that price proposals would be evaluated for reasonableness and realism, but did not specify the manner or degree of analysis to which proposals would be subjected. The record in this case, including testimony provided at a General Accounting Office hearing, shows that the contract specialist who performed the price analysis compared ADT's price with the other offerors' prices, with the prior contract price for these services, and with a government estimate--techniques which are recommended by the FAR. In our view, this constituted an adequate and reasonable price analysis under the RFP.

The record reflects that the prior contract for these services, awarded in 1992, was held by Lockheed Martin Corporation for a firm, fixed price of \$16,540,176. In her price analysis, the contract specialist adjusted the Lockheed price to reflect various changed requirements--most significantly, different labor costs--between the Lockheed contract and the current procurement. Specifically, the contract specialist added \$1,304,295 to the Lockheed price to account for DOL wage determination increases, which yielded a current contract cost of \$17,844,471. Video Transcript (V.T.) at 10:35:06. On the other hand, the contract specialist reduced Lockheed's annual costs by an estimated \$200,000 to \$250,000 to reflect the

⁵"Price analysis" is a process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit; "cost analysis" involves the examination and evaluation of an offeror's separate cost elements and proposed profit. FAR § 15.801.

73-person work force required by the instant RFP,⁶ rather than the 88-person work force required, on average, each year of the Lockheed contract, which placed the adjusted figure based on the Lockheed contract in the mid-\$16 million range, within close proximity of ADT's price. V.T. at 10:35:06, 10:40:01, 10:40:38, 10:47:09, 11:53:38.

In addition, the agency determined that it had obtained adequate price competition in response to the solicitation and compared ADT's grand total and yearly prices to the prices submitted by the other offerors. V.T. at 9:53:22, 10:51:17. In view of the narrow price difference between ADT's and the second-lowest offeror's prices, the contract specialist concluded that ADT's price was realistic and reasonable. V.T. at 10:11:21, 11:18:52, 12:33:16; see Pearl Properties; DNL Properties, Inc., B-253614.6, B-253614.7, May 23, 1994, 94-1 CPD ¶ 357 at 11-12.

The protester does not contend that the agency erred in finding that ADT's price compared favorably to Lockheed's prior contract price (as adjusted) or the second-lowest offeror's price. Instead, CSI argues that the agency's price analysis was inadequate because it disregarded the fact that ADT's price is barely sufficient to cover the contract's unavoidable, direct labor costs. CSI computes the contract's direct labor costs (considering applicable DOL wage rates and fringe benefits, as well as tax, insurance, workers compensation and social security allowances) at \$15,509,309,⁷ and argues that the awardee's price, which is only \$626,748 more than the contract's direct labor costs, does not adequately cover general and administrative expenses, profit, or the Navy's estimated \$2 million supply support and consumable requirements.

Contrary to the protester's allegations, the Navy did not disregard the fact that ADT may have submitted a below-cost offer. The record reflects that the Navy knew that ADT had submitted a "bare bones" price proposal and might operate the contract at a loss. V.T. at 10:11:21, 11:32:00, 11:32:37. Nevertheless, the agency considered the awardee's price realistic because the second-lowest offeror had offered a virtually identical price and because Lockheed had performed the prior

⁶Our review of ADT's technical proposal establishes that the firm offered the requisite 73 employees. We also note that the contract specialist did not testify that the awardee proposed less than 73 employees, as claimed by the protester. Rather, the contract specialist testified that labor costs could be somewhat variable under the contract because employees may quit and ADT may have fewer than 73 employees during the time it takes to fill any vacancies. V.T. at 11:56:29, 11:58:35.

⁷The Navy acknowledged during the course of this protest that it had underestimated direct labor costs in an independent government estimate (IGE) prepared during the proposal evaluation and that CSI's calculations were correct. V.T. at 10:20:30. The Navy abandoned the understated IGE as a basis for finding ADT's price realistic.

contract at a similar price. V.T. at 10:11:21, 12:33:16. In our view, this constituted a reasonable basis for concluding that ADT's price, even if below cost, did not pose an undue performance risk and was realistic.

We also note that the agency, in reviewing ADT's affirmative responsibility, found that the awardee had the financial resources to cover any price shortfall. V.T. at 11:32:00. A responsible offeror for a fixed-price contract may offer below-cost pricing, as the submission of a below-cost offer is not legally objectionable in itself. Oshkosh Truck Corp., B-252708.2, Aug. 24, 1993, 93-2 CPD ¶ 115 at 6 n.3; PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 8-9. To the extent that CSI alleges that the awardee's price is unrealistic simply because it is below cost, this issue concerns ADT's ability to perform the contract at its proposed price, a matter of affirmative responsibility. Our Office will not review the Navy's determination that ADT was responsible absent a showing of possible fraud or bad faith by government officials, or the misapplication of definitive responsibility criteria, none of which are present here. 4 C.F.R. § 21.5(c) (1997); Oshkosh Truck Corp., *supra*.

Accordingly, we deny CSI's protest that the agency misevaluated ADT's proposal with regard to price realism.

The protest is denied.

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