



Comptroller General
of the United States

1055209

Washington, D.C. 20548

Decision

Matter of: Logicon RDA

File: B-252031.4

Date: September 20, 1993

Michael A. Gordon, Esq., Holmes, Schwartz & Gordon, for the protester.
Lane L. McVey, Esq., and Grant L. Clark, Esq., McKenna & Cuneo, for Titan Corporation, an interested party.
Major Bobby G. Henry, Jr., and Captain Gerald P. Kohns, Department of the Army, for the agency.
Glenn G. Wolcott, Esq., and Paul E. Jordan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation stated that both cost and technical factors would be considered and clearly advised that a cost/technical tradeoff would be performed, agency was required to give equal weight to cost and technical factors.
2. Agency's cost realism analysis which included application of each offeror's direct and indirect labor rates to a common number of manhours was reasonable where the adjusted number of manhours was within 5 percent of the total hours proposed by each offeror.
3. Agency properly evaluated technical/management proposals under "staffing" subfactor by considering the potential peak workload and the maximum number of exercises the contractor could be required to perform.
4. Agency reasonably concluded that awardee was likely to succeed in its stated intent to recruit and retain a substantial portion of the incumbent workforce.
5. Agency engaged in meaningful discussions where it advised protester of multiple, specific areas of its proposal which the agency believed to be overstaffed.
6. Agency reasonably concluded that protester's technical superiority, reflected in score that was 14 percentage points higher than awardee's score, was insufficient to justify probable costs that were 60 percent or \$16 million higher than awardee's probable costs.

DECISION

Logicon RDA protests the Department of the Army's award of a contract to Titan Corporation under request for proposals (RFP) No. DAJA37-92-R-0150 for technical services to support battle simulation exercises at various locations throughout Europe. Logicon protests that the agency failed to: properly apply the RFP's technical evaluation factors; perform a proper cost realism analysis; conduct meaningful discussions; and perform a reasonable cost/technical tradeoff.

We deny the protest.

BACKGROUND

The RFP was issued on August 25, 1992, and sought proposals to provide all personnel, supervision, and services necessary to provide technical support for computer driven battle simulation exercises at various locations throughout Europe. The predecessor contract to the one protested here was awarded to Logicon on a cost-reimbursement, level-of-effort basis in 1989. In 1992, the Army Audit Agency (AAA) audited Logicon's performance of the predecessor contract; among other things, the AAA found "ineffective contract administration" resulting in cost overruns and payment of unauthorized travel expenses. The AAA recommended, among other things, that any follow-on contract should include greater controls regarding how contract requirements would be ordered. As a result, this RFP contemplated a contract to be performed primarily on a task-order basis and incorporated two basic line items: 1) a core requirement consisting of constant, recurring administrative work; and 2) battle simulation exercises to be negotiated under individual task orders.

The RFP required offerors to submit both technical/management proposals and cost proposals. Regarding the technical/management proposals, the RFP required offerors to describe the personnel, organizational structure, and staffing approach intended to be used in performing the contract. With regard to cost proposals, offerors were required to submit the direct and indirect rates applicable to the labor they proposed, along with other identified direct and indirect costs.

Section M.4 of the RFP stated that proposals would be evaluated on the basis of technical/management factors; RFP section M.5 stated that proposals would also be evaluated on the basis of cost. The RFP did not indicate whether technical/management or cost was to be of greater importance, stating that award would be based on an

"integrated assessment" of technical/management and cost factors.¹ The RFP specifically provided that cost would be a "significant" consideration and advised offerors that, "significant differences in measured merit of technical/management proposals may or may not be deemed affordable or worth an additional amount of money."

On October 13, Logicon and Titan submitted initial proposals. Logicon initially proposed to perform the contract using 182 people; Titan's initial proposal contemplated performing the contract with 115 people. Titan explained that it intended to retain a core workforce to perform the constant, recurring requirements, and to augment its workforce, as task orders were issued, with temporary or part-time personnel recruited from the areas where the task orders were to be performed. Logicon's proposed cost was \$54,197,648; Titan's proposed cost was \$20,727,709.

The cost proposals were evaluated by personnel in the agency's financial services branch; technical/management proposals were evaluated by a source selection evaluation board (SSEB).² In evaluating the cost proposals, the agency found that Logicon's labor overhead rate, general and administrative (G&A) rate, and proposed fees were significantly higher than those proposed by Titan.³ The agency determined that the overall difference in the proposed costs was primarily the result of the significantly different rates and fees, along with the different levels of effort proposed.

In evaluating the technical/management proposals, the SSEB determined that the proposal submitted by the incumbent, Logicon, was superior to the proposal submitted by Titan. The SSEB gave Logicon's technical/management proposal a score of 806 points out of a possible 900 (90 percent); Titan's technical/management proposal received a score of 702 points (78 percent). In the SSEB's report to the source selection authority (SSA) following the initial evaluation, the SSEB specifically found that both proposals were technically acceptable, but expressed various concerns regarding each, including its belief that Titan's proposal was understaffed and that Logicon's proposal was overstaffed.

¹As between technical and management, section M.4 stated that technical was more important.

²The SSEB did not have access to the cost proposals during its evaluation of technical proposals.

³In light of the proprietary nature of this information, we will not discuss any of the specific rates or fees proposed by either offeror.

Specifically, regarding Titan's proposal, section A 1 of the SSEB report stated:

"(b) The total staffing of 115 was considered to be inadequate by the members of the SSEB for maximum exercise support. Past experience has shown that a number of between 135 - 145 personnel are needed to support the minimum contract requirements. Titan should review its proposed staffing plan reconsidering the planned staffing levels or provide clarification on how they will be able to meet contract requirements based on proposed staffing. Specific areas for review are the staffing at each of the Battle Simulation facilities and the need for administrative support at these facilities and within the Program Management Team."

Section B.1 of the SSEB report identified several examples of Logicon's proposed staffing that the SSEB believed were excessive, stating:

"(d) The need for a Site Manager at each of the BFT sites is questionable. . . . [Logicon] needs to relook its staffing in the area or provide justification for the increased cost associated with an additional Site Manager.

"(e) Clarify the need for a(n) Intelligence Manager within the V Corps staffing. The [SSEB] does not understand the functions of this individual in the support of the contract requirements. [Logicon] needs to provide further justification on the need for this position.

"(f) [Logicon's] proposal addresses the issue of a General Support Team within the Project Management Office. The proposal does not address the function of the team, what its function is during non-exercise periods and for whom it works.

"(g) The need for a Computer Scientist is unclear. [Logicon's] staffing within the Program Management Office lists a need for such, however the job description indicates the individual's duties as those of a Senior Software Technician."

The SSEB recommended that discussions be conducted with each offeror to give each an opportunity to revise or clarify its proposal and to submit a best and final offer (BAFO).

On November 6, the agency conducted discussions with both offerors. During discussions with Logicon, the agency identified each of its specific concerns regarding excessive staffing, as outlined in the SSEB report above, and asked that Logicon, generally, "review [its] entire proposal to identify further personnel economies." During discussions with Titan, the agency stated that Titan's proposed staffing appeared understated by about 25 to 30 percent.

Both Titan and Logicon submitted BAFOs on November 27. Titan's BAFO reflected an increase in proposed staffing from 115 to 141. Logicon's BAFO reflected a decrease of proposed staffing from 182 to 166. Titan's proposed costs increased to \$23,968,508; Logicon's proposed costs decreased to \$48,645,336.

Both cost and technical/management proposals were again evaluated separately. Each offeror's technical/management score increased slightly. Logicon's score increased to 833 (93 percent); Titan's score increased to 710 (79 percent).

Following its evaluation, the SSEB submitted a second report to the SSA. In that report, the SSEB concluded that Titan's technical/management proposal "was comprehensive, and substantially satisfied the stated [solicitation] criteria"; the SSEB also concluded, consistent with the scores discussed above, that Logicon's technical/management proposal was superior to Titan's. Although the SSEB had not reviewed the cost proposals, it recommended award to Logicon, concluding that such award "would result in the most effective operation of the [Army's] Battle Simulations Support Program."

The agency requested that the Defense Contract Audit Agency (DCAA) review both offerors' cost proposals. DCAA did so and concluded that the rates contained in each of the proposals were acceptable. Following DCAA's review, the SSA performed a cost realism or "probable cost" analysis, making various adjustments to each offeror's cost proposal. Most significantly, the SSA recalculated each cost proposal by applying the respective offeror's direct and indirect rates to a common number of direct labor hours (291,683).⁴

As a result of the cost realism analysis, the SSA concluded that the probable cost to the government under Logicon's proposal would be \$42,659,769 (down from \$48,645,336), and the probable cost to the government under Titan's proposal

⁴The SSA identified 291,683 as the midpoint between the total number of direct labor hours in Logicon's proposal (305,451) and the total number of direct labor hours in Titan's proposal (277,916).

would be \$26,644,390 (up from \$23,968,508); thus, the SSA concluded there was a difference in probable costs between the two proposals of approximately \$16 million. The SSA found that the difference in the cost of the two proposals was primarily the result of Logicon's significantly higher overhead rate, G&A rate, and proposed fees.

The SSA reviewed the second SSEB report regarding the evaluation of technical/management proposals, focusing specifically on the SSEB's descriptions of the distinctions between the two proposals. The SSA concluded that the report provided insufficient justification for awarding a contract to Logicon in light of Logicon's significantly higher probable costs. Accordingly, the SSA asked the SSEB to reconvene, to again review the proposals, and to provide an expanded description of the technical/management distinctions between the two proposals. The SSEB reconvened, reviewed the proposals again, and submitted a third report to the SSA. The SSEB did not change the technical/management scores for either proposal, but the third report contained a more detailed description of the technical/management distinctions between the two proposals.

Upon reviewing the third SSEB report, the SSA weighed the technical/management superiority of Logicon's proposal against the higher costs associated with it and concluded that Logicon's technical/management superiority was insufficient to outweigh the additional costs. On December 31, a contract was awarded to Titan. This protest followed.

DISCUSSION

Logicon first protests that the agency failed to properly apply the stated evaluation criteria, arguing that the solicitation "made technical merit, not low proposed cost, the predominant consideration."⁵ Logicon argues that, "cost . . . was only to be determinative in the award decision when the offerors' technical/management scores were essentially equal." Logicon maintains that because its technical/management proposal was rated higher than Titan's, the contract should have been awarded to Logicon.

⁵In multiple supplemental documents following its initial protest, Logicon refers to various other issues, including assertions that Titan's proposal should have been disqualified on the basis of an alleged conflict of interest; Titan's proposal failed to comply with the minimum requirements of the solicitation; and the agency improperly modified Titan's contract following award. We have reviewed all of Logicon's allegations and find no merit in them.

Contrary to Logicon's representations, the RFP did not state that technical factors were to be "the predominant consideration." Rather, section M.4 of the solicitation stated that proposals would be evaluated on the basis of technical/management factors and, as between technical and management factors, technical would be more important. Section M.5 of the solicitation stated that proposals would also be evaluated on the basis of cost, but did not establish any relative importance between cost and the technical/management factors identified in section M.4. The solicitation specifically provided that the basis for contract award would be "an integrated assessment of the criteria designed to determine which proposal offers the greatest value to the [g]overnment." While the solicitation stated that the "integrated assessment . . . of technical, management and cost factors may result in an award to other than the low offeror," it also stated that, "significant differences in measured merit of technical/management proposals may or may not be deemed affordable or worth an additional amount of money." [Emphasis added.] In short, because the solicitation clearly put offerors on notice that a cost/technical tradeoff would be performed, but did not establish that either cost or technical/management factors would be more important, the agency was obligated to give approximately equal weight to technical/management factors and cost in the source selection decision. Johns Hopkins Univ., B-233384, Mar. 6, 1989, 89-1 CPD ¶ 240. Accordingly, Logicon's protest that the agency failed to accord technical factors predominant consideration is without merit.

Logicon next challenges the SSA's cost realism analysis. Logicon complains that it was improper for the agency to apply each offeror's respective direct and indirect rates to a common number of direct labor hours.⁶ Logicon asserts that Titan failed to understand the complexity of the work to be performed and, therefore, that it will actually take Titan more effort to perform the contract requirements than the level of effort that Titan proposed.

Titan and the agency respond that Titan's proposal fully demonstrated its understanding of the contract requirements as reflected in the SSEB conclusion that Titan's proposal was comprehensive and satisfied the solicitation requirements. Titan and the agency further point out that the agency's normalization of hours worked to the detriment of Titan and to the benefit of Logicon since, for purposes of the cost realism analysis, Titan's proposed hours were

⁶Logicon does not challenge DCAA's conclusion that Titan's overhead and G&A rates were acceptable, nor does it assert that Logicon's significantly higher overhead and G&A rates were in any way overstated.

increased and Logicon's hours were decreased. In this regard, the parties observe that Logicon's technical/management rating was enhanced by the higher level of staffing it proposed; yet, the evaluation of Logicon's cost proposal was not negatively affected by the higher staffing levels because of the normalization of direct labor hours. Conversely, Titan's technical/management rating reflected some criticism regarding its lower staffing levels; yet, the evaluation of Titan's cost proposal was not positively affected by Titan's lower staffing levels due to the normalization of direct labor hours. In short, Titan and the agency assert that, if anything, the cost realism analysis had an unfair effect on the evaluation of Titan's proposal.

Where, as here, an agency evaluates proposals for award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 15.605(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost. CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make the cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. AmerInd, Inc., B-248324, Aug. 6, 1992, 92-2 CPD ¶ 85.

In performing a cost realism analysis, an agency may properly make minor changes in the level of direct labor proposed without otherwise altering the applicable direct and indirect rates. See, e.g., National Steel & Shipbuilding Co., B-250305.2, Mar. 23, 1993, 93-1 CPD ¶ 260. Here, the adjustments made to each offeror's direct labor hours for purposes of the cost realism analysis represented less than 5 percent of the total direct labor hours proposed by either offeror. Logicon has not demonstrated that the costs either offeror is likely to incur will be affected in any way by this minor adjustment to the proposed levels of effort. On this record, the agency's normalization of direct labor hours for purposes of its cost realism analysis was not improper. Id.

To the extent Logicon is challenging the agency's judgment regarding Titan's ability to perform the contract within the number of hours used in the cost realism analysis, Logicon is merely expressing its disagreement with the agency's affirmative responsibility determination regarding Titan. The evaluation of proposals and the determination as to an offeror's understanding of the contract requirements and its

ability to meet those requirements is primarily the function of the procuring agency; the procuring agency is responsible for defining its own needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. E.g., D.O.N. Protective Servs., Inc., B-249066, Oct. 23, 1992, 92-2 CPD ¶ 277. Here, we find no basis to question the agency's determination that Titan's proposal adequately demonstrated an understanding of the contract requirements and that Titan is capable of successfully performing those requirements.

Logicon next protests that the agency's technical/management evaluation of each offeror's staffing plan was flawed. Logicon observes that amendment No. 1 of the RFP incorporated the agency's "best estimate" that as many as 702 exercises per year could be required, and that offerors were required to prepare their proposals based on the assumption that they would have to perform the maximum number of exercises. In evaluating the offerors' proposed staffing plans, the agency relied on a staffing estimate of 144 personnel. Logicon notes that, under the preceding contract, it performed only 284 exercises with a staff of approximately 144 personnel; on this basis, Logicon asserts that the agency's staffing estimate must have been based on less than 702 exercises. Accordingly, Logicon protests that the agency's evaluation was improper because it was based on a level of activity other than the one which offerors were required to assume in preparing their proposals.

The agency responds that, in fact, it based its internal staffing estimate on performance of 702 exercises. However, the agency explains that the maximum number of exercises to be performed is not the dispositive factor in determining the staff size necessary for contract performance. The agency states that, in developing its staffing estimate it considered not only the maximum number of exercises that could be required, but also the potential "density" of those multiple exercises; that is, the agency assessed the staff size that would be required to perform the contract during periods of peak workload. Because its staffing estimate reflected the number of personnel necessary to perform the contract during peak workload periods, the agency reasoned that its staffing estimate would remain the same whether the total number of exercises was substantially higher or lower than 702. In short, the agency maintains that its evaluation of technical/management proposals with regard to the level of staffing proposed was based on the same assumption regarding the maximum number of exercises as the assumption that offerors were required to make in preparing their proposals.

We find no basis to question the agency's statement regarding its technical/management evaluation of proposed staffing levels or its explanation regarding the basis for its internal staffing estimate.⁷ Further, we have reviewed the record regarding the agency's evaluation of the offerors' respective staffing plans and find that the agency did rely on its estimate of 144 personnel in evaluating the staffing plans included in the offerors' technical/management proposals. In any event, as noted above, the record shows that Logicon's proposal received a final score of 117 points out of a possible 130 points with regard to the technical/management subfactor "staffing," and that Titan's proposal received a final score of 94 points under this subfactor. On this record, we find no merit in Logicon's protest that the agency's technical/management evaluation of staffing was performed on a basis other than the one on which offerors were required to prepare their proposals.

Logicon next protests that Titan's proposal should have been "disqualified" on the basis that Titan "misrepresented" its ability to recruit and retain a significant portion of Logicon's incumbent workforce.⁸ The agency expressed some concern regarding Titan's ability to retain this portion of the incumbent workforce; however, the SSA ultimately concluded that Titan's projection was reasonable based on "the current economic downturn," the "pessimistic outlook for other job opportunities," and the SSA's experience in the European theater since 1979.

Titan disputes Logicon's characterization of its recruiting projection as a "misrepresentation." Approximately 2 months after Logicon's protest was filed, Titan filed an affidavit stating that it had, in fact, experienced considerable success in retaining the incumbent workforce; specifically, Titan stated that 81 of the 110 Titan employees hired at that time were former Logicon employees. After filing its initial protest, Logicon itself confirmed that a significant

⁷We note that the agency's explanation is consistent with Logicon's own staffing estimate when compared to its staffing under the preceding contract. Logicon states that it needed a staff of approximately 144 personnel to perform only 284 exercises under the preceding contract. Yet, in preparing its proposal to perform approximately two and one-half times that number of exercises, Logicon increased its staff to only 166, or approximately 20 percent.

⁸Titan's proposal stated that it anticipated being able to recruit and retain approximately 70 percent of the incumbent workforce. In its proposal, Logicon represented that, if it was not the successful awardee, "approximately 90 percent" of its workforce would be returning to the United States.

portion of its former workforce had been hired by Titan, arguing that Titan's recruiting activity constituted "bait and switch" tactics.

Initially, we note that it is neither unusual nor inherently improper for an awardee to recruit and hire personnel previously employed by an incumbent contractor. See, e.g., Applications Research Corp., B-230097, May 25, 1988, 88-1 CPD ¶ 499; Gem Servs., Inc., B-217038.2, Feb. 7, 1985, 85-1 CPD ¶ 159. Here, Titan clearly advised the agency of its intentions with regard to retaining the incumbent workforce. Further, we find no basis to question the SSA's judgment that Titan was likely to succeed in retaining a significant portion of the incumbent workforce--as appears to have, in fact, occurred. On this record, we find no basis to conclude that Titan engaged in "misrepresentation," or that Titan engaged in "bait and switch" tactics.

Logicon next protests that the agency failed to conduct meaningful discussions with Logicon in that the discussions were unequal. Logicon complains that, because the agency advised Titan that it needed to increase its proposed staffing by "about 25 to 30 percent," the agency was obligated to have similarly advised Logicon of the percentage the agency believed Logicon's proposal was overstaffed.

In order for discussions to be meaningful, contracting agencies must furnish information to all offerors in the competitive range regarding areas in which their proposals are believed to be deficient so that offerors may revise their proposals to fully satisfy the agency's requirements. Proprietary Software Sys., B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. Although discussions must provide offerors an equal opportunity to revise their proposals, the content and extent of discussions are within the discretion of the contracting officer and discussions with each offeror need not be identical; rather, a procuring agency should tailor its discussions to each offeror since the number and type of proposal deficiencies will vary between proposals. See, e.g., Indian Community Health Serv., Inc., B-217481, May 15, 1985, 85-1 CPD ¶ 547.

Here, the record reflects that the agency advised Logicon that its proposal was overstaffed and specifically identified the multiple areas of its proposal wherein the agency believed overstaffing existed. In light of the detail provided to Logicon in this regard, the agency's failure to state a specific percentage of staff to be eliminated did not constitute unequal treatment. In any event, the record fails to demonstrate any prejudice to Logicon as a result of the different discussions regarding staffing levels. Following discussions and submission of BAFOs, Titan's technical/management score under the "staffing" subfactor.

increased 3 points to 94; Logicon's score under the "staffing" subfactor increased 6 points to 117. On this record we find no merit in Logicon's assertion that the agency engaged in prejudicially unequal discussions.

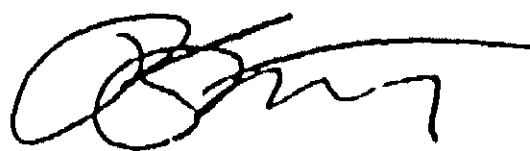
Finally, Logicon protests that the agency's cost/technical tradeoff was irrational because it failed to consider various deficiencies which Logicon asserts existed in Titan's technical/management proposal. Logicon essentially maintains that its technical/management proposal was so superior as to preclude any reasonable cost/technical tradeoff resulting in award to Titan, and that the SSA's failure to recognize Logicon's insurmountable technical superiority was the result of the SSA's technical incompetence.

As noted above, the SSEB found that Titan's proposal was "comprehensive, and substantially satisfied the stated criteria." The SSA concurred in that overall assessment, finding Titan's proposal to be "high quality." Logicon summarily dismisses the SSA's determination, stating:

"The SSA's claim that Titan submitted a 'high quality' proposal is entitled to no weight. Neither the SSA nor his advisors are technically competent to make that determination."

Where a solicitation states that both cost and technical factors must be considered, the source selection official is required to determine whether differences in technical merit are worth additional expense to the government. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. The extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. E.g., General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. We have reviewed the record and find no basis to question the reasonableness of the SSA's determination that Logicon's technical/management superiority, as reflected by a score that was 14 percentage points higher than Titan's, was insufficient to justify incurring an additional \$16 million and over 60 percent higher costs than those likely to be incurred under Titan's proposal.

The protest is denied.


 James F. Hinchman
 General Counsel