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United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: SAGE Systems Technologies, LLC

File: B-310155

Date: November 29, 2007

William K. Walker, Esq., Walker Reausaw, for the protester.
Ralph G. Bittelari, Esq., Department of Justice, for the agency.
Nora K. Adkins, Esq., and James Spangenberg, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

The agency properly accepted the awardee's proposal that employed a particular
labor category to perform service contract work, where it did not violate any
solicitation provisions; contention that the use of the proposed labor category would
violate the Service Contract Act will not be considered by GAO because it is a matter
for consideration by the Department of Labor.

DECISION

SAGE Systems Technologies, LLC, protests the award of a contract to Drayton,
Drayton, and Lamar (DD&L) by the Bureau of Alcohol, Tobacco, Firearms and
Explosives (ATF), Department of Justice, under request for proposals (RFP)
No. BATF-0703, for data entry support services.

We deny the protest.

The RFP, issued as a competitive section 8(a) set-aside, contemplated the award of a
contract to support, at three locations, the ATF's Firearms and Explosive Services
Division's Enforcement Programs and Services database, which contains information
pertaining to the manufacturing, dealing, and importing of ammunition, implements
of war, explosives, and firearms. The RFP's statement of work identified such
typical contract tasks as screening forms and documents; entering and retrieving
data; processing hard and soft mail; monitoring and controlling facsimile
communications; photocopying; operating and monitoring various office machines;
updating and printing reports; and coordinating, assembling and mailing packages
required under the contract. The offerors were informed through the RFP's
amendments and answers to offeror's questions that the ATF expected to maintain
the current staffing levels at each location, a total of 37 employees, although it was

"not limiting the solicitation to the current staffing situation" and that offerors could "identify [any] labor category needed as documented in the wage determination." RFP amend. 6 at 1; RFP amend 7 at 1.

The RPF incorporated the contract clause at Federal Acquisition Regulation (FAR) § 52.222-41, "Service Contract Act [SCA] of 1965, as Amended" RFP § I.9. The solicitation also incorporated the clause at FAR § 52.222-42, "Statement of Equivalent Rates for Federal Hires" as follows:

> In compliance with the [SCA], and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of employees expected to be employed under the contract . . .
>
> This Statement is for Information Only: It is not a Wage Determination.

Employee Class	Monetary Wage/Fringe Benefit
Computer Operator 2	$17.47
Data Entry Operator 1	$11.02
General Clerk 1	$12.83
General Clerk 2	$14.20

RFP § I.10. The RFP also included wage determinations applicable to the three contract locations that established the minimum applicable SCA wages and benefits.

Proposals were to be evaluated based on four criteria listed in descending order of importance: past performance, technical/management approach, qualifications of key personnel, and price. Price was to be evaluated for reasonableness by comparing the offerors' proposed prices with the proposed prices of other offerors competing for the requirement. RFP § M-3.

The ATF received 34 proposals in response to the solicitation. Eight proposals were included in the competitive range. The ATF determined that the awardee's and protester's proposals were the highest rated and were technically equal, which made price the deciding factor between these two offerors. DD&L's price for the base year and 4 option years was $9,032,959, while SAGE's price was $10,871,513. The ATF determined DD&L's lower-priced proposal was the best value, and made award to that firm. This protest followed.

SAGE argues that the agency did not perform an adequate "cost realism analysis," because DD&L's proposed use of the Data Entry Operator labor category to fulfill a majority of the 37 required positions, instead of the General Clerk labor category that SAGE proposed, did not meet the RFP's labor requirements to perform the tasks as set out in the solicitation's statement of work, and that DD&L's proposed labor categories violate the SCA. In this regard, SAGE references the SCA Directory of Occupations, issued by the Department of Labor, which SAGE argues by definition

directs the use the General Clerk category at a minimum to fulfill the SOW requirements. SAGE's argument here is that by not ensuring that DD&L was using the proper labor categories, the ATF improperly waived a solicitation requirement resulting in an unfair competitive advantage for the awardee.

We first note that there was no requirement here for a cost or price realism analysis, inasmuch as this is a fixed-price contract and the RFP did not provide for such an analysis to ascertain whether the offered price was unrealistically low. Indtai, Inc., B-298432.3, Jan. 17, 2007, 2007 CPD ¶ 13 at 4. Instead, in accordance with the RFP and applicable regulations, the ATF compared DD&L's offered prices to those of the other offerors, and reasonably concluded, consistent with the RFP, that DD&L's total offered price was fair and reasonable, that is, that it was not unreasonably high. RFP § M.3; FAR § 15.404-1(b) (an agency's comparison of prices received in response to a solicitation is a fair and reasonable price analysis technique).

With regard to the remainder of the protest, as noted by the ATF, nothing in the solicitation required the offerors to use only the General Clerk labor category to fulfill the statement of work requirements. To the contrary, as the ATF points out, the solicitation identified, albeit for informational purposes only, both the Data Entry Operator and General Clerk labor categories as ones "expected" to be used under the contract, and explicitly allowed offerors to make their own determination as to what combination of employee classifications could best perform the required services.[1] RFP § I.10; RFP amend. 6, at 1. The ATF reviewed and had exchanges with DD&L regarding its proposed labor categories, and found that they would satisfy the RFP requirements. Contracting Officer's Statement at 2. Based on our review of the record, which does not show that DD&L violated any solicitation requirement and evidences a reasonable evaluation by the agency of this aspect of DD&L's proposal, we find no impropriety in the agency's evaluation of DD&L's proposed labor categories. See Computer Cite, B-297291, B-297291.2, Dec. 23, 2005, 2006 CPD ¶ 31 at 5; Taft Broad. Corp., B-222818, July 29, 1986, 86-2 CPD ¶ 125 at 5.

At the heart of SAGE's protest is its assertion that DD&L's proposed labor categories will result in a violation of the SCA. The determination of prevailing wages and fringe benefits, and the issuance of appropriate wage determinations under the Service Contract Act, 41 U.S.C. §§ 351 et seq. are matters for the Department of Labor. Concerns with regard to establishing proper wage rate determinations or the application of the statutory requirements should be raised with the Wage and Hour Division in the Department of Labor, the agency that is statutorily charged with the implementation of the Act. See 41 U.S.C. § 353(a); 40 U.S.C. § 276a; The Forestry Ass'n, Inc., B-236240, Sept. 28, 1989, 89-2 CPD ¶ 294.

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[1] The ATF points out that SAGE was the only competitive range offeror that did not include the Data Entry Operator labor category in its proposal.

Thus, our Office will not consider this protest contention as this is a matter for consideration by Department of Labor.

The protest is denied.

Gary L. Kepplinger
General Counsel