



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Robocom Systems, Inc.

File: B-244974

Date: December 4, 1991

Joseph R. Conte, Esq., for the protester.
William R. Sheehan, Esq., Department of the Navy, for the agency.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly failed to consider cost realism of awardee's proposal when it accepted awardee's capped indirect cost rates, which were substantially lower than its actual rates, is denied where the contract limits reimbursability of indirect costs to the capped rates, and there is no indication that awardee will attempt to recover unreimbursable indirect costs through increases in reimbursable direct costs.
2. Whether awardee will be able to perform contract at below-cost rates is a matter of its responsibility; General Accounting Office will not review agency's affirmative determination of responsibility absent showing of possible agency fraud or bad faith or misapplication of definitive responsibility criteria.
3. Protest allegation that awardee intentionally misrepresented experience of awardee's proposed project manager and availability of key personnel is denied where record does not support claim of misrepresentation.
4. Protest allegation that agency improperly evaluated experience of awardee's proposed project manager and availability of awardee's key personnel is denied where the record indicates that agency's evaluation of candidate's experience was reasonable, and agency had no reason to believe that proposed key personnel would not be available to perform contract.

DECISION

Robocom Systems, Inc. protests the award of a contract to Harris Corporation under request for proposals (RFP)

No. N00140-91-R-0021, issued by the Department of the Navy for technical and engineering services in support of the Naval Integrated Storage Tracking and Retrieval System (NISTARS). Robocom, the incumbent contractor, primarily alleges that the agency did not properly evaluate Harris's cost and technical proposals, and that Harris misrepresented the availability of key personnel in its proposal.

We deny the protest.

The solicitation contemplated award of a cost-plus-fixed-fee contract for a base year and 2 option years. The RFP provided that award would be based on the offer determined to be most advantageous to the government, technical and cost factors considered. In this regard, the RFP stated that technical proposals would be evaluated based on three technical evaluation factors--management plan/approach, personnel resources, and corporate experience--and that cost proposals would be evaluated based on cost realism, that is, "the offeror's ability to project costs which are realistic and reasonable and which indicate that the offeror understands the nature and the scope of the work to be performed."

Five firms submitted initial proposals by the February 19, 1991, closing date. Following the evaluation of initial proposals, only Robocom and Harris were determined to be in the competitive range. The contracting officer and the agency's negotiator/cost analyst then conducted a cost realism analysis of both offers, focusing on the offerors' direct labor rates and associated general and administrative (G&A) and overhead rates. Based on the realism analysis, the Navy adjusted each offeror's proposed costs as follows:

<u>Offeror</u>	<u>Proposed cost</u>	<u>Realistic cost</u>
Harris	\$ 9,806,888	\$15,214,901
Robocom	12,528,763	12,279,468

As the above figures indicate, the Navy determined that Harris's realistic cost was substantially higher than its proposed cost. The adjustment was based on a comparison of Harris's proposed indirect rates--58 percent for overhead and 14 percent for G&A--to Harris's actual indirect rates as reported by the Defense Contract Audit Agency (DCAA), and the Navy's finding that Harris's proposal provided no support for the proposed rates. In this regard, the Navy noted that while Harris's proposed indirect rates were in line with the audited rates of the Harris organization proposing to perform the contract--Harris Technical Services Corporation (HTSC) of Norfolk, Virginia--the proposed employees were based at Harris's Government Support Services Division (GSSD) in Syosset, New York, and the contract was

to be performed in Syosset. The Navy therefore concluded that the higher Syosset rates supplied by DCAA were more realistic than the proposed rates.

Following the cost evaluation, the Navy conducted discussions with both offerors, in particular informing Harris that its proposal did not provide any basis for its offered indirect rates, and that the DCAA audited rates (178 percent for overhead and 23 percent for G&A) would be used if Harris could not furnish support for its proposed rates. The Navy requested best and final offers (BAFO) from both firms.

In response to the Navy's concern about the lack of support for its indirect rates, Harris explained that HTSC did not yet have a DCAA-audited cost center at the Syosset location, and therefore did not have any actual cost data to support its proposed rates. In order to assure the Navy that it would receive the benefit of the low proposed rates, Harris offered in its BAFO to "cap" its overhead rate at 60 percent for the first year of the contract, 61 percent for the second year, and 62 percent for third year. In addition, Harris proposed to cap its corporate G&A rate at 14 percent and its subcontractor G&A rate at 3 percent for all 3 years. Under this approach, the Navy's liability would be contractually limited to the specified percentages, even if its actual indirect costs exceeded those amounts. The Navy accepted Harris's approach, and evaluated the BAFO costs as follows:

<u>Offeror</u>	<u>Proposed cost</u>	<u>Realistic cost</u>
Harris	\$ 9,744,626	\$ 9,848,954
Robocom	12,055,957	12,408,443

In the technical area, the Navy rated both technical proposals "acceptable" under all three factors, except that Robocom's proposal was rated "highly acceptable" under the corporate experience factor by virtue of its experience as the incumbent contractor. However, notwithstanding that Robocom's overall technical rating was slightly higher than Harris's, the contracting officer determined that this slight technical advantage did not warrant payment of Robocom's 26 percent higher cost, and recommended award to Harris. The agency's contract review board adopted the contracting officer's recommendation, and award was made to Harris on June 27. Robocom protested the award to the contracting officer on July 5. After receiving the agency's July 12 decision denying its protest, Robocom filed this protest in our Office on July 25.

COST EVALUATION

Robocom contends that the Navy improperly evaluated Harris's cost proposal. Specifically, Robocom asserts that Harris's capped indirect rates are unreasonably low compared to its actual audited rates, and maintains that the Navy improperly failed to recognize that Harris would attempt to recover some of the losses that inevitably would result by raising direct labor rates, thereby increasing the dollar amounts of recoverable indirect costs. In addition, Robocom argues that Harris's performance will suffer because it cannot provide its employees with sufficient fringe benefits at the proposed capped rates.¹

When a cost-reimbursement contract is to be awarded, the offerors' estimated costs of contract performance should not be considered as controlling since the estimates may not provide valid indications of final actual costs, which, within certain limits, the government is required to pay. See Federal Acquisition Regulation (FAR) § 15.605(d); Science Applications Int'l Corp., B-232548, B-232548.2, Jan. 22, 1989, 89-1 CPD ¶ 52. The agency's evaluation of estimated costs thus should be aimed at determining the extent to which the offeror's estimates represent what the contract should cost, assuming reasonable economy and efficiency. Science Applications Int'l Corp., supra. An evaluation of this nature necessarily involves the exercise of informed judgment. Because the contracting agency clearly is in the best position to make such an informed judgment, our review is limited to considering whether the agency's cost realism determination is reasonably based and not arbitrary. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

The record indicates the Navy conducted a reasonable cost realism analysis of Harris's proposal. First, with respect to direct labor rates, while DCAA did not have labor rate information for individual Harris employees, Harris's current direct labor rates for the proposed employees were included in its proposal as part of the required certified cost or pricing data; as such, the rates were considered to be accurate for purposes of cost realism. The Navy relied upon information from DCAA for verification of Harris's proposed indirect rates; as the proposed indirect rates were

¹Robocom's protest also alleged that the Navy specifically requested that Harris cap its indirect rates but did not afford Robocom a similar opportunity. As Robocom has not rebutted the Navy's explanation that Harris took the initiative in offering capped rates, we deem the issue abandoned. See Universal Hydraulics, Inc., B-235006, June 21, 1989, 89-1 CPD ¶ 585.

considerably lower than the DCAA audited rates, the Navy made upward adjustments to Harris's proposed costs. In order to reduce those costs, Harris then proposed a cap on its G&A and overhead rates; since these rates are the maximum rates the government will have to pay under any circumstances, they are not subject to any upward adjustment. Support Sys. Assocs., Inc., B-232473; B-232473.2, Jan. 5, 1989, 89-1 CPD ¶ 11; see also Raytheon Support Serv. Co., 68 Comp. Gen. 566 (1989), 89-2 CPD ¶ 84; PRC/VSE Assocs. Joint Venture, B-240160 et al., Oct. 30, 1990, 90-2 CPD ¶ 348. As the record thus shows that the Navy reviewed Harris's proposed costs, questioned its indirect costs, and obtained a contractual guarantee from Harris limiting the reimbursability of those costs, Robocom's protest of the Navy's cost realism analysis is without merit.

While Harris's proposal to cap its indirect burden rates reduced the Navy's risk in the event of cost overruns, it increased the risk that Harris would experience performance problems if it had to absorb substantial unbillable costs (including, according to Robocom, employee fringe benefits). Accordingly, the Navy considered Harris's financial position and performance on other government contracts in its determination of Harris's responsibility. In its memorandum documenting the responsibility determination, the Navy noted that Harris has annual receipts of over \$3 billion and that it is performing other contracts successfully. While Robocom challenges the Navy's responsibility determination as unreasonable, we will not review a contracting officer's affirmative determination of an awardee's responsibility absent a showing of possible agency fraud or bad faith, or a misapplication of definitive responsibility criteria, neither of which is present here. 4 C.F.R. § 21.3(m)(5) (1991); Pan Am World Servs., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ 283.

As to Robocom's allegation that Harris plans to recover some of its lost indirect costs by increasing salaries and using more labor hours (since indirect costs are billed as a percentage of direct labor), this argument assumes that Harris will perform the contract in bad faith, an assumption for which there is no basis in the record, and that the agency will not avail itself of the safeguards available in administering cost-type contracts. These safeguards include the requirement, found at FAR § 31.201-2, that all costs charged to the government be reasonable, allocable, allowable, and consistent with the cost principles set forth in FAR part 31; cost reimbursable contracts also are subject to audit, pursuant to FAR § 52.215-2, to protect the government against improper cost substitution by contractors. Robocom's speculation that Harris will act improperly does not establish that the indirect rate caps incorporated into the contract will be ineffective to protect against cost

increases. See United Eng'rs & Constructors Inc., Stearns-Roger Div., B-240691; B-240691.2, Dec. 14, 1990, 90-2 CPD ¶ 490.

HARRIS'S PROPOSAL AND TECHNICAL EVALUATION

Robocom alleges that Harris's proposal contained misrepresentations concerning its personnel qualifications and staffing, and that the Navy erroneously concluded, based on these alleged misrepresentations, that Harris's proposal was technically acceptable.

Project Manager

The RFP required the proposed project manager to possess 3 years of project management or supervisory experience in design and development of major interactive ADP systems, including 1 year of NISTARS experience, plus 8 years of system design and analysis experience in specified areas. Robocom contends that Harris's proposed project manager lacks the required supervisory and ADP experience, and that Harris misrepresented this fact in its proposal.

We find no evidence of misrepresentation. Harris's proposal included a resume for the project manager candidate, Mr. Robert Austin, which cited his 7 years of experience in NISTARS development--the last 2 of which have been as a project manager for Harris--as well as earlier related experience as a team leader responsible for developing materials handling systems, for a total of 19 years of system design experience. The resume stated that Mr. Austin's NISTARS experience specifically involved the development of automated materials handling equipment and the interfaces between equipment and computers; he also helped to design a system based on NISTARS for the Defense Logistics Agency. The Navy's evaluation of Mr. Austin found that his 7 years of NISTARS experience and 19 years of experience in system design and analysis would assure the government of accurate recommendations and efficient problem resolution.

Robocom asserts that Mr. Austin does not possess the required 1 year of NISTARS design and development experience because his NISTARS experience is not in the area of software design and development. This argument is without support in the record. First, while Robocom appears to be arguing that Harris misrepresented that Mr. Austin has software development experience, our review of Mr. Austin's resume shows that Mr. Austin did not claim to have software development experience; rather, the resume specifically referenced experience with materials handling equipment and equipment/computer interfaces. Moreover, Robocom's assertion that Mr. Austin is unqualified because he lacks

software development experience appears to be misplaced, as the RFP requirement for NISTARS design and development experience does not specifically refer to software development. The RFP required experience in "design and development of major interactive ADP systems, one year of which shall be NISTARS experience"; we think the Navy could reasonably consider Mr. Austin's 7 years of designing NISTARS automated materials handling systems and working with equipment/computer interfacing for those systems to be qualifying experience under the RFP.

Robocom asserts that Harris is now "desperately and unsuccessfully" trying to replace Mr. Austin as project manager, and argues that Harris's action amounts to an admission that Mr. Austin is not qualified. As post-award personnel substitutions are a matter of contract administration which our Office does not consider, see 4 C.F.R. § 21.3(m)(1); Pan Am World Servs., Inc., supra, we will not review the reasons for Harris's alleged attempt to replace Mr. Austin. The only issues for consideration here are whether Harris properly represented Mr. Austin's qualifications and whether the Navy properly evaluated them; based on the record, we find no evidence of misrepresentation or miscalculation. This being the case, we have no basis to conclude that the evaluation based on the information Harris furnished was unreasonable.

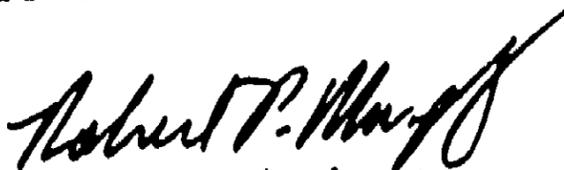
Other Key Personnel

Robocom also maintains that Harris misrepresented the availability of certain key personnel, and failed to acknowledge that other proposed personnel would refuse to accept positions under the contract because the positions allegedly involved reduced fringe benefits. In support of this argument, Robocom alleges that only 4 of the 27 key personnel Harris proposed ultimately accepted positions under the contract after award. Alternatively, Robocom asserts that the Navy should have found Harris's proposal technically unacceptable under the personnel resources factor because its below-cost proposal would mean reduced fringe benefits for the proposed personnel, who would consequently refuse to accept positions under the contract.

We have held that an agency's evaluation that is based on an offeror's proposed key personnel is not objectionable, even though some are changed after award, when the offeror provided firm letters of commitment and the names were submitted in good faith with the consent of the respective individuals (that is, the offeror was not proposing personnel it had no intention of providing). Informatics Gen. Corp., B-224182, Feb. 2, 1987, 87-1 CPD ¶ 105.

Here, the RFP did not require letters of commitment and, moreover, all but two of Harris's proposed key personnel were already employed by the firm. The fact that only 4 of the 27 key personnel proposed are actually working under the contract now does not itself establish that Harris misrepresented the availability of the other 23 in its proposal. Harris explains that its recent decision to downsize its GSSD Syosset office and relocate some of that office's programs to Florida resulted in a number of NISTARS-qualified individuals becoming available to work on the contract after award; some of these people were substituted for less-qualified personnel listed in the proposal. In addition, Harris has replaced four proposed employees with highly qualified former Robocom employees whom Harris was able to hire after it received the award. We therefore find no basis to conclude that Harris intended to misrepresent the availability of these individuals, see Pan Am World Servs., Inc., supra, or that the Navy improperly gave Harris's proposal an acceptable rating based on the offered personnel. See Development Alternatives, Inc., B-217010, Feb. 12, 1985, 85-1 CPD ¶ 188.²

The protest is denied.


James F. Hinchman
General Counsel

²The record does show that, in fact, two employees listed in Harris's BAFO had been laid off before the BAFO was submitted. However, both individuals were rehired before performance began and are now working under the contract. This being the case, no prejudice resulted from inclusion of the employees in Harris's BAFO; Harris's proposal was evaluated based on these individuals' availability, and the individuals are in fact performing as Harris proposed. See Omni Analysis, 68 Comp. Gen. 300 (1989), 89-1 CPD ¶ 239.

B-244974