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E. Wirtanen  
Proc II

**DECISION**



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

**FILE: B-186513**

**DATE: January 27, 1977**

**MATTER OF: I Systems, Incorporated.**

**DIGEST:**

It is not clear that RFP requirement for "statements of commitment" from persons not then employed by offeror could be satisfied only by submission of signed statements from each person, as protester asserts, and not by an offeror's representation that it had obtained such commitments, as in case of successful firm. In view thereof, and fact that persons identified in successful firm's proposal did report for work, protest is denied. However, agency is advised that similar provisions in future solicitations should be more clearly expressed.

Request for proposals (RFP) N00600-76-R-5083, a 100 percent small business set aside, was issued to provide data file maintenance services required by the Naval Intelligence Support Center (Navy), Washington, D.C. As of the closing date, October 29, 1975, four offers were received. All proposals were found unacceptable. All offerors were advised of the deficiencies in their proposals and were afforded an opportunity to correct them. All revised offers were found technically acceptable.

The contracting officer determined that the competitive range consisted of the two firms which received the highest technical scores and submitted prices substantially lower than the others: I Systems, Inc. (I Systems) and American Electronic Management Systems, Inc. (AEMS). Best and final offers were requested from both firms and preaward surveys were initiated for both firms. Since AEMS achieved the highest technical score and offered the lowest price, on March 19, 1976 the Navy advised I Systems of its intent to award a contract to AEMS. On April 30, 1976, the contract was awarded to AEMS.

The solicitation called for a total of nine individuals to be proposed in certain categories. Of the individuals proposed by these offerors, five were common to both. The five individuals in question were employed by the incumbent contractor who was

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providing the same services required under the instant solicitation. The incumbent contractor, as a subsidiary of a large business, was precluded from consideration for the present contract. After award of the contract to AEMS, I Systems became aware that both firms had proposed five individuals in common. Subsequently, I Systems protested the award alleging that no prior agreement existed between AEMS and several of the proposed research assistants as required by the RFP.

The RFP provided that technical proposals "must include, as a minimum," resumes of the personnel proposed and "If the individual proposed is not currently employed by the offeror, a clear statement of commitment from the individual that he will be available for work if a contract is awarded to the offeror." (Emphasis added.) I Systems states the individuals in question were let go by the incumbent contractor on November 30, 1975, at which time the protester began paying these five half salary to ensure that they would be available for immediate employment should the contract be awarded to I Systems.

I Systems' proposal was accompanied by signed statements from its proposed personnel indicating their desire to participate in the project and authorizing the use of their names by I Systems. AEMS stated in its proposal that:

"The individuals proposed for this contract assignment are not currently employed by AEMS. Each individual however, has provided the President of AEMS with a clear statement of commitment to be available for work if this contract is awarded to AEMS."

The Navy accepted this statement as satisfying the RFP requirement for "a clear statement of commitment from the individual that he will be available for work."

The protester has submitted affidavits signed by the individuals which state that "he or she neither signed any working agreement nor authorized use of his or her name or resume by AEMS prior to 19 March 1976." I Systems contends that use of the resumes was contrary to the intent of the RFP and the statement that agreements existed was a misrepresentation which swayed the Navy decision.

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We believe that the solicitation was not explicit as to whether offerors were required to submit signed statements of commitment from each individual not currently employed, or whether the requirement could be satisfied by an offeror's statement that it had obtained commitments from the individuals concerned. In any case, the affidavits provided by the protester raise substantial questions as to whether AFMS had such commitments at the time it submitted its proposal. Therefore, we believe there is a certain merit to the protester's position. However, we note that the individuals proposed by AFMS did in fact become employees of that company for the performance of this contract. Although for that reason we see no basis for disturbing the award, we are recommending to the Secretary of the Navy that in the future, statements of commitment should be required only if deemed essential. When such a requirement is included in a solicitation, what the offeror is required to submit should be made unmistakably clear.

*P. J. ...*  
Deputy Comptroller General  
of the United States