

**Findings of Protest Board**

RE: Request for Proposal for a Proximity Card Reader System

Board members: Karen Johnson, Chair, George Arola, Kathy Viehe

Date: August 9, 2000

Attending:

Karen Johnson, AGM of Customer & Administrative Services & Protest Appeal Panel Chair

Kathy Viehe, Communications Director & Protest Appeal Panel Member

George Arola, Information Systems Director & Protest Appeal Panel Member

Pat Moore, Administrative Services Director & RFP Evaluation Team

Gary Hill, Senior Buyer, Purchasing & RFP Evaluation Team

Bob Phillips of Semco

Charlie Taylor of Semco

Randy Graves of Simplex

Tracy Wohl, Recorder

Background

On June 26, 2000, GRU submitted a request for proposal (RFP) for a proximity card reader system, a system designed to provide secure access to a number of GRU facilities. At the hearing, Gary Hill, Senior Buyer, said that GRU intentionally chose the RFP vehicle for this system rather than a formal bid, because GRU did not want to specify the exact elements of the system nor the approach for the vendors to take. The RFP process gives GRU flexibility so that the vendors with this expertise help determine the best solution, while still maintaining the general functionality as described by GRU in the RFP. Since vendors are typically submitting systems with different approaches, usually there are a number of evaluation criteria in addition to price so issues like newer technology, ease of maintenance, necessary training, etc. may be taken into consideration.

A number of proposals were received, and the evaluation team recommended award to SEMCO Integrated Systems. The proposal of Simplex was rejected by the Purchasing Department on July 25th as non-responsive. Specifically the rejection letter said "Since the Simplex proposal does not contain all the materials and services required by the RFP, GRU is unable to evaluate the proposal."

On August 1 Simplex filed a protest of the recommended award of the project to SEMCO. The protest was filed in a timely manner as required by the purchasing procedure. The protest disputed that the Simplex proposal was non-responsive. It also alleged that the SEMCO proposal was non-responsive.

The Protest Board was convened at 1:30 on August 9th. Representatives of Simplex, SEMCO, and the GRU Purchasing Department were present. The Board heard the protest in two parts as outlined below.

Findings: Non-responsiveness of Simplex Proposal

Upon review of the proposal, the evaluation team could not determine what specifically was included in the proposal nor the proposed prices. Simplex was asked to clarify this by providing GRU with a list of materials included in the proposal. Simplex' answer did not include a listing of any wiring for the project, a significant cost factor for the system.

The evaluation team then referred to Section 9.3 of the RFP which stated: "Proposer shall clearly indicate if the unit prices include installation or shall indicate a price for all labor to install the access control system in accordance with the terms and conditions included in this Request for Proposal." Simplex replied: "**Unit prices do not include installation, since installation consists of many variables such as length of wire runs, type of door, door jamb, ceilings, fire wall penetrations, etc.**" This statement further supported the conclusion that wiring was not included in the proposal

In a subsequent letter dated July 21st, Simplex stated that "Our installation includes all necessary wire and cable to complete the job." This statement clearly conflicted with the original proposal and was inconsistent with the failure of Simplex to include wiring in its materials list. GRU Purchasing staff concluded that this was an attempt to better the proposal after submission, which is not allowed because it would place other vendors at an unfair competitive disadvantage.

When questioned about this inconsistency of the various documents during the protest hearing, Mr. Randy Graves of Simplex replied:

- That wiring is not a "material" but rather part of installation, so therefore Simplex did not need to include it on the materials list. However, except for two optional items, there was no cost for installation in the proposal, but rather a building by building cost for "materials" and "labor." In the opinion of the Board, wiring should have been included in the Materials list. Given that it was not, it stretches credibility beyond an acceptable level to assume that wiring was included in an item listed as "labor."
- Furthermore, at one point during the hearing Mr. Graves said in regard to wiring costs that "You can't quote from thin air." He then stated that it was impossible to quote wiring costs unless the vendor knew where the doors were that were being secured, the distances wire would have to run, etc. This statement further supports the view that wiring was not included in the proposal. It should be noted for the record that there was an optional pre-proposal walk through of all relevant GRU facilities where the exact location of proposed security devices was outlined. Simplex elected to attend only part of this optional tour, and therefore may have had insufficient information. The other proposers who attended the walk-through listed prices for wiring and installation.

Finding: The members of the Protest Board respectfully note that after an hour of direct questioning of Simplex on relevant points, we still find the inconsistencies in the Simplex proposal, letters, and statements so widespread and confusing as to make a legitimate evaluation of this proposal impossible. It is impossible to determine what is included and at what price. Award of a contract based on this proposal would constitute an open invitation for the vendor to request additional payments, refuse services, or perhaps even engage in legal

action because of the lack of clarity. The GRU Purchasing Department was correct to reject this proposal as non-responsive. The protest is denied.

Findings: Non-responsiveness of SEMCO Proposal

Simplex has alleged that SEMCO proposal was non-responsive on three items:

1. The proposal did not include a vehicle barcode scanner;
2. The proposal excluded several items in a Section called "Work by Others," and;
3. The proposal was not signed.

Findings: Item 1. As stated earlier, the purpose of doing an RFP rather than a bid was to give proposers the opportunity to focus on functionality rather than specific systems. A vehicle barcode scanner was not required by the RFP, but rather a vehicle scanner with the functionality of being able to allow a vehicle to go through a gate without requiring the driver to get out of the car or to place a card directly in a scanner. The SEMCO proposal included more updated technology for achieving this functionality, and in fact exceeds the requirements of the RFP, therefore meeting the intent of the proposal. Mr. Graves also alleged that the W.W. Gay proposal was disqualified because they failed to include a vehicle barcode scanner. This is only partially correct. W.W. Gay was disqualified because they failed to include any vehicle scanner at all in their proposal, an entirely different situation from that of SEMCO's proposal. The protest is denied.


Findings: Item 2. In their proposal SEMCO listed a number of items of work to be performed by others. The evaluation team saw this as very helpful because it clarified exactly what was expected of each party in the process in order to avoid problems later. Simplex has alleged that this amounts to an exclusion of required items, and therefore the SEMCO proposal should be declared non-responsive. Again this allegation was marked by some extreme inconsistencies. On one hand, Mr. Graves alleged that the SEMCO proposal was wrong to explicitly state that SEMCO expected to use the existing conduit at the Springhills Service Center. On the other hand, he stated that he assumed in his proposal that Simplex would be allowed to use the same conduit. He also faulted SEMCO for declaring that "A clear, clean conduit path...will need to be provided," and deemed this to be a material exception to the RFP. When asked if Simplex anticipated in its proposal that it would be their responsibility to remove all obstacles from the path of the conduit, he replied "Yes." Again, this absolutely strains credibility, as carried to its logical extreme, Simplex could have been required to move a building or some other permanent structure from the conduit path. The protest is denied.

Findings: Item 3. The Utilities Attorney has given the Purchasing Department a legal opinion that the failure of SEMCO to sign the proposal may be waived as immaterial. Therefore, this item was not taken up the Board.

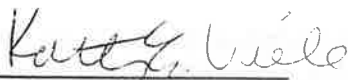
Summary

The Board finds all elements of Simplex' protest to be without merit and recommends that GRU proceed with the contract award to SEMCO.


Dated this 11th day of August, 2000.



Karen S. Johnson,
Chair, Protest Board



Kathy E. Viehe,
Member, Protest Board



George Arola,
Member, Protest Board