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DECISION

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

FILE: B-187177 DATE: March 1, 1977

MATTER OF: Informatics, Inc.
American Management Systems, Inc.
National CSS, Inc.

DIGEST:

1. Where agency did not issue amendment to request for proposals (RFP), but met with each offeror individually to advise of change in RFP evaluation criteria, but one offeror denies even being advised of change, it is clear that misunderstanding could have resulted from agency's failure to verify its oral advice by prompt issuance of RFP amendment in accordance with regulations.

2. Agency's cost evaluation based solely on benchmark costs and without regard to other contract costs was inadequate.

3. In view of deficiencies in procurement, GAO recommends resolicitation of proposals and, if advantageous to Government, that new contract be awarded and that present contract be terminated.

Informatics, Inc. (Informatics), American Management Systems, Inc. (AMS) and National CSS, Inc. (NCSS) have protested the award of a fixed unit price contract to Boeing Computer Services, Inc. (Boeing) under request for proposals (RFP) 76-24 issued by ACTION on May 3, 1976. In addition, Computer Network Corporation (Comnet) has submitted comments as an interested party to the various protests.

The solicitation invited proposals to provide computer time and concomitant support services to ACTION for its automatic data processing systems. Each potential offeror was provided with a System Management Facility (SMF) tape for the month of April 1976 to use as a base against which to estimate costs. The RFP listed detailed evaluation criteria and the points associated with each item and provided that the most advantageous proposal was to be determined based on a "value per point" formula. The RFP further provided that "should negotiations be deemed necessary such negotiations will be conducted with all firms in the negotiation range" based on the value per point formula.

The maximum point score obtainable under the evaluation criteria was 334. Thirty of the points were assigned to a benchmark or live test demonstration with 15 of the points allocated to benchmark cost and 15 to benchmark time. The benchmark was designated as

an optional criterion which ACTION might elect to conduct "if deemed necessary by evaluation officials." A note following the benchmark criteria stated:

> "NOTE: Vendor must fully and completely execute benchmark in an acceptable manner to be considered for award. Test must be run as furnished. Vendor must request prior written approval of any proposed JCL [job computer language] changes."

ACTION received eight proposals by May 24, 1976. The proposals were evaluated by a technical evaluation panel (Panel). The benchmark had not been conducted so each offeror was assigned no score under that criterion. The Panel applied the other RFP evaluation criteria, and the estimated costs of the technically qualified proposals were then determined and factored in accordance with the "value per point" formula. A determination was thereafter made to exclude from the competitive range offerors proposing more than $500,000. As a result of this evaluation, Boeing, AMS, Informatics and Comnet were determined to be within the competitive range, and the other offerors were eliminated from the competition, including NCSS.

At this point, the contracting officer concluded that while the estimated costs quoted by the offerors based on the SMF tape were valid for determining the competitive range, the SMF-based costs were not adequate for making an award decision because it appeared that each offeror had to compute its estimated costs on a set of assumptions. He states that "a review of these assumptions clearly indicated that while some assumptions were used by more than one firm these assumptions were totally inconsistent." Accordingly, the contracting officer decided to call for the benchmark test and to use the benchmark prices as the basis of award selection since the "conditions prevalent for the benchmark were clearly evident and * * * [the benchmark] would provide consistency between the proposers."

ACTION initiated the benchmark by letter dated June 23, 1976, to AMS, Informatics, Boeing, and Comnet. The letter included the benchmark test which consisted of ACTION's bi-weekly payroll.

Benchmark tests were than concluded, and cost proposals were received based on the benchmarks.

ACTION notes that at this point in the procurement process, the contracting officer left the office for a two week vacation, and management of the procurement was turned over to his contract negotiator. Apparently, the contract negotiator was unaware of the contracting officer's determination that cost proposals were to be based on the benchmark rather than the SMF tape. Thus, on July 14, 1976, the contract negotiator contacted the offerors by telephone and requested a best and final offer from each offeror to be submitted the same day. The following best and final offers were received on the the basis of the SMF tape:

Offeror	Initial Best and Final Offer
Boeing	$14,700 month
AMS	$19,595 month *
Comnet	$21,681 month
Informatics	$29,000 month *

(*ACTION reports that these figures exclude "discounts and other pricing gimmicks such as free time, free floats, etc. * * * which were considered unstable for purposes of award.")

The contracting officer reports that on July 19, 1976, upon his return to the office, it became evident to him that the July 14 cost estimates based on the SMF tape were unsuitable for award determination. Therefore, he sought from each offeror a "confirmed" cost proposal, expressed in terms of the benchmark, rather than the SMF tape. In this connection, the contracting officer states that on July 20, 1976, he had separate meetings with Informatics, Boeing, AMS and Comnet. The contracting officer reports that he told each offeror at these meetings that award would be made solely on the basis of benchmark price. In the contracting officer's words:

> "* * * I called each offeror into my office with the clear purpose of having each convert his offer to the benchmark or confirm his offer if already expressed in benchmark."

The contracting officer reports the following offers resulting from the July 20 meetings:

Offeror	Final Benchmark Price
AMS	$544.95
Boeing	$755.34
Informatics	$794.69
Comnet	$853.49

The contracting officer then evaluated the benchmark results. He found that AMS had failed to "execute the benchmark in an acceptable manner." A contract was awarded to Boeing, the next low offeror, on July 29, 1976.

Thereafter, AMS, Informatics and NCSS protested. However, for the reasons discussed below, we need only consider the Informatics protest.

The main thrust of the Informatics protest is that the award evaluation based solely on benchmark costs was "illegal" since these costs do not reflect the Government's true costs and the RFP did not provide for such an evaluation. Moreover, Informatics states its belief that "its price is less than Boeing's and that applying the criteria set forth in the RFP for evaluation, Informatics is entitled to award."

We find there is merit to the protest. Federal Procurement Regulations (FPR) 1-3.805-1(d) (1964 ed.) requires that when, during negotiations, a substantial change occurs in the Government's requirements, the change or modification should be made in writing as an amendment to the RFP, and a copy shall be furnished to each prospective contractor. Oral advice of changes or modifications may be given if (1) the changes involved are not complex in nature, (2) all prospective contractors are notified simultaneously (preferably by a meeting with the contracting officer), and (3) a record is made of the oral advice given. In such instances, however, the regulation goes on to provide that "the oral advice should be promptly followed by a written amendment verifying such oral advice previously given" and that the dissemination of oral advice of modifications separately to each prospective contractor during individual negotiation sessions should be avoided unless

"preceeded, accompanied, or immediately followed by a written amendment to the request for proposals * * *." See also Union Carbide Corporation, 55 Comp. Gen. 302 (1976), 76-1 CPD 134. In our opinion, a change in the RFP evaluation scheme falls within the reach of this regulation. See Minjares Building Maintenance Company, B-184263, March 10, 1976, 76-1 CPD 168. Therefore, when the contracting officer decided in late June (after the competitive range was determined) to abandon the RFP evaluation criteria in favor of the benchmark costs as the basis for award, he should have notified the remaining offerors in writing of the change.

We recognize that the RFP did not specifically state that the final award determination would be based on the so-called "value per point" formula. The RFP simply stated that should negotiations be deemed necessary such negotiations will be conducted with all firms in the negotiation range based on the value per point formula. However, an offeror reading the RFP would logically conclude, as do we, that the value per point formula as described in the RFP would determine not only the competitive range but also the eventual awardee.

If the contracting officer had advised the offerors in writing that the benchmark would be controlling in making the award, we suspect that his contract negotiator would not have made the mistake during the contracting officer's absence of calling for the July 14 best and final offers based on the SMF tape. Once this mistake was discovered by the contracting officer, the contracting officer should have met simultaneously with the four offerors, not individually, to advise them of the change. Furthermore, in accordance with FPR 1-3.805-1(d), the contracting officer then should have promptly issued a written amendment verifying the oral advice previously given. As we stated in a case concerning Armed Service Procurement Regulation 3-805.1(a) (1969 ed.), the counterpart of FPR 1-3.805(d):

> "* * * The benefits to be derived from issuance of a written amendment are evident. The procurement officials of the agency are assured that notice of the complete change is in fact

> communicated to the proper officials of all competing offerors and that all the aspects of the change referenced to the applicable RFP provisions are included in the notice. The possibility of charges of fraud or favoritism is thereby eliminated or reduced. Also, the written amendment and acknowledgement of its receipt provide a firm basis for reviewing and justifying a challenged procurement action." 49 Comp. Gen. 156, 162 (1969); see also Chrysler Motors Corporation, B-186600, September 23, 1976, 76-2 CPD 294.

The importance of adhering to the regulatory provision is pointed up by Informatics' statements in support of its protest. Informatics "categorically denies that it was ever told by ACTION that the evaluation would be made solely on the basis of the benchmark," and states that it did not understand from what it was told that new best and final offers were being solicited after July 14. It contends that it was prejudiced as a result, and that award therefore should be made on the basis of the July 14 offers. Informatics has submitted its own evaluation of Boeing's monthly prices (based on the July 14 offer) and concludes that Informatics' prices were lower.

Although ACTION insists that each offeror was advised of the change on July 20, and that no offeror objected to the change, obviously, we are not in a position to resolve this factual dispute. What is clear, however, is that Informatics was not advised in writing of the change and could have misunderstood the purpose of the July 20 meeting. In this this regard, even the contracting officer acknowledges that a "misunderstanding could have ensued." See Chrysler Motors Corporation, supra.

Furthermore, while we cannot disagree with ACTION's position that Informatics' evaluation of the July 14 proposals appears to be based on the SMF tape which could not be utilized effectively as a basis for award, we nevertheless agree with Informatics' contention that evaluation of only benchmark cost was not an adequate substitute since it did not permit consideration of all potential costs involved. For example, Informatics states that tape storage is "an item for which Boeing charges $4,455 per month and Informatics charges $450 per month assuming 1,000 tapes per month" (which it believes to be a realistic estimate because ACTION raised the figure from 500 tapes to 1000 during negotiations with it), but that the benchmark evaluation

did not reflect these costs. Under these circumstances, we think it is questionable whether the proposal most advantageous to the Government could have been determined by the evaluation conducted here.

Conclusion

In view of the inadequate cost evaluation and the procedural defects which occurred during the course of the procurement, we recommend that the procurement be resolicited under revised evaluation criteria. If, after resolicitation, it is determined that it would be advantageous to the Government to accept one of the proposals received in lieu of the existing contract, then the contract should be terminated for the convenience of the Government.

Since our decision contains a recommendation for corrective action, we have furnished a copy to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires the submission of written statements by the agency to the Committees on Government Operations and Appropriations concerning the action taken with respect to our recommendation.

Acting Comptroller General
of the United States