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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Computer Cite

File: B-297291; B-297291.2

Date: December 23, 2005

Charles R. Marvin, Jr., Esq., and Sharon A. Jenks, Esq., Venable LLP, for the protester.

Maj. Derek S. Sherrill, Department of the Air Force, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated offerors' proposals submitted in response to solicitation for telecommunications support services is denied where the record shows that the agency's evaluation of proposals was reasonably supported by the record.

DECISION

Computer Cite protests the award of a contract to D. S. Information Systems Corporation (DSIS) by the Department of the Air Force under request for proposals (RFP) No. FA5215-05-R-0010, to provide telecommunications support services at Hickam Air Force Base (AFB) and other government locations in Hawaii. Computer Cite challenges the agency's evaluation and award decision, and alleges that the evaluation was tainted by a conflict of interest that makes award to DSIS improper.

We deny the protest.

BACKGROUND

The RFP was issued as a competitive section 8(a) set-aside, seeking proposals for a contractor to provide all personnel, supervision, equipment, tools, and material necessary to perform installation, testing, documentation, and maintenance and repairs. The solicitation's statement of work (SOW) identified typical tasks or areas of work, including consulting, engineering, diagnostics (on-site and remote), telephone and network wiring, installation, records maintenance, and other recurring support services. RFP, SOW, at 3. The RFP contained four contract line

item numbers (CLINs), each describing the services to be performed, along with estimated quantities, for each performance period. RFP at 3-10.

The solicitation incorporated by reference the contract clause at Federal Acquisition Regulation (FAR) § 52.222-41, "Service Contract Act (SCA) of 1965, as Amended," and included various wage determinations for the areas to be serviced by the contract. The solicitation also incorporated by reference the clause at FAR § 52.222-42, "Statement of Equivalent Rates for Federal Hires,"¹ and included the following information:

This Statement is for Information Only
It is not a Wage Determination

<u>Employee Class</u>	<u>Monetary Wage -- Fringe Benefits</u>	
TELECOMMUNICATIONS MECHANIC I	WG-8	\$22.27
TELECOMMUNICATIONS MECHANIC II	WG-10	\$25.37

RFP at 27.²

As amended, the solicitation contemplated award, without discussions, of a fixed-price requirements contract (with a cost-reimbursement component) to the firm submitting the lowest-priced, technically acceptable proposal, for a base period with four 1-year option periods. RFP amend. 2, at 2. Proposals were to be evaluated on the basis of two factors--technical capability and price. The technical capability evaluation was to be on a pass/fail basis with proposals being rated as either acceptable or unacceptable. The first prong of the technical capability assessment required offerors to include the following information for evaluation:

written certification from Avaya Professional Certification Program or from accredited Information Technology Training Center that they are qualified to perform maintenance and repair work on Avaya telephone switch system.

¹ In a solicitation for services, such as this, FAR § 22.1006(b) requires the contracting officer to insert this provision.

² With respect to personnel requirements, there was no particular class of employees or labor categories (other than program manager) identified in the RFP. Rather, the RFP advised that "personnel performing work in the execution of this SOW shall be technically qualified." RFP, SOW, at 13.

RFP amend. 2, at 2. The second prong of the assessment of the acceptability of the offeror's technical capability, and the one at issue in this protest, stated:

The standard is met when: . . . The offeror provides a listing of similar projects in telecommunications support services similar in volume as Hickam AFB's workload. The listing shall include the project's total dollar value, location, point of contact and phone number information and work listing can be commercial or governmental.

Id.

Only those technical proposals evaluated as acceptable would then be evaluated under the price factor. For pricing purposes, offerors were required to propose fixed unit and extended prices for each CLIN, by contract period, with the overall price to be determined by multiplying the unit prices by the corresponding estimated quantities, and then totaling the extended unit prices. Price proposals were to be evaluated only for reasonableness. RFP amend. 2, at 2.

Eight proposals were received in response to the RFP, including proposals from DSIS and Computer Cite and its teaming partner, SDV Telecommunications, Inc. (SDV), the incumbent contractor at that time. A technical evaluation panel (TEP) reviewed the offerors' technical proposals and only six proposals were evaluated as acceptable under the technical capability factor. Agency Report (AR), exh. 6, Proposal Evaluation Report; AR, exh. 7, Technical Evaluation/Abstract of Offers. These proposals were evaluated under the price factor; the lowest-priced proposal was that of DSIS at an evaluated price of \$6,316,224.48, inclusive of all options; the next lowest-priced proposal was that of Computer Cite at a price of [DELETED] inclusive of all options. Id. at 6. On the basis of these evaluation results, the source selection authority (SSA) selected DSIS for award, concluding that its proposal was the lowest-priced, technically acceptable proposal. AR exh. 8, Source Selection Decision, at 3. Following a debriefing on August 22, and the denial of Computer Cite's agency-level protest, this protest followed.³

DISCUSSION

Computer Cite challenges the evaluation of the DSIS proposal under the technical capability factor, asserting that the prior contracts reviewed by the agency for evaluation of DSIS's experience were not telecommunications services contracts similar in volume to the workload at Hickam AFB. Computer Cite, therefore, concludes that the technical evaluation was flawed and unsupported, and that the

³ Upon receipt of the agency report, Computer Cite filed a supplemental protest.

resulting award was improper. Protester's Comments at 3-4; Protester's Supplemental Comments at 2-6.

The RFP did not set out clear criteria for determining technical acceptability with respect to assessing offerors' experience. Instead, as quoted above, it indicated that the proposal would be considered to have met the standard if it included a list of "similar projects in telecommunications support services similar in volume as Hickam AFB's workload."

It appears that in assessing the awardee's experience, the agency primarily considered DSIS's experience under its [DELETED] contract. The agency apparently viewed the contract value and period of performance as similar to the requirements of the current RFP, and found similarity in the [DELETED] work requirements to those solicited here, such as the requirement to integrate "computer networks with satellite communications systems and secure voice radio and telephone systems." See AR ex.5, DSIS Proposal, at 32. Although, as the protester points out, and the agency appears to concede, this telecommunications work was only one of the functions performed by DSIS under that contract, that alone does not make the telecommunications work dissimilar to the work to be performed under the contract at issue here.

While the protester contends that the agency had no reasonable basis for finding DSIS's experience similar to the requirements of the current procurement, the fact is that the RFP did not establish objective criteria for defining "similar," and the record demonstrates that the agency interpreted the word generously for the protester as well as for the awardee. Specifically, the record shows that the agency found Computer Cite's experience acceptable, even though the [DELETED] projects the protester claimed were similar were [DELETED].⁴ In other words, it appears from the record that to the extent the agency did not interpret "similar" in the strict way that the protester now advocates, nothing in the RFP required it to, and both DSIS and Computer Cite appear to have benefited from the agency's interpretation.

Computer Cite also alleges that the agency improperly allowed DSIS to propose engineering technicians, because, in the protester's view, the RFP required the use of telecommunications mechanics I and II (higher-skilled, higher-cost labor classifications). In support, the protester principally relies on the naming of those latter two labor classifications where the RFP incorporated FAR § 52.222-42, "Statement of Equivalent Rates for Federal Hires," as quoted previously. By not requiring DSIS to propose telecommunications mechanics I and II, the protester

⁴ Computer Cite also listed [DELETED] projects performed by its subcontractor, SDV. However, under the RFP, only the prime contractor's experience with similar projects would be considered.

argues, the agency improperly waived a solicitation requirement, resulting in an unfair competitive advantage for the awardee.

We find no impropriety here. It is true that the full FAR clause (not incorporated in full in the RFP) states that “this clause identifies the classes of service employees expected to be employed under the contract,” FAR § 52.222-42, but the clause advises offerors (and this language was incorporated explicitly in the RFP) that the employee class and compensation were included in the solicitation for informational purposes only. RFP at 27. Nothing in the RFP required that offerors propose to use telecommunications mechanics I and II, and we do not view the mere listing of particular labor categories or grades as part of FAR § 52.222-42 in a solicitation as requiring offerors to propose employees in those categories or grades. See Symvionics, Inc., B-281199.2, Mar. 4, 1999, 99-1 CPD ¶ 48 at 9 (it was not reasonable for the protester to rely on service employee information listed under the Federal Hires FAR clause as a requirement of the RFP, given language that the listed service employee class was provided for informational purposes only). Instead, an offeror was allowed to make its own determination as to what combination of employee classifications could best perform the required contract services. DSIS, therefore, was not required by the RFP to propose telecommunications mechanics I and II, and its proposal of a different labor category was not inconsistent with the terms of the RFP.

To the extent the protester argues, in the alternative, that a latent ambiguity existed as to the use of telecommunications mechanics such that the agency was required to issue an amendment and resolicit proposals, we disagree. Even if we agreed with Computer Cite’s interpretation of the solicitation language referring to telecommunications mechanics, that would, at most, create a patent ambiguity that Computer Cite was required to protest prior to the closing time for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2005).

Computer Cite argues that the agency failed to reasonably determine that DSIS’s proposed prices were fair and reasonable, given that the firm’s prices were based on its use of lower-cost and allegedly less-qualified personnel. Protester’s Supplemental Comments at 12. We conclude, however, that this argument lacks merit.

Here, as acknowledged by Computer Cite, the agency compared DSIS’s offered prices to those of the other offerors and concluded that DSIS’s total offered price was fair and reasonable. See FAR § 15.404-1(b) (describing a number of price analysis techniques that may be used to determine whether proposed prices are fair and reasonable, including comparing the prices received in response to a solicitation). Other than alleging that the agency impermissibly permitted the awardee to propose less-qualified, lower-cost personnel (an argument we reject for the reasons set forth above), Computer Cite has provided no meaningful basis for our Office to question the reasonableness of the agency’s conclusion that DSIS’s

price was fair and reasonable. See WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 3.

Computer Cite also asserts that DSIS had an improper competitive advantage in connection with the procurement because of a close and ongoing relationship between the president of DSIS and the SSA. We find no merit to this aspect of Computer Cite's protest. The agency has furnished our Office with an affidavit from the SSA which indicates that the SSA had little, if any, contact with DSIS's president when that individual was an enlisted member of the Air Force. Agency's Response to Protester's Supplemental Comments, attach. 1, Affidavit of SSA. The agency also categorically denies, and the record does not otherwise establish, that DSIS's president received favorable treatment because of that individual's prior military service. Further, as we concluded above, the agency's evaluation was reasonable. We, therefore, have no basis to conclude that DSIS gained an unfair competitive advantage in this procurement. See Snell Enters., Inc., B-290113, B-290113.2, June 10, 2002, 2002 CPD ¶ 115 at 3-4.

In sum, the agency's evaluation of DSIS's proposal was reasonable and we have no basis to question the award to that firm.⁵

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ Although we have not specifically discussed all of the protest grounds raised by Computer Cite, we have reviewed all of its allegations and we find them to be without merit.