

Matter of: SIMSHIP Corporation

File: B-253655.2

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DIGEST

1. Where protester's and awardee's proposals received the same adjectival scores for technical merit and the agency reasonably concluded that the awardee's lower priced proposal offered advantages not present in the protester's proposal, the agency reasonably determined that awardee's proposal provided the highest technical capability and represented the best value to the government.
2. Agency did not mislead protester into raising its price where, based on the agency's concern that the protester had offered unreasonably low prices, during discussions the agency advised the protester to review its proposed price, without stating that the protester was required to raise its price.
3. Where proposal does not contain any enhanced prices, and the record supports the government's belief that it will purchase all services evaluated, there is no basis to reject proposal as unbalanced.

DECISION

SIMSHIP Corporation protests the award of a contract to MarineSafety International (MSI) under request for proposals (RFP) No. N00600-92-R-1057, issued by the Department of the Navy, for provision of shiphandling training services. SIMSHIP contends that the Navy should have awarded it the contract because its proposal, not MSI's, represented the best value to the government.

The RFP, issued February 25, 1992, sought technical and price proposals for providing shiphandling training services to be performed at a government-owned Shiphandling Complex (SHC) to be constructed in an existing government building at the Naval Station San Diego, California. The services were to be performed using electronic simulators provided and installed by the successful contractor. Under the terms of the RFP, following contract award the contractor would have to make, at its own expense, all necessary renovations to the government's 4,800 square-foot building, including installation of new electrical wiring, plumbing, air conditioning, floors, walls, and ceilings, to accommodate the simulators.

The RFP contemplated award of a fixed-price, indefinite quantity, requirements contract for a base year with 4 option years to conduct training in shiphandling for surface officers. The RFP, as amended, provided that the Navy would order a minimum of 1,500 and up to 2,500 hours of training each year. Offerors could propose up to four per-hour rates for all training in varying increments: up to 1,500 hours, up to 2,500 hours, and two levels in between. The RFP also required offerors to furnish direct labor, overhead, and general and administrative (G&A) rates, as well as a summary by year and totals.

The RFP provided that award would be made to the offeror whose proposal was considered most advantageous (*i.e.*, represented the best value) to the government. Each proposal was to be evaluated on the basis of four factors, listed in descending order of importance: Technical Approach; Key Personnel; Management Plan; and Corporate Experience. Proposals were to be scored on the basis of adjectival ratings of "Outstanding," "Better," "Acceptable," "Marginal," or "Unacceptable." As explicitly provided in the RFP, for evaluation purposes, the government considered the proposed total price for the base year and all options, based on ordering the 2,500-hour maximum per year.

Three offerors, including SIMSHIP and MSI, submitted proposals on April 30, 1992. Based on initial evaluations, the Navy scored the proposals of SIMSHIP and MSI as "marginal" overall. While the original RFP had required offerors to submit single hourly rates, all offerors included alternate proposals with discounted rates for increased hours. In response, the Navy amended the RFP on February 3, 1993, to permit such "stepladder" rates. By letters of the same date, the Navy sent all offerors discussion letters outlining proposal deficiencies. Both MSI and SIMSHIP submitted revised technical and price proposals. While both offerors provided stepladder pricing, MSI lowered its total price by approximately 40 percent and SIMSHIP raised its total price by approximately 20 percent

relative to the price of its primary initial proposal. The evaluators scored both proposals as "outstanding" overall and, in April, the Navy solicited best and final offers (BAFO) from each.

MSI's and SIMSHIP's BAFO proposals were evaluated as "outstanding." SIMSHIP's BAFO of \$5,854,500 was based on a single hourly rate of approximately \$400 for all hours during the base year, while MSI's BAFO of \$5,769,700 was based on stepladder hourly rates of \$660, \$103, and \$134. The contracting officer concluded that MSI's proposal offered the best value to the government. On May 20, 1993, the Navy awarded MSI the contract. After a debriefing, SIMSHIP filed a protest with our Office which it supplemented after reviewing the agency report.

SIMSHIP first contends that the agency's evaluation establishes that its proposal was technically superior to MSI's and thus represented the best value to the government. While it is not the function of our Office to evaluate proposals de novo, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

While the two proposals received identical adjectival ratings and favorable elements of both were described in the evaluators' narratives, the narrative in support of MSI's overall "outstanding" rating was approximately four times longer than the SIMSHIP narrative and it included findings that MSI's proposal met (and exceeded most) of the SOW requirements, and that "many aspects of the proposal far exceed the specifications." The evaluators highlighted MSI's offer to share all ship models in the Newport, Rhode Island SHC (another Navy contract) which would provide the Navy an additional five Navy hulls and more than 50 other ships, and MSI's ability to provide geographic data bases for more than 25 ports, with future development to provide San Diego with a total of 32 exercise data bases. The evaluators also identified MSI's proposed staff as "an extraordinarily well qualified team," with both facilitators holding Master Licenses.

The contracting officer's award recommendation echoed the evaluators' view of the considerable benefit that MSI's offer represented to the government. She observed that MSI's ability to provide additional ship models was an advantage "not available from any other offeror" and that its key personnel each had a Master License, recent

shiphandling experience, and six additional experience qualifications. The agency further observed that while SIMSHIP had proposed one of the same experienced personnel, its other facilitator possessed only three additional qualifications. In addition to finding that MSI offered the lowest overall evaluated price, which was determined to be fair and reasonable, the contracting officer determined that MSI's proposal provided the highest technical capability.

SIMSHIP's argument that its proposal was technically superior is based on a number of line-by-line comparisons of language differences in the respective narrative evaluation statements. For example, while the Navy found SIMSHIP's technical approach to be "a particular strength," its model as "exceeding specifications," and its facility "very well laid out," the Navy found MSI's technical approach to be a "definite strength," its model "of considerable benefit to the government," and its facility "well laid out." While these adjectival conclusions by themselves could suggest that SIMSHIP's proposal was viewed as superior to MSI's, the evaluation record as a whole, which clearly reflects the agency's view that MSI's proposal contained a substantial number of superior features which the agency found unique to MSI, supports the agency's position that MSI's proposal was superior to SIMSHIP's.

SIMSHIP next argues that the agency's discussions misled it into raising its price. While an agency may not consciously mislead or coerce an offeror into raising its price, see Marine Transport Lines, Inc.; Lant Shipping, Inc., B-238223.2; B-238223.3, July 30, 1990, 90-2 CPD ¶ 80, the record does not support SIMSHIP's allegation.

The protester's initial price was approximately \$7 million lower than the government's estimate, and price reasonableness was one of the evaluation criteria. The Navy's written discussion statement was: "Your total price appears to be unreasonably low. The Government is concerned that you may have an error or do not fully understand the statement of work. Please review your proposed price." We see nothing misleading or coercive about this statement.

There is no evidence that during oral discussions, SIMSHIP was instructed or otherwise coerced into raising its price.

¹SIMSHIP observes that the agency's report initially argued that the offers were technically equal, but subsequently argued that MSI's proposal was superior. Notwithstanding the agency's initial position, the record clearly establishes that the evaluators and contracting officer both found MSI's proposal technically superior to SIMSHIP's proposal.

When SIMSHIP explained that its low price was attributable to its decision not to pass on certain significant equipment costs to the government, the agency asked SIMSHIP to include this explanation in its revised proposal. Instead, SIMSHIP asserts that because it believed the Navy was unconvinced by this explanation, SIMSHIP raised its price in its revised proposal. This explanation does not substantiate the allegation that the agency conducted misleading or coercive discussions. An offeror's conclusion that it has failed to persuade an agency of the basis for a lower price during oral discussions does not prevent the offeror from maintaining and further supporting its position in written submissions as the agency, in fact, requested it to do. See Marine Transport Lines, Inc.; Lant Shipping, Inc., supra; Eagle Tech., Inc., B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468.

Further, SIMSHIP's statements in its BAFO belie the assertion that it was coerced into raising its prices. SIMSHIP mentioned the Navy's concern about low pricing and explained that its price revisions were based in part on the government's change in requirements and on the revised cost breakout clause. The protester also explained that it had thoroughly reviewed its costs and had a better understanding of the government's requirements and method for allocation of costs. Under these circumstances, the record does not support SIMSHIP's assertion that the Navy's price discussions improperly caused SIMSHIP to raise its prices.

SIMSHIP next argues that the Navy should have rejected MSI's proposal as unbalanced because MSI's proposed rate for the first 1,500 hours is approximately five times higher than either of its two other rates.² According to SIMSHIP, MSI has either overstated its costs for the first 1,500 hours or understated its costs for the other hours. SIMSHIP also contends that MSI's proposal is materially unbalanced because its proposal does not become the low offer until near the end of the final option year, even if the agency orders the 2,500 hour maximum requirement in each of the base and option years.

²In fact, the Navy took note of SIMSHIP's explanation in its evaluation of the protester's price and, because SIMSHIP's price increase was unexplained in its revised proposal, requested an explanation to be included with its BAFO.

³In this regard, we note that the amended RFP provided an example of stepladder pricing which was consistent with MSI's proposal. That is, it included a first 1,500 hour rate (\$5) which was 5 times greater than the rate for the last 300 hours (\$1).

Before an offer can be rejected as unbalanced, it must be found both mathematically and materially unbalanced. Contrary to SIMSHIP's argument, an offer is not mathematically unbalanced unless it is based both on nominal prices for some of the items and enhanced prices for other items. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271. A mathematically unbalanced offer is considered materially unbalanced and cannot be accepted where there is a reasonable doubt that acceptance of the offer will result in the lowest overall cost to the government, Star Brite Constr. Co. Inc., B-244122, Aug. 20, 1991, 91-2 CPD ¶ 173, or where it is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment, even if the offer represents the lowest cost to the government. Federal Acquisition Regulation § 15.814(b)(2) (FAC 90-7).

Before making her final award determination, the contracting officer reviewed MSI's proposal with respect to the following: the nature of the procurement; the contractor's payment of substantial renovation and equipment costs prior to commencement of reimbursable training; the effect of these matters on MSI's pricing; and a comparison of line item rates among the option years. She concluded that MSI's proposal was not unbalanced and that its price represented the lowest actual cost to the government based on the consistency and acceptable escalation rate of line item prices between the base and option years and the fact that MSI's recovery of up-front renovation and equipment costs under training line items was reasonable. Based on our review, the record substantiates the agency's determination that MSI's offer was neither mathematically nor materially unbalanced.

With regard to mathematical unbalancing, while MSI's rate for the first 1,500 hours is significantly higher than its rates for the remaining hours, there is no evidence that the rate is enhanced, i.e., that it represents a price substantially in excess of applicable costs. MSI submitted detailed cost calculations with its proposal which establish that the awardee arrived at its \$660 basic rate by dividing its total indirect and direct costs, including one-tenth of its up-front equipment and one-fifth of its construction costs, by 2,000 of the potential yearly maximum of 2,500 hours. It then charged this rate only for the first 1,500 hours, the contractual minimum, and offered a discount rate (\$103) for the next 500 hours. The remaining 500 hours were provided at a rate (\$134) derived from actual operation

costs divided by the number of hours.⁴ This same pricing structure is used in the option years with an escalation factor of less than 3 percent over the 5 years. While the basic 1,500 hour rate bears more of the costs than the remaining rates, it does not bear more than the actual cost to the offeror of those hours. The middle 500 hours appear to carry a below-cost rate, however, such pricing is unobjectionable; an offeror properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. Since MSI's proposal does not contain both enhanced and understated pricing, it is not mathematically unbalanced, and an offer which is not mathematically unbalanced, cannot be materially unbalanced. See OMSERV Corp., *supra*; Jasper Painting Serv., Inc., E-251092, Mar. 4, 1993, 93-1 CPD ¶ 204.

Moreover, even if MSI's prices could be considered mathematically unbalanced, they would not be materially unbalanced, since MSI's proposal clearly represents the lowest overall cost to the government. SIMSHIP does not challenge the Navy's intent to exercise each option; rather, it alleges that the Navy intends to order only 1,500 hours per year. The Navy states that it intends to order the maximum of 2,500 hours each year. The agency has represented that it intends to use the SHC for 2,000 hours of training each year for the Naval Surface Force, Pacific Fleet, San Diego and that nine other government activities (including Naval Reserve units, the Coast Guard, Military

⁴According to MSI, these rates will result in a loss to MSI regardless of the number of hours ordered. That is, the pricing structure results in a significant difference between MSI's costs and expected payments under the contract. MSI explains that the contract permits the awardee to use the SHC for commercial training beyond the Navy's yearly maximum and that it will have ample opportunity to earn additional revenue through commercial training.

⁵Likewise, this case does not present the possibility of a prohibited advance payment due to gross front-loading because, while MSI included start-up costs in its price proposal, it did not seek to recover them all in the base year or even by using the minimum 1,500 hour requirement. Instead, MSI amortized and depreciated its start-up construction and simulator equipment costs equally among the anticipated 5 years of the contract, rather than pricing them in a way which permits their recovery early in the first year of performance. Therefore, the fact that the first 1,500 hour performance period within each year is at a higher rate than the later hours within each year does not constitute front-loading.

Sealift Command, and Government Pilots) are interested in using the SHC for training. The Navy is discussing use of the facility with these other activities and has determined that their combined usage will total 500 hours each year. Accordingly, there is no reasonable doubt that the MSI's proposal represents the lowest overall cost to the agency. See Star Brite, supra. Since MSI's offer is neither mathematically nor materially unbalanced, the fact that MSI's proposal does not become the low offer until near the end of the final option year does not preclude acceptance of MSI's offer.

Finally, SIMSHIP claims that the contracting officer acted in bad faith in awarding MSI the contract by determining that MSI was responsible. Absent a showing of possible fraud, bad faith, or failure to apply definitive responsibility criteria, our Office will not review an agency's affirmative determination of a contractor's responsibility. 4 C.F.R. § 21.3(m)(5) (1993); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. When a protester contends that contracting officials were motivated by bias or bad faith, the record must contain convincing proof that the agency acted with specific and malicious intent to hurt the protester. Group Techs. Corp.; Electrospace Sys., Inc., B-250699 et al., Feb. 17, 1993, 93-1 CPD ¶ 150. The basis for SIMSHIP's allegations of bad faith merely reflect its disagreement with MSI's explanations for price reductions and potential recovery of lost revenue, and the reasonableness of the government's estimate and evaluation, none of which provide any basis to establish bad faith.

The protest is denied.

James F. Hinchman
General Counsel