



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Computer Data Systems, Inc.

File: B-223921

Date: December 9, 1986

---

### DIGEST

Agency reasonably determined that the protester's best and final offer, which priced 8 of 15 labor categories at zero, presented an unacceptable cost risk to the government where pricing of other items was unreasonably high and the protester's intent in offering zero-priced items was unclear.

---

### DECISION

Computer Data Systems, Inc., (CDSI) protests the rejection of its proposal and the award of a contract to Orkand Corporation under request for proposals (RFP) No. N66032-85-R-0005, issued by the Navy's Automatic Data Processing Selection Office. The agency rejected the protester's proposal as unreasonably priced because, in response to a solicitation amendment, the protester submitted a pricing scheme that priced 8 of 15 labor categories at zero. We agree with the agency that the proposed pricing scheme involved such a cost risk to the government that the proposal could not be accepted. We deny the protest.

The solicitation contemplated the award of a fixed-price, indefinite-quantity, indefinite-delivery contract for automatic data processing software support services for the Navy Regional Data Automation Center in Washington, D.C. The services solicited included program analysis, system development and maintenance, software conversion, training, and other support. The solicitation provided for the services to be performed during a 1-year base period and two, 1-year option periods. During the initial term of the contract, the government is required to order a minimum of \$500,000 in services. The maximum that may be ordered in any year is \$5 million.

037570 - 131765

Award was to be made to the offeror whose proposal represented "the greatest value to the government," with price and technical factors being weighted equally. The solicitation required fixed or finitely determinable hourly prices for each of the 15 labor categories listed below in Table I. Prices were to include all direct labor, overhead, profit, and general and administrative (G&A) expenses. For evaluation purposes, the hourly price for each labor category was to be multiplied by a government-provided estimate of the number of hours of expected use for that category. The solicitation separately provided that travel, per diem, and other direct costs would be reimbursed on the basis of actual costs incurred, plus an amount for G&A at the offeror's stated rate, and provided a means for evaluating such costs.

The solicitation stated that during contract performance the government will issue task requests to the contractor describing its technical requirements. The contractor will analyze each requirement and prepare a proposal setting forth a technical approach, the number of hours by labor category it considers necessary, milestone dates, and a total proposed price. The contractor and the contracting officer will use the proposal as the basis for negotiating fixed-price delivery orders. The solicitation provided that although these negotiations will be based on the contractor's proposed labor rates, delivery orders will not identify labor categories or the hours negotiated, but only a firm, fixed-price for the deliverable item or service.

Following an initial round of best and final offers, the Navy reopened negotiations by issuing solicitation amendment No. 3 to clarify its intent to use fixed-price delivery orders. The amended instructions for preparing proposals also stated that "[i]f there is no charge for any of the categories enter 0." The agency informed the protester by separate letter that price analyses would be performed.

By the closing date for receipt of the second best and final offers, CDSI submitted a revised offer that priced 8 of the 15 labor categories at zero for the base year and each of the 2 option years. The offer carried a notation indicating that rates "shown as zero are not separately priced." The eight zero-priced categories represented a majority of the total number of estimated labor hours. As a result, the evaluated price of the protester's second best and final offer decreased by approximately 60 percent from the price submitted in its initial best and final offer. None of the other offerors' evaluated prices decreased by more than 5

percent. Although we have reviewed the protester's prices in camera, the agency has requested that we not disclose the actual prices submitted. The following table summarizes CDSI's second best and final offer.

Table I

<u>Labor Category</u>	<u>Estimated Hours</u>	<u>Price</u>
Program Manager	2,080	Priced
Senior Computer Sciences Analyst	6,240	Priced
Senior Technical Specialist	18,720	0
Senior Research Associate	20,800	Priced
Senior Analyst	27,040	0
Scientific Analyst	4,160	0
Senior Programmer/Analyst	35,360	0
Scientific Programmer/Analyst	4,160	0
Programmer	10,400	0
Scientific Programmer	4,160	0
Documentation Specialist	12,480	Priced
Data Base Manager	2,080	0
Senior Data Base Analyst	6,240	Priced
Senior Data Technician	6,240	Priced
Data Base Technician	6,240	0

After reviewing CDSI's pricing, the contracting officer rejected the CDSI proposal, which received the highest technical score, because he concluded that it:

- violated the RFP's evaluation criteria;
- did not meet the solicitation requirement that hourly rates include direct labor, overhead, profit, and G&A expense;
- was unreasonably priced; and
- precluded the determination of prices for fixed-price delivery orders.

Expanding on the latter point, the Navy contends that the protester's pricing scheme prevented the contracting officer from calculating fixed or finitely determinable prices for CDSI. The agency argues that by qualifying some of the items in its offer with the notation "not separately priced," the protester was indicating that the costs for these categories were included elsewhere, either in other labor category rates or in the G&A rate.

The Navy says its purpose in issuing amendment No. 3 was to indicate to offerors that they should price at zero those labor categories for which they normally would impose no separate charge, thus recognizing the common industry practice of including the costs of some personnel, such as the program manager, in overhead or G&A. The Navy alleges, although CDSI denies it, that this was explained orally to the protester prior to the second submission of best and final offers.

CDSI contends that the agency improperly rejected its proposal based on a criterion that was not disclosed in the solicitation--price reasonableness--and therefore violated 10 U.S.C. § 2305(b)(1) (Supp. III 1985) (as added by the Competition in Contracting Act of 1984 (CICA)), which requires an agency to evaluate competitive proposals solely on the factors specified in the solicitation. The protester maintains that its proposal complied with the solicitation's pricing requirements, which allowed, without express limitation, the submission of offers with zero-priced labor categories. CDSI says that the labor categories it priced at zero were those that, from its experience as the incumbent contractor, it expected to be used seldomly.

Subsequent to filing its protest with this Office, CDSI filed an action in the United States District Court for the District of Columbia requesting injunctive and declaratory relief. The court denied CDSI's motion for a preliminary injunction and stated that it would await the decision of this Office before ruling on the merits. Computer Data Systems, Inc. v. Lehman, Civ. No. 86-2414 (D.D.C. Oct. 7, 1986).

#### Analysis

The protester correctly notes that CICA requires that competitive proposals be evaluated solely on the basis of factors specified in the solicitation. 10 U.S.C. § 2305(b)(1). This is not a new requirement; it is largely reflective of what long has been required under the procurement statutes. See H.R. Rep. No. 861, 98th Cong., 2d Sess. 1429 (1984); see, e.g., Genasys Corp., 56 Comp. Gen. 835 (1977), 77-2 CPD ¶ 60.

We have never interpreted the requirement to base an evaluation solely on the terms of the solicitation, however, as precluding an agency from conducting an analysis of the prices offered. When a fixed-price contract is contemplated, for example, an agency is not required to make award at a price that its analysis shows is unreasonably high. Freund Precision, Inc., B-197770, June 17, 1980, 80-1 CPD ¶ 422.

Moreover, in every negotiated procurement the contracting officer is required to conduct a price or cost analysis to determine whether proposed prices or costs are fair and reasonable. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.805-1(b) (1985). Thus, the protester is incorrect in arguing that the contracting officer was without authority to consider the reasonableness of proposed prices in the absence of an express solicitation provision. In any event, the agency specifically informed the protester in a letter accompanying amendment No. 3 that it would conduct price analyses. An offeror is bound by information it obtains during discussions, even though that information may not be incorporated in the solicitation by amendment. Southland Associates, 62 Comp. Gen. 50 (1982), 82-2 CPD ¶ 451.

While the Navy has offered a number of reasons in support of its determination to reject CDSI's proposal, we think that basically the Navy concluded that acceptance of the offer would subject the government to unacceptable cost risks. We agree.

The record here shows that several of the categories CDSI priced were one and one-half to twice the prices offered by other offerors for the same categories. The Navy thus had a basis for concluding that some of CDSI's prices were unreasonably high. The contracting officer feared that CDSI could direct work into the overpriced categories since the contractor will play a significant role both in identifying the work required and in formulating the delivery orders under which the work will be performed. Since the line items in CDSI's proposal do not carry their respective shares of profit, CDSI would have an incentive to propose only those labor categories for which it would be entitled to be paid. In effect, the Navy concluded that acceptance of what appeared to be the low offer might not result in the lowest cost to the government during contract performance, and that CDSI's price structure involved significant cost risk to government. We agree with the Navy in this regard.

Further, we agree with the Navy that CDSI's labeling of its zero-priced categories as "not separately priced" created uncertainty as to exactly how CDSI would expect to be paid for work required under the zero-priced labor categories. Obviously, it would not have been reasonable to assume that CDSI was proposing to provide over 110,000 hours per year of professional staff time at no cost to the government. CDSI's offer created doubt therefore as to whether the firm intended

to perform the work required under the zero-priced categories with higher-skilled, priced personnel, or use the zero-priced personnel and attempt to recover their costs elsewhere. Although CDSI may have been betting that the government's hourly estimates were inaccurate, and that the zero-priced categories would not be used frequently, the Navy maintains that its estimates accurately reflect its anticipated needs.

Finally, we reject CDSI's argument that its proposed pricing structure was justified in light of the language in amendment No. 3 stating that labor categories for which there would be no charge could be priced at zero. First, contrary to CDSI's contention, the firm's pricing structure did not comply with the literal terms of the amendment since CDSI's offer did not state that there would be no charge at all for the zero-priced categories, but only that the prices were not separately stated. More importantly, we think it was unreasonable to read amendment No. 3 as an invitation to reduce an evaluated price by more than 60 percent without explanation or to submit a pricing scheme that would expose the government to an unacceptable cost risk. While the Navy's intent in permitting zero-priced categories certainly could have been, and should have been, stated more clearly, we think CDSI's response to the amendment was simply unreasonable.

The protest is denied.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel