



Decision

Matter of: Advanced Management, Inc.

File: B-258942

Date: February 23, 1995

John Lin for the protester.

Larry R. Cullumber, Department of Agriculture, for the agency.

Robert Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against the award of a service contract to a firm with allegedly unqualified key personnel is denied where record demonstrates that awardee proposed qualified personnel, notwithstanding the fact that the agency permitted post-award personnel substitutions.

2. Protest allegation that awardee proposed wage rates below those required by the Service Contract Act (SCA) is denied where awardee did not take exception to the requirement to pay SCA wages and, in such circumstances, was free to submit a below-cost offer.

DECISION

Advanced Management, Inc.--the incumbent contractor for 4 years--protests the award of a contract to Metrica, Inc. under request for proposals (RFP) No. EMS-94-R-0001, issued by the Department of Agriculture for automated data processing (ADP) support services. The protester challenges the evaluation of technical and price proposals and alleges that, after award, the agency "conspired" with Metrica to permit the firm to make improper substitutions of key personnel to begin contract performance.

We deny the protest.

The RFP, which contemplated a labor-hours contract for 1 year with four 1-year options, was issued on February 2, 1994. Award was to be made to the offeror whose technically acceptable proposal was determined to provide the government with the most advantageous technical/price relationship.

The relative importance of technical proposals was to be 70 percent, while price proposals were to be weighted at 30 percent.

Technical proposals were graded on a 140-point scale using four factors: (1) personnel assigned to the project (60 points); (2) understanding and approach (40 points); (3) corporate experience (20 points); and (4) management and control procedures (20 points). Each of the factors was comprised of subfactors.

Offerors were required to propose a minimum of four key personnel including a full-time lead computer operator, a full-time computer operator and two other computer operators to work Saturdays and holidays. Among other experience requirements, computer lead operators were required, at a minimum, to have at least 3 years experience on IBM 4300 or IBM ES-9000 series computer systems within the last 5 years. Computer operators were required to have at least 2 years experience on one of these two systems within the last 5 years. The RFP further precluded substitutions of key personnel during the first 90 days of contract performance except for reasons of illness, death, or termination of employment.

Offerors were required to propose burdened hourly rates for the lead operator position and the computer operator positions. These rates, when multiplied by the estimated number of hours for each position over the base and option period, were to comprise each offeror's total evaluated price. Each position was subject to a Department of Labor determined minimum wage rate pursuant to the Service Contract Act (SCA).

Ten initial proposals were received. Of these, three were included in the competitive range. The technical evaluation results for these offers were as follows:

Offeror	Personnel	Understanding	Experience	Management	Total
Advanced Management	55	38	18	18	129
Metrica	52	35	19	15	121
Third offeror	50	27	17	16	110

Best and final offers (BAFO) were requested of these three offerors with the following final prices being submitted:

Offeror	Evaluated Price
Metrica	\$410,939.70
Advanced Management	\$482,790.00
Third Offeror	\$526,938.00

Award was made to Metrica on August 17 on the basis that, although Advanced Management had scored slightly higher in the technical evaluation, an award to the firm was not justified in light of Metrica's significantly lower price.

On August 23, the agency requested Metrica to give consideration to hiring Advanced Management's lead operator and computer operator in an effort to minimize costs for retraining and phasing-in new personnel. On October 1, Metrica began performance using Advanced Management's personnel; however, within 2 weeks, these individuals accepted new positions with Advanced Management. The agency has advised this Office that Metrica is continuing to perform using the personnel it originally proposed for the lead operator and computer operator positions.

The central thesis of Advanced Management's protest is that Metrica did not propose qualified key personnel with which it intended to perform the contract and, when the agency discovered this after award, it acted improperly in encouraging the awardee to hire the protester's qualified personnel. The protester hypothesizes that the agency "conspired" with the awardee to succeed in a "bait and switch" scheme. Advanced Management also argues that the post-award actions of the agency prove, by inference, that the comparative technical evaluation of the key personnel factor was flawed, resulting in Metrica receiving a much higher score (52 points out of 60) than it should have. In this regard, Advanced Management asserts "on information and belief" that the awardee's proposed key personnel may not have met the RFP requirements for experience within the last 5 years on IBM 4300 or IBM ES-9000 systems.

The record, however, supports the agency's position that Metrica was evaluated on the basis of its own personnel resumes and was not permitted to "fix" or upgrade its proposal impermissibly after award as alleged by Advanced Management. We have examined the resumes submitted by Metrica and, in each case, the proposed key personnel exceed the experience requirements within the last 5 years for lead operators and computer operators. Thus, there is no basis

to question the rating assigned to Metrica's proposal for key personnel.¹

Bait-and-switch practices, in which an offeror proposes 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 provide a basis for proposal rejection. Informatics, Inc., 57 Comp. Gen. 217 (1978) 78-1 CPD ¶ 53. Here, however, there is no basis for questioning Metrica's intention at the time it submitted its proposal to perform with the key personnel listed in its proposal.² The record simply does not disclose that Metrica "baited" the agency by submitting key personnel it could not deliver. The propriety of Metrica's proposed personnel list is substantiated by the fact that it is presently performing with those very persons.

Finally, Advanced Management alleges that the agency should have more carefully scrutinized Metrica's prices which the

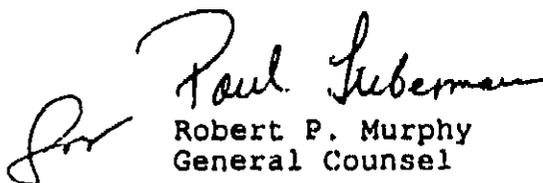
¹Advanced Management also suggests that the relative closeness in scores between the competing offerors on the factors involving understanding and approach and corporate experience is indicative of a flawed evaluation because, in Advanced Management's view, no other offeror could possibly possess as much expertise as a 4-year incumbent with "hands-on" experience with the subject matter of the solicitation. Neither of these evaluation factors required an offeror to be an incumbent, in order to receive a high rating; moreover, a review of Metrica's proposal shows that it had considerable experience with major government contracts involving ADP operations. The protester's generalized assertions do not call into question the reasonableness of evaluation in these areas. Likewise, Advanced Management generally alleges that the evaluators were not qualified to assess the merits of the competing proposals and applied undisclosed evaluation criteria. The protester does not elaborate on these assertions and a review of the evaluation record provides no support for them.

²Contrary to Advanced Management's suggestion, the RFP did not require evidence of availability such as letters of intent. The fact that an offeror, after award, provides substitute personnel does not, by itself, make the contract award improper. Anion Corp., B-249115; B-249115.3, Oct. 20, 1992, 92-2 CPD ¶ 261. Since the record indicates that the agency's evaluation was reasonable and that Metrica had a reasonable expectation that the individuals it proposed would be available to perform, the post-award substitutions, which fell within the RFP clause permitting key person substitution in the instance of termination of employment, are unexceptionable here.

protester asserts are based on wage rates below those mandated by the SCA. In this regard, the protester asserts that its own employees were offered less than the SCA rates as substitutes.³

An examination of Metrica's proposed burdened wage rates discloses that they are sufficient to cover the minimum SCA rates in the solicitation. Even if a firm offers to perform at hourly rates below those specified in the SCA wage determination, the firm is nonetheless eligible for contract award if its offer does not evidence an intent to violate the SCA. An offer which does not take exception to the SCA requirements but offers rates lower than those specified by the SCA is generally considered to be a below-cost offer and is legally unobjectionable. The Galveston Aviation Weather Partnership, B-252014.2, May 5, 1993, 93-1 CPD ¶ 370. Metrica's offer did not take exception to the RFP requirement regarding SCA compliance; hence, Metrica is obligated to pay the SCA-mandated rates and acceptance of its proposal was not improper.

The protest is denied.


Robert P. Murphy
General Counsel

³The agency has advised us that Metrica has, as a matter of contract administration, been advised that it must pay SCA rates and that, contrary to Advanced Management's suggestions, the awardee has not been permitted to increase its price in order to pay higher rates.