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

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REDACTED VERSION'

Decision

Matter of: Radian, Inc.
File: B-256313.2; B-256313.4
Date: June 27, 1994

Robert A. Klimek, Jr., Esq., Klimek, Kolodney & Casale, P.C., for the protester.
Robert E. Gregg, Esq., Hazel & Thomas, for MKI Systems, Inc., an interested party.
William A. Longwell, Esq., and Laurie Baird Hurley, Esq., United States Marine Corps, for the agency.
Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency is not required to conduct an in-depth cost analysis or to verify each and every item of an offeror's proposed costs in conducting its cost realism analysis since the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency; our review is limited to a determination of whether an agency's cost evaluation was reasonably based.
2. Contracting agency's use of "rate checks" for verifying offeror's proposed labor rates by obtaining information from the Defense Contract Audit Agency (DCAA) in connection with a cost realism analysis is a reasonable method for verifying such costs where certain labor rates cannot be verified by DCAA, agency may rely on information contained in proposals and perform its own cost realism analysis without seeking additional independent verification of each item of proposed costs, since the extent to which proposed costs will be examined is generally a matter for the agency to determine.
3. An offeror is responsible for affirmatively demonstrating the merits of its proposal.

The decision issued June 27, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

4. Where offeror for cost-type contract proposes certain personnel as consultants (bona fide independent subcontractors), contracting agency, in performing its cost realism analysis, may reasonably evaluate proposed charges for consultants as a direct cost and permit offeror to exclude consultants from application of offeror's overhead rate that is customarily allocated and charged to its own employees.

5. Contracting agency is under no obligation to conduct discussions where the solicitation advised all offerors that the government intended to make award on the basis of initial proposals without holding discussions, unless discussions were determined to be necessary, and where the solicitation specifically warned offerors that initial proposals should contain the offeror's best technical and cost terms.

DECISION

Radian, Inc. protests the award of a cost-plus-fixed-fee, indefinite delivery/indefinite quantity contract to MKI Systems, Inc. under request for proposals (RFP) No. M67854-93-R-2098, issued by the United States Marine Corps for technical, logistical, financial, engineering, and other services to support various programs and projects within the Marine Corps Systems Command.¹ The protester principally contends that the agency failed to perform a reasonable cost realism analysis which flawed the selection decision, that the agency otherwise miscalculated cost proposals, and that the agency should have conducted discussions instead of awarding the contract on the basis of initial proposals.

We deny the protest.

GENERAL BACKGROUND

The RFP, issued May 28, 1993, stated that the government would award the contract to the responsible offeror whose offer conforming to the solicitation was most advantageous to the government, cost, or price and other factors considered. The RFP stated that the government intended to evaluate proposals and award a contract without discussions with offerors and that therefore each initial offer should

¹Among other program and project functions, the Command has the responsibility for research, development, acquisition, fielding, and life cycle support of systems for nuclear, biological, chemical defense, motor transport, and individual combat equipment, as well as construction and excavation equipment, material handling equipment, and engineering support equipment.

contain the offeror's best terms from a cost or technical standpoint; however, the government reserved the right to conduct discussions if later determined by the contracting officer to be necessary. The RFP contemplated a performance period of 1 base year and four 1-year option periods; total costs evaluated by the agency for purposes of award included the base and all option year costs and fees. The RFP stated that cost would be "slightly less important" than all technical factors combined; however, the RFP stated that the importance of cost as an evaluation factor would increase depending upon "the degree of equality of the [technical] proposals."

The technical evaluation factors, listed in descending order of importance, were as follows: (1) understanding of requirements and technical approach, (2) corporate experience, (3) personnel experience, and (4) management structure.² As relevant here, offerors were required to propose eight labor categories of personnel with stated minimum qualifications. Offerors were required, in section B (the schedule), to propose hourly rates for each labor category based on a specific labor mix, and to include rates for overhead, other direct costs and fees, as well as a total cost-plus-fixed-fee. For example, for contract line item number (CLIN) 0001 (services for the agency's Combat Service Support Program Office for fiscal year 1994), Schedule B contained the following table:

<u>Labor Category</u>	<u>No. Hours</u>	<u>Rate/Hour</u>	<u>Total</u>
Project Leader	9,970 MH	\$ _____	\$ _____
Senior Project Engineer	8,798 MH	\$ _____	\$ _____
Project Engineer	5,865 MH	\$ _____	\$ _____
Logistics Analyst	9,970 MH	\$ _____	\$ _____
Technician/Draftsman	5,278 MH	\$ _____	\$ _____
Technical Writer	5,865 MH	\$ _____	\$ _____
Documentation Specialist	4,106 MH	\$ _____	\$ _____
Clerk/Typist	8,798 MH	\$ _____	\$ _____

As stated above, section B also required offerors to provide overhead/burden rates, expressed as a percentage of base, as well as total amounts proposed for other direct costs and a total cost-plus-fixed-fee for each year.

²The technical factors generally contained numerous and detailed subfactors. We note that the agency evaluated technical proposals using the following adjectival ratings: outstanding, superior, good, marginal, and unacceptable. However, since the protester has not challenged the technical evaluation, we will primarily discuss the cost aspects of the solicitation, the cost proposals, and the cost evaluation by the agency.

The RFP stated that costs would be evaluated for reasonableness and realism. The RFP required offerors to provide enough data to enable the government to "break down" total estimated cost and fee into separate components, to present direct labor rates and overhead and burden rates, including a description of the basis on which direct labor rates were proposed, and the basis for overhead and burden rates. The RFP also stated that the agency may adjust proposed costs for purposes of evaluation, based on the results of the cost realism evaluation. Finally, the RFP cautioned offerors that unrealistic rates and costs would be considered in a cost risk assessment and may result in adjustment of the offerors' estimated cost-plus-fixed-fee.

On September 3, the agency received seven proposals, including proposals from Radian and MKI.³ The agency evaluated technical proposals and performed a cost realism analysis. As part of the cost realism analysis, the agency obtained the assistance of Defense Contract Audit Agency (DCAA) offices to perform a "rate check" on each labor category proposed by each offeror.⁴ The results of the technical and cost realism evaluations were as follows:

	<u>Radian</u>	<u>MKI</u>
Technical Approach	Outstanding	Superior
Corporate Experience	Outstanding	Outstanding
Personnel Experience	Superior	Superior
Management Experience	Outstanding	Superior
Proposed Cost	[DELETED]	\$8,101,412
Evaluated Cost--with DCAA input	[DELETED] [DELETED]	\$8,453,454 [\$8,502,571]

The agency decided to award the contract to the lower-cost offeror, MKI, on the basis of initial proposals without discussions. Specifically, the agency decided that Radian's higher technical rating simply did not justify "spending the additional money." Award was made to MKI on January 21, 1994; this protest followed.

³Since the contract was ultimately awarded to MKI, and since only Radian filed a timely protest against this award, we limit our discussion to the proposals of these two firms.

⁴We discuss below in more detail what type of information DCAA provided to the agency and in what manner the agency made use of this information in its cost realism analysis.

COST REALISM METHODOLOGY

A. Specific Relevant Facts

The agency's cost realism was essentially limited to an examination of the reasonableness of each offeror's proposed direct labor rates, overhead rates, and G&A rates. The contract specialist provided each cognizant DCAA auditor (responsible for auditing contracts for a particular offeror) with each offeror's labor category, specific personnel (where available), and proposed rates, and asked for a "rate check."⁵ Using the information obtained from DCAA, the contract specialist prepared a detailed spread sheet for each offeror which adjusted each offeror's proposed rates based upon the information obtained from DCAA. She states that while "there were differences between DCAA's recommendations and the offerors' proposed rates, in no case was the difference so significant that I felt the need to question the auditor's recommendation."⁶ In cases where no information on a labor rate was available from DCAA, she relied on each offeror's proposed rates after

⁵For example, Radian proposed an hourly rate of \$19.80 for its project leader; DCAA, in its response to the agency, supplied information to the agency confirming that rate at \$19.80. As another example, Radian proposed an hourly rate of \$18.80 for one of its project engineers; DCAA supplied information to the agency that \$17.50 was the appropriate rate. For some labor categories, DCAA could not provide specific information ("no info").

⁶Radian argues that the information on labor rates and indirect costs provided to the agency by DCAA did not amount to audit report "recommendations," but amounted to unaudited rate verifications. The contract specialist states that even though the protester does not consider this DCAA information as "recommendations," her office "routinely receives rate check information from DCAA in this fashion and that this information has always been regarded by [her] office as DCAA's recommendations regarding the contractor's proposal." We agree with the protester that the DCAA information did not amount to a formal audit report and that the information provided was essentially informal unaudited cost information provided by DCAA in response to the agency's requests for "rate checks." However, we find that such requests for "rate checks" from DCAA (including unaudited rate verification) are commonly employed by agencies in evaluating or otherwise resolving cost problems under cost reimbursement-type contracts. We also find nothing objectionable about this practice.

performing her own cost realism analysis by, for example, examining proposed labor rates against current rates charged by a contractor under other contracts with the agency.

The agency's spread sheets, prepared in the course of the cost realism analysis, contain two sections. Section 1 is a tabulation of cost information extracted from each offeror's proposal for each labor category and is labeled "PROPOSED." Section 2 of the spread sheet is essentially identical except that the tabulated cost information is a composite of information (rate checks) obtained from DCAA and from the respective offerors' cost proposals as otherwise verified by the contract specialist. Section 2 is entitled "DCAA RECOMMENDS" and was used by the agency in determining each offeror's total evaluated cost for cost realism purposes.

B. Protester's Contentions

The protester argues that the cost realism analysis conducted by the agency was "no more than a comparison of cost data submitted in response to the RFP to cost data submitted to DCAA by the same offeror at an earlier date." Radian argues that its own proposed rates were "more current" than the information "extracted by DCAA," and that therefore it was not adequate for the agency to ignore an offeror's proposed rates and "merely prepare a computer spreadsheet using current cost information provided by DCAA." Radian also argues that the spread sheet cost realism analysis was a methodology that was too "mechanical," and that the agency failed to consider each offeror's individualized approach and failed to employ "analytical techniques" to determine the most probable cost to the government.

C. Analysis

With regard to cost evaluations, an agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting its cost realism analysis. Rather, the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency; since such an analysis is a judgment matter on the part of the contracting agency, our review is limited to a determination of whether an agency's cost evaluation was reasonably based. See Fairchild Weston Sys., Inc., B-229568.2, Apr. 22, 1988, 88-1 CPD ¶ 394.

⁷The contract specialist explains that "[i]n no case did I simply 'mechanically' insert a proposed labor rate when no information was provided by the DCAA auditor."

We find reasonable the methodology used by the agency to analyze Radian's costs (and those of the other offerors) for realism. We do not think that an agency has to achieve scientific certainty in analyzing costs proposed by offerors; rather, we think any methodology employed by an agency must only be reasonably adequate and provide some measure of confidence that the rates proposed are reasonably and realistic in view of other cost information reasonably available to the agency from its own and outside sources.

Here, the agency requested rate checks from DCAA, obtained specific information for most labor categories, and evaluated proposals consistent with this information from DCAA. Our review of the spread sheets shows that the DCAA rates for Radian's direct labor were extremely close to Radian's proposed rates and provided the agency with adequate assurance of the realism of Radian's rates, as adjusted. In this regard, we have upheld as reasonable an agency's use of rate checks from DCAA in connection with a cost realism analysis, see Sys. Research Corp., B-237008, Jan. 25, 1990, 90-1 CPD ¶ 106, and an agency may rely on information contained in offerors' cost proposals in performing a cost evaluation (where, for example, rate checks are unavailable for certain items of cost) without seeking additional independent verification of each item of proposed costs since the extent to which proposed costs will be examined is generally a matter for the agency to determine. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Concerning the protester's argument that the agency failed to determine each offeror's individualized approach during its cost realism analysis, we find this contention to be without merit. By the specific terms of the RFP, offerors were required to propose (for cost evaluation purposes) a fixed number of man-hours of support. Total direct labor for each program year was further required to be broken down by labor category in accordance with a specific labor mix set forth in the solicitation. Accordingly, the protester knew, or should have known, that the only missing factor that would be evaluated by the agency during its cost realism analysis was the hourly rates and burdens for each labor category. In short, the cost evaluation never contemplated an evaluation of competing technical approaches, and therefore the agency's cost evaluation was strictly consistent with the terms of the solicitation. Consequently, we deny this protest ground.

RADIAN'S OVERHEAD COSTS

Radian argues that the agency unreasonably used an overhead rate of [DELETED] percent in its cost realism analysis for the entire contract performance period. Radian admits that

this rate, which the agency obtained from DCAA (and was also mentioned in its cost proposal), is its fiscal year 1993 overhead rate. In its cost proposal, Radian proposed a lower overhead rate of [DELETED] percent for the out-years and, during this protest, has now presented supporting information that its overhead rates have consistently been decreasing and that the agency should have used Radian's lower projected rate in its cost realism analysis.

In response, the contract specialist states as follows:

"My use of DCAA's recommended [DELETED] percent overhead rate was entirely reasonable. There was no discussion provided by the offeror in its proposal to evidence the fact that [it] would have a significant decreasing trend in overhead rates. In fact, the only discussion which addresses this issue at all was the statement on page 33 of Radian's costs proposal that 'the overhead will decrease to an estimated [DELETED] percent due to the proportional change from overhead to labor.' I did not consider this statement to provide adequate justification for such a projected decrease in indirect cost rates [since Radian was actually using the higher rate] for billing purposes at the time of contract award."

We have reviewed Radian's cost proposal; while Radian during the course of this protest has provided additional information suggesting that it will have lower overhead rates in the out-year, its proposal was completely devoid of adequate justification or explanation supporting its claimed lower overhead in future years. In these circumstances, the agency had no basis to accept the one sentence concerning the out-year overhead on page 33 of Radian's proposal. An offeror is responsible for affirmatively demonstrating the merits of its proposal, see generally Will-Burt Co., B-250626.2, Jan. 25, 1993, 93-1 CPD ¶ 61; since Radian here completely failed to support in its cost proposal its claimed decreasing overhead rate for the out-years, we think the agency reasonably disregarded the proposed decrease. This protest ground is denied.

MKI'S USE OF CONSULTANTS

Radian states that MKI, in its proposal, designated 16 of its personnel as consultants and therefore did not apply overhead to the direct labor of these "employees." Radian states that this was a deliberate strategy by MKI to exclude a large part of its labor pool from overhead. Radian argues, and the record shows, that this strategy accounted for a substantial portion of the difference in total evaluated costs between Radian and MKI.

We understand that cost contractors often attempt to shield certain direct costs from application of overhead and G&A, and thereby lower their total evaluated costs for a particular contract, by employing various strategies which may be found to be legally unobjectionable. See, e.g., Vitro Corp., B-247734.3, Sept. 24, 1992, 92-2 CPD ¶ 202. We have reviewed the record here and find that the 16 people in question have and have had legally binding consulting agreements as independent contractors with MKI and are treated as independent contractors by MKI for all purposes, including income tax withholding and reporting. Further, the record shows that the status of each consultant as well as the labor rates proposed were verified by the contract specialist during the course of her cost evaluation;⁴ specifically, since DCAA provided no labor rates for these consultants, the contract specialist reviewed recent vouchers submitted by MKI under a different Marine Corps contract (under which all the proposed consultants were providing support services for MKI) to verify the reasonableness of the labor rates proposed. We therefore conclude that the agency, from a legal and procurement standpoint, reasonably viewed these consulting agreements as bona fide, and appropriately evaluated these 16 people as essentially independent subcontractors whose services could reasonably be charged as a direct cost by MKI without application of MKI's overhead that is customarily charged to its own employees. Accordingly, we deny this protest ground.⁵

⁴While the original consulting agreements provided by MKI were apparently lost by the agency, the contract specialist states that she reviewed these agreements during her cost realism analysis, and MKI has affirmatively represented that such agreements were included with its proposal. In any event, copies of all consulting agreements between MKI and each proposed consultant were provided to our Office during the course of this protest. We have no basis to question the legally binding nature of these agreements. Radian argues that these agreements are defective because they provide for termination of the agreement upon 10 days notice, which, if exercised, would subvert the "commitment required [by the RFP] to insure continuity of effort over five years." However, we note that MKI has successfully used consultants under prior contracts, and we have no basis to speculate about potential terminations or the possible use by MKI of "hair and switch" tactics suggested by Radian as a possibility in view of the termination provisions.

⁵Radian also argues extensively that, despite MKI's representations to the contrary, MKI uses uncompensated overtime. In this regard, in order to establish a projected
(continued...)

DISCUSSIONS

Radian argues that, as the highest technically rated offeror, the agency should have conducted discussions with the firm to clarify errors in its cost proposal--for example, the overhead rate question for the out-years discussed above and any labor rate errors. Radian argues that the agency was "in no hurry to make an award," and that therefore discussions were in order.

Here, we think the contracting officer was under no obligation to conduct discussions with Radian or any other offeror. The solicitation advised all offerors that the government intended to make award on the basis of initial proposals without holding discussions, unless discussions were determined to be necessary. For this reason, the solicitation specifically warned offerors that initial

⁹(...continued)

hourly labor rate, an offeror must divide the employee's projected salary by the expected number of hours to be worked. The usual method is to divide the employee's annual salary by 2,080 hours. If an offeror proposes more than 2,080 as the denominator, then the excess is uncompensated overtime. The use of uncompensated overtime reduces the employee's hourly rate which, in a competitive environment, could provide the offeror with a significant competitive cost advantage; the government receives the benefit of the reduced hourly rate if the employee, in fact, works the proposed number of uncompensated hours. Here, the supervisory contract specialist states that she "was advised [by the cost analyst] that the amount of uncompensated overtime [by MKI] was relatively minor (2 hours per week) [and since] all of the employees to whom this policy applied were current company employees occupying relatively senior positions [under another] prior contract, [she] determined that MKI's use of uncompensated overtime would have no adverse effect upon contract performance." We find, based on this record, that Radian has not adequately rebutted the agency's position that uncompensated overtime was a relatively minor cost issue in any case. Indeed, Radian, in its protest submissions, expressly states that MKI "has a corporate policy of requiring employees to work at least 1 hour of uncompensated overtime per week." Even if this is true, given the substantial cost difference between Radian and MKI following the agency's cost realism analysis, we do not think that 1 hour of uncompensated overtime per employee would have significantly affected the evaluation or otherwise altered the selection decision to the prejudice of the protester. We therefore see no reason to discuss the matter further. See generally Laser Diode, Inc., B-249990, Dec. 29, 1992, 93-1 CPD ¶ 18.

proposals should contain the offeror's best technical and cost terms. There is generally no obligation on a contracting agency to negotiate where the RFP specifically instructs offerors to provide their best terms in their initial offers. See generally White Storage and Retrieval Sys., Inc., B-250133, Jan. 12, 1993, 93-1 CPD ¶ 34. Our review of the record shows no abuse of discretion by the agency in deciding to award the contract on the basis of initial proposal. We therefore find no merit to this contention.¹⁰

The protest is denied.

Robert P. Murphy
Acting General Counsel

¹⁰Radian also argues that the agency failed to ensure that the award to MKI represented the best value to the government; this argument is solely based on Radian's belief that the cost realism performed by the agency was legally defective. Since we find the cost realism proper, we dismiss this basis of protest.