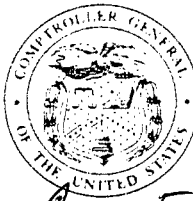


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DECISION



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

[Protest of Air Force Contract Award]

FILE: B-198252

DATE: November 28, 1980

MATTER OF: Technology/Scientific Services, Inc.

DIGEST:

1. Where basis for protest could not have been known until protester received information pursuant to Freedom of Information Act requests and protest was filed within 10 days after receiving that information, protest is timely.
2. Protest that manhour estimates in solicitation were not in agreement with "actual" manhours as calculated by protester by projecting previous contract extensions on annual basis is denied, since question is not whether the estimates are absolutely correct but whether they are based upon the best information available and are reasonable, accurate representation of actual anticipated needs.
3. Protest that offer is nonresponsive for failure to include hourly rates for certain labor categories listed in the RFP is without merit since reasonable interpretation of Schedule would not require prices for those labor categories where zero estimated hours were specified.

Technology/Scientific Services, Inc. (T/SSI) protests an award to Universal Energy Systems, Inc. (UES) under request for proposals (RFP) No. F33601-79-RX343, issued by Wright-Patterson Air Force Base, Ohio.

T/SSI presents the following grounds for protest:

1. The estimated manhours designated in the RFP were not in agreement with "actual" manhours required

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of UES during the original contract, during extension periods, and currently provided under the new contract. The fact that the RFP estimates and actual hours differed was used by the incumbent contractor, UES, which structured its prices accordingly so as to appear to be the low bidder.

2. UES' proposal was nonresponsive, as it failed to include hourly rates for certain labor categories listed in the RFP.

Background

The RFP called for proposals to provide engineering and technical staff on a time and materials basis for the operation, maintenance and improvement of a 50 Megawatt Electrogas dynamics Test Facility at the Wright-Patterson Air Force Base, for a period of nine months (later changed to seven months) and two one-year option periods. The RFP was issued on November 7, 1979 and the closing date for receipt of proposals was December 19, 1979. Sixteen companies were solicited, three proposals were received. No negotiations were conducted, i.e., award was based on initial proposals. The Air Force awarded the contract to UES on February 28, 1980, with performance to begin March 1, 1980. UES has been performing the contract since that time.

UES had been the incumbent contractor on the previous contract which ran from December 1, 1978 through September 30, 1979, and which had two one-year option periods which were not exercised by the Air Force. To cover the gap between the end of the old contract and the performance start date of the new one, the old contract was extended twice, first for three months and then for two months.

Both T/SSI and UES were found to be technically acceptable and the selection of a contractor was based on total price for the base period, March 1, 1980 to September 30, 1980, and the two option periods.

T/SSI was notified orally on February 28, 1980 of the award to UES. Formal notice of the award by letter was received on March 7, 1980. T/SSI protested the award to our Office on March 27, 1980.

Timeliness

The initial question to be decided is the timeliness of T/SSI's protest. The Air Force and UES contend that since T/SSI was notified of the award to UES on February 28, 1980, the protest filed on March 27, 1980 is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1980).

T/SSI states that the only information it initially received was that UES was awarded the contract as low offeror and the prices involved. Upon receipt of formal notice of award on March 7, 1980, T/SSI that same day submitted a request for a copy of the contract under the Freedom of Information Act (FOIA). After receipt of the contract copy on March 14, and review the following week, T/SSI concluded that the pricing structure inserted by UES for certain labor categories was "strange" and sought additional information from the Air Force through FOIA requests. T/SSI claims that the basis of its protest was uncovered on March 26 when T/SSI was permitted to review the extensions to the old contract and discovered the alleged discrepancy between estimated and actual staffing requirements. The following day the protest was filed.

Under the circumstances, the mere notification of the contract award to the apparent low offeror would not constitute such knowledge to T/SSI as to form the basis for a protest. The basis for protest could not have been known by T/SSI until it received information pursuant to its FOIA requests. At all times, T/SSI diligently pursued the information underlying the protest, and the protest was filed within 10 days after receiving that information. We consider the protest timely. See Serv-Air, Inc., 57 Comp. Gen. 827 (1978), 78-2 CPD 223; Prestype, Inc., B-187093, April 27, 1977, 77-1 CPD 286; Graphics, Communications Systems, Inc., B-186715, July 23, 1976, 76-2 CPD 75.

Best Estimated Quantities

T/SSI first alleges that the estimated labor units listed in the RFP (quoted in terms of manhours) are not in agreement with "actual" labor units required of UES during the old contract, during extensions to it, and with the staffing presently provided under the new contract. T/SSI alleges that UES knew that there was a difference between

the RFP estimates and the "actual" staffing required, and used this knowledge to submit an offer apparently lower than T/SSI's, but which, when performed would be at a price higher than T/SSI's. T/SSI maintains that if both offers are evaluated upon the basis of "actual" requirements, T/SSI is the low offeror.

The "actual" staffing requirements were calculated by T/SSI by analyzing the staff utilized by UES during the January-February 1980 extension period and projecting these figures on an annual basis. T/SSI contends that the staff provided by UES during the extension was simply a continuation of the staff assigned to the program by UES and approved by the Air Force under the old contract.

A summary of the comparisons submitted by T/SSI for the ten core staff categories with the "actual" requirements in parenthesis follows:

<u>Labor Category</u>	<u>No. of Pers.</u>		<u>Est. Hrs.</u>		<u>UES Hourly Rates</u>	<u>T/SSI Hourly Rates</u>
Engineer V	1.0	(.83)	1440	(1200)	17.07	19.89
Engineer IV	.5	(1.0)	756	(1440)	16.69	19.87
Engineer III	.5	(1.0)	752	(1440)	12.41	19.35
Engr Tech V	2.0	(4.0)	2880	(5760)	14.99	11.80
Engr Tech IV	2.0	(-)	2880	(-)	8.87	10.29
Engr Tech III	2.0	(3.0)	2880	(4320)	8.20	8.30
Engr Tech II	2.0	(-)	2880	(-)	7.19	7.01
Engr Tech I	1.0	(1.0)	1440	(1440)	7.06	5.50
Drafter II	1.0	(.083)	1440	(120)	9.02	10.03
Secretary	1.0	(1.0)	1440	(1440)	6.54	6.54

(1) Comparison shows quantities projected for base period (seven months only) for on-site staff only.

Based upon T/SSI's calculations, it appears that the RFP estimates for the ten core staff categories were underestimated in four categories and overestimated in four. In terms of manhours (the basis upon which offers were evaluated) the variations range from 240 to 2880 manhours. Consequently, if UES' and T/SSI's offers are entirely recomputed on the basis of these "actual" requirements, T/SSI becomes the low evaluated offeror by \$11,345.20 for the base period plus options. T/SSI's hourly rates are, however, low in only

one category where there is an alleged error in the estimate -- Engineer Tech. V -- which if "corrected" would alter the result of the competition.

The Air Force, however, disputes the validity of the computations submitted by T/SSI, and maintains that the extension manhours (as annualized by T/SSI) and the RFP estimates need not correlate as they are separate and distinct. In addition, the Air Force takes the position that the RFP was based upon the best information available. The Air Force states:

"The estimated manhours for the extensions were based on fairly exact and predictable near-term requirements; actual known tasks were taken into consideration. The end result was that the estimated manhours of the extensions were valid only during the extensions, and were not considered necessarily typical of past or future requirements.

"The estimated manhours for the solicitation, on the other hand, were based on the Government's best estimates of manhour requirements for the 31 months following the extension periods. They were based on user experience during the four years prior to the UES performance period, on user experience during the four years prior to the UES performance period, and user projections of future mission requirements. This method of determining future estimated requirements is still considered the most valid and realistic method available to the Government.

"T/SSI's suggested alternative method is entirely without merit. Since the estimated manhour requirements for the extensions are not necessarily typical, they are completely unsuitable as a basis for projecting future requirements."

UES states that it had no reason to believe that the completed program will deviate from the manhours estimated in the RFP, and adds that during one of the extension periods

it was required to perform work not representative of the manhours required during normal model testing and facility maintenance.

In its comments on the agency report, T/SSI disputes that the RFP estimates were based upon the best information available. T/SSI notes that the RFP was based on a 33-month period not a 31-month period as the agency stated, that the estimates remained the same as those used in the old contract even though UES staffing had changed during that time. T/SSI also alleges that the extension manhours were not based upon "exact and predictable near term requirements" as T/SSI was advised by the Air Force that the purchase requisition for the new contract and the accompanying statement of work served as procurement authorization for the extension periods.

Essentially, the question in this case is whether the estimates used in the RFP were based upon the best information available. The Air Force takes the position that the RFP estimates were based upon the best available information, while T/SSI contends that more accurate hours could have been determined by projecting the extension hours on an annual basis since the staffing in the extensions is the same as that used by UES under the old contract. We stated the general rule as to estimates in Union Carbide Corporation, B-188426, September 20, 1977, 77-2 CPD 204, as follows:

"Generally, when the Government solicits bids on the basis of estimated quantities to be utilized over a given period, those quantities must be compiled from the best information available. Central Brace Company, B-179788, January 29, 1974, 74-1 CPD 38. If the procedures used to obtain the data necessary to make quantity projections include the sources of information and types of factors normally relevant, then the estimates are considered to have been based on the best available information. Tretaros Painting and Construction Corp., B-186655, January 18, 1977, 77-1 CPD 37. If the estimates are not reasonably accurate, the evaluation based upon those estimates is likewise suspect and may not result in the lowest cost to the.

Government. Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 CPD 164. Ultimately, the estimated quantities must be a reasonably accurate representation of actual anticipated needs. Michael O'Connor, Inc., B-183381, July 6, 1976, 76-2 CPD 8. * * *

"While the estimates must be based upon the best possible information, there is no requirement that the estimate be absolutely correct. * * *"

Although T/SSI has submitted, in detail, material to support its argument that based upon its calculations of "actual" requirements T/SSI's bid would be lower than UES', the extension requirements and projections based upon them would not be relevant in determining RFP estimates or their validity. The extension periods on the old contract occurred after the time in which the RFP was prepared. The record does not conclusively show that UES staffing had changed prior to the time in which the estimates were prepared or that the staffing presently provided is significantly different than the RFP estimates.

In any event, the question is not whether the estimates are absolutely correct but whether the estimates are based upon the best information available, and thus are a reasonably accurate representation of actual anticipated needs. See Union Carbide Corp., supra. From the record before us, we cannot say that T/SSI has sufficiently demonstrated that the Air Force did not use the best available information. We therefore find no merit to this allegation.

Responsiveness

T/SSI's second basis of protest is that UES' offer is nonresponsive for failure to include hourly rates for certain labor categories listed in the RFP. T/SSI alleges that hourly rates for all labor categories are required by section 6, paragraph 25 of the RFP, which reads:

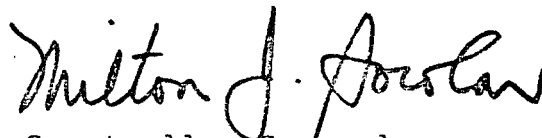
"Award will be made in the aggregate to the low responsive and responsible offeror. Offerors shall submit a proposal on all items. Failure to do so will be cause for rejection of the proposal as being unacceptable and nonconforming to the Request for Proposal."

Line item 0001 of the Schedule is for on-site services. Included in that line item are 18 labor categories and the number of labor hours estimated for contract performance for each category. Five of the 18 categories indicate an estimated need of zero labor hours. Line item 0002 (off-site services) repeats the labor categories listed in line item 0001 verbatim, with no labor hours required for only one category (which is not included in any zero estimate under line item 0001). We believe the manner in which the Schedule was constructed makes it clear that while all labor categories are repeated for each item, prices are not required for all categories. We also believe that the RFP's "Instructions, Conditions, and Notices to Offerors" support our view. For example, the requirement to "submit a proposal on all items" is preceded by the sentence specifying the basis for award, i.e., to the low aggregate offeror. Those items for which no estimated quantity appears would not affect the aggregate price offered and thus would not impact on the evaluation.

We therefore do not believe (as T/SSI maintains) that the mere presence of these categories under each line item even if considered in conjunction with paragraph 25 of the RFP, supra, expresses a need for those services where no estimates were indicated.

The protest is denied.

For the


Comptroller General
of the United States