



Comptroller General
of the United States

Washington, D.C. 20548

150,235

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Decision

Matter of: Mandex, Inc.

File: B-252362.4

Date: February 1, 1994

James H. Roberts III, Esq., and Suzanne M. Dohrer, Esq.,
Manatt, Phelps & Phillips, for the protester.
Michael A. Gordon, Esq., and Donald C. Holmes, Esq., Holmes,
Schwartz & Gordon, for Logicon Eagle Technology, an
interested party.
Captain Gary M. Parker, Esq., and Major Bobby G. Henry, Jr.,
Esq., Department of the Army, for the agency.
Glenn G. Wolcott, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Where solicitation contemplated award of a fixed-price contract, there was adequate price competition, and cost and pricing data was not requested or submitted, agency was only required to perform a price analysis, not a cost analysis, to determine whether prices offered were fair and reasonable.
2. Price analysis was proper where it consisted of comparing proposed prices with an independent government cost estimate based on prior contracts for similar services.
3. Protest that awardee's proposal failed to comply with solicitation requirements regarding technical data rights is denied where awardee had obtained the required data rights, its proposal took no exception to the solicitation requirements, and agency had no reason to question awardee's intention to comply with the solicitation requirements.
4. Protest that agency exceeded delegation of procurement authority (DPA) is denied where record demonstrates that contracts awarded were within the authority granted by the DPA.

DECISION

Mandex, Inc. protests the Department of the Army's award of a contract to Logicon Eagle Technology under request for proposals (RFP) No. DABT60-92-R-0005, for the development of training materials to be used by Army schools and other government agencies. Mandex maintains that the agency did not properly evaluate Logicon's proposed labor rates; Logicon did not offer the necessary data rights in some of the authorizing software it proposed; and the agency failed to obtain a proper delegation of procurement authority (DPA).

We deny the protest.

BACKGROUND

The RFP was issued by the Army in August 1992, seeking proposals to provide the personnel, material, equipment, and facilities necessary for developing and producing interactive courseware, including computer-assisted instruction (CAI), interactive videodisc (IVD) courseware,¹ and print media, to support the Army's distributed training program.² The RFP contemplated award of a firm-fixed-price requirements contract, for a base year and 4 option years, under which the government would issue delivery orders for individual training products.

Section B of the RFP contained the schedule of contract line items (CLINs) for which fixed prices were sought. The schedule was divided into three sections: CLINs 0001 through 0035 were set aside for small businesses; CLINs 0036

¹The RFP defined "IVD courseware" as:

"The application of videodisc and computer to the delivery of instruction wherein there is an ongoing interchange of stimulus and reaction between computer and videodisc system and the user. Most of the visual information is presented by video with the computer managing the flow and keeping student records."

²The Army's distributed training program is an initiative to modernize institutional training.

through 0060 were set aside for small disadvantaged businesses; and CLINs 0061 through 0115 were unrestricted.³ Mandex challenges only the award of CLINs 0061-0115, the unrestricted portion of the procurement.

Within the unrestricted portion of the solicitation, most of the individual CLINs sought delivery of specific standardized training products.⁴ For example, CLIN 0062, entitled "Computer-Assisted Instruction," called for delivery of standard CAI training lessons; CLIN 0063, "Interactive Videodisc Courseware," called for delivery of standard IVD training lessons; and CLIN 0067, "Print Products," called for delivery of standard "paper-based" training lessons. The agency refers to the CLINs calling for standard products as "production CLINs," and states that the majority of the contract effort will be performed on the basis of delivery orders placed against those CLINs.⁵

In contrast to the "production CLINs," CLIN 0069, entitled "labor categories," listed 20 labor categories for which fixed rates were sought. The agency states that it plans to issue delivery orders against the "labor categories" CLIN

³Each group of CLINs was further subdivided by performance period. For example, CLINs 61 through 71 were applicable to the base period; CLINs 72 through 82 to the first option period; CLINs 83 through 93 to the second option period; and so on.

⁴The RFP required that the interactive courseware delivered under this contract be provided "in accordance with MIL-STD 1379D," which contains interactive courseware protocols. As explained in the RFP, MIL-STD 1379D "resulted from the military's decision to write standards for [interactive courseware] products so that military developers would use standard specifications."

⁵Each "production CLIN" was further divided into sub-CLINs reflecting various tasks associated with the particular product sought. Estimated quantities were listed for each sub-CLIN and offerors were required to submit fixed unit prices for each sub-CLIN based on the estimated quantities. The total price for each proposal was determined by multiplying the proposed unit prices by the applicable estimated quantities and summing the products of those calculations.

only when products other than standard training lessons are required. Section C-4.3 of the RFP summarized the intended use of the different CLINs as follows:

"Firm fixed unit prices listed in section B are applicable to standard [interactive courseware] and print requirements. The firm fixed labor rate prices shall be used to meet the Army's needs for other tasks listed in this statement of work which may be ordered."⁶

Regarding the basis for the labor rates to be proposed, the RFP advised offerors that all costs associated with direct labor would be recovered only through the rates proposed. Specifically, section B.3 of the RFP stated:

"The contractor shall establish a 'loaded' direct labor-hour rate that shall include wages, indirect costs, other costs, general and administrative expense, and profit."

In response to a question posed prior to the submission of proposals, an RFP amendment clarified section B.3, specifically noting that the labor rate the agency expected to pay for a media production specialist, for example, would include the offeror's costs to obtain production facilities incident to that category of labor. This clarification effectively put offerors on notice that delivery orders would not be issued with separate line items for production facilities or other costs associated with direct labor.

Section M of the solicitation stated that award would be based on the proposal offering the "best overall value," which would be the proposal offering the lowest price per technical point as determined by dividing the total technical points into the total proposed price.

On or before the October 13 closing date, nine proposals, including those of Logicon and Mandex, were submitted for the unrestricted portion of the procurement.⁷ Technical

⁶Section C-6 of the RFP further addressed the limited use of the "labor categories" CLIN, stating:

"The contractor may be required to employ, on a temporary basis, an individual or individuals with explicit technical expertise required under special products by delivery order."

⁷Mandex, a small disadvantaged business, also submitted a proposal in response to CLINs 0036 through 0060, one of the set-aside portions of the solicitation.

proposals were evaluated by a technical evaluation board and price proposals were evaluated by a price analyst. The agency determined that the proposals submitted by Mandex, Logicon, and two other offerors were in the competitive range. Discussions with each of the competitive range offerors were conducted, and best and final offers (BAFO) were submitted on May 5, 1993. The technical scores and evaluated prices of the offerors' BAFOs were as follows.

<u>Offeror</u>	<u>Technical Score</u>	<u>Evaluated Price⁹</u>
Logicon	563.60	\$83,266,432
Mandex	554.60	85,235,779
Offeror A	523.10	112,850,356
Offeror B	492.20	116,250,396

In connection with its evaluation of price proposals, the agency established an independent government cost estimate (IGCE) for purposes of determining whether the prices proposed were fair and reasonable. The IGCE was comprised of two parts: an estimate of costs applicable to the "production CLINS," and an estimate of the labor rates to be used in ordering special products. Both parts of the IGCE were based on prices obtained under recent contracts for interactive courseware products; the IGCE for labor rates was specifically based on a task order contract for training products that Mandex was then performing (contract No. DABT60-89-D-0004, referred to as the "omnibus" contract), under which Mandex had proposed rates for the same or similar labor categories sought under the protested solicitation.

In order to assess the price reasonableness of the proposals under the "production CLINS," the agency created a sample delivery order drawn from those CLINS, calculated what each offeror's price would be under that delivery order, and compared that price to its IGCE. In evaluating the proposed labor rates, the agency compared each rate to the IGCE labor rates, which were, essentially, the rates proposed by Mandex under the "omnibus" contract. Based on the BAFO evaluations, including the price comparisons, the agency determined that all offerors' prices were fair and reasonable, and that Logicon's proposal, which offered the

⁹All of the offerors, other than Mandex, were large businesses, so each large business' evaluated price reflects a 10 percent addition to provide an evaluation preference for Mandex due to its small disadvantaged business status.

lowest total price and received the highest technical score, offered the best overall value to the government.⁹ Accordingly, the agency selected Logicon for contract award. Mandex's protest followed.

DISCUSSION

Mandex first argues that Logicon's proposed rates for three particular labor categories--Audio Visual Production Specialist, Media Director, and Media Production Specialist--were unrealistically low in that they failed to reflect the cost of audio/video production facilities likely to be incurred incident to the labor performed under those categories. Mandex asserts that, in light of the RFP provision regarding "loaded" labor rates and the RFP amendment clarifying that provision, the agency was obligated to do more than merely compare Logicon's proposed rates with rates under prior contracts. Further, Mandex asserts that the agency's use of Mandex's "omnibus" contract as a basis for comparison of labor rates was inappropriate because most of the labor actually ordered under the "omnibus" contract had been for labor categories that did not require video production facilities.

In response, the agency first notes that it performed a price analysis, not a cost analysis, of the proposals submitted.¹⁰ The agency maintains that only a price analysis was required because: award of a fixed-price contract was contemplated; there was adequate price competition; and cost and pricing data had not been requested or submitted. Regarding its reliance on Mandex's "omnibus" contract as a basis for comparing the proposed labor rates, the agency explains that: the "omnibus" solicitation contained the identical language regarding "loaded" labor rates as that in section B-3 of the protested solicitation, quoted above; the RFP for the "omnibus" contract specifically sought labor categories which generally require production facilities; and the statement of work in the "omnibus" contract specifically contemplated delivery of products that would necessitate obtaining

⁹Consistent with section M of the RFP, the agency also calculated the cost per technical point of each of the proposals, which showed that Logicon's proposal offered the lowest cost per technical point.

¹⁰"Price analysis" is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit; in contrast, a "cost analysis" involves the examination and evaluation of an offeror's separate cost elements and proposed profit. FAR § 15.801.

production facilities. Further, the agency notes that Mandex had, in fact, delivered products under the prior contract that required production facilities. In sum, the agency maintains that it reasonably viewed the requirements of the "omnibus" contract to be sufficiently similar to the requirements of the protested solicitation to justify its using the "omnibus" rates as a basis for comparing the rates proposed under the protested solicitation.

Where the award of a fixed-price contract is contemplated, "cost realism" is not ordinarily evaluated, since such contracts place the risk and responsibility of loss upon the contractor. Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556. Rather, a procuring agency is required to perform a price analysis to determine that the prices proposed are fair and reasonable. FAR § 15.805-2; Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6.

Here, the RFP clearly indicated that a fixed-price contract was contemplated and did not indicate that any cost analysis would be performed. Specifically, the RFP required that price proposals be submitted on standard form (SF) 1411 and advised offerors: "No backup rationale is required with the SF 1411." Accordingly, to the extent Mandex is protesting that the agency was obligated to perform a cost analysis, evaluating the cost elements and profit incorporated into Logicon's proposed rates, its protest is without merit.

Regarding the adequacy of the price analysis, the nature and extent of an agency's price analysis is largely a matter of agency discretion which our Office will not disturb unless that determination is unreasonable or there is a showing of fraud or bad faith. Coastal Indus. Inc., B-230226, May 3, 1988, 88-1 CPD ¶ 431. An agency may properly base its determination of price reasonableness on comparisons with government estimates, prior proposed prices, prior contract prices, or any other relevant factor. See FAR § 15.805-2; United States Elevator Corp., B-241772, Mar. 5, 1991, 91-1 CPD ¶ 245.

The Army's price analysis here was unobjectionable. Mandex does not dispute that Logicon's labor rates are consistent with the IGCE and with Mandex's own labor rates under the "omnibus" contract. Nor does Mandex dispute that the RFP for the "omnibus" contract contemplated delivery of both print and videotape products, as is currently sought under the protested solicitation and, in fact, that Mandex has delivered products under that contract that required video production facilities. Further, we find unpersuasive Mandex's argument that the agency improperly relied on the "omnibus" rates because limited amounts of products requiring production facilities have been ordered under that contract. First, the record indicates that, at the time

Mandex submitted its proposal for the "omnibus" contract, it did not know that only a limited amount of products requiring production facilities would be ordered. Further, Logicon asserts that it will be able to obtain production facilities through agreements with particular subcontractors at little or no cost, and that its proposal merely passes that savings on to the government. We have no basis to challenge Logicon's statements in that regard. We conclude that there is no basis to question the contracting officer's reliance on Mandex's prior rates, along with the IGCE, as a basis for its analysis of Logicon's price.¹¹

Mandex also asserts that Logicon's proposal failed to comply with the RFP requirements regarding the authoring software proposed. Mandex refers to section H.11 of the RFP, which incorporated the following requirement from Department of Defense (DOD) Instruction No. 1322.20:

"The DOD components shall obtain to the extent authorized by the FAR, unlimited rights or government-purpose license rights to the courseware, associated presentation programs necessary to interpret and execute the courseware, documentation and associated training materials for all [interactive courseware] programs developed for or by the Department of Defense. These rights shall include the royalty-free rights to use, duplicate, and disclose data for government purposes and to permit others to do so for government purposes."

Specifically, Mandex argues that, "on information and belief," Logicon proposed to use "QUEST" authoring software, rather than "Masterwriter" software, and that Logicon did not offer to furnish government-purpose license rights for the "QUEST" software as required by the RFP.¹²

¹¹Mandex also protests that "Logicon's failure to include loaded rates demonstrates that it did not understand the nature and scope of the work." On this basis, Mandex maintains that the agency's technical evaluation of Logicon's proposal was flawed. In light of our conclusion that the agency acted reasonably in determining that Logicon's proposed rates were fair and reasonable, we find no merit in Mandex's assertion that Logicon's technical proposal should have been downgraded based on the prices it proposed.

¹²Mandex agrees that a proposal offering "Masterwriter" software complies with the data rights requirements of the RFP because the government already owns government-purpose data rights in that software.

This argument also is without merit. Logicon's proposal stated that it was offering to use both the "Masterwriter" and "QUEST" software to design and develop the required products under this contract, and it took no exception to the data rights requirements contained in RFP section H.11. In response to Mandex's protest, Logicon submitted a copy of its licensing agreement with the manufacturer of the "QUEST" software, demonstrating that Logicon had, in fact, obtained the required data rights. There thus is no basis to question the agency's determination that Logicon's proposal complied with the data rights requirements.¹³

Finally, Mandex protests that the award to Logicon is void because the Army lacked an appropriate DPA from the General Services Administration (GSA) authorizing it to purchase federal information processing (FIP) resources. Mandex acknowledges that the Army did, in fact, obtain a DPA from GSA applicable to the combined procurements conducted under this solicitation, and that this DPA authorized expenditure of \$99.2 million for FIP resources. Nonetheless, Mandex asserts that, because the combined estimated value of the two contracts awarded under this solicitation which involved FIP resources is \$102.68 million,¹⁴ the contract awarded to Logicon should be considered void for exceeding the authority granted by the DPA.

This argument is without merit. The Army's "Agency Procurement Request" (APR) to GSA clearly stated that the Army was seeking authority to award three contracts in the total aggregate amount of \$119.84 million. Further, the APR clearly seeks procurement authority to award the two contracts involving FIP resources in the total amount of \$104.93--of which \$99.2 million is for FIP resources and \$5.73 million for non-FIP resources. In granting the DPA for \$99.2 million, GSA expressly stated that the DPA was "based on the information and certification contained in the APR." Further, the text of the DPA itself specifically states that the total value of the three contracts to be awarded under this solicitation included \$99.2 million for

¹³To the extent Mandex is asserting that Logicon will not, in fact, provide the required data rights to the government at the proposed price, its protest raises a matter of contract administration not within our bid protest jurisdiction. 4 C.F.R. § 21.3(m)(1) (1993).

¹⁴There is no dispute that the third contract awarded under this solicitation involves no FIP resources.

FIP resources and \$20.64 million for non-FIP resources.¹⁵ Since the FIP portion of the contracts fell within the amount authorized for FIP resources, the Army did not exceed its authority under the DPA.

The protest is denied.

Ronald Berger
for Robert P. Murphy
Acting General Counsel

¹⁵The \$20.64 million included \$14.91 million in non-FIP resources for the third contract contemplated under this solicitation, along with the \$5.73 million in non-FIP resources contemplated under the contract awarded to Logicon.