

DECISION



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

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FILE: B-205114

DATE: August 18, 1982

MATTER OF: Analytics Incorporated

DIGEST:

1. Offerors are not evaluated on equal basis where RFP requested cost proposals to provide fixed level-of-effort based on direct professional productive hours but awardee is permitted to count nonproductive professional time and thus submits a cost proposal based on a lesser amount of work than others were required to price.
2. Where awardee's best and final offer reduced number of hours of direct professional productive time required in solicitation and on which its cost proposal was initially based, agency should have either rejected best and final offer or reopened negotiations under an amended solicitation so that all offerors could compete on an equal basis. Awardee's best and final cost proposal affects entire proposal including the acceptability of its technical and management proposals.

Analytics Incorporated protests award to Calculon Corporation of a 48-month fixed level-of-effort cost-plus-fixed-fee contract under Department of the Army Request for Proposals (RFP) DAAK80-81-Q-0063. The contractor will provide systems engineering support services in connection with the development of specifications for the tactical C³ (Army Command, Control and Communication) systems. The contract was awarded on September 30, 1981.

The protester presents three principal issues: (1) did Calculon base its proposal on providing the level of work required in the RFP; (2) were proposals evaluated in accord with the evaluation criteria stated in the RFP, and (3) did the Army perform a meaningful evaluation of the cost realism of Calculon's proposal. We believe each of the protester's bases of protest has merit, and we sustain the protest.

Analytics does not believe Calculon can perform at the price stated in the contract because that price would be exceeded were Calculon to provide the anticipated level-of-effort at prevailing professional wage rates. In fact, Analytics contends, the contract as originally awarded to Calculon did not call for 83,200 direct professional productive labor hours, which Analytics states the RFP established as the basis for evaluation. Moreover, Analytics alleges, Calculon's proposed overhead rates are unreasonably low and it failed to properly account for travel costs. Analytics maintains that its technical and management proposals were superior to Calculon's but that the Army, disregarding the RFP evaluation criteria which gave technical and management factors greatest weight, improperly accepted Calculon's apparently low cost proposal without adequate evaluation.

In response, the Army admits that the Calculon contract as awarded provided for an estimated 73,280 hours of direct professional productive effort, not 83,200 hours. However, the Army says, this was merely a clerical mistake which has been corrected. According to the Army, Calculon did propose to furnish enough hours, but because a portion of the work was to be subcontracted and the subcontractor's hours were not carried forward when the contract was assembled, the total number of hours specified in the contract was erroneous.

Further, the Army says, RFP evaluation criteria were not disregarded. The Army states that the technical evaluation was performed by the Army's Center for System Engineering and Integration, which was not furnished any cost data, and that cost proposals were audited by the Defense Contract Audit Agency (DCAA), which prepared a cost analysis and which determined that the overhead rates proposed by Calculon were those being experienced by the concerned Calculon profit center and were acceptable.

Our review of the record shows that Calculon's best and final cost proposal was not based on the level-of-effort stated in the RFP.

Paragraph L.60.b of the RFP directs offerors to base their proposals on an approximate level-of-effort of 83,200 direct professional productive labor hours of various professional technical disciplines, labor categories and skill levels, supplemented by necessary support personnel. In subparagraph 1.a, paragraph L.60.b goes on to state that:

"productive labor hours means on-the-job time spent working actively on objectives or tasks under any resulting contract. * * *"

Subparagraph L.60.b.1.b states that any required support personnel effort should not exceed one hour for each four hours of professional personnel effort and includes the time of all non-professional, non-technical personnel "such as administrators, technical writers, illustrators, secretaries, typists, etc."

At 40 hours per week (2080 hours per year), 83,200 hours is exactly 40 manyears (10 manyears per year for the four years). Calculon's initial proposal stated that for purposes of computing level-of-effort:

"A productive manyear is equivalent to 1875 man-hours and is exclusive of fringe hours (sick/personal leave time, vacation and holiday time)."

It initially proposed 83,200 hours of professional time based on an 1875 hour manyear. "Fringe hours" were listed as an additional cost category.

Calculon's best and final cost proposal states that it is offering 10 manyears per year of professional time. However, Calculon did not base its final cost proposal (DD Form 633) or the final DD Form 633 submitted for its subcontractor on 10 years at 1875 manhours per year.

Rather, Calculon's cost data was based on approximately nine annual direct productive professional manyears. It attributed 9,728 nonproductive professional hours to the contract. Of these hours, 7936 appear on Calculon's DD Form 633 as a portion of "fringe hours" which Calculon priced as a percentage of productive labor cost. The remaining 1792 hours are carried forward from Calculon's subcontractor's DD Form 633 where they were claimed as "overhead," which, as explained in a footnote on the DD Form 633, again "includes paid leave (vacation, sick holiday) from fringe pool." Thus, almost 10,000 professional hours "dropped out" of Calculon's proposal in its best and final offer.

The consequence of these entries is that in actuality Calculon based its cost proposal on a total of 73,472 direct professional productive hours consisting of 58,624 hours of Calculon and 14,848 hours of subcontractor direct

professional productive time. Calculon's proposal meets the 83,200 hours only by adding nonproductive professional time (73,472 plus 9,728 hours equals 83,200 hours).

Calculon made other changes, in addition to its elimination of direct professional productive hours. Calculon changed its proposed organization of the work to be done eliminating some administrative personnel by relocating personnel and changing proposed profit centers. Travel costs were also significantly reduced. The effect on cost of all the changes made was to lower Calculon's proposed cost by approximately 50 percent of the cost it had proposed in its original proposal, from more than four to approximately two million dollars. On its face, Calculon's final proposed cost bore no relationship to the cost proposed by other vendors, including Analytics.

In similar circumstances, our Office has held that a low cost proposal submitted in response to an RFP for a cost reimbursement type contract may not be accepted at face value, since the Government will be obligated in any event to pay the contractor's actual not its proposed costs. Proposed costs must be examined by the contracting activity to determine whether they are realistic. Kirschner Associates, Inc., B-199547.2, August 26, 1981, 81-2 CPD 178.

Here, the contracting officer accepted Calculon's best and final offer largely at face value. He attributed the cost reduction to Calculon's proposed change of profit center and reduced administrative cost. He selected Calculon for award two days following the closing date for receipt of best and final offers, justifying this action on the basis that Calculon had received the highest combined rating on its technical and management proposals and had offered to perform at significantly lower cost than had any of the other offerors.

A meaningful cost realism analysis of the Calculon proposal was not performed. During the two days which intervened between closing and selection, the contracting officer: (1) submitted the best and final technical and management proposals to the technical evaluation panel (which reported no change in the scores they had assigned earlier), and (2) called DCAA to confirm that Calculon's new proposed overhead rates were appropriate to the profit center Calculon was proposing. The technical evaluation

team was not told, insofar as the record shows, that Calculon had made significant changes in the level of manpower proposed, and DCAA was not provided any information from which it could have discovered that fact for itself. The Army contends, in defense of the protest, that DCAA performed a cost analysis, but we note that the analysis that was performed concerned Calculon's initial cost proposal. The changes which Calculon made rendered that analysis irrelevant.

With respect to travel costs proposed, it is our view an adequate cost analysis would have disclosed a \$500,000 discrepancy between Calculon's and Analytics' proposed travel costs. The RFP states that the number of trips cannot be estimated but that the Government estimates that annual travel costs should not exceed \$150,000. Analytics (and Calculon in its initial proposal) included an estimated \$150,000 annual travel and subsistence expense in the cost proposal. In Calculon's best and final offer, Calculon reduced this figure to \$25,000 per year, for a total apparent four year "savings" of \$500,000 over Analytics' proposed costs for this item. The record does not disclose any basis which would justify concluding that such a difference in cost would be experienced during contract performance; as Analytics contends, the facilities it and Calculon proposed to use are located in the same geographical area so that both would be likely to incur similar travel costs under any contract.

It is fundamental, as Analytics points out, that offerors must be treated equally. If the Army were able to estimate the cost of travel, and thus evaluate Calculon's \$25,000 per year proposed cost, it did not communicate the basis for such an evaluation to other offerors. If on the other hand such costs were speculative (as the RFP suggests), all similarly situated vendors should have had their costs normalized for this item if the proposals were to be fairly evaluated. See Lockheed Propulsion Company; Thiokol Corporation, 53 Comp. Gen. 977 (1974), 74-1 CPD 339.

Where multiple professional technical skill mixes and levels of experience are involved, an evaluation which compares one cost proposal based on the level-of-effort specified in the solicitation as well as reasonably assumed travel costs and another based on something substantially less is not reasonable. These proposals are

simply not comparable. Offerors must be treated equally and be provided a common basis for the preparation of their proposals. Motorola, Inc., Communications Group, B-200822, June 22, 1981, 81-1 CPD 514.

We conclude, therefore, that the Army's evaluation of Calculon's proposal was deficient.

We next consider what consequences should have flowed from a proper analysis of Calculon's best and final offer.

First we point out that the RFP provided that, in evaluating cost realism, proposals which failed to present realistic costs would be penalized. Calculon's costs were not realistic inasmuch as the entire cost proposal is based on 9,728 fewer direct professional productive labor hours than the agency anticipated it required.

Second, any actual cost advantage achieved in contracting with Calculon should be significantly less than the contracting officer stated in justifying award to Calculon. Its relative standing with respect to cost is in error by \$500,000 for travel costs alone. The cost impact of its failure to include estimated costs based on an 83,200 hour direct professional level-of-effort is substantial. Also, the best and final offer sets out quite different rates which apply if "support is required from other divisions [profit centers] of our corporation."

The impact on the Army's evaluation of Calculon's best and final offer, however, should not have been limited to cost which, indeed, was the least important of the three areas of evaluation.

Proposals were to be scored by assigning technical and management strength greatest weight, in that order, with cost receiving least weight. The evaluators found that the technical and management merit of Calculon's proposal collectively outweighed the combined technical and management merit of Analytics' proposal because, although Analytics' proposal was considered somewhat better with respect to management, Calculon outscored it technically. Calculon's primary strength was attributed to its greater familiarity with tactical C³ systems.

From this record, however, it appears that the evaluators were assuming that Calculon was proposing the specified direct professional productive labor hours. The solicitation lists in order of importance five subfactors on which the technical portion of the evaluation was to be based, the second and third being, respectively: qualifications and experience of committed personnel, and commitment of personnel. Calculon's initial proposal included tables listing employees who would be assigned to the project. These tables showed how much time each was expected to contribute based on a total of 83,200 direct professional productive hours. However, Calculon's best and final cost proposal in effect, altered this commitment. As a result, Calculon's technical proposal was undermined, and the Army should have downgraded its evaluation of that proposal.

Finally, Calculon's reduction in the level-of-effort on which its cost proposal was based should have affected scoring of its proposal in the management area. Of the principal management subcriteria, the first listed and most important is management approach which, according to the RFP, was to involve:

"An assessment of the quoter's intended approach for organizing, staffing, administering, directing and controlling the work force * * *."

We believe that Calculon's staffing reduction made in its best and final offer left uncertain what its intended management approach really was.

The fact that the changes Calculon made in its best and final offer should have significantly altered the Army's evaluation of its proposal is sufficient to establish that the final evaluation was not reasonable or consistent with the solicitation's evaluation factors.

A reasonable evaluation then, should have revealed to the contracting officer that he had essentially two choices left to him after the receipt of best and final offers--either reject the Calculon proposal because of its deficiencies, or reopen negotiations under an amended solicitation so that all of the offerors could compete

on an equal basis. We believe it is now simply too late to reopen negotiations, particularly in view of the extensive discussion of the cost proposals that were necessary to this decision. We also believe that it is not possible to attempt to normalize the Calculon best and final offer with the others because of the skill mixes involved. Such an adjustment would be a guess at best. We believe that the only reasonable course of action is to recommend that the contract awarded Calculon be terminated, that best and final offers of those firms that are still interested in the award of the contract be evaluated, that Calculon's proposal be rejected, and that a contract be awarded to whichever of the remaining firms is found to be in line for award.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with Section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

Milton J. Aorolan
for Comptroller General
of the United States