The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Science Applications International Corp.

File: B-232548, B-232548.2

Date: January 23, 1989

DIGEST

1. Protest that evaluation was improperly based on offerors providing operation and maintenance support for current configuration of training center control system, rather than upgraded system which will be in use for most of the contract, is denied where solicitation called for proposals to provide support for system in any state of upgrade over the course of the contract and solicitation included line items allowing upgrade of the system over the course of the contract. Protester's proposal was not rejected because the evaluation was based on current system, as opposed to upgraded system, as protester contends; but rather as a result of technical and management deficiencies in proposal.

2. Since protester was told to submit material on current system, which should have led protester to enhance its approach in that respect and, since protester does not argue that other deficiencies, which were a significant cause of protester's failure to receive award, were not discussed, General Accounting Office does not conclude that more detailed discussions concerning the focus of proposal on upgraded system would have been relevant to the evaluation.

3. Although protester's proposal was not given credit in cost evaluation for justified reductions in costs of materials below agency's cost estimates, protest is denied since, even when protester's proposal is given credit for reductions, its evaluated cost is still higher than that of the awardee and its technical and management proposal is not rated as high so protester is still not in line for award.

4. Although awardee's offer was mathematically unbalanced between various labor rates for time and materials work and also unbalanced between time and materials labor rates and labor rates for other separately priced work, offer can

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still be accepted by contracting agency since it is not materially unbalanced.

DECISION

Science Applications International Corp. (SAIC) protests the award of a contract to GE Government Services under request for proposals (RFP) No. DABT60-88-R-0042, issued by the Army for operation and maintenance of the National Training Center-Instrumentation System (NTC-IS). Generally, SAIC contends that the Army's evaluation did not conform to the evaluation scheme set out in the RFP. We deny the protest.

The National Training Center (NTC) is a training facility which provides a realistic environment in which heavy battalion task forces, their controlling headquarters and supporting units can undergo combined arms training using both force-on-force and live fire concepts. Force-on-force exercises are tactical operations against an opposing force composed of Army units which simulate Soviet organization and tactics. Vehicles, aircraft, soldiers, and weapons on both sides of an exercise are equipped with the multiple integrated laser engagement system (MILES) which permits weapons to be "fired" as they would with live ammunition, registering hits and near misses, forcing "killed" vehicles and soldiers out of action. MILES events, along with tactical and administrative communications are reported to the NTC control center along with information on the location of participating soldiers, vehicles, aircraft and weapons. Live fire exercises involve the use of an array of hundreds of computer-controlled targets which are raised and lowered in sequences which represent maneuvers of a typical Soviet motorized rifle regiment.

The NTC-IS is the computerized control system for the NTC and provides data on actual and simulated weapons systems and engagements and real-time assessment of simulated casualties and damage. The NTC-IS includes five subsystems:

-- The core instrumentation subsystem (CIS) which performs the real-time data processing necessary to maintain and control the NTC.

-- The range data measurement subsystem (RDMS) which provides position location and event registration data to the CIS.

-- The range monitoring and control subsystem (RMCS) which provides voice, video and digital data transmissions to and from remote equipment in the field and the operations center.

-- The live fire subsystem (LFS) which provides training units an opportunity to train using either actual ammunition or MILES equipment.

-- The spectrum management engineering and control subsystem (SMECS) which performs all off-line processing needed for spectrum management and provides real-time monitoring of a secure data link.

The NTC-IS contractor is to perform three different functions. Primarily, the contractor is to provide, on a cost reimbursement basis, in response to task orders, operation and maintenance (O&M) support of the NTC-IS. In accordance with the O&M statement of work and the performance requirements summary, under the basic and optional contract line items (CLINS) (allowing performance through 1992), the contractor is to furnish the necessary personnel to support the NTC-IS. Also, under separate basic and optional CLINS, the contractor will be reimbursed for materials, equipment and services procured or leased which are necessary for operation and maintenance of the NTC-IS. Second, under CLIN No. 0001, in accordance with a separate work statement, the contractor will perform transitional work, also on a cost reimbursement basis, not to exceed 30 days, leading to full performance of the O&M contract. Finally, the solicitation includes options and a third work statement for system integration services which the contractor is to perform on a time and materials (T&M) delivery order basis in accordance with fixed hourly labor rates included in the contract. Under the solicitation's system integration CLINS, each offeror was to propose rates for 39 listed labor categories. The solicitation allowed offerors to propose different rates for each of the three annual system integration options. According to the system integration work statement, the contractor will merge new systems and technologies into the NTC-IS including changes in weapons, observer/controller methodologies and requirements, organization, tactics or doctrines and innovations that affect the configuration, location or performance of the NTC-IS.

SAIC is the incumbent O&M support contractor for the NTC-IS. SAIC is also performing under a contract awarded on September 19, 1986, under which the firm is to upgrade the CIS. According to the work statement for that contract,

SAIC's CIS upgrade deals primarily with the CIS, but requires that the contractor understand fully the functions and interface requirements of the other four subsystems. Although the CIS upgrade contract as modified called for delivery of the CIS by December 31, 1988, we have been informed that delivery has not yet been accomplished.

Under the current solicitation, award was to be made to the offeror whose approach was most advantageous to the government under the listed evaluation and award factors, including an acceptable proposed cost. The evaluation was to include an assessment of each offerors' technical approach and management approach with technical of paramount importance. The technical evaluation was to consider seven major factors, each of which contained several subfactors. The major factors were: (a) technical approach, (b) maintenance plan, (c) understanding of NTC-IS, its mission and interrelationships between the subsystems and a feasible approach to perform the required tasks, (d) quality control, (e) logistic support, (f) transition and (g) software. The management approach evaluation was to consider staffing, whether the management plan reflects an understanding of the requirements, authority of the on-site manager, quality control, organization and corporate structure, recruiting and training, the configuration management plan, the safety program, plans to inventory, store and handle hazardous materials and waste, plan to accommodate "peaks and valleys" in level of support required, and capability to effectively perform liaison with various government agencies and subcontractors.

The cost evaluation, which was considered less important than technical and management considerations, was to include an assessment of whether an offeror's proposed costs were realistic and consistent with the work proposed and an assessment of an offeror's most probable cost, which is the government's estimate of the cost of completing the contract using the offeror's proposed technical and management approach.

The solicitation was issued on March 30, 1988, and a site visit was held on April 7. Eight initial proposals were submitted. Based on an initial technical evaluation, all offerors were considered to be in the competitive range. Oral and written discussions were conducted from July 11 through July 14 and best and final offers were submitted on or before July 29. A second round of discussions was held and second best and final offers were submitted by

August 16. The final evaluation was completed on August 25; the technical and management scores were as follows:

	Technical	Management	Total
GE	395.5	306	701.5
SAIC	299.5	168	467.5
-	287.5	180	477.5
-	310.5	216	526.5
-	429.5	298	727.5
-	256	174	430
-	282.5	222	504.5
-	232	147	379

Based on the technical and management evaluation and GE's total evaluated cost plus fee of $69,543,521 ($66,548,868 excluding the award fee) for the entire effort, including options, award was made to GE on September 2 at a basic cost plus award fee of $8,114,179.

SAIC filed two protests, one on September 8 and the other on October 7, challenging the Army's evaluation of technical and management proposals and its cost evaluation. We will first consider SAIC's protest of the technical and management evaluation and then we will separately consider issues raised relating to cost and price.

Technical and Management Evaluation

SAIC's principal contention is that the evaluation did not conform to the solicitation which, according to the protester, called for proposals based on the NTC-IS as modified by SAIC's CIS upgrade contract. According to the protester, since its proposal was focused on the upgraded NTC-IS, the agency's evaluation of its proposal in the context of the current NTC-IS lead the evaluators to improperly downgrade its approach. While, for the reasons set forth in detail below, we agree in part with the protester that there are references to the upgraded CIS in the RFP, we do not agree that it failed to receive the award because of the Army's evaluation of its proposal on the basis of the current configuration of the NTC-IS.

SAIC argues that the solicitation itself and other information provided by the agency in the answers to preproposal conference questions, at the site visit and in discussions, led SAIC and other offerors to base their proposals on the

upgraded NTC-IS rather than the current system.1/ Nonetheless, according to SAIC, in spite of the numerous upgrade references in the solicitation, the Army evaluated proposals only on the basis of the current NTC-IS.

SAIC argues that as a result of its current contract to upgrade the CIS, the entire NTC-IS has been or will be substantially altered; there will be significant changes in the equipment, hardware and software in four of the five NTC-IS subsystems. Moreover, SAIC argues that proposals based on the upgraded system were appropriate because, when it filed its protest in September, the CIS upgrade contract was to be completed in December 1988, and thus, at that time, at most, the new contractor was to provide O&M services on the current system for only 3 months and on the upgraded system for the remaining 55 months of the contract, if all the O&M options are exercised.

SAIC argues that, as a result of the evaluation based on the current system, SAIC and other offerors who proposed to the upgraded NTC-IS were unfairly penalized by the evaluation while other offerors, such as GE based their proposals on the current system, were evaluated on the basis of that system and, as a result, were rated too high. In this respect, SAIC argues that aspects of its proposal which the Army cited as weaknesses were only weaknesses in relation to the current system and actually would be strengths if viewed in light of the upgraded NTC-IS.

Further, in this connection, SAIC complains that the agency failed to inform it during discussions that the evaluation was to be based on the current rather than the upgraded NTC-IS in spite of the fact that it pointed out the same matter to at least one other offeror. Finally, SAIC argues that the Army, in apparent recognition of the flawed evaluation, modified GE's contract immediately after award to include O&M work on the upgraded system. According to SAIC, as a result of the contract modification, the work which GE will perform under the contract will not be the same as the work evaluated as the basis for award, in effect, giving GE a sole-source award on the O&M work for the upgraded NTC-IS.

1/ SAIC refers to the NTC-IS configuration that has been in place since 1982 as the "current system" and refers to the NTC-IS configuration which includes enhancements provided for in SAIC's CIS upgrade contract as the "upgraded system."

a) Solicitation Provisions

In support of its position that the RFP called for proposals based exclusively on an upgraded NTC-IS, SAIC has submitted a long and detailed explanation of certain provisions of the work statement and the performance requirements summary and Army responses to preproposal conference questions. SAIC argues that these provisions and the Army's responses refer to equipment, features and processes that are exclusive to the NTC-IS as enhanced by SAIC's CIS upgrade contract. Further, SAIC maintains that the work statement and the performance requirements summary, although similar to that used in its incumbent O&M contract, are missing a number of references to features of the current NTC-IS. SAIC also notes that the solicitation's evaluation and award provisions directed offerors to propose to the solicitation requirements set out in the O&M work statement and the performance requirements summary. For these reasons, SAIC argues that the solicitation called for proposals to be based exclusively on an upgraded NTC-IS.

In response, the Army maintains that there is no "upgraded" NTC-IS as SAIC describes it because SAIC's CIS upgrade contract does not upgrade the entire NTC-IS, only the CIS itself and the other subsystems to the extent necessary to interface with the CIS. The Army also denies that the solicitation included "numerous" references to an upgraded NTC-IS and argues that the solicitation should not have led offerors to propose exclusively to a system based on the CIS upgrade. In this respect, the Army argues that the NTC-IS is constantly being upgraded and that the task order format of the O&M contract will allow the awardee to provide O&M services when the NTC-IS or any of its subsystems is upgraded.

Moreover, the Army argues that SAIC should not have been misled since during discussions contracting officials told SAIC to explain its approach in the context of the NTC-IS as it currently existed and, in the final evaluation, SAIC was given full credit for that explanation. According to the agency, SAIC was not selected because of the numerous weaknesses in its proposal which resulted in the firm's relatively low technical and management score, not because the firm's proposal was evaluated based on the current system.

We agree with the protester that the solicitation did include references to equipment and features that will be part of the NTC-IS only after the CIS upgrade is complete. The Army concedes as much, arguing instead that those references should not have misled SAIC or any other offeror.

Nonetheless, although the solicitation included references to the upgraded NTC-IS, the protester concedes that the solicitation and the preproposal responses also included a number of references to equipment and systems which will no longer be used in the NTC-IS once the CIS upgrade is completed. SAIC also does not specifically dispute that the O&M work statement, the performance requirements summary and the agency's preproposal responses included numerous references which apply equally to the current system and the NTC-IS after the CIS upgrade is completed. Based on our review of the solicitation, we reject SAIC's assertion that the solicitation called for offerors to propose O&M exclusively for the NTC-IS as it will exist when the CIS upgrade is completed. Rather, it appears to us that the solicitation was designed to solicit proposals to provide O&M on the NTC-IS throughout the life of the contract, allowing for upgrades to the CIS and the other subsystems.

We believe that our conclusion in this regard is supported by the task order format of the O&M CLINS. Under the O&M CLINS of the contract, the Army will issue task orders to the O&M contractor which describe the work to be performed. The work statement and the performance requirements summary do not limit those task orders to O&M on the NTC-IS at any particular state of upgrade. Rather, the O&M services are to be provided over the life of the contract. Moreover, since the Army included in the solicitation a number of CLINS which were devoted exclusively to system integration or enhancements of the NTC-IS, it should have been apparent to all offerors that the NTC-IS was subject to change and that O&M services required under the contract will have to adapt to that change.

b) Evaluation

Concerning the actual evaluation of the technical and management proposals, the record shows that SAIC failed to receive the award as a result of the firm's low technical and management score relative to GE and a number of other offerors. It is the protester's position that its low scores were the result of its focus on the upgraded CIS. As set out above, SAIC's combined technical and management score was 467.5 2/, compared to GE's score of 701.5. That relatively low score was based on a number of weaknesses in the firm's technical and management approach. Those weaknesses, which were provided to SAIC during the protest,

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2/ The source selection authority in his selection memorandum raised SAIC's score to 517.5. SAIC's enhanced score placed them fourth out of the eight offerors.

included concerns with the firm's staffing, over-reliance on cross-utilization of employees, spare parts stockage and control, quality control, work control instructions, quality program records, maintenance and use of quality cost data, instrumentation and deinstrumentation, software documentation, corporate organization, training, safety management and planning for NTC-IS performance peaks.

SAIC does not challenge most of the proposal weaknesses which the Army described except to say generally that those weaknesses relate to the fact that its proposal was based on the upgraded NTC-IS. In response to the Army's assertion that SAIC's proposal included insufficient staffing, SAIC argues that under the NTC-IS as modified by the CIS upgrade contract, the O&M contractor will need a smaller staff to accomplish the same level of O&M support.

Specifically, SAIC says that the CIS upgrade contract involves replacement of about half of all NTC-IS hardware with newer equipment that is more reliable, of higher quality and is more easily maintained, which will result in increased reliability and fewer repairs. Further, according to SAIC, most of the new hardware has built-in diagnostics that facilitate tuning of equipment and identification of failed parts. SAIC also says that key upgrade equipment is digitally controlled, allows continuous monitoring of operational status and automated diagnosis of problems. The protester contends that these equipment changes allow centralization and automation of many O&M functions and states that it tailored its O&M approach to exploit these changes by reducing staffing and O&M costs while improving performance.

According to SAIC, the changes that it proposed, which involved restructuring the O&M workforce and a reduction in staffing, are dependent on the upgraded system and would make no sense in the context of the current system. Thus, according to SAIC, since its proposal was evaluated based only on the current system, rather than the upgraded NTC-IS, its proposal strengths appeared to be weaknesses.

In response, the Army argues that the CIS upgrade would not justify a staff reduction such as SAIC proposed. According to the Army, although in some subsystems there will be a reduction in staffing, because of added equipment, continuing requirements for preventive maintenance and the necessity of "debugging" new hardware and software, overall the CIS upgrade should result in no significant change in the required O&M staffing for the NTC-IS. The Army explains that SAIC has used 220 employees to provide NTC-IS O&M

support under its previous contract; yet, SAIC proposed only 148 employees for the follow-on contract.

In our view, the record does not support SAIC's position that such radical staff reductions would be justified based on the CIS upgrade. Although there may be reductions in staffing in some areas, those reductions will be offset by increased maintenance support for additional equipment such as file and data servers, additional workstations, after action review preparation stations, and associated power generator sets. Also, as the Army explains, new hardware and software will require additional personnel, at least initially. Further, other new equipment will still be subject to extremes of heat, shock and vibration, and, according to the Army, will still require a program of regular checks, adjustments and repairs.3/ Finally, the work statement for SAIC's CIS upgrade contract does not indicate that the purpose of that effort was to decrease O&M staffing for the NTC-IS. Rather, that work statement tends to support the view that the purpose of the CIS upgrade was to enhance the capabilities of the NTC-IS and it does not appear to us that decreased staffing was a goal.

Thus, even if we accept SAIC's view that its proposed staffing approach was the result of its focus on the upgraded CIS and even if it were evaluated as such, there is no support in the record for the protester's position that its plan to reduce the staff would have been viewed as a strength in its proposal. Moreover, staffing was only one of a number of technical and management deficiencies which the Army identified in SAIC's proposal. These deficiencies are in such critical areas as quality control, corporate organization, training and safety management. Other than to generally assert that those other weaknesses related to the fact that it proposed based on the upgraded NTC-IS, SAIC did not specifically challenge these numerous other proposal deficiencies. In view of the above and since the relationship of these deficiencies to SAIC's focus on the upgraded NTC-IS is not evident, it is our view that these other deficiencies would have prevented SAIC from receiving a technical score approaching that received by GE.

3/ Ford Aerospace, which participated in the protest as an interested party, apparently agrees that the CIS upgrade will not allow a reduction in staff or level of effort. According to Ford, it determined that the upgraded CIS will be more labor intensive and will require an increase in the number of programmers over the current CIS.

c) Negotiations

The protester argues that it should have been informed during negotiations that the agency intended to evaluate proposals only in the context of the current system so that it could have oriented its proposal to the agency's wishes. In this regard, SAIC states that several other offerors, who like it, based their proposals on the upgraded system were in fact specifically informed that proposals would only be evaluated based on the current system.

While the agency responds that it would have been better had it been more specific with SAIC during discussions, it states that it did inform SAIC that its proposal lacked material on the current system and advised it to include such material in its best and final offer. The agency explains that it did not inform the offeror to reorient its proposal because it viewed the material that pertained to the upgrade to be, at worst, harmless and it did not conclude that SAIC's entire approach was specifically related to the upgraded system.

SAIC was informed that material that discussed the current system was needed. We think that this mention of the need for the inclusion of material on the current system should have led the protester to enhance its proposal which it maintains was based on its belief that the agency was only interested in an approach based on the upgraded system. Dynalectron Corp.--PacOrd, Inc., B-217472, Mar. 18, 1985, 85-1 CPD ¶ 321. (In the conduct of discussions, agencies are not required to provide all-encompassing negotiations but generally must lead offerors into areas of their proposals needing amplification.) In any event, we have concluded that SAIC's approach would not have been considered a strength even if evaluated in the context of the upgrade.

Further, in this regard SAIC does not argue that the negotiations failed to address the other deficiencies identified in the firm's proposal. Since those other deficiencies were a significant cause of SAIC's relatively low score and the firm's failure to receive the award, we cannot conclude that more detailed discussions concerning the focus of the proposal would have been relevant to the evaluation.

Finally, contrary to the protester's allegation, it appears from our review of the record, that only one offeror was explicitly advised during negotiations to propose based on the current NTC-IS; that offeror was not GE.

d) Contract Modification

We also reject SAIC's contention that the Army improperly modified GE's contract immediately after award to permit GE to perform O&M on the upgraded NTC-IS. In this respect, SAIC argues that the work to be performed under the modified contract--O&M on the upgraded system--is different than the work on which the Army's evaluation was based--O&M on the current system.

The record indicates that the Army did not modify GE's contract; rather, the agency issued the first O&M task order under the contract. According to the agency, at the time the cited order was issued, the upgraded CIS had not been completed, tested or accepted by the agency. In any event, since under the RFP and the resultant contract, GE is to provide O&M for the NTC-IS in any state of upgrade, the task order was within the scope of the contract.

e) System Integration CLINS

SAIC also challenges the Army's evaluation of the system integration CLINS. In response to a preproposal question, in amendment No. 0002 contracting officials indicated that the evaluation of the technical and management aspects of the system integration CLINS was to be the same as for the O&M CLINS. That amendment, however, also stated that the system integration CLINS "will be evaluated on the basis of cost and whether the minimum standards for the labor categories have been met/not met." Pursuant to this provision, the Army explains that it evaluated the system integration CLINS on a cost comparison basis and assumed that an offeror with the technical competence to complete the O&M work could also perform the system integration tasks. The Army argues that the answer provided in response to the preproposal question was an obvious error and that the evaluation of the system integration CLINS only on the basis of a cost comparison had no effect on the evaluation and award.

SAIC argues that, as a result of the agency's response to the preproposal question, the Army was required to evaluate the system integration CLINS on the same basis as the O&M work, giving paramount consideration to the technical and management factors over cost.

We do not agree. We find that the agency's conclusion--that offerors who it decided, based on the evaluation of the O&M proposals, could perform the O&M CLINS could also do the system integration work--was reasonable. Although there are some slight differences in the labor categories for the two

types of work, they are, in fact, very similar. Further, despite GE's lower prices in this area there is nothing in the record which would lead us to the conclusion that evaluation of the system integration CLINS on the same basis as the O&M CLINS would have changed SAIC's technical and management score relative to GE.

Cost/Price Evaluation

SAIC also makes a number of arguments regarding the Army's evaluation of cost on the O&M CLINS and price on the system integration, T&M CLINS. Generally, the thrust of these arguments is that the Army evaluated SAIC's total cost/price too high and GE's total cost/price too low and that, if the evaluation is corrected, SAIC would be in line for award. Although we consider the merits of these contentions, it must be borne in mind that we have concluded that the protester has not shown that the low technical and management scores it received relative to the other offerors were the result of an improper evaluation or would have been significantly impacted even if the evaluation were focused on the upgraded NTC-IS. In this regard, the record clearly shows that SAIC was not selected because of those scores, not to any great extent based on the cost/price proposals of either the protester or the awardee. Thus, even if, as a result of adjustment in the cost/price evaluation, SAIC's evaluated cost were to be equal to or even lower than GE's, because of GE's significant technical and management advantage and the paramount importance of those considerations over cost, it is not likely that SAIC would be in line for award.

SAIC argues that the evaluation on the basis of the current system made it impossible to determine the most probable cost to the government. Most probable cost, one of the cost evaluation factors in the solicitation, was defined as the agency's estimate of the cost of completing the contract using the offeror's technical and management approach and any additional costs to the government. SAIC notes that the agency conceded that "the cost evaluation was based upon the known system, which is the current NTC-IS system." SAIC argues that the cost evaluation based on the current system had no bearing on the actual cost of completing the contract since, according to the protester, at least 95 percent of the contract will involve O&M on the upgraded NTC-IS.

In response, the Army argues that, since the staffing required under the new O&M contract will be substantially the same as under the previous contract, "most probable cost" is substantially the same after the CIS upgrade as

before the upgrade. We have no basis on which to question the Army's position in this respect since, as explained earlier, the record does not support SAIC's contention that radical staffing reductions are possible based on the CIS upgrade.

SAIC also argues that it was not given credit for substantial and justified reductions in proposed costs on O&M CLINS for materials, equipment and services below the Army's not-to-exceed figures on those CLINS. In this respect, each of the CLINS for reimbursement of the costs of materials, equipment, and services procured by the contractor included a not-to-exceed figure. SAIC says that, based on its understanding of and experience with the NTC-IS, it proposed and fully justified a figure for each of these CLINS substantially below the listed not-to-exceed figures. Also, SAIC indicates that, as required by the RFP, it submitted with its proposal two cost evaluation summaries, one of which included the Army's not-to-exceed costs and a second which included SAIC's reduced costs. Finally, SAIC argues that GE was given credit for unjustified reductions in the costs of materials, equipment and services below the Army's not-to-exceed figures.

In response to SAIC's allegation that it was not credited with these reductions, the Army says that the source selection official incorrectly used the SAIC cost evaluation summary which included the Army's not-to-exceed estimates. Nonetheless, the Army says that this error made no difference in the final selection since using SAIC's evaluation summary with the reductions in the evaluation would have reduced the firm's evaluated cost from approximately $76,330,000 to approximately $69,071,000, which was still above GE's evaluated cost of $66,548,868. Thus, according to the agency, the cost evaluation error made no difference in the final selection decision.

We agree. Based on our review of the record, we conclude that even if SAIC is given credit for the full $7 million difference between its proposed costs on the O&M materials CLINS and the Army's not-to-exceed costs, SAIC's evaluated cost is still $2.5 million greater than GE's. Further, contrary to the protester's contention, GE did not propose and was not given credit for costs on the materials CLINS below the Army's not-to-exceed figures. Even with the correction in SAIC's evaluated cost for the materials CLINS, SAIC was not the low cost offeror.

SAIC also contends that GE's offer should have been rejected because it was mathematically and materially unbalanced. In this respect, SAIC argues that GE's offer was unbalanced and

should have been rejected because the firm proposed unrealistically low rates for certain individual categories of labor on the system integration, T&M CLINS. SAIC maintains that this pricing tactic was improper because GE received the full advantage of its selective low rates over other offerors in the evaluation, but during performance GE will be able to avoid supplying these labor categories under the system integration task orders. SAIC maintains that, although the contract provides for negotiations as to cost under the individual task orders, GE has absolute discretion over the labor mix in the orders. For this reason, according to SAIC, GE will be able to skew the labor mix in the system integration task orders so as to maximize payments by minimizing the use of lower priced labor categories. SAIC argues that the agency did not consider and discount the potential cost and performance risks of award to GE based on its unbalanced offer on the system integration CLINS.

SAIC maintains that, even if the agency considered the cost and performance risks of GE's offer, the Army did not have the discretion to accept that offer since the imbalance between GE's system integration labor categories was so extreme and pervasive. SAIC argues that GE will not provide employees in many of the lower priced system integration labor categories. Thus, SAIC argues that GE's proposal, in effect, eliminated many critical labor categories which were requirements of the RFP.

SAIC also argues that GE's offer was unbalanced between the labor rates for the system integration CLINS and the labor rates proposed for the O&M cost reimbursement CLINS. SAIC says that GE's average labor rate for the system integration CLINS is approximately $9.60 per hour while GE's average labor rate for the cost-reimbursement, O&M CLINS is almost $14 per hour 4/, even though the majority of the labor categories are the same for the two types of work. According to SAIC, GE's offer was mathematically unbalanced in this regard since the system integration CLINS carried a disproportionately low share of the total contract cost while the proposed O&M labor CLINS carried a disproportionately high share of total contract costs. SAIC maintains that this situation results in an offer that is also materially unbalanced because the system integration

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4/ Contrary to its assertion here, in the context of another argument, SAIC says that GE's average labor rate for the O&M CLINS is only $12.96 per hour. Based on GE's contract, we calculate GE's average labor rate for the O&M CLINS as $12.96 per hour not $14 per hour. See Footnote 6.

CLINS are options which need not be exercised at all and, if exercised, the contract requires only a nominal 160 hours. SAIC argues that if the Army were to order only the minimum 160 hours, the agency would receive virtually no benefit from GE's artificially low system integration labor rates in spite of the fact that those rates gave GE an advantage over other offerors in the cost evaluation which was based on an estimate of approximately 1 million system integration hours.

In response, the Army argues that GE's pricing strategy on the system integration labor categories was not prohibited and that the labor rates submitted by GE will provide the agency with system integration services at a good price.5/ The Army also maintains that all offerors were aware that the system integration CLINS were options which may not be exercised but that, under the solicitation, the evaluation was to include consideration of the basic and the option CLINS. Thus, all offerors were free to propose based on the evaluation scheme.

Our review of alleged unbalanced pricing generally involves two aspects. The first is a mathematical evaluation of the offer to determine whether each item carries its share of the cost of the work plus overhead and profit. Special Waste, Inc., B-230103, June 2, 1988, 67 Comp. Gen. ___, 88-1 CPD ¶ 520. Here, based on our in camera review, we conclude that GE's hourly labor rates for some system integration labor categories do not carry their share of the actual cost of the employees in those categories. Thus, GE's offer was mathematically unbalanced with respect to the labor rates for the system integration CLINS. Also, as a result of the low labor rates for some system integration labor categories, we conclude that GE's offer was mathematically unbalanced between the system integration CLINS and the O&M CLINS.

A mathematically unbalanced bid or offer may be accepted, however, unless it is also materially unbalanced. When a contract is to be awarded based solely or primarily on low cost or price, material unbalancing exists when there is a reasonable doubt that acceptance of a low, mathematically unbalanced bid or offer ultimately will result in the lowest

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5/ GE's labor rates for the system integration CLINS are considered proprietary information by the firm so those rates were only released to outside counsel for SAIC under a protective arrangement between outside counsel for SAIC and GE.

cost to the government. General Instrument Corp., B-228053, Dec. 8, 1987, 87-2 CPD ¶ 564. Here, however, the RFP clearly subordinated price and cost considerations to the technical and management evaluation factors.

In any event, we do not believe that the protester has shown that award to GE based on its system integration labor rates will result in an actual overall cost to the government that is not reasonably related to the evaluated cost. In this respect, the labor rates in GE's contract are fixed; GE is required to provide employees in each category at the specified rates. Since, however, system integration task orders under the contract will not include labor hours, just a statement of work and a total price, we have some reservations about the Army's ability to assure that it will receive the full range of system integration labor categories under the contract. Nonetheless, contrary to the protester's contention, the Army's evaluation of GE's offer did consider GE's low proposed rates for certain labor categories. Also, the Army says that it will carefully monitor GE's performance of the system integration CLINS and will require the firm to provide employees in all labor categories.

SAIC notes in connection with its argument that there is unbalancing between the O&M and system integration CLINS that the system integration CLINS are only options which may not be exercised and the contract requires only a minimum of 160 hours under those CLINS. Nonetheless, there is no reason to believe that the system integration options will not be exercised. The record indicates that the NTC-IS has been modified a number of times in the past and that the agency intends to do so in the future and the protester does not challenge the agency's conclusion that other modifications or upgrades will occur over the course of the contract. Further, the solicitation included agency estimates for the system integration labor categories which totaled over 1 million labor hours. SAIC has not argued that the solicitation workload estimates for each labor category on which the evaluation was based were not reasonably accurate. See International Terminal Operating Co., Inc., B-229591 et al., Mar. 18, 1988, 88-1 CPD ¶ 287. The evaluation and award were required to be based on those estimates.

SAIC also argues that the Army did not properly evaluate the O&M, cost reimbursement CLINS for cost realism in accordance with the RFP evaluation scheme. SAIC's principal contention in this regard is that the average of GE's proposed labor rates for the O&M labor categories was only $12.96 per hour and that figure cannot be reconciled with the amounts

legally required to be paid to the employees in those categories by the applicable Department of Labor wage determination. In support of this contention, SAIC says that GE and the Army have indicated that GE plans to hire most of SAIC's employees working on the incumbent O&M contract. SAIC argues that the labor rates for 90 percent of the labor hours under the O&M CLINS are established by the wage determination and that under its incumbent O&M contract, SAIC already pays those employees the minimum wages and benefits allowed by the wage determination. SAIC says that the average of its own proposed labor rates for all the O&M CLINS is $14.92 per hour, the lowest amount possible consistent with the wage determination requirements for the vast majority of the O&M labor categories.

SAIC also argues that GE did not include in the calculation of its labor rates for the O&M CLINS amounts for workers' compensation insurance premiums, social security taxes, unemployment taxes and costs associated with vacations and holidays. According to the protester, GE considered such costs to be covered by the $0.59 per hour amount specified in the wage determination for health and welfare benefits. SAIC asserts that the $0.59 figure in the wage determination is not sufficient to cover, and was not intended to cover, the costs listed above.

Finally, SAIC argues that there was a defect in the Army's cost realism analysis of GE's proposal relating to the "transition" effort under CLIN 0001, which GE proposed to accomplish for "$0." SAIC maintains that since the transition effort was contracted for on a cost reimbursement basis, in the absence of some contract provision to the contrary, GE will have the legal right to invoice the Army for transition costs. SAIC argues that we should consider the Army's cost realism analysis flawed since the agency failed to add to GE's evaluated cost the estimated cost of transition.

When a cost-reimbursement contract is to be awarded, the offerors' estimated costs of contract performance and their proposed fees should not be considered as controlling since the estimates may not provide valid indications of final actual costs, which the government is required, within certain limits, to pay. See Federal Acquisition Regulation (FAR) § 15.605(d); Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677. The government's evaluation of estimated costs thus should be aimed at determining the extent to which the offeror's estimates represent what the contract should cost, assuming reasonable economy and efficiency. This determination in essence involves an informed judgment of what costs actually would be incurred

by acceptance of a particular proposal. Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 CPD ¶ 502. Because the contracting agency clearly is in the best position to make this cost realism determination, we will disturb its determination only where it is shown to be unreasonable. Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24.

Based on our review of the record, we conclude that there is no merit to SAIC's allegations relating to the realism of GE's proposal on the cost reimbursement CLINS. First, there is no support in the record for SAIC's assertion that its own average labor rate for all the O&M CLINS is significantly higher than that of GE. On the contrary, based on SAIC's best and final offer, we calculate SAIC's average labor rate for the cost reimbursement, O&M CLINS as only $12.12 per hour, less than the $12.96 per hour proposed by GE.6/ The record also shows that the agency did consider the labor rates in its cost analysis and determined that they were reasonable and realistic. Based on the above, we have no reason to interfere with that judgment.

There is also no merit to the protester's contention that GE did not include required costs in its calculation of its labor rates for the O&M CLINS. GE's best and final offer includes separate estimates beyond the $0.59 per hour required by the wage determination for the items listed by SAIC.

Finally, with respect to GE's inclusion of "$0" for transition costs, GE says that, by this entry, it offered to perform the transition effort at no cost to the Army and that, regardless of the costs it incurs, the Army will pay nothing for this effort. Further, it is clear from the record that the Army considered the "$0" offer in its cost evaluation and accepted that offer with the expectation that no costs would be invoiced by GE for transition. We are aware of nothing that prohibits GE from including a no cost estimate for transition in its offer or that prohibits the Army from accepting the risk of such an offer. In any event, based on the government's estimate of the cost of transition and the amounts included by the other offerors

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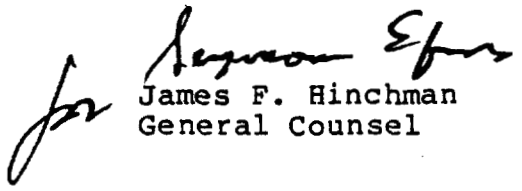
6/ The $12.12 per hour figure for SAIC is based on the same calculations which SAIC says that it used to arrive at the $12.96 per hour figure for GE, i.e., the sum of the estimated costs for the O&M CLINS in SAIC's best and final offer ($33,854,687) divided by the sum of the estimated hours for these CLINS in the best and final offer ($2,791,475).

for transition, GE's estimate for this item made no difference in the evaluation and selection decision.

The protest is denied.



James F. Hinchman
General Counsel