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Perry



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Unisys Corporation

File: B-242897

Date: June 18, 1991

Bernard Fried, Esq., and William A. Wotherspoon, Esq., for the protester.
Terence Murphy, Esq., Kaufman & Canoles, for Systems Engineering International, Inc., an interested party.
Douglas P. Larsen, Jr., Esq., and Donald S. Safford, Esq., Department of the Navy, for the agency.
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. While a number of proposed key personnel were changed after award, agency's evaluation of offeror's key personnel was not improper where offeror provided firm letters of commitment with consent of the listed individuals, and nothing in the record suggests that the names were submitted other than in good faith.
2. Protester's allegation that agency improperly downgraded its proposal which resulted in award to another offeror is denied where record demonstrates that protester was rated technically superior, and even if the protester received a perfect technical score this would not have outweighed the 30 percent cost differential between it and the awardee.
3. Challenge to agency's review of cost realism of awardee's proposal is denied where record shows that cost realism review was reasonable and thorough and where agency received favorable advice from Defense Contract Audit Agency and another activity currently contracting with awardee for similar services regarding proposed rates and acceptability of performance at those rates.

DECISION

Unisys Corporation protests the award of a contract to Systems Engineering International, Inc. (SEI) under request for proposals (RFP) No. N00123-90-R-0278, issued by the Department

of the Navy for on-site field engineering services for equipment owned or controlled by the Fleet Combat Direction Systems Support Activity, San Diego, California. Unisys asserts that SEI's proposal was technically deficient and that the Navy improperly downgraded Unisys' proposal.

We deny the protest.

The solicitation calls for on-site automatic data processing hardware maintenance support services, 24 hours per day, 5 days per week, on a firm, fixed-price basis. Per call maintenance services and technical engineering support are to be provided on a time and materials basis. The base contract period is approximately 8 months, and the RFP provides for four 1-year renewal options.

Award was to be made to the responsible offeror whose offer, conforming to the solicitation, was determined to be the most advantageous to the government, cost and other factors considered. The RFP provided that technical factors were more important than price, but cautioned that price would become increasingly important as the technical merit of the proposals became equal. The evaluation factors were listed as follows, in descending order of importance:

I. Technical

- A. Personnel Management and Qualifications
- B. Company Performance
- C. Technical Approach

II. Cost

Unisys and SEI submitted the only proposals. Unisys received the higher technical score, at a higher price. SEI received a slightly lower technical score, at a substantially lower price. After reviewing the technical and cost evaluations, the contracting officer determined that the SEI offer represented the best overall value to the government. The contracting officer determined that although Unisys submitted a better technical proposal, the \$1,572,810 cost difference between the two proposals: "represent(ed) such a substantial cost differential that award to Unisys could not be justified. SEI's proposal is technically acceptable. Unisys's technical superiority does not outweigh the approximate 30 percent cost differential." Award was made to SEI on the basis of initial proposals, without discussions, as allowed by the terms of the RFP.

Unisys challenges the award determination alleging that:
(1) SEI's proposal is technically deficient because SEI failed to fully staff the contract initially; (2) the Navy improperly

downgraded Unisys' proposal in a manner which impacted the cost/technical tradeoff; and (3) the Navy's cost realism analysis is inadequate because it consisted of only a Defense Contract Audit Agency (DCAA) verification of labor rates.

The protester alleges that SEI never intended to supply the individuals for whom it submitted resumes for evaluation. Unisys argues that SEI's massive substitution of key personnel immediately following contract award, consisting of the replacement of 9 out of 16 people who were evaluated and listed in the contract, constitutes a "bait-and-switch" tactic which should render SEI ineligible for award, especially here where personnel substitution is strictly limited by the RFP.^{1/}

Offeror "bait-and-switch" practices, whereby an offeror proposes the use of personnel that it does not expect to actually use during contract performance, have an adverse effect on the integrity of the competitive procurement system and generally provides a basis for proposal rejection. Informatics, Inc., 57 Comp. Gen. 217 (1976), 78-1 CPD ¶ 53. This does not mean that an offeror must use the personnel it proposed or risk losing the contract for which it is competing in every case. For example, where the offeror provides firm letters of commitment and the names are submitted in good faith with the consent of the respective individuals (that is, the offeror is not proposing personnel it has no intention of providing), the fact that the offeror, after award, provides substitute personnel does not make the award improper. See Informatics General Corp., B-224182, Feb. 2, 1987, 87-1 CPD ¶ 105.

Conversely, however, an offeror may not be awarded a contract where the offeror does not have the individuals' permission to use their names for key positions for which they are proposed and cannot provide a satisfactory explanation for its use of the names. Ultra Technology Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42. Similarly, where an offeror knows prior to submission of its best and final offer (BAFO) that proposed

^{1/} The solicitation provides that:

"The Contractor shall assign to this contract those persons whose resumes were submitted with its proposal and who are listed The Contractor agrees that during the first ninety (90) days of the contract performance period no personnel substitutions will be permitted unless such substitutions are necessitated by an individual's sudden illness, death, or termination of employment."

key employees are no longer available, the offeror should withdraw the individuals and, in its BAFO, propose substitutes who will be available. Omni Analysis, 60 Comp. Gen. 300 (1989), 89-1 CPD ¶ 239. To do otherwise is, in effect, to misrepresent the availability of proposed personnel which in turn compromises the validity of the technical evaluation, regardless of whether post-award substitutions of key personnel may later be made and approved by the agency pursuant to a clause in the awardee's contract. Ultra Technology Corp., B-230309.6, supra.

On this record, we find no basis to conclude that SEI intended to misrepresent the availability of proposed personnel. SEI provided individual employee resume certifications and letters of intent as required by the solicitation for each of the 16 people it proposed. When the availability of some of these people changed, SEI did not, as did the offeror in Omni Analysis, keep that information to itself. Although SEI did not have the opportunity to withdraw some of the proposed individuals and to propose substitutes in a BAFO because award was made on the basis of initial proposals, the record shows that SEI, during the pre-award survey conducted by the Defense Contract Management Administration Office, Baltimore, (DCMAO), informed the survey personnel that four of the people whom it had initially proposed were no longer available. DCMAO, however, failed to relay this information to the contracting officer, and that is why the contract awarded to SEI listed the original 16 people proposed by SEI. These circumstances do not suggest that SEI intentionally misrepresented the proposed personnel it would use on its contract or failed in its pre-award obligation to notify the government of changed circumstances.^{2/} See Informatica General Corp., B-224182, supra. Accordingly, this issue provides no basis for sustaining the protest.

Unisys next objects that the Navy improperly downgraded Unisys' proposal, and that if it had been properly evaluated the cost technical trade-off would have changed. Specifically, Unisys alleges that the agency's three purported reasons for lowering its technical score--lack of experience on IBM equipment, an insufficient number of system engineers, and failure to provide specific information concerning acquisition of emergency parts--were all incorrect. Essentially, Unisys argues that it should have received a perfect technical score which would have outweighed its significantly higher price.

^{2/} The agency reports that SEI's proposed substitute personnel "have qualifications equal to or higher than the qualifications of the persons replaced."

We find no merit to this argument. The Unisys proposal was viewed as superior in the technical area and received a high technical score. Had Unisys received a perfect score, its technical point score and total score would have increased by less than 4 points. While this would have resulted in near identical scores for the two offerors, it is clear from this record that the selection decision would have been the same.

The Navy concluded that SEI's combination of technical competence and low cost represented the best overall value to the government, despite the Unisys technical superiority. The contracting officer states that this determination would not have changed even if Unisys had received a higher technical score. Given the 30 percent cost differential between the two proposals and the fact that the Unisys proposal was initially viewed as superior, we see no basis to question the reasonableness of the contracting officer's position that a few more technical evaluation points for Unisys would not have changed the selection decision.


Finally, Unisys contends that the agency's cost realism analysis is flawed in that it is based on a bare Defense Contract Audit Agency (DCAA) verification of labor rates. The protester argues that although this may be sufficient in some circumstances, it is clearly insufficient here, where SEI may have proposed superior key personnel but intended to staff the contract with less qualified, lower-paid individuals. Unisys argues that SEI may have provided top quality resumes within a labor category but only average labor rates for the category. Therefore, the protester argues that the cost realism analysis, at a minimum, should have ensured that the rates proposed accurately reflected the resumes provided.

Unisys's premise that SEI provided superior key personnel with an intention to staff with less qualified personnel is contradicted by the record, which shows that SEI received a significantly lower score for the qualifications of its key personnel than did Unisys because the Navy did not view SEI's proposed key personnel as superior. Accordingly, the Navy would have had no reason to expect or require SEI's labor rates to be at the top end of the scale.

In this regard, SEI's proposed labor rates, overhead, and G&A rates were analyzed and verified by DCAA, and reviewed by the contracting officer. No discrepancies were found that would substantially affect SEI's proposed overall cost. The contracting officer noted that, in fact, some of SEI's proposed labor rates were higher than it was required to pay by the Service Contract Act. Since SEI's proposed labor rates were significantly lower than those offered by Unisys, the agency contacted another activity that has a contract for similar services with SEI, to inquire about SEI's performance

and rates under that contract. An analysis of those rates in comparison to the rates which SEI offered under this solicitation demonstrated that SEI's proposed and actual costs were consistent with each other. As a result, the contracting officer concluded that the rates were reasonable, realistic and reliable; and that the agency could expect SEI's performance to be of a similar quality as that of Unisys, but at a lower cost. The record provides no basis to question this conclusion.

The protest is denied.


for James F. Hinchman
General Counsel