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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: Systalex Corporation

File: B-400109

Date: July 17, 2008

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Paul F. Khoury, Esq., Nicole P. Wishart, Esq., and John R. Prairie, Esq., Wiley Rein LLP, for The MIL Corporation, an intervenor.

Lauren Kalish, Esq., and Mark Langstein, Esq., Department of Commerce, for the agency.

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

DIGEST

Evaluation of protester’s technical proposal was unobjectionable where agency reasonably found weaknesses associated with firm’s failure to include sufficient examples of change management tools, recommendations for improving current tools, how methodologies should be updated, and how identified training technology should and could be implemented.

DECISION

Systalex Corporation, protests the issuance of a task order to The MIL Corporation under request for proposals (RFP) No. SB1341-08-RP-0009, issued by the Department of Commerce, National Institute of Standards and Technology (NIST), for support services for NIST’s Business Systems Division (BSD). The competition was limited to vendors holding General Services Administration (GSA) Federal Supply Schedule (FSS) contracts. Systalex asserts that the agency improperly evaluated the protester’s proposal.

We deny the protest.

The RFP sought functional and technical support services for the BSD with the principal goal of supporting the agency’s commerce business system, core financial system. Proposals were to include a description of each vendor’s technical approach, including its FSS labor categories and estimated hours. The RFP

contemplated issuance of a labor-hour type task order under the successful vendor's GSA, FSS contract for a 1-year base period, with 4 option years.

Proposals were to be evaluated for "best value" on the basis of six factors (with relevant subfactors)--(A) technical approach; (B) management plan (quality control plan, project management plan, and staff recruitment/retention plan); (C) key personnel (resumes of project manager, testing lead, and development lead); (D) experience; (E) past performance; and evaluated cost. Factor A was most important and was slightly more important than factors B and C, which were approximately equal to one another. Factors B and C, individually, were more important than factors D and E, which were approximately equal in importance. The non-price factors were rated on an adjectival basis (exceptional, acceptable, marginal, unacceptable, and, for past performance only, neutral). Evaluated cost was approximately equal in importance to the non-price factors combined and was not scored. Instead, the agency would determine whether proposed costs were consistent with the cost proposal instructions and, if necessary would ensure that the costs reflected 1,920 hours multiplied by the proposed fully burdened hourly rate for each NIST functional title. Hourly rates that exceeded applicable FSS rates were to be adjusted downward and rates that did not reflect an appropriate escalation rate were also to be adjusted.

Four vendors, including Systalex and MIL, submitted proposals. A proposal evaluation board (PEB) evaluated the proposals (without conducting discussions) and reached the following consensus technical ratings for Systalex and MIL:

	Systalex	MIL
Factor A: Technical Approach	Acceptable	Exceptional
Factor B: Management Plan	Acceptable	Exceptional
Quality Control Plan	Acceptable	Acceptable
Project Management Plan	Acceptable	Exceptional
Staff Recruitment/Retention Plan	Acceptable	Exceptional
Factor C: Key Personnel	Marginal	Exceptional
Project Manager	Exceptional	Exceptional
Testing Lead	Marginal	Exceptional
Development Lead	Marginal	Acceptable
Factor D: Experience	Exceptional	Acceptable
Factor E: Past Performance	Acceptable	Exceptional
Evaluated (Probable) Cost	\$17,640, 126	\$15,582,336

The agency made no adjustments to either vendor's proposed costs. Based on an independent assessment of each proposal and the PEB's findings and recommendations, the contracting officer, as source selection authority (SSA), determined that MIL's higher technically-rated proposal and lower evaluated cost

made its proposal the best value, and issued that firm a task order under its FSS contract (No. GS-35F-4670G). After receiving a debriefing, Systalex filed this protest.¹

Systalex asserts that the evaluation was flawed because the agency improperly rated its proposal under the technical approach and key personnel evaluation factors. The protester maintains that a proper evaluation would have resulted in its proposal being more highly rated, and thus would have represented the best value for award.

In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11.

TECHNICAL APPROACH EVALUATION

Under the technical approach factor, proposals were to be evaluated on the soundness and feasibility of the offeror's proposed technical approach and how it intended to satisfy the technical requirements in the performance work statement and performance requirements summary. RFP § M.2. In evaluating Systalex's proposal, the PEB noted six weaknesses, including the firm's failure to include examples of change management tools or recommendations for improving current change management tools.² Agency Report (AR), Tab 10, at 6. It also found that the proposal called for methodologies to be updated, but did not state how they should be updated, and mentioned [deleted] technology, but did not address how it should and could be implemented at NIST. Id.

Change Management

Systalex asserts that, contrary to the agency's evaluation conclusion, its proposal discussed in detail how the current change management process was being implemented and made recommendations on how the current methodology could be improved by integrating the existing tools to eliminate errors and omissions due to

¹ Systalex challenges the agency's award on numerous bases. We have considered all of Systalex's arguments and find that they have no merit, or that the alleged impropriety did not prejudice the protester. This decision addresses Systalex's most significant arguments.

² Systalex does not challenge three other weaknesses assessed by the PEB under this factor: not enough detail on the requirements traceability matrix; failure to state how the firm would meet performance tuning standards on newly developed software; and an entire page of the proposal was missing leading to an incomplete narrative. AR, Tab 10, at 6.

manual entry. Protest at 10. In this regard, Systalex states that it included the types of change management it proposed, the process for identifying where the changes are necessary, and the process for implementing the changes. Initial Comments at 3. Systalex states that it also proposed to increase efficiency by studying alternative tools that allow for more rapid and accurate tracking of changes while continuing current services without interruption. Protest at 6. Systalex maintains that it was impossible to provide more specific information because each situation and change issue is unique.

The evaluation in this area was reasonable. Although the protester's proposal included numerous definitions of change management, the agency found that it proposed using a structure already in place at NIST and failed to state what tools would be used to achieve change management goals.³ AR at 14. Similarly, the proposal referenced the firm's experience in stating that Systalex would "explore new tools" to enhance change management implementation "in the future," and its team's experience with a specific software application that would be used to enhance the version control system. Systalex Proposal at 51. However, the agency found the proposal otherwise included only limited recommendations for improving current change management tools, and that it did not demonstrate Systalex's stated expertise in implementing the referenced software application. Supplemental Agency Report at 3; PEB Chair Supplemental Statement, ¶ 5. Our own review of the proposal is consistent with these findings. While Systalex also proposed various improvements, such as increased [deleted], the agency found that it provided only limited information as to how those improvements would be made. Again, our review confirms that only limited information was provided and the proposal stated that the improvements would be detailed and coordinated upon award. Systalex Proposal at 50-51, 53. Based on this record, we think the PEB could reasonably conclude that Systalex's proposal was weak with regard to examples of change management tools and recommendations for improving those currently in use.⁴

³ Systalex asserts that, since the RFP required offerors to provide "continuity" for a continuous technology change management, it was unreasonable for the evaluators to downgrade its proposal for offering to continue and enhance its current methods. Systalex Supplemental Comments at 5-6. This assertion is without merit. While the RFP required continuity, as discussed, Systalex's proposal provided limited information on how its proposed improvements of current tools would be made. Thus, in our view, the agency reasonably found its proposal weak in this area.

⁴ Systalex notes that the consensus evaluation refers to there being "no" examples of change management tools while the supplemental agency report explains that the weakness was based on "limited" recommendations. Systalex Supplemental Comments at 4. We see no meaningful distinction in the weakness as assessed and explained by the agency; it is clear that the agency found the proposal weak in this area. Apart from the protester's assertions, there is no basis for finding that the PEB failed to review, and base its evaluation on, the firm's entire proposal.

Updated Methodologies

With regard to updated methodologies, Systalex asserts that its proposal did in fact specifically address what methodologies needed updating and how the upgrades would be accomplished. Protest at 11. For example, it proposed to establish and enforce industry-standard [deleted] and to increase developers' ability to implement changes; to relieve increased calls to the customer interaction center (CIC) through [deleted]. Id.; Systalex Proposal at 5, 18, 32-34.

The evaluation in this area was reasonable. Notwithstanding Systalex's proposal of the various identified upgrades, in assigning this weakness, the agency found that the proposal did not provide adequate detail in demonstrating how the firm would accomplish the upgrades. Thus, while Systalex's proposal included ideas for helping address [deleted] in the CIC, the agency notes, it has already explored these ideas under Systalex's current and previous task orders, and the proposal failed to present information that resolved the issues that prevented implementation of these solutions in the past, particularly the use of [deleted]. AR at 15; Tab 3, ¶ 10. Of the four proposed "main methods" of delivering training, three--[deleted]--were acknowledged by Systalex as currently in use at NIST. Systalex Proposal at 33. As to the single new method proposed, [deleted] technology, the agency found, and our review confirms, that the proposal lacked detail and failed to explain how the technology could and should be implemented at NIST. AR, Tab 3, ¶ 12; AR, Tab 10, at 6. Systalex claims that implementation was covered by its reference to a [deleted], and that anticipated cost savings addressed why it "should" be implemented. However, the proposal only devoted eight lines of text to the technology and, apart from mentioning [deleted] and cost savings, failed to provide any significant detail regarding implementation. Systalex Proposal at 34. In view of this limited detail, coupled with Systalex's proposal of existing methodologies with minimal detail as to how they would be updated, we find that the agency reasonably found the protester's technical approach weak in this area.⁵

⁵ Our conclusion is not changed by Systalex's observation that one evaluator listed [deleted] technology as a strength, Systalex Supplemental Comments at 5; finding the proposal of a technology to be a strength is not inconsistent with a finding that the proposal failed to provide sufficient detail about implementing the technology. Further, the fact that the strength was not included in the consensus evaluation does not provide a valid basis for protest. See Resource Applications, Inc., B-274943.3, Mar. 5, 1997, 97-1 CPD ¶ 137 at 5 (consensus score need not be the score initially awarded by the majority of evaluators; it may properly be determined after discussions among the evaluators).

KEY PERSONNEL EVALUATION

Systalex challenges the PEB's evaluation of its proposed testing lead and development lead as marginal under the key personnel factor. The protester claims that both personnel fully met the RFP requirements and that its proposal thus should have been rated exceptional under this factor.

We need not determine whether the PEB erred in rating Systalex's proposal marginal under the key personnel factor. In this regard, the SSA, in his source selection decision, specifically determined that, even if Systalex's proposal had earned an acceptable or exceptional rating under this factor, it would not represent the best value. AR, Tab 12, at 3. In making this determination he noted that Systalex had proposed the second highest evaluated cost and that its proposal was not rated higher than any of the others under the most important technical factor--technical approach--or under the management approach factor, which was equally as important as the key personnel factor. *Id.* Since we have found no error in the agency's evaluation under the technical approach factor, and the SSA has determined that, even with the highest possible rating under the key personnel factor, the protester would not be in line for award, there is no possibility of prejudice from any error in the agency's evaluation in this area. We will not sustain a protest absent a reasonable possibility that the protester was prejudiced by the agency's actions. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

ALLEGED IMPROPER RECRUITMENT

Systalex asserts that, after it filed its initial protest, the agency improperly recruited some of its employees to perform work under the firm's incumbent task order and MIL's newly issued task order. In Systalex's view, the agency's actions violate the statutory stay in contract performance under the Competition in Contracting Act of 1984 (CICA) and violate the agency's implied duty of good faith and fair dealing as Systalex performs an extension to its incumbent task order. In addition, Systalex asserts that the agency's plan to hire its employees to perform work encompassed by MIL's newly issued task order constitutes a violation of the requirements for a public-private competition under Office of Management and Budget (OMB) Circular A-76.

Systalex's assertions are without merit. Issues regarding whether an agency is complying with the CICA stay requirements are not subject to review by our Office. Grot Inc., B-276979, Aug. 14, 1997, 97-2 CPD ¶ 50 at 3, n.1. Likewise, our Office does not review matters of contract administration such as whether an agency's actions interfere with the performance of a protester's task order. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2008). With regard to its assertions of a violation of OMB Circular A-76, since there is no evidence that the agency has taken any steps to convert work currently performed by a contractor, to work by federal employees, Systalex's

protest is premature and not for review.⁶ See ITT Elec. Sys., Radar Sys.--Gilfillian, B-299150, Feb. 2, 2007, 2007 CPD ¶ 19 at 3.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁶ In any event, the agency denies that it has taken any formal personnel actions to hire Systalex employees to perform the requirements of MIL's task order; interviewing any of those employees for the purpose of hiring them to do so; or making any decisions that would reduce the scope of MIL's task order, and nothing in the record shows otherwise. AR at 16.