



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Bendix Field Engineering Corporation  
**File:** B-230076  
**Date:** May 4, 1988

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### **DIGEST**

Protester has not shown that the agency's cost realism approach of not escalating personnel costs subject to Department of Labor determinations under the Service Contract Act was arbitrary or unreasonable even though it had the effect of differentially adjusting the proposed costs of both offerors.

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### **DECISION**

Bendix Field Engineering Corporation protests the award of a cost-plus-fixed-fee contract to RCA Government Services, a Division of RCA Corporation, under request for proposals (RFP) No. N00421-87-R-0132, issued by the United States Navy for maintenance and training services in support of its Integrated Undersea Surveillance System. The protester alleges that the Navy failed to perform a proper cost realism analysis.

We deny the protest.

The RFP was issued on May 20, 1987, contemplating a 9-month base period of performance commencing January 1, 1988, followed by two 1-year option periods and a final 3-month option period. Award was to be made to the offeror whose proposal is determined to be technically acceptable and offers the lowest evaluated cost. Option period prices were to be evaluated. The RFP required the Navy to perform a cost realism analysis; offerors were specifically advised that "[w]ith regard to any understatement of costs, the Government reserves the right to evaluate cost proposals based upon the inclusion of all necessary and verifiable items of cost."

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The RFP specified 13 different labor categories and the corresponding levels-of-effort needed. Offerors were to compete based on proposals which satisfied both the labor category and the specified level of effort for that category. As amended, the RFP notified offerors that 4 of the 13 listed labor categories were covered by Service Contract Act (SCA) wage determinations and incorporated the latest Department of Labor (DOL) wage scales for those categories. According to the agency, of the total of 46 employees that would be required in order to meet the specified levels of effort during the base period, 39 are covered by SCA wage determinations and 7 are exempt from such coverage. Of the total of 50 employees required to perform during the option periods, 41 are covered by SCA and 9 are exempt.

Only Bendix and RCA submitted initial proposals. These were determined to be technically unacceptable but capable of being made acceptable. Bendix' initial cost estimate was \$10,342,844, while RCA proposed an estimate of \$8,782,059. Following discussions, each firm was requested to submit a best and final offer (BAFO). A second round of evaluations resulted in each proposal being rated technically acceptable but clarifications were required from both offerors. Following a second round of discussions, "final" BAFOs were submitted on December 14, 1987. Bendix and RCA differed significantly in their approaches to the labor mix of SCA-covered and exempt employees. RCA conformed exactly to the mix established by the RFP. Bendix proposed to use far fewer than the specified 39 SCA-covered employees:

	<u>Base Period</u>	<u>Option Periods</u>
SCA-Covered Employees	5	5
Exempt Employees	41	45

Based on corporate policy and past experience, each offeror proposed an escalation factor applicable to its non-SCA-covered employees for the various time periods covered by the RFP. Neither offeror escalated the costs of its SCA-covered personnel. The Navy determined that each offeror's escalation factor for exempt personnel costs was realistic and each was taken into account during the cost realism analysis; <sup>1/</sup> however, that analysis did not disturb the labor mix of either proposal nor did it escalate the costs

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<sup>1/</sup> Bendix asked us to verify that RCA's exempt personnel costs were, in fact, realistically escalated. Our in camera review discloses that they were.

of SCA-covered personnel. Certain other adjustments were made during the analysis. The results were as follows:

	"Final" Proposed BAFO Cost	Evaluated Cost
Bendix	\$9,451,918	\$9,875,972
RCA	\$9,402,442	\$9,630,179
Difference	\$ 49,476	\$ 245,793

A contract was awarded to RCA on January 14, 1988. Bendix was debriefed on January 15 and filed this protest on January 22.

Bendix argues that the Navy's cost realism analysis was improper because the agency failed to escalate the costs of SCA-covered personnel and suggests that the Navy was under some duty to "normalize" the competing proposals in this area because of the widely divergent labor mixes proposed. Bendix also states that the agency's analysis improperly applied the agency's proposed escalation factor with respect to personnel not subject to the SCA. Finally, Bendix contends that the Navy in its cost analysis improperly added back certain costs for foreign country allowances which had been included in the protester's first two proposals but which were omitted from the "final" BAFO. Bendix has presented a "model" cost analysis which uses a 3.23 percent annual escalation factor for SCA-covered personnel and which purports to correct the other alleged deficiencies. The protester concludes that, as a result of the "model" analysis, its correctly evaluated price is actually \$18,818 less than RCA's.

When a cost reimbursement contract is to be awarded, the offerors' estimated costs of contract performance and proposed fees should not be considered as controlling since the estimates may not provide valid indications of the actual costs which the government is, within certain limits, required to pay. Federal Acquisition Regulation § 15.605(d). The government's evaluation of estimated costs thus should determine the extent to which the offerors' estimates represent what the contract should cost, assuming reasonable economy and efficiency. This determination in essence involves an informed judgment of what costs actually would be incurred by acceptance of a particular proposal. Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 CPD ¶ 502. Because the contracting officer clearly is in the best position to make this cost realism determination, we limit our review to a determination of whether an agency's cost evaluation was reasonably based. PRC Kentron, B-225677, Apr. 14, 1987, 87-1 CPD ¶ 405. For the reasons

set forth below we believe that the protester has not shown that the award to RCA based on the Navy cost realism analysis was unreasonable or arbitrary. See SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121.

The Navy states that its practice not to escalate SCA-covered personnel costs is based on the premise that, in contrast to escalations in non-SCA personnel costs which can be predictably controlled by an offeror's corporate policy, the agency cannot reasonably predict what the DOL will do with future wage rates under the SCA. Moreover, the Navy argues that Bendix was well aware of this practice.

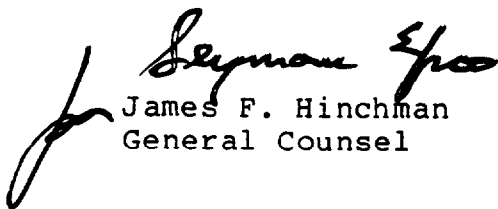
The protester maintains that the Navy's position that DOL actions are unpredictable is not reasonable. Apparently based on its own contract experience, Bendix concluded that SCA-covered personnel costs should be escalated at 3.23 percent annually. As noted above, this precise, but unverified, escalation rate resulted in a "model" analysis showing Bendix' evaluated costs to be slightly lower than RCA's. Without evidence that supports the reasonableness of this particular "model" escalation rate, which is over 40-percent higher than the protester's proposed escalation rate for exempt personnel costs, we are simply not persuaded by Bendix' arguments.

Bendix recognizes that any contractor would be obligated to pay specific minimum wage rates during contract performance as established by DOL, but it maintains that it is free to propose a labor mix at variance with an RFP and take its chances that DOL will later agree. The protester also argues that the Navy accepted this position by not disturbing its basic labor mix during the cost realism analysis. The Navy was, in essence, obligated in conducting its cost analysis to assess how realistic the chances were that Bendix would ultimately be able to pay the lower wages to the people in the labor categories that the RFP identified as covered by the SCA. In proposing a labor mix which did not conform to the RFP, Bendix ran the risk of the Navy conforming costs associated with that mix to the DOL wage determinations contained in the RFP. See Scott Services, Inc., B-181075, Oct. 30, 1974, 74-2 CPD ¶ 232; CDI Corp., B-209723, May 10, 1983, 83-1 CPD ¶ 496. In conducting its cost analysis the Navy in fact concluded that Bendix would have to pay the higher SCA mandated rates. We have no basis upon which to question the agency's judgment in the matter.

Even if we were to agree with Bendix' other allegations regarding the proper application of its proposed escalation factor for exempt personnel costs and the adding back of

certain foreign country allowances they would not make the protester's evaluated price lower than RCA's. Accordingly, we need not discuss their merits.

The protest is denied.



James F. Hinchman  
General Counsel