



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Logicon RDA

File: B-261714.2

Date: December 22, 1995

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Col. Nicholas P. Retson, and Thomas J. Duffy, Esq., Department of the Army, for the agency.

Sylvia Schatz, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against agency refusal to accept cost reductions proposed in best and final offer is denied where (1) first proposed reduction was based on receipt of reimbursement from a government training program that information available to the agency indicated that funding would not necessarily be available for the program in the future, and (2) second proposed reduction was based on an unspecified reduction in the level of effort which was not supported in the protester's proposal.
2. Agency was not required to reopen discussions to permit offeror to justify an unsupported cost reduction introduced for the first time in the offeror's best and final offer (BAFO); the decision to reopen discussions and request a new round of BAFOs is largely left to the discretion of the contracting officer, and where an offeror modifies its proposal by introducing material ambiguities or defects in its BAFO, it runs the risk that the agency will not reopen discussions.
3. Agency's decision not to check one of many past performance references listed in awardee's proposal was not improper where information available to the agency, including checks with four of listed references, furnished no reason to believe that firm's representations of its experience were inaccurate; procurement officials generally are not required to check all references listed in an offeror's proposal.

DECISION

Logicon RDA (LRDA) protests the Department of the Army's award of a contract to Cubic Applications, Inc. (CAI), under request for proposals (RFP) No. DAKF57-94-RT-0036, for battle simulation services in support of the Army I Corps, Army

Reserve, and Army National Guard exercises. LRDA, the incumbent on the current I Corps contract, primarily challenges the evaluation of technical and cost proposals.

We deny the protest.

The RFP contemplated award of a cost-plus-award-fee contract to support Army computer battle simulation exercises for a base year, with 4 option years, to the offeror submitting the best overall proposal. The solicitation provided for proposals to be evaluated on the basis of quality (more important) and cost. The quality factor consisted of four subfactors: (1) technical, which was almost twice as important as (2) related experience, which was significantly more important than (3) management plan, which was twice as important as (4) quality control. Within the technical subfactor, the RFP listed two elements: qualifications of personnel (more important) and personnel availability.

The Army received proposals from LRDA and CAI by the closing time, both of which were included in the competitive range. Following written and oral discussions, the agency requested best and final offers (BAFO). The BAFOs were evaluated as follows:

	CAI	LRDA
QUALITY		
Technical	Satisfactory plus (399 of 500 available evaluation points)	Satisfactory (398)
Related Experience	Excellent (249 of 275)	Excellent (249)
Management	Excellent (129 of 150)	Excellent (122)
Quality Control	Excellent (64 of 75)	Excellent (62)
TOTAL QUALITY	Excellent (838 of 1000)	Excellent (831)
PROPOSED COST	\$5,334,541	\$5,444,339
EVALUATED COST	\$5,440,775	\$5,960,728

Although CAI's quality proposal received a slightly higher score than LRDA's, the proposals were considered essentially technically equal, and award therefore was made to CAI based on its lower evaluated cost. LRDA thereupon filed this protest.

COST EVALUATION

LRDA's Proposal

LRDA challenges the Army's evaluation of the most probable cost of its proposal on the basis that the agency improperly disallowed several cost reductions it proposed in its BAFO.

Specifically, LRDA argues that the Army improperly disallowed its proposed \$120,000 BAFO cost reduction which was based on receiving reimbursement--\$10,000 per employee for two or three employees per year for 5 years--under the Department of Veterans Affairs's (VA) Service Members Occupational Conversion and Training (SMOCTA) program, for hiring and training unemployed former military service members.

Where, as here, an agency evaluates proposals for award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government generally is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) § 15.605(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost. Logicon RDA, B-252031.4, Sept. 20, 1993, 93-2 CPD ¶ 179. Because the contracting agency is in the best position to make the cost realism determination, our review in this area is limited to determining whether the cost evaluation was reasonable. AmerInd, Inc., B-248324, Aug. 6, 1992, 92-2 CPD ¶ 85.

We find no basis to question the cost evaluation. The record shows that the Army disallowed LRDA's proposed SMOCTA-based personnel cost reduction on the basis that, among other considerations: (1) while LRDA's BAFO stated the firm "will hire several veterans under this program per year," thus indicating that it had not already hired such veterans for this contract effort, the agency was concerned that eligible veterans may not be available when LRDA needed to fill an employment vacancy; and (2) the Army had been advised by the VA that funding would not necessarily be available for the program in the future. Although LRDA claims that the funding risk was not substantially greater than the risk for any other government program, the record indicates that at the time the Army was conducting its evaluation, participation in the program was scheduled to be closed to new applicants substantially before the end of the potential contract term. Given the substantial uncertainties associated with recruiting SMOCTA-eligible

veterans meeting the specifications' qualification requirements, the application deadline, and continued funding of the program for the period of the contemplated contract, the agency could reasonably conclude that LRDA's ability to benefit from the SMOCTA program was too uncertain to warrant acceptance of a cost reduction based on participation in the program.

LRDA also challenges the Army's determination to disallow its proposed \$375,000 "management" cost reduction which was based on having its employees divide their time between this contract and other contracts at the installation. The agency rejected this approach on the ground that these other contracts might not be funded and that LRDA did not establish that it would be able to perform with the man-hours remaining after the reduction. LRDA argues that disallowance was inconsistent with the agency's determination to allow a similar \$37,977 cost reduction for time to be spent by LRDA's proposed site manager working on other contracts.

We see no inconsistency. LRDA's BAFO provided a clear basis for the \$37,977 cost reduction by citing proposed manager's experience for the most recent year (April 1994 through March 1995) under the incumbent contract, when he charged 14.7 percent of the time worked (321 hours of 2,183 total hours) to other contracts. In contrast, LRDA's proposal only generally referred to experience under other contracts to justify a substantially more significant \$375,000 cost reduction for work to be performed by other personnel on other contracts; LRDA neither specified the estimated number of hours they would work on the other contracts, referring only to a saving of \$75,000 per year, nor explained how this contract could be performed with the remaining available labor hours.¹ The Army, in the absence of any specific explanation of the proposed reduction, calculated the amount of the reduction to be 3,527 man-hours, or two full-time equivalents (FTE), per year. The agency determined that LRDA, which had originally proposed 25 personnel, could not successfully perform the contract and provide the required

¹Although LRDA claims that the Army was familiar with LRDA's practice (from other contracts) of having its personnel perform work on several contracts, contracting officials deny familiarity with the cost data from the other contracts. In any case, LRDA assumed such familiarity at its own risk; agencies are required to evaluate proposals based on the content of the proposal, and the evaluation ordinarily does not include other information. See George Mason Univ., B-255348, Feb. 24, 1994, 94-1 CPD ¶ 147. In any case, mere awareness of LRDA's practice on other contracts for different requirements would not establish that LRDA could adequately perform the current contract with significantly fewer man-hours than originally proposed or considered necessary by the agency.

level of support with only 23 FTEs, three fewer than the government estimate of 26 FTEs. LRDA has not shown this determination to be unreasonable.

LRDA argues that in the event the Army had concerns regarding its personnel cost adjustments, it should have obtained post-BAFO clarifications from the firm to resolve the matter. It is clear from the record, however, that only by revising its proposal to set forth a detailed approach for performing the solicitation requirements with substantially fewer labor hours than the Army believed necessary could LRDA establish a basis for the significant reduction in labor hours proposed in its BAFO. Given the substantive nature of the matter, any such dialogue would have constituted discussions rather than clarifications and would therefore have required the agency to solicit a new round of BAFOs from both offerors. FAR §§ 15.601, 15.607, and 15.611; see SWD Assocs., B-226956.2, Sept. 16, 1987, 87-2 CPD ¶ 256. The decision to reopen discussions and request a new round of BAFOs is largely within the discretion of the contracting officer. Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶ 76. Where, as here, an offeror modifies its proposal by introducing material ambiguities or defects in its BAFO, it runs the risk that the agency will exercise its discretion not to reopen discussions. IDB Int'l, B-257086, July 15, 1994, 94-2 CPD ¶ 27; State Technical Inst. at Memphis, B-250195.2; B-250195.3, Jan. 15, 1993, 93-1 CPD ¶ 47. We see nothing improper with the agency's decision not to conduct further discussions after BAFOs were received.

CAI's Proposal

CAI proposed the same number (26) of personnel in its initial proposal as assumed in the independent government estimate (IGE), but proposed hours for several employees who were less than full-time, which resulted in a total number of man-hours (232,080 man-hours over 5 years) less than the number (270,400 man-hours) on which the government estimate was based. In evaluating CAI's initial proposal, the Army noted that, although CAI had proposed the same number of employees as the IGE assumed, it appeared that the proposal contained "unusually low productive (paid) hours," resulting in proposed costs (\$5,589,278) 9 percent below the IGE (\$6,132,512); consequently, the agency increased CAI's proposed cost by \$644,455, to a most probable cost of \$6,233,734. However, when the Army questioned CAI during discussions about employees not working full-time on this contract, CAI responded that it planned to employ all personnel full-time, but that they would not work full-time on this contract as the required work was cyclical. Instead, according to CAI, many of the proposed employees would be utilized temporarily on its other government contracts in the area (and their labor costs thus would be charged to these other contracts) when not utilized under this contract. CAI pointed out that it had proposed overtime for employees to accommodate work load during exercises (that is, during periods of peak demand for support services). CAI stated that it had reevaluated the hours proposed and

believed they "adequately covered the requirements of the contract." Upon reevaluation, the Army determined that CAI could perform the contract requirements with its stated level of effort and, as a result, adjusted CAI's proposed BAFO costs upward by only \$107,000.

LRDA maintains that the agency should have adjusted CAI's BAFO costs upward by the initial \$644,455 adjustment.

LRDA argues that it will actually take CAI more effort to perform the contract requirements than the level of effort proposed in its BAFO, but it has not demonstrated why CAI's proposed level of effort was insufficient to meet the contract requirements. In this regard, we note that CAI's BAFO man-hours (232,080 over 5 years) were only slightly below LRDA's (235,300, or 1.37 percent according to the agency) prior to LRDA's "management" reductions, and after allowance of the reduction for the site manager (approximately 233,945, or 0.8 percent). Further, CAI explained in greater detail than LRDA how it would staff the contemplated contract so as to assure that the required support services would be furnished. In this regard, as discussed, CAI proposed that its personnel would work on other contracts only during the off-peak periods in the work load cycle and that during exercises the personnel would work overtime hours to accomplish the required work. The agency reviewed CAI's proposed staffing and found CAI's explanation convincing, in part because its proposal of 26 personnel, one more than LRDA proposed, afforded it an additional measure of flexibility in scheduling. Our review of the record affords no basis to question the agency's assessment of the adequacy of CAI's proposed approach to meeting the specification requirements or its decision not to upwardly adjust CAI's proposal by the initial \$644,455 amount.

QUALITY

Related Experience

The record shows that in response to the RFP requirement that offerors list their corporate history, CAI listed in its BAFO 11 current or recent contracts performed within the past 7 years, including the United States Army, Europe (USAREUR) contract; the Army contacted four of the listed references to assess the firm's performance on current cost-type contracts for battle simulation support at Forts Hood, Carson and Riley, and in Korea. The responses received from these references indicated that CAI had an exceptional performance record; that CAI's costs, with the exception of an occasional "government induced" cost overrun, were either on target or an underrun; and that its performance was on schedule or early. For example, contracting officials familiar with CAI's Korean battle simulation support contract stated that the firm's performance "has been exceptional" and that CAI has "been instrumental in establishing the Korea battle simulation center as a leader in the conduct of joint and combined, operational level computer-assisted

exercises." Similarly, contracting officials familiar with CAI's Fort Hood contract stated that the firm "has been very responsive and sensitive to the government's needs," and "has been very easy to work with in all situations." Based on the above references, CAI received a rating of "excellent" rating under the related experience subfactor.

LRDA argues that the Army's evaluation of CAI's BAFO under the related experience subfactor of the quality factor was unreasonable because the agency intentionally avoided contacting a reference listed in CAI's BAFO for work it was performing on a similar simulation services contract with the USAREUR from 1993 to the present, as the Army allegedly knew it would have shown the poor performance of CAI on that contract. LRDA argues that, had the agency checked this reference, it would have been told that CAI had performed in an untimely manner and incurred cost overruns of \$8 million (more than its proposed cost of \$20.7 million) while performing fewer than half of the exercises required under the contract. LRDA concludes that CAI's BAFO should have received a rating lower than excellent under the related experience subfactor, and that LRDA, not CAI, would have received the award had CAI's score been so reduced.

LRDA's argument is without merit. Procurement officials are not required to check all references listed in an offeror's proposal. Advanced Envtl. Technology Corp., B-259252, Mar. 20, 1995, 95-1 CPD ¶ 149; Geographic Resource Solutions, B-260402, June 19, 1995, 95-1 CPD ¶ 278. An agency may accept a firm's representations of its experience unless there is reason to believe that the representations are inaccurate. See Geographic Resource Solutions, *supra*; cf. G. Marine Diesel; Phillyship, B-232619; 232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90 (protest sustained where the agency was familiar with, but did not consider, the awardee's prior contract performance).

In any event, the Army maintains, and the record indicates, that even if it had contacted the reference at USAREUR, the reference would have indicated that CAI's performance on the contract was good. In this regard, the Army has submitted documentation from USAREUR showing that CAI received an average award fee score of 95 points (which entitled it to an award fee of 75 percent). Although CAI's award fee score was somewhat lower than LRDA's score under its prior USAREUR contract, for which it received an average award fee score of 97 points (entitling it to an award fee of 84.5 percent), the contracting officer for CAI's USAREUR contract stated that "[t]here is no significant difference between the quality of performance by either contractor, and I would consider each to be a very good performer." Further, according to the USAREUR contracting officer, CAI did not have cost overruns on the contract arising from an inability to perform the requirements of the originally contemplated contract at its offered price. Rather, reports the contracting officer, the contract cost increased because USAREUR's needs changed and more work was ordered. Specifically, the contracting officer

explains that with the fall of communism in Eastern Europe, the nature of the training undertaken by USAREUR has changed significantly as the German government has placed new constraints on USAREUR to minimize maneuver damage, thereby forcing it to abandon physical tank maneuvers in favor of the computer simulations supported by this contract. As a result, according to the contracting officer, CAI supported a larger number of more elaborate simulation exercises than originally anticipated at the time of CAI's award. (The contracting officer contrasts the additional demands placed upon CAI with the work under LRDA's prior contract, which consisted largely of smaller unit, shorter duration exercises.) The contracting officer concludes that, despite the unexpected increase and modification in work load, CAI had "done a good job of controlling costs." Thus, while the total number of exercises supported by CAI may have been fewer than anticipated at the time of contract award, as alleged by LRDA, the record indicates that CAI was required to perform a larger number of more elaborate simulation exercises, thus driving up the cost of contract performance.

We conclude that the record supports the reasonableness of the Army's determination that LRDA's and CAI's overall related experience were essentially equal.

Personnel Qualifications

LRDA challenges the evaluation of the qualifications of a number of the personnel proposed by the offerors. For example, LRDA questions why CAI's proposed site manager received a higher score than LRDA's, even though LRDA's proposed site manager received excellent ratings under the current contract.

The RFP established the following requirements for the proposed site manager: a bachelor of science (BS) or bachelor of arts (BA) degree in mathematics or science; at least 15 years experience as a U.S. Army or Air Force officer or equivalent civil service within the Department of Defense; experience in operations and training requirements; a minimum of 2 years experience with high level computer systems; a minimum of 5 years supervisory experience, preferably in the area of computer operations or the equivalent technical field; and a familiarity with large scale military war games and simulations.

The Army evaluated CAI's proposed site manager, who received 21 of 25 available points, as possessing stronger academic qualifications and military experience than LRDA's proposed site manager, who received 20 points. While LRDA's proposed site manager had earned a BS in mathematics, CAI's proposed site manager had earned not only a BA in applied mathematics but also a Masters in Business Administration, and had graduated from the Army Command and General Staff College. In addition, CAI's proposed site manager had served as deputy director of the Army Battle Command Training Program, developed attack plans for the Army

VII Corps during Operation Desert Storm in the Persian Gulf War, and before retiring had supervised training for the Army I Corps. In contrast, while LRDA's proposed site manager met the RFP requirements, he had earned only a BS in mathematics. We conclude that the Army reasonably determined that, notwithstanding the excellent ratings received by LRDA's proposed site manager, the superior academic and military credentials of CAI's proposed site manager warranted assigning a 1-point advantage to CAI's BAFO in this regard.

As a further example, LRDA challenges the evaluation of the offerors' proposed JANUS simulation senior controllers. The RFP established the following requirements for the JANUS simulation senior controller: a BS or BA degree; a diploma from an Armed Forces staff college or equivalent military training; experience as a land forces or combat arms officer; attainment of a field grade rank; knowledge of Joint and Army organizational structures and operations; experience in planning and operations; at least 1 year experience in high resolution computer simulation war games; and 3 years experience operating military simulations in a VAX/VMS or UNIX environment. Although the Army recognized that CAI's proposed JANUS senior controller, who received 8 of 10 available points, possessed limited experience with operating military simulations, and that LRDA's proposed JANUS manager, who received 7.5 points, possessed more extensive Janus experience, the agency evaluated CAI's proposed JANUS senior controller as possessing stronger academic credentials and a stronger overall military background. CAI's proposed JANUS senior controller had earned not only a BS in industrial technology but also an MS in systems management, and was an Army War College graduate. In contrast, LRDA's proposed JANUS manager had earned only a BA in international affairs and graduated from the less advanced Army Command and General Staff College. In addition, the agency notes that, prior to retirement, CAI's proposed JANUS senior controller was division chief at the Tactical Commanders Development Program at Fort Leavenworth, where he developed tactical scenarios and instruction for battalion and brigade command designees; supervised field-grade officer instructor/controllers, computerized combat simulations and conducted post-action analyses; and coordinated contractor personnel for simulation support of an executive-level tactical training course. Given the strengths of both proposed Janus controllers, we find no basis to question the agency's assignment of nearly equal scores to both, with the slightly higher score of CAI's proposed controller reflecting his superior academic credentials.

Based on our review of these and LRDA's other challenges to the evaluation of proposed personnel, we find no basis to question the agency's overall conclusion that the qualifications of the proposed personnel were essentially equal. Further, since the record supports the agency's determination that the proposals were

technically equal, we have no basis to question the reasonableness of the agency's determination to make award based on the lower evaluated cost of CAI's proposal.

The protest is denied.

Comptroller General
of the United States