

DECISION



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

FILE: B-219658 **DATE:** December 11, 1985
MATTER OF: Ross Aviation, Inc.

DIGEST:

In solicitation for fixed-price requirements contract under which payment will be based on productive labor hours, evaluation can only be on the basis of the total number of labor hours specified in the solicitation. Although offerors are required to include salaries, general and administrative expenses, and profit in their proposed labor rates, an evaluation based on the number of productive hours independently developed by an offeror, rather than on total labor hours, would lead to offerors improperly being evaluated on different bases.

Ross Aviation, Inc. protests the evaluation of its best and final offer under request for proposals (RFP) No. DAAD05-85-R-6879, issued April 19, 1985 by the United States Army Test and Evaluation Command. The RFP covers 5 years of operation of Phillips Army Airfield, Aberdeen Proving Ground, Maryland, and maintenance of aircraft assigned to the airfield. Ross is the incumbent contractor.

The protest is essentially about two different methods of expressing labor costs. Under one, these costs are expressed as total "calendar" or annual hours. Under the other, they are expressed as productive hours, that is, annual hours with deductions for vacation, sick leave, and holidays. The protester contends that the Army's evaluation, which increased its proposed price by approximately \$1.7 million, was without a rational basis.

We deny the protest.

The RFP describes the contemplated contract as a "fixed-price requirements contract."^{1/} It requests a total price for the airfield services for a base and 4 option years. The RFP includes a Schedule of Services and Prices (Schedule B) that lists various categories of labor and an estimated number of normal and overtime hours for each category. Schedule B includes a column entitled "fixed hourly rate" in which offerors are to enter proposed unit prices, i.e., the proposed price per hour for each labor category, including applicable overhead, general and administrative expenses, and profit. However, in the original RFP the column was asterisked with the notation "to be inserted at time of award."

The RFP states that award will be made to the technically acceptable offeror with the lowest total price, including option years. It indicates that the Army will issue monthly delivery orders for specific quantities of labor, with billing and payment for work actually performed at the fixed hourly rate for each labor category.

The Army received five proposals on June 10 and found all to be technically acceptable. It performed a cost and price analysis and then conducted discussions by telephone on July 10. According to the agency's written summary of discussions, it told all offerors that the basis for payment would be productive hours, stating, for example, that if 2080 or 2088 hours (the estimated number in the solicitation for the general manager, meaning that this individual would work 8 hours a day, 5 days a week, 52 weeks a year) were used to compute the billing rate, the successful contractor might not recoup all costs. The Army states

^{1/} The contract might better be described as a time and materials contract. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 16.601 (1984). The contractor will provide services for a specified period at fixed hourly rates for various labor categories. These rates include wages, overhead, general and administrative expenses, and profit. In addition, the contractor will be reimbursed for certain direct costs, including travel, materials, and material handling.

that it specifically told Ross that it should fill in the fixed hourly rates on Schedule B which, following the asterisked note, Ross had left blank. The Army asserts that it sent Ross a TWX confirming these points. Ross contends that it never received the TWX, but does not deny that oral discussions were held before the July 19 due date for best and final offers.

On July 31, the contracting officer notified Ross by telephone that award had been made to Dynamic Science, Inc. However, the award was rescinded on August 1, after Ross protested to the agency on a basis not at issue here. Also, on July 31, the price analyst informed Ross that the Army had recalculated its best and final offer. It appears from the record that rather than accepting Ross' proposed total price for each contract year, the Army took Ross' proposed fixed hourly rate for each labor category and multiplied it by the estimated number of hours given in the solicitation for that category; it then added the results to reach Ross' total evaluated price for each year. This price was approximately \$1.7 million more than that proposed by Ross for labor for the 5 contract years.

Ross states that its initially-proposed total price had been based on the estimated number of hours for all labor categories given in the solicitation, which it viewed as calendar, or annual, hours. However, Ross states, the fixed hourly rates submitted with its best and final offer were based on productive hours, pursuant to its understanding of the instructions given during negotiation. For example, Ross based its hourly rate for the general manager on 1,752 hours, the number that Ross believed this individual actually would work during the first contract year. In other words, in its best and final, Ross subtracted vacation time, sick leave, and paid holidays and from the estimated hours given in the solicitation, then proposed hourly rates reflecting its own estimates.

According to Ross, if the Army wished to evaluate its offer on the basis of the hours given in the solicitation, the correct method would have been for the Army to divide Ross' proposed total price for each labor category by the number of hours given in the solicitation. This would have resulted in fixed hourly rates that were less than those actually proposed by Ross, but would not have changed Ross' lump sum total for all labor. In other words, under this

method, the sum of the extended fixed hourly rates would still have been equal to Ross' total proposed price for all labor for the contract year.

Ross maintains that, given the magnitude of the difference between the government's evaluated price and its proposed price, the agency should have sought clarification or attempted to verify the accuracy and reasonableness of the evaluation. Ross requests that its proposal be reevaluated, with award of the contract if, as a result, it is the low offeror.

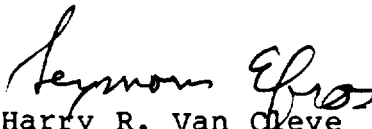
According to the Army, since award was to be made to the lowest technically acceptable offeror, the true cost to the government could only be determined by multiplying each offeror's proposed fixed hourly rates by the estimated hours for each category of labor given in the solicitation, then adding the extended prices. The agency maintains that the fixed hourly rates, rather than offerors' lump sum totals, are the critical portion of this contract, since they form the basis of the delivery orders and obligate the awardee to furnish the required services at the amount specified.

We agree with the Army that evaluation could only be on the basis of the number of hours stated in the solicitation for each labor category. While offerors were told to include salaries, general and administrative expenses, and profit in their proposed fixed hourly rates, each offeror was required to develop its own estimate as to how high the rates must be to include these extras and to compensate for the fact that payment would be based solely on the number of hours actually worked.

Ross' estimates of the number of hours that each labor category actually would work appear to be based on its interpretation of the solicitation's statement of work and the negotiation instructions. While the negotiation instructions might have been a source of confusion, we believe that the only reasonable interpretation of the solicitation is that the total number of hours specified--rather than the estimate of productive hours independently developed by an offeror--would be used for evaluation purposes. Any other result would lead to offerors improperly being evaluated on different bases. See RMI, Inc., B-203652, Apr. 20, 1983, 83-1 CPD ¶ 423; aff'd on reconsideration, B-203652.2 et. al., June 18, 1984, 84-1 CPD ¶ 630.

Even if, as Ross suggests, the estimates given in the solicitation are too high because, for example, it does not appear from the statement of work that the general manager will be required to work on holidays, the same total number of hours was used to evaluate all offerors. Thus all were equally affected if the estimates were too high.

The protest is denied.

for 
Harry R. Van Cleave
General Counsel