



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ManTech Field Engineering Corporation
File: B-245886.4
Date: March 27, 1992

Kenneth S. Kramer, Esq., and Catherine H. Winterburn, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester. Kathleen D. Martin, Esq., and Paula J. Barton, Esq., Department of State, for the agency. Elizabeth S. Woodruff, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where proposals are to be evaluated based upon the qualifications of proposed personnel, an offeror has the responsibility to propose individuals who may reasonably be expected to be available for performance.
2. Where BAFOs are submitted several months after initial proposals and the offeror makes no attempt prior to submitting its best and final offer to determine whether its proposed personnel are available, the offeror has not met that responsibility.

DECISION

ManTech Field Engineering (ManTech) protests the award of a contract to Systems Engineering & Management Associates, Inc. (SEMA) under request for proposals (RFP) No. 0000-125026, issued by the Department of State for engineering and installation services for the Department's worldwide information management system. ManTech contends, among other things, that SEMA misrepresented the availability of its personnel. We sustain the protest.

The solicitation was issued on January 22, 1991, for the award of a Firm-Fixed Price/Cost-Reimbursement/Labor Hour contract for a base period and four option years. The award was to be made to the offeror whose offer was determined to be the most advantageous to the government, cost and other factors considered. Five proposals were submitted by the March 20, 1991, closing date. After initial evaluation, proposals from three of the offerors were considered to be within the competitive range, including proposals from ManTech and SEMA. Written and oral discussions were held

with each offeror in the competitive range and best and final offers (BAFOs) were submitted on September 12, 1991.

The technical proposal submitted at BAFO by ManTech received 93.6 points, while SEMA's received 90.5 points. Since SEMA proposed a considerably lower price, the contracting officer determined that it offered the more advantageous proposal and should receive the award.

The contract was awarded to SEMA on September 24, 1991. The base period of the contract started immediately and ran to September 30, 1991. During this one week period, the contractor was required to produce three persons whose positions were designated as "key." The first option year began October 1, 1991, at which time the contractor was required to provide nineteen additional persons.

On September 26, 1991, ManTech challenged the award on the ground that SEMA had misrepresented the availability of its proposed personnel.¹ On October 1, 1991, the agency advised that it was proceeding with contract performance notwithstanding the stay provisions of the Competition in Contracting Act, 31 U.S.C. §§ 3553(c) and (d), based upon a determination that urgent and compelling circumstances would not permit waiting for GAO's decision. ManTech supplemented its initial protest on October 3, 1991, with additional material. The agency filed a report on November 4, 1991. Based upon information contained in the agency report, ManTech filed a second protest on November 18, 1991. In its revised protest, ManTech raised additional allegations. Due to the similarity of the issues, ManTech's earlier protest was closed and all of the issues were consolidated into the protest filed November 18, 1991.

THE EVALUATION OF SEMA'S PROPOSAL

The RFP specified labor categories which the contractor was required to fill. The RFP then listed the technical qualifications and a minimum period of experience which the personnel who were proposed for each labor category were to possess. The RFP advised offerors that proposals should include resumes of persons who they proposed for contract performance and stated that the resume submitted for each proposed employee should detail the individual's background, education, and job experience. The RFP also required that each resume be accompanied by a signed statement certifying

¹The third offeror in the competitive range, Jaycor, also filed a protest of this solicitation on October 8, 1991. B-245886.3. Jaycor's protest was withdrawn after receipt of the agency record.

the individual's consent to the use of the resume in evaluating the proposal. With respect to persons proposed as key personnel, the RFP required that they be currently employed by the offeror or that a bilaterally signed employment agreement, contingent upon the award of the contract, be in place at the time of receipt of proposals.

The RFP provided that technical proposals and cost proposals were "of equal importance." The RFP further provided that technical proposals would be evaluated on corporate approach (25 points) and personnel (75 points). The personnel factor was based upon two subfactors of equal weight:

- (1) qualification of proposed personnel (37.5 points), and
- (2) past experience of proposed personnel in similar or comparable projects (37.5 points). According to the evaluation scheme developed by the agency, the resume of each of the twenty-two persons proposed at BAFO was worth a total of 3.4 points, 1.7 points for qualifications and another 1.7 points for experience.

In its BAFO, SEMA offered the resumes of twenty-two persons it proposed to use in performance of this contract. Eight of these proposed personnel were not included in SEMA's initial proposal but were first proposed in SEMA's BAFO. Two of these eight SEMA included to take the place of persons proposed in SEMA's initial proposal who were found to be unqualified by the agency. The requirement for the other six, all assembly technicians, was added by the agency when it requested BAFOs. Thus, the first opportunity SEMA had to propose persons to fill these six positions was in its BAFO.

The record shows that when SEMA submitted its BAFO, it had no current knowledge regarding the availability of most of the 22 individuals it proposed. For example, of the eight new individuals proposed, one of the eight was a current SEMA employee; the other seven were contingent hires. SEMA submitted letters of commitment for the contingent hires. Of these seven letters of commitment, one is dated in September, one in May, and five in February 1991. In oral testimony, SEMA's project manager was unable to recall whether SEMA had contacted any of the contingent employees who were last contacted in February or May to determine his or her availability prior to the submission of his or her resume on September 12, 1991. Only one of these seven contingent hires reported for work.²

²This employee, a key personnel, left after working only one day. The record is in conflict regarding the reason this individual terminated his employment.

In addition, SEMA knew that at least one of its three proposed key employees might not be available for contract performance. When it submitted its initial proposal, SEMA proposed for the position of Lead Assembly Technician one of its current employees. However, in April this employee terminated his employment with SEMA and moved to Arizona. Despite the RFP's requirement for the submission of a letter of commitment for any proposed key employee who was not a current employee, SEMA never obtained a letter of commitment from this employee. SEMA's project manager's only explanation was that he was "sure" this individual was coming back and that it "did not occur to [him]" to secure a letter of commitment. We note, however, that SEMA affirmatively stated in its BAFO that each of its three proposed key employees was either a current employee or had signed a letter of commitment.

Based upon evidence submitted by ManTech and unrefuted by the agency, it appears that of the 22 persons proposed in SEMA's BAFO (including those initially proposed in March) only 10 ever reported for work on this contract. Moreover, it was not until October 15, 1991, after State had served SEMA with a notice to cure the deficiencies in its staffing, that the contract was fully staffed. Had SEMA attempted to confirm the availability of its proposed personnel prior to submission of its BAFO in September, it would have learned that at least some of them would not be available. For example, one person proposed for the position of Assembly Technician had died in April 1991.

The agency acknowledges that SEMA did not confirm the availability of the personnel it proposed to perform the contract when it submitted its BAFO. It argues, however, that the RFP did not mandate such a practice. In support of this position, the agency cites a number of our decisions to the effect that an awardee need only act in good faith in representing the availability of its personnel. The agency, for example, cites Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577, where we found that the offeror had acted in good faith despite the substitution after award of 9 out of 16 key personnel who were evaluated and listed in the proposal. We noted, however, that the awardee did not have the opportunity to withdraw proposed individuals and to propose substitutes in a BAFO because the award was made based on the initial proposals but had orally informed government officials performing a pre-award survey of the unavailability of some of the proposed individuals.

In contrast, SEMA had the opportunity to submit a BAFO. Included in that BAFO was one key person for whom it had no written commitment and no firm basis upon which to assume that the individual would be available. In addition, SEMA also included for the first time resumes of individuals,

most of which it had obtained over 6 months previously without further contacting these individuals regarding their continued availability.

We are not unmindful of the difficulty faced by a non-incumbent contractor of securing a qualified work force sufficient to secure an award. Nevertheless, we believe that an offeror has a responsibility to propose persons who it reasonably may expect will be available for contract performance without the RFP having to provide that the offeror must do so. This is particularly so where the solicitation expressly states that a proposal should include only those persons the contractor intends to use for performance and that the proposal will be evaluated based upon the qualifications of those persons. Otherwise, there is no assurance to the government that it will receive what was offered. See e.g., Management Services, Inc., B-184606, Feb. 5, 1976, 76-1 CPD ¶ 74. SEMA did not meet that responsibility here.³

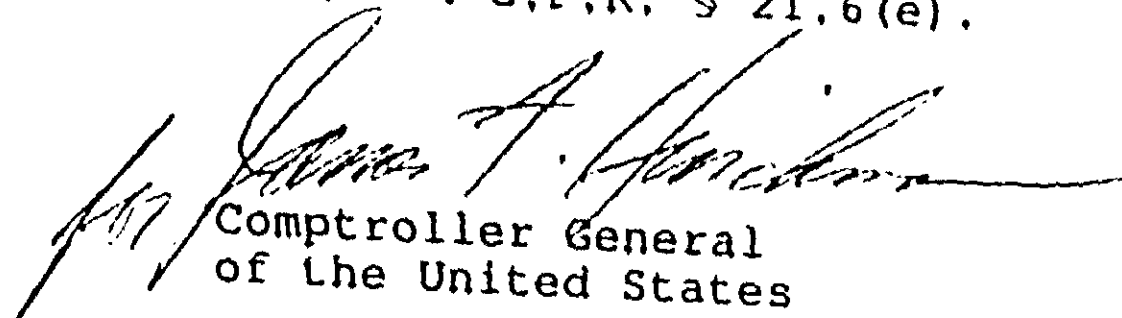
CONCLUSION

As a consequence of SEMA's failure to ascertain whether its proposed personnel were in fact available, the agency made its determination to award the contract to SEMA based on outdated, inaccurate information. We recommend that the agency reopen negotiations and call for a new round of BAFOs. If an offeror other than SEMA is then selected for award, we recommend that SEMA's existing contract be terminated.

In this connection, the protester questioned whether the agency waived the security qualifications set forth in the solicitation for SEMA. In oral testimony, the contracting officer stated that the agency never intended to require that contractor personnel have a TOP SECRET clearance in place in order to perform but would be permitted to perform while obtaining an upgrade of a SECRET clearance. In view of our conclusion, we recommend that the agency clarify its security requirements prior to reopening negotiations.

³ManTech has raised other allegations concerning SEMA's proposal which we find to be either without merit or irrelevant in light of the conclusion reached above. We see no need to discuss each of those contentions.

Mantech is entitled to the costs of filing and pursuing its protest, 4 C.F.R. §§ 21.6(b) and (d). Mantech should submit its claim for such costs directly to the Department of State, 4 C.F.R. § 21.6(e).


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