



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: SMS Systems Maintenance Services, Inc.

File: B-270816

Date: April 29, 1996

Leonard Walsh for the protester.

Janis P. Rodriguez, Esq., Digital Equipment Corporation, an intervenor.

William L. Murphy, Esq., Department of the Treasury, for the agency.

Wm. David Hasfurther, Esq., Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where both quotations submitted by two firms under a request for quotations for computer equipment maintenance services reasonably required clarification regarding whether the required on-site engineer was being offered as a part of the quoted prices, and where the agency instead effectively rejected protester's quotation (by unreasonably adding a 20-percent cost increase for the on-site engineer to the protester's quotation) without requesting clarification of the matter, but asked the awardee for clarification on its quotation, and then relaxed the on-site engineer requirements for the awardee, the award selection was based on unequal and unfair treatment and the procurement should be reopened to permit clarifications by both firms.

DECISION

SMS Systems Maintenance Services, Inc. protests the issuance of a delivery order to Digital Equipment Corporation for the maintenance of Digital computer equipment under a request for quotations (RFQ) issued by the Department of the Treasury. SMS principally argues that it submitted the low-priced quotation and that the issuance of the order to Digital was improper.

We sustain the protest.

By letter of September 26, 1995, the agency issued the RFQ to SMS and Digital. The RFQ stated that only quotations under General Services Administration (GSA) schedule contracts would be considered and that the agency would consider

one-time price reductions from schedule prices.¹ Quotations were required by September 28 for services to be performed October 1, 1995, through September 30, 1996. Quotations were to be submitted in the form of fixed monthly prices for each piece of listed equipment. The RFQ provided that the principal period of maintenance (PPM) for on-call, basic maintenance "is expected" to be from 8 a.m. to 12 a.m. (16 hours) Monday through Saturday. The RFQ also provided that the following optional PPMs and maintenance coverage shall be available: for on-call maintenance coverage, from 9 a.m. to 6 p.m. (9 hours) Monday through Friday and from 12 a.m. to 12 a.m. (24 hours) Sunday through Saturday; and for on-site maintenance coverage, requiring the stationing of one engineer and all required tools, test equipment, and supplies at the Treasury site, from 9 a.m. to 6 p.m. (9 hours) Monday through Friday. Offerors were required to have the capability to perform all required services on site as well as to have a technical support center that would be available for per-call maintenance 24 hours a day, 7 days a week.

Both SMS and Digital submitted quotations. SMS submitted a total monthly price of \$11,123 for a 12-hour PPM (8 a.m. to 8 p.m.) Monday through Friday. It also provided a \$117 hourly rate for maintenance performed outside of that time frame. However, because the agency interpreted SMS' quotation as not offering an on-site engineer except at prices 20-percent higher than the prices quoted, SMS' prices were increased by 20 percent and then decreased by the 3-percent discount provided in the firm's quotation for orders exceeding \$10,000 in monthly maintenance, resulting in an evaluated total monthly price of \$12,947.17. The decision to increase SMS' prices by 20 percent resulted from the agency's interpretation of the following language in the SMS quotation:

"For GSA Schedule contracts, our standard Principal Period Maintenance is 8 AM to 8 PM, Monday though Friday, see page 22 of our GSA Schedule."

"For service any time outside these hours our hourly rate is \$117."

"SMS provides any Principal Period of Maintenance up to and including 7 X 24 [i.e., 7 days a week, 24 hours a day] but we feel that using the GSA Schedule standard PPM with guaranteed per-call service for all other hours at the above rate [\$117 per hour] gives you protection 7 days a week 24 hours a day at the least expensive cost."

¹The RFQ's statement of work varied from the terms of the SMS and Digital GSA schedule contracts in several regards. SMS' post-award protest of the differences in terms is untimely and will not be considered. See Herman Miller, Inc., B-230627, June 9, 1988, 88-1 CPD ¶ 549.

For your reference, the increase in cost for a 7 X 24 PPM is 20 [percent] of the quoted prices."

"An engineer on-site from 9 AM to 6 PM Monday through Friday, as required by C.2.3.1 of your WORK STATEMENT, whose sole duty is the maintenance of the machines covered under this contract, would be occupied with that maintenance, in our estimate, less than 20 [percent] of the time. The cost of an on-site engineer would therefore be largely wasted, particularly since our field engineer will be at your site within 2 hours of your placing a service call anyway, as required by C.2.5.2 of your WORK STATEMENT."

The agency interpreted the above statement in the SMS quotation as an affirmation by the protester that the price for the required on-site engineer was not included in the quotation's stated monthly price, and that a 20-percent increase in price was instead quoted by SMS for the provision of the on-site engineer. Consequently, the agency, as stated above, increased the SMS quotation's monthly price by 20 percent, calculating the evaluated price to be \$12,947.17.

Digital's quotation's total monthly price was \$11,631.91. The quotation, however, did not mention the required on-site engineer. Needing clarification of whether or not the Digital quotation provided for the on-site engineer, the agency requested confirmation from the awardee as to whether the prices quoted included the provision of an on-site engineer. Digital, by letter of September 28, stated that: "a 'Dedicated' engineer will . . . be available . . . [during the PPM and] will start each work day . . . at the Department of Treasury . . . [but that if] no maintenance activity [at the Treasury site] is required, Digital's Dedicated engineer will be available for assignment to available service calls in the Greater Metropolitan area." Accordingly, any service calls that the agency might make to Digital during the PPM—where the dedicated engineer was not at the Treasury site—would be dispatched to the engineer for his resolution if he was available. Accepting this "clarification" from Digital as confirmation that the firm's quotation provided the requisite on-site engineer, and the fact that Digital's quoted price was considered low, the agency issued the delivery order to Digital. This protest followed.²

The record indicates that the agency's selection of Digital to perform the required maintenance was based on an unequal and unfair evaluation of the quotations vis-a-

²While the agency argues that the protest against the issuance of the delivery order is untimely since it was not filed within 14 days after SMS learned of its issuance, the record shows that SMS' requests for information, made shortly after the delivery order was issued, were not answered until December 11, and that SMS submitted a timely protest upon receipt of the information.

vis the agency's stated requirements. The agency determined that SMS' quoted monthly price expressly did not include the on-site engineer. However, there is no reasonable basis in that quotation to support the agency's determination. We cannot agree with the agency's interpretation that the SMS quotation, as stated above, took exception to the RFQ on-site engineer requirement or provided that the on-site engineer would only be provided at a 20-percent increase in the quoted price. The quotation simply did not state this; the quotation only pointed out the protester's opinion that an on-site engineer will only have on-site work for less than 20 percent of his work day and that it would be more cost effective for the agency to delete the on-site engineer requirement. Further, the "7x24 PPM," relating to the 20-percent premium quoted by SMS, responds to the RFQ requirement for per-call maintenance, not the independent requirement for an on-site engineer. We therefore can find no reasonable basis in the record to explain or support the agency's 20-percent increase to the SMS quotation price for the on-site engineer. Additionally, while its GSA contract does not provide for such services (SMS states, and the agency does not rebut, that Digital's GSA contract also does not), SMS' quotation stated that "SMS meets or exceed all the specifications contained in your WORK STATEMENT." While we think SMS' quotation could have been presented in a more straightforward manner, it did not take exception to the on-site requirement.

Although the Digital quotation similarly made no mention of providing an on-site engineer, the agency asked only that firm to clarify whether its price provided for such an engineer. Further, when Digital responded to the clarification request by stating that it would provide a "dedicated" engineer, rather than an on-site engineer that would be stationed at the Treasury site during the hours required by the RFQ, the agency improperly relaxed the on-site engineer requirement for Digital without affording the protester an opportunity to quote on that basis. We believe fairness requires that SMS also be given the opportunity to resolve any concerns that the agency had concerning SMS' intention to meet requirements including the opportunity to quote on the agency's "on-site" engineer requirements in terms similar to those provided by Digital through its "dedicated" engineer.³ The failure to permit SMS to clarify its quotation as Digital was permitted to do constituted

³We note that the formal procedures of negotiated contracting are not applicable to this procurement. See Federal Acquisition Regulation § 15.602.

unequal treatment under the circumstances, and was improper. See BWC Technologies, Inc., 65 Comp. Gen. 500 (1986), 86-1 CPD ¶ 366; see Mercer Prods. & Mfg. Co., B-205316, Feb. 22, 1982, 82-1 CPD ¶ 155.⁴

Accordingly, we initially recommend that the agency review its requirements (e.g., regarding the agency's actual basic maintenance PPM to be used for evaluation and contract purposes and regarding its actual on-site engineer requirements). Assuming that the agency wishes to maintain the stated requirements, we recommend that the agency request clarifications from both SMS and Digital of their quotations so as to determine whether these firms' quotations provide the required 16-hour basic maintenance PPM and on-site engineer (to be located at the Treasury site for the 9-hour period), and, if so, at what prices.⁵ If the agency determines that a "dedicated" engineer is sufficient to meet its minimum needs and that this engineer need not be on site for the 9-hour period stated in the RFQ, we alternatively recommend that the agency amend the RFQ to reflect the changed requirement and request revised quotations from both firms on that basis.

If SMS' quotation is found to meet the agency's requirements at a lower price, Digital's delivery order should be terminated and award should be made for the balance of the contract period to SMS. Additionally, we recommend that the protester be reimbursed its costs of filing and pursuing the protest. Bid Protest

⁴SMS also raised numerous other protest contentions (for example, concerning the terms of the RFQ, the date of award, and an alleged violation of appropriation laws) that are untimely and otherwise rendered academic by our decision above sustaining the protest of the evaluation of the SMS quotation.

⁵Digital contends that regardless of whether SMS' quotation provided the on-site engineer, the protester's quotation cannot be considered low-priced because SMS' GSA schedule contract provides for substantial price increases for the RFQ's stated 16-hour, 6-day PPM. The record shows, however, that both Digital and SMS quoted prices on and off their GSA schedule contracts and that SMS' quotation provided sufficient information (if calculated proportionately) that can reasonably be interpreted as providing for the 16-hour PPM at substantially lower prices than its GSA schedule prices. This should thus also be a subject of clarification with the protester. In any event, since the on-site requirement was relaxed, we have no way of knowing how SMS would quote on the relaxed requirement.

Regulations, section 21.8(d), 60 Fed. Reg. 40,737, 40,743 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.8(d)). The protester should submit its detailed and certified claim for costs directly to the agency within 90 days after receipt of this decision. Bid Protest Regulations, section 21.8(f)(1).

The protest is sustained.

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of the United States.