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Mr. Weiskopf

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Protest of Evaluation Method in Air Force RFP]*

FILE:

B-200121

DATE: May 20, 1981

MATTER OF:

Beta Industries, Inc.

**DIGEST:**

Evaluation scheme for award of time and materials contract which does not take into account reimbursable material handling costs when not included in basic labor rates violates fundamental principle that all competitors must be evaluated on comparable basis since offerors who do include these costs in hourly labor rates will be evaluated on basis of total cost to Government while others will not. Scheme is further defective because it may not indicate which offer does represent lowest overall cost to Government.

Beta Industries, Inc. protests the evaluation method of Air Force solicitation No. F33601-80-RX194 which requests proposals for a time and materials type contract to provide quick response engineering and related technical services to support the scientific and engineering staff of the Wright Aeronautical Laboratories, Flight Dynamics Laboratory, Wright-Patterson Air Force Base.

Essentially, Beta contends that under the terms of the RFP it will be evaluated for award on the basis of its offered hourly labor rates which include certain material handling costs, whereas a competitor could be evaluated on the basis of hourly labor rates which do not include material handling costs despite the fact that the competitor will be reimbursed for those indirect costs by the Air Force if awarded the contract.

We sustain the protest.

Defense Acquisition Regulation (DAR) § 3-406.1(a) (1976 ed.) explains the time and materials type of contract as follows:

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"The time and materials type of contract provides for the procurement of supplies or services on the basis of (i) direct labor hours at specified fixed hourly rates (which rates shall include wages, overhead, general and administrative expense, and profit) and (ii) material at cost, and, in addition, where appropriate, material handling costs as a part of material cost. Material handling costs may include all indirect costs, including general and administrative expense, allocated to direct materials in accordance with the contractor's usual accounting practices consistent with Section XV [Contract Cost Principles and Procedures]. Such material handling cost should include only costs clearly excluded from the labor hour rate.  
\* \* \*"

The RFP contained the following "Notice to Offerors" regarding material handling costs:

"Reference DAR § 7-901.6 entitled 'Payments'. Material Handling Costs will be reimbursed separately under the resulting contract, only to the extent that they are excluded from the hourly rate. Material handling costs will be audited upon completion of the contract \* \* \*. Final payment will be withheld pending completion of the audit."

DAR § 7-901.6 defines material handling costs in substantially the same way as does DAR § 3-406.1.

The RFP provided that the "lowest total price will be the controlling factor for an award to [an] offeror whose proposal has been evaluated as technically acceptable," and that the lowest total price would be determined by multiplying the offered labor rates by the estimated required manhours listed in the schedule of supplies/services and then totaling the products. In addition, the schedule listed an estimated amount of \$320,000 for materials, subcontracting and travel.

Beta suggests that an evaluation procedure which does not consider all offerors' material handling costs improperly might prejudice Beta in the competition. Beta points out that where a reasonable estimate of the material handling costs

for a time and materials contract is, for example, \$200,000, the offer by a firm such as Beta which distributes that amount over labor costs of \$800,000 will be evaluated as \$1,000,000. However, an offer from a firm which intends to bill material handling costs separately and whose labor costs also are \$800,000 will be evaluated as only \$800,000. Thus, assuming both offers were technically acceptable, the one excluding material handling costs from its labor rate would be selected for award, notwithstanding that both offers represent the same \$1,000,000 overall cost to the Government.

The Air Force argues that the solicitation treats offerors equally because each offeror has the option of including material handling costs in its hourly labor rates or billing for these costs outside the hourly rate after receiving the contract, and presumably offerors would structure their proposals to their advantage -- by not including handling costs in labor rates -- pursuant to the RFP evaluation scheme.

We find the Air Force position to be without merit for two reasons. First, offerors do not necessarily have the option of structuring their proposals as the Air Force suggests. DAR § 3-406.1 permits the billing of material handling costs outside of the hourly labor rate only "in accordance with the contractor's usual accounting practices consistent with Section XV." Thus, a contractor which usually distributes its indirect material handling costs over direct labor hours for billing purposes may not change its accounting approach for bidding on a particular Government contract. Second, even if offerors have such an option, there is no guarantee, given the audit requirement, that all offerors would choose to bill separately for the material handling costs. Consequently, under the Air Force evaluation scheme, it is conceivable that an offeror who does so will be evaluated as low even though its offer in fact would not represent the lowest overall cost to the Government because another offeror does not do so.

To insure that offerors compete on an equal basis so that the evaluation will reflect the actual low offer on the basis of all contract costs, we believe the Air Force should require offerors to state in their offers whether they included material handling costs in their hourly labor rates, and to the extent that they intend to seek reimbursement of such costs separately pursuant to the RFP's "Notice to Offerors," to state the estimated amount of material handling costs. In

evaluating offers, the Air Force should analyze offerors' estimated material handling costs to determine their reasonableness and consider them in determining which offer would be most advantageous to the Government. In this respect, the Air Force, for example, may rely on prior procurement data, see DAR § 3-807.2(a)(2), or even a limited preaward field audit to determine such costs' reasonableness. See DAR § 3-801.5(b)(2). This is so regardless of whether the Air Force decides, as it did here, that adequate price competition exists, exempting offerors from submitting cost and pricing data. See DAR § 3-807.7(a).

Apparently, in a previous procurement the Air Force had required the submission of cost data for evaluation, including projected material handling costs as a fixed percentage of the Government's estimate of required materials, but canceled the solicitation principally for two reasons: DAR § 7-901.6, which authorizes the payment of material handling costs as an element of material cost, does not mention the use of material handling costs in the evaluation process; and the Air Force believed that the solicitation's requirement that material handling costs be estimated as a fixed percentage of material cost would violate the statutory prohibition against the cost-plus-a-percentage-of-cost system of contracting at 10 U.S.C. § 2306(a) (1976).

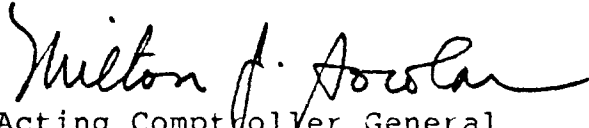
We think DAR § 7-901.6 and 10 U.S.C. § 2306(a) are inapposite. Simply put, neither of these provisions concerns the manner in which an agency evaluates costs; they address the allowability of certain costs. The fact that DAR § 7-901.6 authorizes the payment of material handling costs as material costs does not preclude an agency from evaluating the impact of a particular offeror's estimated costs in determining the offer which is most advantageous to the Government. Similarly, the statutory ban on the cost-plus-a-percentage-of-cost system of contracting does not prohibit the evaluation of provisional percentage overhead rates subject to adjustment to reflect actual costs to determine the actual amount of payment. See 35 Comp. Gen. 434, 436 (1956).

In its report on the protest, the Air Force introduced another objection to evaluating material handling costs: the Air Force itself allegedly cannot provide a reasonable estimate as to the amount of the material or material handling costs which will be incurred.

We do not understand the Air Force's objection. First, this would not preclude an offeror from furnishing an estimate of material handling costs. Second, to the extent that the Air Force is concerned that it will have difficulty in evaluating the reasonableness of an offeror's estimate, as already noted a limited preaward field audit could be helpful in that regard. Moreover, as illustrated above, the evaluation of proposals under the solicitation as presently constructed essentially frustrates the requirement for equal competition. The Air Force in fact was able to compute and include in the solicitation an estimate of materials, subcontracting and travel costs (\$320,000) and estimates of man-hours for each of the numerous labor categories. We assume that those are based on procurement history, and we do not see why an estimate of materials and material handling costs could not also similarly be computed which would at least equalize the competition to an acceptable degree. In this respect, an estimate need only be based on the best information available to be deemed reasonable and thus properly form a basis for evaluation. See JETS Services, Inc., B-190855, March 31, 1978, 78-1 CPD 259. While there is no guarantee of total accuracy in any estimate used for evaluating costs, that does not alleviate the necessity for an agency to analyze all nonspeculative cost risks. Cf. Dynatrend, Inc., B-192038, January 3, 1979, 79-1 CPD 4 (where we sanctioned the Government's use of cost estimates to evaluate costs while cautioning against undue reliance upon them given the uncertainties associated with cost reimbursement contracting).

In view of the foregoing, we recommend that the Air Force take appropriate steps, including amending the RFP, to provide for an evaluation of the material handling costs as a separate item for those offerors who do not include those costs in their basic labor rates. We are bringing this matter to the attention of the Secretary of the Air Force by separate letter.

The protest is sustained.

  
Acting Comptroller General  
of the United States