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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Unisys Corporation

File: B-400340.9; B-400340.10

Date: July 27, 2010

Richard J. Webber, Esq., and Patrick R. Quigley, Esq., Arent Fox LLP, for the protester.
Carl J. Peckinpaugh, Esq., and Jill R.N. Chung, Esq., for Computer Sciences Corporation, an intervenor.
Christian F.P. Jordan, Esq., Department of Hoaeland Security, Transportation Security Administration, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's source selection decision is denied where record shows, contrary to protester's assertion, that agency did not give undue weight to a risk identified by the evaluators in connection with protester's proposal, and that source selection decision was otherwise adequately documented and reasonable.

DECISION

Unisys Corporation, of Reston, Virginia, protests the issuance of a task order to Computer Sciences Corporation (CSC), of Falls Church, Virginia, under request for proposals No. HSTS03-08-R-CIO903, issued by the Department of Homeland Security, Transportation Security Administration (TSA), to acquire computer support services. Unisys asserts that the agency made an unreasonable price/technical tradeoff in its award decision.

We deny the protest.

The RFP sought fixed-price proposals to perform a task order for a wide variety of computer support services for TSA at a large number of the agency's installations nationally and worldwide, for a base year, with four 1-year options. The competition was limited to firms previously awarded indefinite-delivery, indefinite-quantity contracts by the Department of Homeland Security under functional category 2 of the Enterprise Acquisition Gateway for Leading Edge Solutions (EAGLE) program. Award was to be made on a "best value" basis considering price, three equally weighted non-price factors (with subfactors)--technical approach, management, and performance, which were significantly more important than price--and a fourth non-price consideration, small business contracting plan, which was less important than price. RFP §§ M-1 and M-5.

The agency received proposals from General Dynamics (GD), Unisys, and CSC. After an initial evaluation, the agency engaged in discussions, after which it issued a clarifying amendment and solicited and received proposal revisions, on May 18, 2009. After evaluating these submissions, the agency requested additional information and also issued another amendment. Thereafter, the agency solicited final proposal revisions (FPR), which were submitted on July 20. Based on the FPRs, the evaluators prepared a technical evaluation report and a price evaluation report. Initial Agency Report (IAR) exhs. 28, 29. These reports, along with a source selection recommendation prepared by the chairmen of the technical/management team (TMET) and price evaluation team (PET), were forwarded to the source selection advisory council (SSAC) for review. IAR, exh. 30. After receiving comments from the SSAC, the TMET and PET revised the recommendation, which was again forwarded to the SSAC along with the technical and price evaluation reports. The SSAC, in turn, prepared a source selection recommendation. IAR exh. 31. In summary, the evaluation results for CSC and Unisys were as follows:

Factor/Subfactor	CSC	Unisys
IT Security	Good	Acceptable
Solutions Delivery	Good	Acceptable
Operational Effectiveness	Acceptable	Acceptable
Transition Technical Approach	Acceptable	Acceptable
Overall Technical Approach	**Good**	**Acceptable**
Program Management	Acceptable	Acceptable
Staffing	Acceptable	Acceptable
Transition Management	Acceptable	Acceptable
Quality Assurance Plan	Acceptable	Acceptable
Overall Management	**Acceptable**	**Acceptable**
Service Level Agreements	Acceptable	Acceptable
Performance Management and Incentive Process	Acceptable	Acceptable
Overall Performance	**Acceptable**	**Acceptable**
Total Price	**$467,180,425**	**$510,809,903**
Small Business Subcontracting Plan	**Acceptable**	**Acceptable**

IAR, Contracting Officer's Statement, at 17-18; IAR, exh. 30, at BATES 7873. On the basis of these evaluation results, the source selection authority (SSA) selected CSC for the task order, finding that its proposal offered the best value. IAR, exh. 31.

GD and Unisys filed protests with our Office challenging the technical and price evaluations, and the selection decision. We sustained the protests. General Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45. In particular, we found that the agency had misevaluated CSC's proposed staffing and rates of compensation, and also improperly had allowed CSC to propose an incentive fee that was lower than the fee contemplated by the RFP. We recommended that the agency amend the RFP to advise offerors of its intent concerning the incentive fee, provide offerors adequate discussions, and solicit revised proposals. We further recommended that the agency evaluate the revised proposals in a manner consistent with the terms of the RFP and our decision, make a new selection decision, and cancel CSC's task order if called for by the new best value determination.

Thereafter, the agency issued several amendments clarifying the incentive fee provision and making other minor changes. Agency Report (AR) exhs. 4-6. The agency then engaged in discussions, but limited them to offerors' price proposals. Unisys filed a protest in our Office on February 17, 2010, challenging this limitation, but subsequently withdrew that protest (B-400340.7, Mar. 8, 2010).

The agency received and evaluated final FPRs. The reevaluation was confined to price revisions. AR, exhs. 33, 33A. CSC offered a revised total price of $448,007,842, while Unisys's revised price was $396,907,408. Id. Using the revised price evaluation results, along with the technical evaluation materials prepared during the original selection, IAR, exh. 28, the chairmen of the TMET and the PET prepared a new source selection recommendation document (SSRD). AR, exh. 35. This document again recommended selection of CSC, finding that its revised proposal offered the best value. Id. at BATES 2067-68. The SSAC reviewed the SSRD, concurred in its recommendation, and also recommended selection of CSC. AR, exh. 37. Finally, the SSA reviewed the technical and price evaluation reports, along with the revised SSRD and the SSAC's recommendation, and again determined that CSC's proposal was the best value. AR, exh. 38.

Unisys asserts that the new selection decision is unreasonable. In this connection, agencies are afforded broad discretion in making source selection decisions in a best value setting. Where, as here, a solicitation provides that the non-price considerations are more important than price, agencies properly may determine through a price/technical tradeoff that a higher-rated, higher-priced proposal represents the best value; such tradeoffs must be reasonable and consistent with the terms of the solicitation. Tessada and Assocs., Inc., B-293942, July 15, 2004, 2004 CPD ¶ 170 at 8. We find no basis to object to the source selection decision here.

We note at the outset that Unisys's protest included several arguments that, as we advised the parties during the course of the protest, are untimely. Specifically, Unisys challenges certain findings regarding its technical proposal, and also asserts that the agency improperly failed to recognize that its proposal offered a number of the same strengths identified in CSC's proposal. Protests based on such arguments must be filed no later than 10 days after the basis for the protest was or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2010). Because the agency's selection decision here was based on the technical evaluation report prepared in connection with the original selection decision, IAR exh. 28, any arguments challenging the technical evaluation conclusions, to be timely, had to be raised within 10 days after Unisys became aware of the evaluation results, that is, at the time of Unisys's original protest. Because Unisys did not raise these arguments previously, they now are untimely and will not be considered.

Similarly, in a supplemental protest, Unisys asserts that the agency improperly failed to recognize its proposal's technical superiority based on its offering a greater number of full time equivalent (FTE) staff. However, the evaluation materials, IAR exh. 28, make absolutely no mention of the comparative number of FTEs proposed by the offerors. Thus, to be timely, any argument that the agency was required to consider the relative merits of the numbers of FTEs proposed had to be raised during Unisys's initial protest (we note that GD did raise this argument during its initial protest). Since Unisys now raises this argument for the first time, it is untimely.

Unisys also argues that the agency improperly failed to require CSC to correct the deficiencies in its price proposal that we identified in our earlier decision. To the extent that this allegation relates to the discussions the agency had with CSC in connection with its corrective action, it is untimely because Unisys was provided the discussions interchange between the agency and CSC during Unisys's February 17 protest. To the extent that the allegation is based solely upon the fact that CSC lowered its price in the reopened competition, it fails to state a valid basis of protest; Unisys's proposal would be deficient for the same reason, since it likewise lowered its price in its FPR (in fact, its price is now lower than CSC's).

Unisys's remaining challenge to the agency's best value tradeoff is comparatively narrow, and focuses on one substantive consideration identified in the agency's source selection recommendation. Unisys also takes issue with the adequacy of the source selection decision document.

Unisys maintains that the SSRD prepared by the TMET and PET chairmen, and the SSAC's source selection recommendation, unreasonably identified a "critical weakness" in its proposal. Specifically, Unisys had proposed what it referred to as its operations nerve center (ONC), essentially a centralized facility where all activities could be monitored. The agency found that there was a risk associated with Unisys's proposal in this area because of a lack of redundancy for its proposed

ONC. AR exhs. 35 and 37. Unisys maintains that the concern was originally identified as only a risk that offset a strength in its technical proposal, but that this minor concern was exaggerated during the new source selection decision process and given undue consideration in the selection decision to the point where it essentially became the sole discriminator.

We have no basis to object to the agency's actions. The record shows that the evaluators originally identified their concern as a "risk" that detracted from, or negated, the "strength" of Unisys's proposed ONC. IAR, exh. 28, at BATES 7827. In discussing the comparative technical merits of the CSC and Unisys proposals, the SSRD prepared by the TMET and PET chairmen essentially repeats the finding of the technical evaluation report, identifying the lack of redundancy of Unisys's proposed ONC as a risk that offsets any potential benefit that might be derived from use of the ONC. AR, exh. 35, at BATES 2044. Later in the SSRD, in comparing the CSC and Unisys proposals' technical merit and prices, the chairmen concluded that the risk posed by Unisys's lack of redundancy could be mitigated, but at a substantial cost--approximately $20-23 million, representing the rough cost of creating a true redundant facility similar to that offered by CSC. AR, exh. 35, at BATES 2053. The SSRD's tradeoff analysis ultimately described the risk as a "critical weakness," the mitigation of which had the potential of drastically reducing Unisys's price advantage. Id. This ultimate conclusion was repeated in the SSAC's source selection recommendation. AR, exh. 37.

Although Unisys has characterized the agency's actions as taking a minor concern identified in the technical evaluation and exaggerating it to the point that it became the sole discriminator during the source selection, we do not agree. As noted, when comparing the Unisys and CSC proposals exclusively in the area of technical merit, the PET and TMET chairmen accurately described the finding of the technical evaluators as a risk that offset the strength of Unisys's offered ONC. Only when they factored in the price impact of the risk did the chairmen conclude that the relatively minor risk had a significant potential impact on the price/technical tradeoff, in that it potentially could reduce Unisys's price advantage by almost half. There is nothing unreasonable or otherwise objectionable in this conclusion. The SSRD finding regarding the price impact of the identified risk was unnecessary during the original source selection, since CSC's proposal was both the highest technically rated and the lowest priced. Once Unisys's price became low in its FPR under the reopened competition, it was appropriate for the chairmen to consider the significance of the price impact of the risk. Doing so did not constitute an exaggeration of the risk previously identified as minor.

Unisys's argument also ignores a number of other significant findings in the SSRD regarding the relative merits of the two firms' proposals. In particular, for the overall technical approach factor, the agency found greater operational value in CSC's proposal when compared to Unisys's under three of the factor's four subfactors. AR, exh. 35, at BATES 2045. For example, under the first subfactor--IT security requirements--the PET and TMET chairmen found as follows:

> Because the CSC approach is more robust and thorough than the Unisys approach and offers more benefits than the Unisys approach, and in light of its higher evaluated rating, the proposal from CSC is considered to offer better operational value to the TSA for the IT Security requirements Sub-Factor.

AR, exh. 35, at BATES 2043. Similar findings were made with respect to the second and fourth subfactors.[1] Id., at BATES 2044, 2045. Similarly, the PET and TMET chairmen found the CSC proposal superior under the two most important management factor subfactors, and concluded that the perceived superiority of the CSC proposal under those two factors afforded the agency a better operational value under the overall management factor. AR, exh. 35, at BATES 2049. Finally, the agency also found the CSC proposal superior under both of the performance factor's subfactors, and concluded that it offered better operational value when compared to Unisys's proposal. Id., at BATES 2051. Unisys's objection to the source selection makes no mention of, and does not challenge, any of these findings, or otherwise attempt to explain why these other considerations were not also part of what the record shows was a fully integrated comparison of the proposals in the source selection recommendation. We conclude that there is no basis for questioning the tradeoff decision.

Unisys challenges the adequacy of the source selection decision document (SSDD), claiming that it fails to specifically call out the particular reasons relied on by the

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[1] We point out as well that, in relating their findings under the solutions delivery requirement subfactor--the one under which the lack of redundancy risk was identified--the PET and TMET chairmen neither mention nor take into consideration that risk. The SSRD states, in this regard, as follows:

> The benefits of the CSC approach are expected to result in a higher likelihood of successful performance of the full set of SD [solutions delivery] requirements (including the aspects of the SD requirements that are integrated with the IT Security and OE [operational effectiveness] areas, as reflected in the evaluation Sub-Factor) than the Unisys approach. The proposed approach from CSC provides a greater operational value by offering a more secure, robust, and complete set of SD support services, including engineered redundancies. Therefore the proposal from CSC is considered to be the better value to the TSA for the Solutions Delivery requirements.

AR, exh. 35, at BATES 2044. The chairmen also do not characterize the risk as a "critical weakness" in this portion of the document.

source selection authority (SSA) in her selection decision. The protester concludes that the selection decision is inadequately documented.

This argument is without merit. The SSDD makes specific reference to the technical evaluation and price evaluation reports, as well as the SSRD, and states that these materials were presented by the SSAC to the SSA and that she reviewed these materials. AR, exh. 38. The record also includes an affidavit in which the SSA explains in detail numerous meetings during which she was presented with these materials by the cognizant members of the evaluation teams and the SSAC, and represents that she carefully reviewed all of these materials. Finally, she states:

> I documented my source selection decision in a memorandum on May 7, 2010. The purpose of this memorandum was to document my determination as the SSA, and was meant to be added to the trade-off analysis prepared by the evaluation team Chairpersons. My memorandum adopts the analysis performed by the evaluation Chairpersons.

Affidavit of the SSA, June 22, 2010, at 2. Simply stated, this was adequate for purposes of documenting the agency's source selection decision. Raymond Assocs., LLC, B-2099496, B-299496.2, May 29, 2007, 2007 CPD ¶ 107 at 8.

The protest is denied.

Lynn H. Gibson
Acting General Counsel