



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Unisys Corporation

File: B-230019.2

Date: July 12, 1988

## DIGEST

Where there was a reasonable possibility that the failure of a solicitation adequately to advise offerors of the actual basis for award resulted in competitive prejudice, then the determination of the contracting agency to reopen negotiations was proper, notwithstanding the prior disclosure of offerors' proposed costs, the alleged disclosure of proprietary information from the awardee's proposal, and the cost to the government of terminating the awardee's contract if another offeror ultimately received the award.

## DECISION

Unisys Corporation protests the decision of the Department of the Navy to reopen negotiations, after having awarded a contract to Unisys, under request for proposals No. N00123-86-R-0246, for engineering and technical services in support of combat systems programs. Unisys challenges the agency's determination that the solicitation was deficient and that there was a failure to conduct meaningful discussions such that reopening negotiations was proper.

We deny the protest.

The solicitation requested proposals to supply engineering and technical services on a cost-plus-fixed-fee basis for a base period of 1 year plus 2 option years, and generally provided for award to the responsible offeror whose conforming proposal was most advantageous to the government, cost and other factors considered. The solicitation listed the following specific evaluation factors:

- "1. Personnel Background and Experience
- ...
- 2. Company Background and Experience
- ...
- 3. Plan to Manage and Accomplish Work

Cost is not as important as Factor 1 and will not necessarily be controlling. The degree of its importance will increase with the degree of equality of proposals in relation to other factors on which selection is to be based. Cost will be evaluated on the basis of realism, reasonableness and reliability. The factors are listed in descending order of importance; Factor 1 is at least twice as important as any other factor."

Proposals were received from four offerors; all offerors were included in the competitive range and were requested to clarify their proposals. Additional questions and requests for clarification were sent to offerors in a subsequent request for best and final offers (BAFOs). The Navy's initial evaluation plan, which was not disclosed to offerors, assigned a weight of 70 percent to the technical evaluation criteria and 30 percent to cost. BAFOs, however, were evaluated under a modified technical/cost tradeoff in which the weight assigned cost increased to 40 percent of the total evaluation points. As revised, the evaluation plan distributed the 100 possible total evaluation points as follows: personnel--34.28 points; company background and experience--12.855 points; plan to accomplish work--12.855 points; and cost--40 points.

Vitro and Unisys received the highest evaluation scores. Vitro's BAFO was evaluated as offering the highest evaluated cost to the government; Vitro's technical proposal, however, received the highest technical score (60 points) and Vitro received an overall total of 92 (technical and cost) evaluation points. While Unisys' BAFO received a somewhat lower technical score (55 points), it was evaluated as offering a significantly lower cost to the government; as a result, Unisys also received an overall evaluation score of 92 points. The next highest overall evaluation score was 86 points.

Notwithstanding the fact that both offerors received the same overall evaluation score, the contracting officer determined that Unisys' proposal in fact offered substantially greater value than Vitro's proposal. The contracting officer attributed Vitro's overall higher technical score, which primarily resulted from the firm's significantly higher score under the criterion for personnel, to Vitro's position as the incumbent contractor for the prior 10 years. The contracting officer noted that Unisys, by contrast, had received a slightly higher score under the subcriterion for general company experience with combat systems. While recognizing that Unisys' proposal contained some technical weaknesses, the contracting officer considered the proposal to be technically acceptable, and concluded that "with the

experience possessed by Unisys, there is no reason to believe that this firm will be unable to successfully perform the required task at considerable savings to the Government."

When the Navy then made award to Unisys, Vitro protested to our Office that the proposal evaluation was inconsistent with the evaluation criteria set forth in the solicitation. The Navy subsequently reached the same conclusion, finding the award to Unisys to be improper. Specifically, the Navy determined that the solicitation statement of evaluation criteria did not adequately describe the criteria actually used in evaluating proposals. For example, the agency asserts that the solicitation statement that "Factor 1 [Personnel] is at least twice as important as any other factor" is reasonably susceptible of the interpretation that the criterion for personnel would be at least twice as important as cost, as well as any other criterion. In fact, as indicated above, up to 40 points were available for cost, while only 34.28 points were available for personnel. In addition, the agency determined that offerors had not been advised during negotiations of all of the deficiencies in their proposals. As corrective action, the agency amended the solicitation statement of evaluation criteria, reopened negotiations, and requested a second round of BAFOs.

Unisys contends in its protest that the most reasonable interpretation of the solicitation statement that "Factor 1 is at least twice as important as any other factor" is that personnel would be at least twice as important as any other technical criterion, but not necessarily twice as important as cost. In this regard, Unisys notes that cost is not one of the three numbered evaluation criteria, and that cost, and its relation to Factor 1 ("Cost is not as important as Factor 1 and will not necessarily be controlling"), is specifically discussed in a separate paragraph. Furthermore, Unisys interprets the phrase "will not necessarily be controlling" (emphasis added) as implying that cost might in some circumstances actually be more important than personnel. Unisys has provided our Office with an affidavit in which the contracting officer for the early stages of this procurement (who since has left the position) claims that all offerors had previously interpreted similar language in prior solicitations as indicating that the first technical factor was more important than cost, but not necessarily twice as important.

It is fundamental that offerors must be advised of the basis upon which their proposals will be evaluated. The Faxon Co., B-227835.3, et al., Nov. 2, 1987, 67 Comp. Gen. \_\_\_\_\_, 87-2 CPD ¶ 425. In particular, contracting agencies are required to set forth in a solicitation all significant

evaluation factors and their relative importance, 10 U.S.C. § 2305(a)(2)(A) (Supp. IV 1986); Federal Acquisition Regulation § 15.605(e) (FAC 84-16); agencies may not give importance to specific criteria beyond that which would reasonably be expected by offerors. See Coopers & Lybrand, B-224213, Jan. 30, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 CPD ¶ 100. Where a solicitation does not set forth a common basis for evaluating offers, which ensures that all firms are on notice of the factors for award and can compete on an equal basis, the solicitation is materially defective. See The Faxon Co., B-227835.3, et al., supra.

We agree with the Navy that nothing in the solicitation advised offerors that cost would be assigned a greater weight in the evaluation than would personnel. On the contrary, the solicitation expressly stated that cost would not be as important as personnel and was reasonably susceptible of the interpretation that personnel was at least twice as important as any other factor, including cost. The fact that the solicitation left open the possibility that cost could be controlling if the other evaluation factors were equal establishes nothing since any significant evaluation factor can be determinative of award if proposals are viewed as essentially equal under the other factors.

Furthermore, we note that Vitro states that it relied upon the strong emphasis in the solicitation on technical excellence and that it would have significantly altered its technical and cost proposals had it been made aware of the actual relative weights of the evaluation criteria. In this regard, we note that Vitro's BAFO already included certain cost-containment measures, such as a limitation on overhead and general and administrative costs to rates below historic levels and the proposal of less expensive labor than used to perform related contracts. Although the agency questioned the structure and effectiveness of the limitation on costs and the realism of the reduction in labor rates, and therefore evaluated Vitro's proposal on the basis of the agency's evaluation of probable cost rather than Vitro's lower proposed cost, we believe that these cost-containment measures indicate that Vitro might have proposed a still lower overall cost had it known the actual relative weight of cost in comparison with the other evaluation criteria.

In view of the fact that Unisys received an overall evaluation score equal to that received by Vitro only because Unisys' significantly lower price offset Vitro's higher technical score, it appears to us that there was a reasonable possibility that Vitro was displaced by its reliance upon the understatement of the true importance of cost. In light of this possibility of prejudice (as we have previously indicated, there need not be a showing that but for

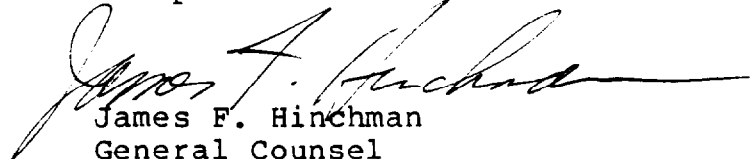
the defect another offeror definitely would have been the successful offeror, see Wheeler Brothers, Inc.; et al.-- Request for Reconsideration, B-214081.3, Apr. 4, 1985, 85-1 CPD ¶ 388), the Navy properly determined to reopen the competition. See The Faxon Co., B-227835.3, et al., supra.

We recognize that Unisys believes that proprietary information concerning its technical proposal has been released to at least one other offeror. In view of this purported disclosure, and considering the likely cost to the government if it subsequently terminated Unisys' contract, Unisys argues that reopening negotiations is not appropriate here. We note, however, that while the notice of award disclosed Unisys' proposed cost, the notice of the reopening of negotiations disclosed to each offeror the costs (and award fees) proposed by its competitors, thus offsetting any competitive advantage Unisys' competitors received from the notice of award. Moreover, while Vitro's initial protest to our Office included raw technical scores received by offerors, the Navy reports that an agency investigation has been unable to confirm that anyone in the contracting office disclosed proprietary information from the proposals.

In any case, where the reopening of negotiations is properly required, the prior disclosure of an offeror's proposal does not preclude reopening negotiations, and reopening does not constitute either improper technical leveling or an improper auction. The possibility that a contract may not be awarded based on true competition on an equal basis has a more harmful effect on the integrity of the competitive procurement system than the fear of an auction; the statutory requirements for competition take priority over the regulatory prohibitions of auction techniques and technical leveling. See id. The possible cost to the government of terminating Unisys' contract, if ultimately required, also does not provide a basis for our Office to question the agency's determination to take corrective action. Amarillo Aircraft Sales & Services, Inc., B-214225, Sept. 10, 1984, 84-2 CPD ¶ 269.

In view of our conclusion that the solicitation's failure adequately to advise offerors of the actual basis for award justified the Navy's decision to reopen negotiations, we need not consider the agency's determination that meaningful discussions were not conducted.

The protest is denied.

  
James F. Hinchman  
General Counsel