

W. Asher



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Technology Applications, Inc.

File: B-236790

Date: January 10, 1990

DIGEST

Low bid for operation and maintenance contract is materially unbalanced where price for initial 60-day mobilization period amounts to approximately 63 percent of overall price for the firm, 1-year performance period in the contract as awarded, and 22 percent of the potential 5-year contract period.

DECISION

Technology Applications, Inc. (TAI), protests the Department of the Navy's award of a contract to Person-System Integration, Limited (PSI), under invitation for bids (IFB) No. N61339-89-B-2005, step two of a two-step sealed bid acquisition for the operation and maintenance of F-14A aircraft training simulators. TAI asserts that the Navy should have rejected PSI's bid as materially unbalanced.^{1/}

We sustain the protest.

Under step one of the procurement, the Navy requested technical proposals for contractor operation and maintenance (COMS) of, and supply support for, F-14A training simulators at Naval Air Station Ocean, Virginia Beach, Virginia, and Naval Air Station Miramar, San Diego, California. The solicitation provided for a potential contract period of up

^{1/} Two-step sealed bidding is a hybrid method of procurement that combines elements of sealed bidding and negotiations. Step one is similar to a negotiated procurement in that the agency requests technical proposals, without prices, and may conduct discussions. Step two consists of a price competition among those firms which submitted acceptable proposals under step one. Simulaser Corp., B-233850, Mar. 3, 1989, 89-1 CPD ¶ 236.

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to 5 years, including (1) a firm requirement for a 60-day mobilization period (during which the contractor was to acquire personnel, conduct training, inventory government-furnished property, observe the performance of the prior, transitioning contractor on a not-to-interfere basis, and perform other mobilization tasks so as to prepare to assume performance responsibility), (2) an initial option for operation and maintenance and supply support for 10 months, (3) three subsequent, separate option years, (4) an option for 10 months, and (5) a final option for a 60-day transition period.

The specifications generally required the contractor to maintain the training simulators in an operationally-ready state, with all essential subsystems fully functional and the simulators manned by a properly qualified operator, during scheduled training time. In addition, the specifications required the contractor, as part of the fixed-price supply support requirement, to assume responsibility for the timely procurement at contractor expense of those spare and repair parts costing \$25,000 or less for any single item and other consumables necessary to accomplish trainer operation and maintenance and to maintain a prescribed stock inventory level.

Eight offerors submitted technical proposals in response to the step one request for technical proposals, and all offerors were invited to submit firm, fixed-price bids. The solicitation provided for evaluation based upon the prices for the firm requirement and all options, except that if there were insufficient funds available at the time of award to fund supply support, evaluation was to be based upon all options except supply support. The solicitation cautioned that the government might reject materially unbalanced bids, and defined an unbalanced offer as one based on prices that are significantly less than cost for some work and significantly overstated for other work. Six of the offerors subsequently submitted step two sealed bids, ranging in total from PSI's low bid of \$5,451,968 to a high bid of \$11,443,945.

After reviewing the bids, the contracting officer wrote to PSI to advise it of the possibility of an error in its bid. In requesting PSI to verify its bid, the contracting officer noted that the bid (\$5,451,968) was significantly lower than the remaining bids (including TAI's second low bid of \$6,532,339). PSI, however, responded by verifying its bid as correct.

Meanwhile, TAI wrote to the contracting officer to complain that PSI had submitted an unbalanced bid by front-loading 22 percent (\$1,210,365) of its overall bid for 5 years into the 60-day mobilization period. The contracting officer agreed that "PSI is obviously unbalanced mathematically," and observed that "PSI appears to be unbalanced due to the high price bid for mobilization." He determined, however, that it did not appear that PSI's bid was materially unbalanced, that is, that award to PSI would not result in the lowest cost to the government; in this regard, the contracting officer noted that PSI's bid becomes low in the first half of the third contract year and concluded that there was "no reason to believe" that the contract would not be in effect for at least 3 years. Consequently, the agency made award to PSI, exercising at the time of award the first, 10-month option for operation and maintenance and supply support. TAI thereupon filed this protest with our Office.

In response to TAI's protest, which reiterates the claim that PSI's bid was materially unbalanced and grossly front-loaded, PSI claims that the "bulk of PSI's supply/support bid accounts for advance purchase of replacement parts." According to PSI, it concluded that it would be necessary to invest in a significantly increased inventory of replacement parts "because substantially all such parts must be custom-made by the manufacturers of the simulator components, a process which requires weeks or months, and concomitant downtime for the affected simulator."

The Navy argues that the determinative consideration here is the contracting officer's expectation that award to PSI would result in the lowest ultimate cost to the government. In this regard, the agency notes that PSI's total price was \$1,080,371 lower than TAI's second low bid, and emphasizes that it becomes low during the first half of the third contract year, and that there are "no foreseeable programmatic decisions which are expected to prevent the Navy from exercising all five options."

However, even if the Navy expects to exercise the options, there remains a concern as to whether the contract provides sufficient incentives to assure PSI's continued, satisfactory performance after its receipt of the initial, enhanced payments. In this regard, we consider it significant that the contracting officer, applying the applicable Department of Labor wage determinations, found that PSI's bid was substantially less than the amount required for payment of the minimum wages for the personnel proposed in its technical proposal; the agency subsequently estimated that

PSI had underbid its direct labor cost by \$2,174,150, not including profit or overhead on the additional wages.

Certainly, acceptance of PSI's grossly front-loaded bid provides a disincentive for the government to administer the contract in a manner consistent with its best interest if contingencies should arise after the enhanced payments have been made that would ordinarily require termination. See F & E Erection Co., B-234927, June 19, 1989, 89-1 CPD ¶ 573. As the Navy points out, the government will not receive title to the spare parts--those not incorporated into the prescribed minimum stock inventory--the extensive advance purchase of which the government is financing. As a result, should the Navy terminate the contract after the mobilization period, or fail to exercise the option after the firm, initial contract year, the Navy will have expended an amount well in excess of the next low bid--\$1,109,665 at the end of 60 days and \$550,568 at the end of the first year--and of the actual value of the items or services to be provided.

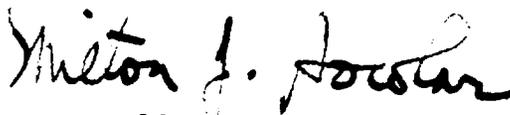
While PSI explains that its bid for supply support during the 60-day mobilization period included the cost of extensive advance purchases of replacement parts, we do not believe that the costs of the advance purchase of a substantial portion of the replacement parts for the potential 5-year period of the contract are legitimate costs of mobilization. As a result of its bidding approach, PSI would receive approximately 63 percent of the overall contract price for the firm, one-year performance period and 22 percent of the overall contract price for the potential 5-year contract period at the end of the 60-day mobilization period. As such, the price for the mobilization period is far in excess of the actual value of the services to be provided.

Nor does it appear that PSI's approach represented a reasonable approach to contract performance. As an initial matter, we note that the contracting officer questioned PSI's bid for mobilization, and the Navy has never argued that such substantial advance purchases of replacement parts were reasonable and necessary. Further, none of the other offerors adopted a similar approach to the procurement of replacement parts; PSI's bid (\$1,114,775) for the supply support portion of mobilization was 1335 percent, or \$1,037,095, more than the next low bid (\$77,680) for this item. In particular, PSI does not explain why substantial advance purchases are necessary when the solicitation provides for the government to furnish the new contractor with the current inventory of replacement parts. Certainly, it does not appear reasonable to purchase replacement parts

for option years that the government is not yet committed to exercising. This is especially true here, where the specifications stated that the agency planned to undertake extensive, future modifications of the simulators during the potential contract period, which presumably would eliminate any need for many current parts.

In these circumstances, we conclude PSI's bid was materially unbalanced and thus should have been rejected. The protest is sustained.

We recommend that the contract with PSI be terminated for the convenience of the government and award made to the next low bidder, TAI, if otherwise appropriate. Further, we find TAI to be entitled to the cost of pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1989); see Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96.

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