

Weiskopf



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Systems Research & Applications Corp.

File: B-225574.2

Date: May 26, 1987

DIGEST

Where request for proposals for time-and-materials contract requires that offerors' wage rates be based on a 40-hour week, an offer to provide compensated overtime is acceptable if the labor rates actually proposed are based on the actual hourly wage rates the offeror pays for a 40-hour week.

DECISION

Systems Research and Applications Corp. (SRA) protests the proposed award of a contract to RJO Enterprises, Inc. under request for proposals (RFP) No. F19628-86-R-0089, issued by the Electronic Systems Division (ESD), Air Force Systems Command. The RFP is for a time-and-materials contract^{1/} to provide systems engineering and management support to ESD's Command Management Systems Directorate.

The protest pertains only to the labor hour portion of the solicitation. SRA argues that RJO's proposed hourly labor rates are based on wage rates for more than a 40-hour work week in violation of the RFP. This, according to the protester, results in an understatement of RJO's hourly labor rates because its professional employees are required by the company to work more than 40 hours a week thus causing their hourly labor rates to appear lower than those who work 40 hours for the same salary. The protester maintains that the company makes up the difference by billing the agency for more than 40 hours per week.

We deny the protest.

1/ A time-and-materials contract is an indefinite-quantity, indefinite-delivery contract under which payment is based on specified fixed hourly rates for labor and on a cost-reimbursable basis for materials. Federal Acquisition Regulation (FAR), 48 C.F.R. § 16.601 (1986).

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The RFP includes separate line items for a base year of services plus options for 2 additional years and a 3-month training period. Each line item contains a list of 21 labor categories (e.g., project manager, systems analyst, and systems engineer) and an estimated number of person years.^{2/} The solicitation contains a table for offerors to propose their hourly labor rates for each of the 21 work categories. The RFP provides that work under the contract will be by delivery orders issued for the particular tasks and including a specific number of hours in each category to accomplish those tasks. The contractor may increase or decrease the number of hours for each category specified in an order by no more than 30 percent provided the price does not exceed the ceiling price for the order. The RFP stipulates that in no event may the total labor requirement exceed 338 person years, excluding the transition option.

Further, in response to an offeror's question whether wage rates based on a work week greater than 40 hours would be acceptable, the agency stated in a written clarification issued to all prospective offerors: "Wage rates should be based on a standard 40 hour work week."

The RFP's evaluation criteria state that price and cost (of the reimbursable items) collectively are equally as important as technical merit. The agency proposes to award RJO the contract based on its "competitive price" and its having obtained the highest technical ranking.

The protester states that it believes that RJO's proposal (which has not been disclosed) was based on labor rates calculated on a greater than 40-hour work week. Citing the clarification stating that wage rates should be based on a standard 40-hour work week, SRA argues that RJO's proposal should be regarded as technically unacceptable.

We disagree. We can find no provision in the RFP and the protester cites none which specifically requires that a contractor only perform the services ordered using a standard 40-hour work week. Nor does the RFP prohibit overtime. It does, however, stipulate that no premium will be paid for overtime. The RFP provides that delivery orders will be issued for specific tasks involving a specified number of labor hours and it is up to the contractor to determine how to accomplish the task, even to the extent of varying the hours in each category by up to 30 percent.

^{2/} A person year or "man year" as defined by the RFP consists of a minimum of 1,856 labor hours.

The agency's clarification cited above did not relate to the labor rates, but concerned the offeror's wage rates; it also did not limit the number of hours that could be billed by the contractor. That is limited only by the ceiling specified in the individual delivery order and the total contract ceiling of 338 person years. The Air Force's answer stated only that the offeror's wage rates should be based on a standard 40-hour work week. In this regard, all the offerors, including RJO, calculated their hourly wage rates by dividing each employee's yearly salary by 2,080 hours.^{3/} The labor rates which were required by the solicitation included the wage rates plus overhead, general and administrative expenses, and profit.

Even though RJO's wage rates are based on a 40-hour week, RJO does propose to have its employees work compensated overtime at its proposed hourly labor rates. This practice does not adversely affect the evaluation since the proposed hourly labor rates are precisely those that will be paid by the government and all offerors' evaluated prices were based on the same number of hours. RJO will, as the protester argues, consume hours at a faster rate than a contractor working a 40-hour week, but this is immaterial since the agency is purchasing the hourly services without regard to their rate of consumption. If the Air Force needed continuous support services through each contract year, then the rate of consumption might be a problem. The RFP, however, does not require continuous support. The protester argues otherwise, contending that the RFP requires person years of services based on a standard 40-hour work week. Although the RFP does define the estimated labor requirements in terms of person years, it clearly states that the agency's requirements are indefinite and that orders will be placed to perform certain tasks using an allotted number of hours. Thus, the terms "person years" or "man years" are used only as a unit of measurement for estimating the amount of work required and not to set forth a need for yearlong services.

As stated above, RJO's base wage rates were established using a 40-hour week. One of its subcontractors, however, has an accounting system that requires recording of uncompensated overtime and its salaried employees work more than 40 hours a week. In RJO's proposal the subcontractor's wage

^{3/} Salary hours of 2,080 represent the actual number of work hours in a year under a 40-hour work week. The 1,856 hour minimum per person year in the solicitation represents 2,080 hours minus the commonly recognized combination of 10 days vacation and 10 days annual holidays plus 8 days of sick leave.

rates were reduced by an appropriate percentage to reflect an average hourly rate for all hours worked including uncompensated overtime. In this way, the rates reflect the amount that would be paid for a standard 40-hour week without uncompensated overtime.^{4/}

Based on the foregoing, we find no merit to SRA's protest that RJO's proposal unacceptably deviated from the RFP's requirements, and deny the protest.

Ronald Beizer

for Harry R. Van Cleve
General Counsel

^{4/} Since payment under the contract will be made on the basis of hours ordered and worked, including hours exceeding a 40-hour week, such a reduction is necessary to reflect the actual hourly rate of compensation. For example, if an employee earning \$40 per hour normally would work 5 hours per week of uncompensated overtime, the employees average hourly rate of compensation actually would be \$35.56.