



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Compro Computer Services, Inc.

File: B-278651

Date: February 23, 1998

Cyrus E. Phillips, IV, Esq., and Christopher H. Jensen, Esq., Kilcullen, Wilson and Kilcullen, for the protester.

Joshua Kranzberg, Esq., and Maj. Harry W. Longbottom, JAGC, Department of the Army, for the agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation provisions requiring contractors to possess certain expertise and experience in computer maintenance do not constitute definitive responsibility criteria--since they do not set out specific, objective standards for determining an offeror's capability to perform--but are performance obligations considered under the contracting officer's general responsibility determination.

DECISION

Compro Computer Services, Inc. protests the award of a contract to MFSI under request for proposals (RFP) No. DAAD01-97-R-0013, issued by the Department of the Army for maintenance and parts support of computer workstations at the U.S. Army Yuma Proving Ground. Compro contends that MFSI's proposal should have been rejected because MFSI does not meet certain alleged definitive responsibility criteria contained in the solicitation.

We deny the protest.

The solicitation, as amended, contemplated award of a fixed-price contract for a base year with 4 option years to provide preventive maintenance services, on-call maintenance services, and parts exchange services for 39 Silicon Graphics, Inc. (SGI) workstations. These computers are used in Yuma's testing and data reduction requirements. The successful contractor is required to provide all necessary parts and personnel to perform the maintenance as required under the terms of the statement of work (SOW).

Section 12 of the SOW, entitled "Contractor Requirements," contains individual sections which read as follows:

C.12.1. This section specifies the minimum requirements which must be met by the KTR [contractor]. The KTR shall give evidence that these requirements shall be met, thus assuring . . . that the KTR has the background, experience, and resources that the Government considers necessary for successful performance of the resulting contract.

C.12.2. Corporate Maintenance Expertise: The KTR shall have reserve expertise available to maintenance personnel. This expertise shall extend to cover all aspects of the electronic and eletro-mechanical components and corresponding software which comprise the [SGI] Systems. The KTR shall have established lines of communication with this reserve so that consultation is available by telephone, or if needed, by personnel from this reserve, who are expert in the referenced areas, who may be transported to the [Yuma] site, on a temporary basis, to aid in the diagnosis of malfunction or other maintenance considerations at no additional cost to the Government.

C.12.3. Maintenance Personnel: Maintenance personnel supplied under the terms of this contract must be factory trained in maintaining the [SGI] Systems specified Contractor shall be required to authenticate factory training.

The RFP at Attachment 7 detailed the evaluation plan including sample evaluation sheets, the composition of the evaluation team, and the scoring methodology. Proposals were evaluated on the basis of three areas, in descending order of importance: technical/management, past performance, and price. The technical/management area was divided into two factors: technical/management merit, and corporate expertise and understanding work performance merit. Each of these was further divided into four subfactors. The factors were rated on a color coded basis: red, fails to meet requirements of the SOW; yellow, weak, but may meet requirements through clarifications; blue, meets minimum requirements; and green, significantly exceeds requirements. RFP, Attachment 7. Award was to be made to the offeror whose technical/management and price proposals, considered together with past and present performance, represented the best buy to the government.

Compro and MFSI were the only offerors to submit proposals by the June 30, 1997, closing date. After receipt of proposals, the agency amended the RFP, substantially

reducing the level of effort required under the SOW, and requested revised price proposals. The results of the evaluation on all factors were as follows:

Factor/Subfactor	Compro	MFSI
Technical/Management Merit		
1-factory trained personnel/prior experience	Green	Blue
2-plan for obtaining spare/repair parts	Blue	Green
3-adequate procedure for obtaining ECOs/FCOs of original equipment manufacturer ¹	Blue	Blue
4-clear identification of any subcontracting/ability to provide full maintenance service	Green	Blue
Corporate Expertise/ Understanding Work Merit		
1-corporate/personnel expertise and understanding of criticality of maintenance	Green	Blue
2-organizational structure	Blue	Green
3-experience in like services/understanding of scope of work	Green	Blue
4-personnel satisfy security requirements	Green	Green
Past Performance Risk Assessment²	Negligible	Low
Price	\$442,188	\$128,580

Due to the disparity in pricing, the contracting officer was concerned that the offerors misunderstood the reduced level of effort. Accordingly, she issued amendment No. 0004, which included a revised SOW and equipment history information. Subsequently, the contracting officer requested best and final offers from both firms. Compro did not change its price, but MFSI raised its price to \$186,185.96.

¹"ECO" refers to engineering change orders and "FCO" refers to field change orders.

²A "negligible" risk is "so small that it can be disregarded," while a "low" risk means that "little doubt exists that the offeror will successfully perform."

In making her award determination, the contracting officer considered that MFSI's proposal met and, in many areas, exceeded the solicitation requirements. She also considered MFSI's significantly lower price and low performance risk rating. While Compro's technical score was higher than MFSI's, the contracting officer determined that this technical superiority was not worth the approximately 230 percent higher price proposed by Compro. Accordingly, she awarded the contract to MFSI. Compro did not request a debriefing and filed a protest with the agency. After receiving a denial of its agency-level protest, Compro filed this protest with our Office.

Compro asserts that MFSI's proposal did not demonstrate its ability to meet the "definitive responsibility criteria" identified in section C.12 which require contractors to provide evidence that the stated maintenance expertise and factory training requirements "shall be met." In this regard, Compro alleges that without proof of appropriate agreements with SGI, which it possesses but MFSI does not, MFSI has not met, and cannot meet, these requirements.

Definitive responsibility criteria are specific and objective standards, qualitative or quantitative, established by a contracting agency in a solicitation to measure an offeror's ability to perform a contract. In order to be a definitive responsibility criterion, the solicitation provision must reasonably inform offerors that they must demonstrate compliance with the standard as a precondition to receiving award. AT&T Corp., B-260447.4, Mar. 4, 1996, 96-1 CPD ¶ 200 at 5.

Here, the provisions pointed to by the protester are not sufficiently specific to establish definitive responsibility criteria; rather, the provisions essentially require in general terms that each offeror have the appropriate expertise, lines of communication, and factory training in order to successfully perform the contract requirements, and that it provide sufficient evidence thereof. The cited provisions do not specify any particular license requirements, years of required experience, or the time when an offeror must obtain the necessary expertise. Accordingly, these experience and training provisions represent performance obligations, enforceable by the agency in its administration of the contract. Southern Nevada Communications, B-241534, Feb. 11, 1991, 91-1 CPD ¶ 146 at 3. As such, these provisions concern the general responsibility of the awardee and its ability to perform the contract consistent with all legal requirements. The agency found MFSI to be a responsible contractor, and our Office will not review the agency's affirmative determination of MFSI's responsibility under the circumstances here. 4 C.F.R. § 21.5(c) (1997).

Compro also argues that MFSI's proposal should have been rejected as technically unacceptable because MFSI allegedly cannot supply required technical publications, ECOs/FCOs, and peripheral change notices released by SGI, since MFSI allegedly lacks the requisite agreements with SGI. In Compro's view, the only acceptable offeror is one, like itself, which possesses SGI Channel Partner and ServicePro

agreements, which provide access to the necessary publications and expertise of senior SGI engineers.

Contrary to Compro's position, nothing in the RFP requires a specific agreement with SGI.³ The RFP requires the contractor to provide a technical publication, containing programming guides and tips, technical articles, and answers to common questions. SOW at C.2.3. Section C.2.6.2 requires the contractor to provide all services and functions required to keep the systems current with the latest hardware, software diagnostics and documentation, including purchasing and incorporating the manufacturer's ECOs, FCOs, and peripheral changes. Section C.2.6.4 makes the contractor responsible for furnishing the government with ECO and FCO documentation and to make the necessary corrections or substitutions of equipment schematics and spare parts inventories.

As the agency observes, and the record reflects, MFSI's proposal provides sufficient evidence of its ability to meet all contract requirements. In this regard, MFSI's proposal states that it subscribes to the update services of original equipment manufacturers, has a contractual relationship with Great Eastern Technology, has certificates showing factory training for its proposed technicians, and evidence of its past performance of an SGI equipment maintenance contract with the Navy. The agency has also submitted a letter from SGI stating that "Great Eastern Technology of Woburn, MA is an authorized reseller (VAD) [value added dealer] of SGI's products and services." In view of MFSI's experience, expertise, and relationship with Great Eastern, the agency reasonably concluded that MFSI's proposal was

³In this regard, the absence of any RFP reference to specific agreements with SGI also serves to contradict Compro's position that the RFP contained definitive responsibility criteria.

technically acceptable, in accordance with the stated evaluation criteria. Information Sys. & Networks Corp., 69 Comp. Gen. 284, 285 (1990), 90-1 CPD ¶ 203 at 3. Compro's mere disagreement with the agency's judgment does not establish that the evaluation was unreasonable. Medland Controls, Inc., B-255204, B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260 at 3.⁴

The protest is denied.

Comptroller General
of the United States

⁴Our conclusion is not changed by a letter from an SGI "Sr. Division Legal Counsel and Manager" who declined to make a declaration concerning Great Eastern's status. While admitting that Great Eastern has a current indirect reseller agreement with SGI, the counsel noted in passing that Great Eastern did not have a ServicePro Agreement with SGI and therefore was "not currently an authorized service provider for SGI equipment." As noted above, the RFP simply does not require contractors to possess any specific SGI agreements in order to perform the contract. Whether MFSI is ultimately capable of performing the contract is a matter of the agency's affirmative determination of responsibility, a matter which we will not review under the circumstances presented here. 4 C.F.R. § 21.5(c).