



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Systems Corporation
File: B-234449
Date: June 8, 1989

DIGEST

Preaward survey team acted reasonably in limiting protester to a short oral presentation concerning its corporate capabilities since the protester had already submitted extensive written materials on the subject. Survey team's refusal to visit protester's maintenance facilities was reasonable since solicitation required little in-plant performance.

DECISION

American Systems Corporation protests a determination of nonresponsibility under request for proposals (RFP) No. F09603-88-R-57980, issued by the Air Force for the maintenance of three computer-based training systems. The protester alleges that the determination was unreasonable because it was primarily based on the unsupported conclusions of a preaward survey.

We deny the protest.

The RFP was issued on March 3, 1988, contemplating a contract for a 1-year base period with 4 option years to maintain the agency's Cryptologic Intelligence Training System (Cryptologic System), Voice Processing Training System (Voice System) and General Imagery Intelligence Training System (Imagery System). Award was to be made to the acceptable offeror with the lowest evaluated price. Further, the solicitation provided that a preaward survey would be conducted to determine the apparently successful offeror's responsibility in a number of areas including technical and production capability.

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Five offers were received. Following two rounds of best and final offers, American was the low offeror with an evaluated total price of approximately \$4 million. Accordingly, on November 9, the agency contacted American to arrange a preaward survey, which was conducted on November 16.

On December 2, the preaward survey team reported its findings and recommended that American not be awarded a contract because it lacked the requisite technical and production capability to adequately perform. The specific findings which are the subject of this protest are that: (1) American proposed an insufficient number of qualified technicians; (2) it failed to demonstrate that it had made adequate arrangements with computer manufacturers to obtain parts and subscription services to keep updated on the equipment to be serviced; (3) its testing plans were inadequate and indicated that it did not have the necessary testing equipment to perform; (4) the firm did not understand its obligation to keep a ready stock of replacement parts on hand at its own expense; and (5) its purchasing methods were inadequate.^{1/}

On January 21, 1989, primarily as a result of the negative recommendation of the preaward survey team, the contracting officer determined American to be nonresponsible. Award was made to the next low offeror, AAI Engineering Support, Inc., on January 30 at a total estimated price of \$4,668,301.20.

In its protest, American disputes all of the major findings of the preaward survey team, alleging that they lack a basis in fact largely because, in its view, the manner in which the survey was conducted was hurried and haphazard and not designed to provide it with a meaningful opportunity to fully explain its capabilities in a context which would best demonstrate that it was responsible to meet the requirements of the RFP. In this regard, the protester raises such objections as the alleged failure of the survey team to

^{1/} Other concerns of the survey team involved the protester's management production and control system, its management plan, and its allegedly limited experience in maintaining similar computer systems. The first two concerns appear, in our view, to be derived from the specific findings listed above. The concern about American's allegedly limited maintenance experience does not appear to have been a factor in the contracting officer's nonresponsibility decision and, therefore, will not be discussed further. See Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300.

permit a full overview presentation of its corporate capabilities, the team's refusal to tour its maintenance and development facility, the 3-hour duration of the team's visit with the protester's representatives, and deviations from the originally scheduled agenda.

At the outset, we do not agree with American's arguments with respect to the manner in which the survey was conducted. The burden of affirmatively demonstrating its responsibility lies with a prospective contractor, Federal Acquisition Regulation (FAR) § 9.103(c), and, in the absence of information clearly indicating that a prospective contractor is responsible, a contracting officer is required to make a determination of nonresponsibility. FAR § 9.103(b). In view of this burden, we have held that a preaward survey team is not under an obligation, as the protester would have it, to tailor the duration of its facilities visit, the agenda of that visit, or the scope and subject matter of its questioning to suit an offeror's particular sense of what is required under the circumstances. See Oertzen & Co. GmbH, B-228537, Feb. 17, 1988, 88-1 CPD ¶ 158. Moreover, insofar as due process considerations do not attach to responsibility determinations because they are administrative in nature, there is no requirement that offerors be afforded special opportunities to demonstrate their abilities to perform. Firm Reis GmbH, B-224544 et al., Jan. 20, 1987, 87-1 CPD ¶ 72.

American was provided an opportunity to, and did, provide the Air Force with an overview of its corporate capabilities in the 37-page "INFORMATION SUPPLEMENT" to its proposal. Under the circumstances, and notwithstanding the protester's contentions to the contrary, the survey team acted reasonably in limiting American to a short presentation of its own choosing at the beginning of the visit. Moreover, we note that American supplemented its presentation with written materials which the agency received. As far as the team's refusal to visit the protester's maintenance facility, we agree with the Air Force that such a visit was unnecessary in view of the fact that the RFP called for little in-plant repair activity. In any event, the survey team did not downgrade the protester with respect to its facility. The protester also complained that the survey team did not follow the agenda announced on November 9 but instead used a list of questions which were not provided to American. Since the RFP outlined the areas to be covered by a plant survey, no such agenda was required in the first place and the record does not reflect that the team went beyond the outline contained in the RFP. Finally, throughout its own submissions in this matter, the protester refers to discussions and question and answer sessions involving the

principal topics in issue. While it is clear that American is displeased with the format of the survey, we are unable to conclude that the format used denied the protester an opportunity to demonstrate its responsibility.

Thus, the issue remaining is whether the agency's findings were reasonable with respect to: the qualifications of American's proposed technicians; its arrangements with equipment manufacturers; its plans to test repaired parts; its understanding of its obligation to stock replacement parts at its own expense; and its purchasing methods. As noted above, the protester disputes the reasonableness of the agency's findings in each of these areas.

Contracting officers have a wide range of discretion and business judgment in reaching nonresponsibility determinations and we will not question those determinations unless the protester can establish that they lacked a reasonable basis. Omneco, Inc. et al., B-218343 et al., June 10, 1985, 85-1 CPD ¶ 660. Where a nonresponsibility determination is based upon preaward survey findings, it is only when those findings are shown to be unreasonable or unsupported in a number of areas that this Office will recommend that the determination be reconsidered. A difference of opinion between the protester and the agency on a technical issue as to what resources are required of an offeror to adequately perform or as to the best method of determining whether an offeror has those resources does not itself establish that the agency's determination is unreasonable. Id.

PERSONNEL QUALIFICATIONS

The RFP required offerors to provide sufficient personnel to maintain all three systems. With respect to the Voice and Imagery Systems, technicians were required to have a minimum of 12 months of experience maintaining computers and associated peripheral equipment manufactured by Digital Equipment Corporation (DEC). In response to a survey team request, American was asked to identify, from among the 28 resumes it had submitted, five key maintenance personnel with the skill levels required by the RFP. After reviewing the five resumes specifically identified by the protester, as well as the remaining 23 resumes, the Air Force concluded that three technicians possessed the requisite DEC experience and that of these, only two were firmly committed to American's employ. The agency maintains that, even if it considered all three as qualified and committed, three technicians would be insufficient to cover its expected first year requirements because two are necessary for the Voice System, two for the Imagery System and one is necessary as a backup to the others.

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American does not dispute the agency's finding that, at most, three of its technicians have the required DEC experience; rather, it contends that, because the Air Force stated that contract performance would commence with only two Voice System technicians, it has in fact met the RFP requirement. The protester also argues that, had it known that the agency was looking for five qualified technicians, it could have provided them from additional persons available to the firm.

It appears that, while American may arguably have proposed a minimally acceptable Voice System staffing level for the very start of contract performance, it did not evidence the staffing necessary to maintain the system for the first year of performance. It did not evidence sufficient staffing for the Imagery System which is a part of the RFP's first requirement. We do not believe that the agency acted unreasonably by gauging the offeror's ability to adequately staff a contract by examining the requirements for the entire base year.

ARRANGEMENTS WITH EQUIPMENT MANUFACTURERS

By the protester's own account, during the survey American was asked to supply agreements it had with original equipment manufacturers (OEMs) for the major equipment in the systems to be serviced and it identified American Telephone & Telegraph and DEC as firms with which it had such agreements. While American disputes the relevance of such agreements to its responsibility and generally complains about the lack of time given to produce them, it was able to produce agreements from the manufacturers it had identified as being major, and one from another firm, Gould. The Air Force stresses that these agreements only covered a portion of the equipment manufacturers listed in the RFP and notes that, while the protester is correct in asserting that parts can be obtained from various sources without such OEM agreements, only the OEMs can provide the subscription services necessary for a contractor to discharge its obligation under the RFP to keep up-to-date about the equipment it is servicing.

American states that, had it been directly asked for additional OEM agreements or other evidence of its efforts to obtain subscription services, it would have been easy to produce them because part of the information was present in the room where the parties were meeting and the rest was in

its corporate files. The protester argues that the controlled structure of the discussion on OEM agreements precluded it from providing the information.

From the record it appears to us that the protester was given ample time and opportunity to provide the OEM agreements and such other evidence it had regarding its efforts to insure a supply of parts and subscription services. The agency did receive and consider the agreements American produced from the suppliers it identified as major together with the third agreement from Gould. Thus, we find it difficult to believe that the protester could not have identified and retrieved other information and presented it to the Air Force for its consideration within 1 day as requested.

TESTING REPAIRED PARTS

During the preaward survey, American indicated that once it had repaired parts it intended to use government computers on a third shift to test them before they were used in the systems it would be maintaining. The Air Force states that the contractor is obligated to test all parts on its own equipment prior to reintroducing them into the systems and notes that this procedure comports with computer industry practice. The agency maintains that the RFP does not make government computers available for testing, and contends that testing parts on its computers as proposed could result in system malfunctions and schedule delays.

The protester argues that standard industry practice is to preliminarily test repaired parts on equipment of the type it possesses and then to test it again on the actual system prior to its reintroduction. American argues that the agency made an unreasonable assumption that it lacked the necessary equipment and argues that the Air Force's suggested method of testing would require special equipment which the RFP states will be supplied by the government.

At the core of this matter is a technical dispute as to which method of final testing is appropriate for repaired parts, and the protester has not shown that the agency's position was unreasonable or inconsistent with the RFP requirements. Omneco, Inc. et al., B-218343 et al., supra. Since American can point to no RFP provision which indicates that the government is obligated to make its facilities available to discharge the contractor's responsibilities to test parts, we find that the agency's findings with respect to this issue were reasonable.

STOCKING REPLACEMENT PARTS

American was asked numerous questions regarding the stocking of parts during the survey and the agency reports that it found it necessary to repeatedly refer the protester to the RFP in order to explain what its responsibilities were in this areas--i.e., that the contractor is responsible at its expense to maintain adequate stocks of such parts to meet a predetermined operational level, and that the government does not pay for the parts until they are installed. From these repeated requests and an uncontradicted agency account that at one point American had to recess to consider the "new" requirements, it is the Air Force's position that the survey team's conclusion as to the protester's misunderstandings was reasonable.

American asserts that it fully understood the RFP requirements and contends that during the survey it was attempting to find out the preexisting levels of stocked parts because it would be cheaper for the agency if it purchased these rather than buying them elsewhere. The agency contends that this argument itself reflects a continuing misunderstanding on American's part because the government stands to save no money by any transaction between the incumbent contractor who owns the parts and its successor, since the agency will not purchase parts until they are installed.

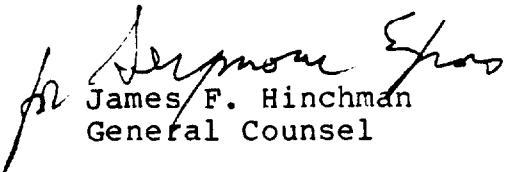
The purpose of the survey was to determine American's ability to perform, and we fail to understand what the protester's repeated questions about the incumbent's level of stocking parts has to do with that subject. In the absence of relevant argumentation, then, we have no basis to question the agency's judgment that the protester did not understand the RFP requirements, especially in light of the apparently protracted discussions and explanations which became necessary with respect to the issue of stocking replacement parts.

PURCHASING METHODS

During the survey, American described its purchasing procedures as being centralized at its Virginia headquarters. The survey team questioned this practice because, in its view, the lack of an on-site manager with purchasing authority would contribute to unacceptable schedule delays. American states that this conclusion is unreasonable because it is drawn from a general description of its purchasing practices and, if the Air Force had asked whether its on-site manager had purchasing authority, it would have been informed that he did. Upon review of American's position, the agency has indicated that American's purchasing methods

appear to be adequate. The fact that one finding of the survey team may have lacked a reasonable basis does not, however, mean that the nonresponsibility determination which was based upon a number of other findings which are supported by the record, was unreasonable. Omneco, Inc. et al., B-218343 et al., supra.

The protest is denied.


James F. Hinchman
General Counsel