



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AmerInd, Inc.

File: B-248324

Date: August 6, 1992

Timothy Sullivan, Esq., Katherine S. Nucci, Esq., and Martin R. Fischer, Esq., Dykema Gossett, for the protester, Douglas F. Sommer for OC, Inc., an interested party, Douglas P. Larsen, Jr., Esq., and Kim Churchill, Esq., Department of the Navy, for the agency, Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's challenge to the evaluation of its cost proposal is denied where the agency reasonably upwardly adjusted the protester's proposed direct labor costs because the labor costs in the cost proposal bore no relationship to the cost of the personnel for whom the protester submitted resumes, despite the specific admonition in the request for proposals that the cost proposal should reflect the cost of personnel for whom resumes were submitted, and where the agency uniformly applied an escalation factor to the proposed labor costs for all offerors in the option years to account for possible cost increases over the life of the contract.

2. Contention that agency improperly rejected protester's best and final offer (BAFO) overhead rate and instead used the rate initially proposed is denied where the protester provided no explanation for the change in its rate, and where the agency reasonably concluded that acceptance of the lower rate in the protester's BAFO was too risky.

3. Agency reasonably evaluated protester's cost proposal using a more recent actual general and administrative expense rate, rather than the proposed rate based on prior experience, where the agency learned that the protester's current rates were substantially higher than the past rates mentioned in its proposal submissions.

DECISION

AmerInd, Inc. protests the award of a cost-plus-fixed-fee contract to OC, Inc. under request for proposals (RFP) No. N00406-90-R-1152, issued by the Department of the Navy, for training systems support services for the Naval Undersea Warfare Engineering Station in Hawaii. AmerInd argues that the Navy miscalculated AmerInd's cost proposal, and, as a result, improperly awarded the contract to OC as the offeror with the lowest evaluated cost, despite AmerInd's lower proposed cost. Specifically, AmerInd claims that the Navy made improper upward adjustments to AmerInd's proposed direct labor costs, overhead rate, and general and administrative (G&A) rate.

We deny the protest.

BACKGROUND

The RFP--issued on January 17, 1991, and set aside for exclusive small business participation--anticipated award of a cost-plus-fixed-fee contract for a base year period followed by 4 option years. The training support sought by the Navy included engineering and technical services relating to training analysis; training systems and devices; design development; training support facilities; and ordnance training support for active and reserve fleet components, joint service ordnance projects, and foreign military sales. The RFP estimated the level of effort (in hours) for each contract period as follows: base year, 56,000; first option year, 86,000; second option year, 116,000; third option year, 146,000; and, fourth option year, 176,000.

The RFP advised that award would be made to the offeror whose proposal was deemed most advantageous to the government, considering cost and other factors, and set forth five evaluation factors in descending order of importance: technical, cost, management, resources, and experience. The RFP further advised that if proposals were determined technically equivalent, award would be made "based on the primacy of cost."

Since the ability of offerors to perform the support services here is largely a function of the personnel proposed, the RFP included extensive instructions on identifying intended employees and calculating direct labor rates. Specifically, offerors were directed to provide detailed resumes for the management and technical personnel committed to work on the contract. RFP § L503.2.e.(2). In addition, offerors were required to use the same personnel identified in the technical proposal to calculate labor costs in the

cost proposal. Id. Similarly, the RFP clause entitled "Labor Rate Methodology" directed offerors to ensure that the proposed labor rates for each labor category were applicable to the specific personnel for whom the offeror submitted resumes in its technical proposal. RFP § L512.1. Finally, offerors were advised to provide explanations if proposed labor rates were higher or lower than the company average labor rates, or were higher or lower than the rates reflected on the resumes submitted with the technical proposal. RFP § L512.2.

By the March 5, 1991, closing date, five proposals were received in response to the RFP. After initial evaluation and an initial request for clarification, two of the offerors were excluded from the competitive range; the other three offerors--AmerInd, OC, and Company A--were included in the competitive range, and were found technically equivalent.

By letters dated December 23, the Navy advised the remaining three offerors that their proposals were considered technically equivalent, and again requested additional information and clarifications from each offeror. In addition, the Navy's letter to AmerInd requested "revised, mid-pointed labor rates for the entire [5] year effort and back-up documentation which indicates how you arrived at these rates." The letter also stated that the rate for G&A, and the rates for four labor categories--senior engineer, engineer, training systems specialist, and technical editor--appeared low. After receiving a response to this request, the Navy requested submission of best and final offers (BAFO) by letter dated February 12, 1992.

Upon receipt of BAFOs, the Navy evaluated and adjusted each offeror's cost proposal to reflect the agency's view of its most probable cost. Although AmerInd submitted the lowest proposed cost, it was considered the offeror with the highest evaluated cost; while OC submitted the highest proposed cost, it was viewed as the offeror with the lowest evaluated cost. The table below shows the proposed and evaluated BAFO costs:

<u>Offeror</u>	<u>Proposed Cost</u>	<u>Evaluated Cost</u>
AmerInd	\$ 15,011,994	\$ 20,929,027
Company A	15,671,376	17,181,594
OC	15,854,697	16,917,466

As explained above, since the proposals were considered technically equal, the Navy made award to OC as the offeror with the lowest evaluated cost. This protest followed.

DISCUSSION

AmerInd argues that four of the adjustments made to its cost proposal were unreasonable and improper, and that, as a result, OC was evaluated the low cost offeror, instead of AmerInd. Specifically, AmerInd claims that: (1) the Navy's upward adjustment of its direct labor costs ignored the average labor rates for the company, and instead utilized only the labor rates for the employees for whom resumes were submitted; (2) the Navy unreasonably rejected AmerInd's assumption that it would not be necessary to pay more for labor in the option years of the contract, and instead applied an escalation rate of 3 percent per year; (3) the Navy improperly ignored AmerInd's BAFO overhead rates, and instead used the overhead rates found in AmerInd's initial proposal; and (4) the Navy improperly ignored AmerInd's proposed G&A rate and instead used a recent actual G&A rate.

Where an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 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, assuming reasonable economy and efficiency. CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Mgmt. Sys., Inc.; Dept. of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

As explained in detail below, our review of each of AmerInd's contentions, and the Navy's detailed response to those contentions, leads us to conclude that the Navy's adjustments to AmerInd's proposal were reasonably calculated to reflect the most likely cost to the government of AmerInd's cost proposal.

Direct Labor Costs

AmerInd argues that the Navy's upward adjustment of AmerInd's proposed direct labor costs ignored the average labor rates for the company, and instead utilized only the labor rates for the employees for whom resumes were submitted. According to AmerInd, this adjustment was improper because it was based on an overly narrow reading of

the RFP, and because it failed to consider that: (1) much of the work will be performed in Hawaii, where labor costs are generally lower than in the Washington, D.C., area (where many of the employees identified in the technical proposal are employed); (2) the influx of former Department of Defense (DOD) and DOD-contractor employees entering the labor market as a result of decreasing DOD budgets might enable AmerInd to hire employees at lower salaries than in recent years; and (3) the large increase in hours over the life of the contract--from 56,000 hours in the base year to 176,000 hours in year five--will require a significant number of new hires, to whom AmerInd could pay less than it pays its current employees.

The Navy made precisely the upward adjustment about which AmerInd complains--and made a similar upward adjustment to the direct labor costs of the other two offerors in the competitive range. In support of its action, the Navy explains that the RFP explicitly advised offerors to propose costs consistent with the resumes and skill levels of the employees named in the technical proposal. In addition, the Navy claims that AmerInd failed to provide any evidence to justify a conclusion that its labor rates might be lower than the rates paid to the employees for whom AmerInd submitted resumes.

With respect to AmerInd's challenge to the Navy's interpretation of the RFP instructions, AmerInd claims that there is a conflict between the RFP's requirement that offerors provide their most likely actual costs in their cost proposal, and at the same time propose labor costs that are directly related to the costs of the specific personnel identified in the technical proposal. In AmerInd's view, the Navy erred in insisting on a correlation between the individuals named in the technical proposal and the proposed labor costs, at the expense of ignoring that actual costs might be lower.

As explained above, the RFP here provided specific instructions to potential offerors on the subject of preparing proposals. Not only did the RFP require offerors to provide detailed resumes for their proposed personnel, but the solicitation also required that the personnel offered in the technical proposal be the same personnel identified in the cost proposal. RFP § L503.2.e.(2). In addition, the RFP stated that the direct labor rates proposed in the cost proposal should be those applicable to the personnel in the technical proposal as reflected in the submitted resumes. RFP § L512.1. Finally, the RFP clearly warned that offerors who proposed labor rates different from those reflected by the specific resumes should identify and explain the reason for the difference. RFP § L512.2.b.

To the extent that AmerInd is arguing that the solicitation was defective, its complaint is untimely. Solicitation improprieties apparent on the face of an RFP must be raised prior to the time for receipt of proposals, 4 C.F.R. § 21.2(a)(1) (1992). In any event, we do not see these provisions as conflicting. The clauses discussed above reveal an attempt to firmly anchor offerors to the personnel identified in their technical proposals--both in terms of qualifications (see RFP § L503.2.e, requiring that the personnel qualifications identified in the resumes submitted with the technical proposals become the minimum standards for all subsequently-hired personnel), and in terms of an offeror's most likely cost (see RFP § L512.1, requiring that the cost proposal reflect the actual cost of individuals named in the technical proposal). These provisions operate together to block offerors from unfairly identifying highly qualified (and highly paid) individuals in the technical proposal, thus earning a high technical score, while using less qualified (and lower paid) individuals to calculate the cost proposal.

In its evaluation of AmerInd's BAFO, the Navy found no correlation between the labor rates in AmerInd's cost proposal and the rates paid to the personnel for whom AmerInd submitted resumes, despite the instructions in the RFP. Rather, AmerInd calculated its direct labor costs using composites of the averages of both its Washington, D.C., and field office salary ranges (field office salaries were lower than those in Washington, D.C.). Generally, this composite rate was significantly lower than the actual rates paid to the individuals for whom resumes were submitted with the technical proposal. In its cost realism adjustment, the Navy rejected AmerInd's composite rates and instead used mid-pointed current, actual rates for the individuals for whom resumes were submitted, thus substantially increasing AmerInd's direct labor costs.

AmerInd has not shown why the Navy should have abandoned the evaluation scheme set forth in the RFP and instead permitted AmerInd to propose costs different from the resumes included in the technical proposal. First, despite AmerInd's complaints, one of the most basic functions of a cost realism analysis is to ascertain the most probable cost associated with an offeror's proposed technical approach. See All Bann Enters., Inc., 70 Comp. Gen. 541 (1991), 91-1 CPD ¶ 521; Dynalelectron Corp.; Lockheed Elecs. Co., Inc., 54 Comp. Gen. 562 (1975), 75-1 CPD ¶ 17, aff'd, 54 Comp. Gen. 1009 (1975), 75-1 CPD ¶ 341. As a result, the RFP's approach of comparing proposed labor costs with the costs of specific employees identified in the technical proposal is consistent with the agency's need to ascertain offerors' most probable costs.

Second, since the solicitation here advised that an explanation was required if the proposed labor costs varied from the cost of the specific employees identified in the technical proposal, AmerInd should have explained in its proposals any reasons for the difference between the cost of the personnel identified in the technical proposal and the costs claimed in the cost proposal. Despite AmerInd's detailed arguments on this subject in its protest filings, none of these reasons were set forth in its cost proposal as an explanation for the discrepancy.¹

With respect to AmerInd's specific claims about why its costs might be lower than the cost of the individuals proposed, we see no reason why the Navy should have attempted to extrapolate some lower labor rate for AmerInd based on the location of portions of the work, the nature of the economy, or the likelihood of an influx of new hires paid less than current AmerInd employees. Since AmerInd did not offer those reasons as explanation for its lower labor rates--as requested by the RFP--we cannot fault the Navy for having failed to come up with them on its own. In addition, in each of these areas, AmerInd is asking the Navy to ignore the cost of the personnel named in the technical proposal and accept instead AmerInd's speculation about the cost of unnamed, unidentified individuals who might become available for significantly less than AmerInd's existing workforce. In short, we find that the Navy's adjustment to AmerInd's direct labor costs to ensure that those costs match the resumes identified in the technical proposal was reasonable and consistent with the evaluation criteria set forth in the RFP. See PRC/VSE Assocs. Joint Venture, B-240160 et al., Oct. 30, 1990, 90-2 CPD ¶ 348.

Escalation of Labor Costs in Option Years

AmerInd also argues that the Navy improperly adjusted its proposed labor costs when it rejected AmerInd's BAFO assumption that it would not be necessary to escalate labor rates during the option years of the contract, and instead applied an escalation rate of 3 percent per year.

¹The closest AmerInd comes to providing any of these reasons in its cost proposal is found in an explanation of its compensation plan. Specifically, AmerInd's initial cost proposal at pages 3 through 4 explains that the company's policy is to hire entry level employees at the low end of the pay scale. This statement, found within the compensation plan appended to the cost proposal, does not purport to be an explanation of why AmerInd's labor rates differ from the rates paid to its proposed personnel, but instead is merely a statement about the firm's salary procedures.

In its initial cost proposal, both AmerInd and its major subcontractor proposed escalation of more than 3 percent per year in direct labor costs. In the BAFO submission--after having been told that award would be made to the offeror with the low evaluated cost--both companies deleted their respective escalation factors. As in the previous section, AmerInd argues that this decision was reasonable given projected unemployment of DOD and DOD-contractor employees and the possibility of new hires. In its evaluation of proposed costs, the Navy decided to apply a 3 percent escalation factor to the proposed direct labor costs of all three offerors in the competitive range.

Although AmerInd could well be correct in its prediction about future cost escalation, it is the Navy, not AmerInd, that must bear the risk if actual rates increase during performance. See Bendix Field Eng'g Corp., B-246236, Feb. 25, 1992, 92-1 CPD ¶ 227. With this concern in mind, we find reasonable the Navy's decision to apply a uniform escalation factor to offerors's proposed labor costs in option years given the following factors considered by the agency. First, the Defense Contract Audit Agency (DCAA) recommended against abandoning the use of an escalation factor to evaluate these costs. Second, the Navy's experience has been that companies doing business with the government have routinely experienced escalating labor rates over extended performance periods. Finally, the Navy noted that its experience with AmerInd, in particular, has been that the company has historically experienced an escalation rate even higher than the 3 percent factor applied here. Accordingly, we take no issue with the Navy's decision to apply a uniform escalation factor to the labor rates proposed by the offerors. Id.

Overhead Rates

AmerInd next contends that the Navy improperly used the overhead rate found in its initial proposal and unreasonably ignored the lower rates in AmerInd's BAFO. In this regard, AmerInd's initial proposal offered a single composite overhead rate to be applied to all direct costs.² As initially proposed, the composite rate dropped slightly between the base year and the first option year, and did not change throughout the remaining option periods.

In evaluating AmerInd's initial proposal, DCAA advised the Navy that the overhead rate appeared acceptable, but cautioned that since the rate was new--and lower than the

²This composite rate was computed using field and on-site rates based on the allocation between field and on-site effort specified in the RFP.

agency's previous experience with AmerInd--the Navy might want to consider negotiating a cap on the rate. The Navy chose not to negotiate a rate cap with any of the offerors, however, based on its concern that such a cap might result in less efficient contract performance. Since the Navy decided that it would accept AmerInd's proposed indirect rate, it made no mention of the rate during discussions.

Upon receipt of AmerInd's BAFO, the Navy noticed that AmerInd had reduced its proposed composite overhead rate by more than 7 percentage points in the base year, and by an additional 1 percentage point for each of the option years. AmerInd's BAFO gave no explanation of the reason why the company apparently believed its overhead rate should be lower than the rate it initially proposed. DCAA advised the Navy that it had not reviewed AmerInd's BAFO overhead rate and did not recommend that the rate be accepted. Instead, DCAA recommended that the Navy evaluate AmerInd's proposal using the overhead rates in its initial proposal. The Navy did so.

According to AmerInd, it was unreasonable for the Navy to reject its BAFO overhead rate simply because DCAA had not yet reviewed the rate. AmerInd argues that DCAA was well aware that the rate was specifically developed for this contract and was based on a blend of field and on-site rates, which were authorized for provisional use.

We find the Navy's use of AmerInd's initial overhead rate to be reasonable under the circumstances here. First, AmerInd--not the Navy, not DCAA--bears responsibility for providing explanations for changes made between the time of initial proposal and BAFO submissions. Earle Palmer Brown Cos., Inc., 70 Comp. Gen. 667 (1991), 91-2 CPD ¶ 134; Aircraft Porous Media, Inc., B-241665.2; B-241665.3, Apr. 8, 1991, 91-1 CPD ¶ 356, aff'd, B-241665.4, June 28, 1991, 91-1 CPD ¶ 613. AmerInd's BAFO offers no explanation for the change, or any reason why the Navy should accept the change. Second, the Navy was already concerned that even AmerInd's initial overhead rate was too low. As stated above, DCAA had recommended that since the initially proposed rate was new, and lower than the agency's past experience with this company, the Navy should consider negotiating a rate cap. The Navy inferred from DCAA's comments about the rate, and from the recommendation to negotiate a capped rate, that DCAA lacked confidence in AmerInd's ability to perform at even its initial--and higher--overhead rate. Therefore, when faced with an overhead rate even lower than the rate initially proposed, and given no explanation by the contractor about why the rate should be considered realistic, the Navy reasonably decided to stick with the initial rate, which had been accepted--albeit not enthusiastically--by

DCAA. In our view, the Navy's precautions here were reasonable.

G&A Rate

AmerInd's final contention is that the Navy unreasonably rejected its proposed G&A rate and instead substituted a recent year-to-date actual rate--a rate AmerInd considers an anomaly.

In its initial proposal, submitted March 5, 1991, AmerInd offered a G&A rate approximately equal to those it experienced in fiscal years 1989 and 1990--the two most recent year-end rates available at that time.¹ DCAA reviewed the rate initially proposed and recommended that it be accepted. DCAA also recommended that the Navy negotiate a cap on AmerInd's G&A, however, because AmerInd was experiencing rates significantly higher than it had in the 2 previous fiscal years. As with DCAA's recommended cap on overhead, the Navy decided not to negotiate a G&A cap.

In its BAFO, AmerInd raised its rate approximately 1 percentage point above the rate in its initial proposal. In addition, AmerInd stated that there was no anticipated change in business volume that would materially affect the proposed G&A rate. As before, DCAA continued to recommend acceptance of the initial rate, along with a negotiated rate cap. However, the DCAA auditor also advised the Navy that AmerInd's September 1991 year-to-date G&A rate was almost twice as high as the rates experienced in 1989 and 1990. Using this information, the Navy evaluated the cost proposal using AmerInd's higher year-to-date G&A rate provided by DCAA.

In its complaint that using the September 1991 interim G&A rate was inappropriate, AmerInd points out that by the end of its fiscal year, its G&A rate was more than 2 percentage points lower than the rate provided to the Navy by DCAA. Next, AmerInd argues that even its final 1991 G&A rate should not be used in the cost realism analysis because the 1991 rate is not representative of its normal experience.

AmerInd's complaint here ignores the Navy's responsibility in awarding cost reimbursable contracts to assure that it considers an offeror's most probable cost. Our review shows that while nothing in AmerInd's BAFO suggested that the agency need look beyond the fiscal year 1989 or 1990 G&A rates, AmerInd was, in fact, experiencing a G&A rate almost twice that of the previous 2 years. When the Navy, through

¹AmerInd's fiscal years mirror those used by the federal government. They run from October 1 to September 30.

its own diligence, found out about AmerInd's most recent cost experience, the agency reasonably put that information to use.

The Navy's use of an actual rate instead of the lower rate claimed in AmerInd's BAFO is the result of AmerInd's failure to provide sufficient information in its BAFO. AmerInd's BAFO failed to alert the Navy to the fact that the company was currently experiencing much higher G&A rates, and failed to explain why those higher current rates might be considered anomalous.⁴ As a result, the Navy was forced to attempt to discern AmerInd's most likely cost without the benefit of any explanation from AmerInd about its most recent G&A experience.

With respect to the claim that the Navy's use of the September 1991 interim rate was unreasonable, we find unconvincing AmerInd's contentions that the Navy should have used some other rate--such as AmerInd's fiscal 1992 budgeted rate or its February 1992 interim rate. While either of these rates would have been more favorable to AmerInd, there is nothing in the record to show that the Navy was aware of either one. Since AmerInd provided no information whatsoever to the Navy on this point, we will not fault the Navy based on what--in essence--is a complaint that the Navy chose an unfavorable snapshot from which to predict AmerInd's costs.

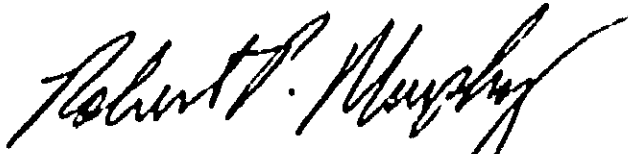
Likewise, with respect to the suggestion that using the fiscal year 1991 rate would be improper because it does not represent AmerInd's average rate, the problem again is one that is ultimately traceable to AmerInd's BAFO. Since AmerInd did not avail itself of the opportunity to make a more informative presentation about its G&A rate, we will not fault the Navy for looking to AmerInd's most recent actual G&A experience for guidance about the most likely future cost. In our view, the Navy's decision to use recent actual figures, in the face of a lack of other helpful information, was reasonable.

⁴In an affidavit appended to the protester's comments, a representative of AmerInd explains that the fiscal year 1991 G&A rate was unusually high because of a loss of funding on one contract, and delays in awarding others. AmerInd's representative explains that these funding delays resulted in a reduction in the number of direct labor dollars against which G&A could be applied. The representative explains that the costs have since been reduced and funding and award issues have been resolved, thus causing the G&A rate to be lower.

CONCLUSION

For the reasons above, we find the Navy conducted a proper evaluation of cost proposals, and that its upward adjustments to AmerInd's proposed labor costs, overhead and G&A were reasonable. As a result, the selection of OC for award was proper.

The protest is denied.


for James F. Hinchman
General Counsel