



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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December 20, 1972

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Washington, D.C. 20006

Attention: Gilbert A. Cuneo, Esq.

Gentlemen:

Further reference is made to your letter of June 8, 1972, and subsequent correspondence, protesting on behalf of International Telephone and Telegraph Corporation, Defense Communications Division (ITT-DCD), against the award of a contract to any other firm under RFQ DAAB07-72-Q-0141 (RFQ -0141), issued by the Army Electronics Command, Fort Monmouth, New Jersey.

Your initial letter of protest made the sole contention that a certain action of the procuring activity constituted the conduct of negotiations after the ostensible receipt of best and final offers. Subsequent to receipt of the initial administrative report, you made the additional principal contention that award to ITT-DCD would represent the greatest value to the Government. Several arguments in support of this contention were also advanced.

Award under the above-referenced solicitation has been withheld pending a decision by our Office.

RFQ -0141, issued on November 10, 1971, contemplates a cost-plus-incentive fee (CPIF) contract for the design, development, fabrication, test and furnishing of prototypes of four different truck- and trailer-mounted satellite communications terminals. The solicitation, as amended, established January 10, 1972, as the closing date for offerors' Technical, Test, Management and Support proposals, and January 24, 1972, for receipt of cost proposals. Four firms submitted timely proposals.

PUBLISHED DECISION  
52 Comp. Gen. \_\_\_\_\_

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B-176182

During evaluation of those portions of proposals other than cost, discussions were held with each offeror to clarify the Government's requirements and the offerors' proposals. Upon completion of discussions, each offeror was permitted to submit revisions to its technical, test, management and support proposals. The completed evaluation of the technical area, furnished to the contracting officer on April 6, 1972, concluded that the proposal of RCA Corporation (RCA) had the highest technical merit.

At this point, one offeror withdrew its proposal, and negotiations were conducted with the remaining three firms, who were advised to submit their best and final offers on April 26, 1972. Upon receipt thereof, technical revisions were evaluated and, although some slight changes were made in the technical merit ratings, the relative standing of the offerors was not altered. Evaluation of the offerors' past performance and cost realism were then initiated.

It is administratively reported:

"Early in the evaluation of cost realism, the Government became concerned that the number of direct labor hours quoted by each firm was significantly less than that estimated by the Government as being necessary to complete the program. It was apparent that part of the difference was due to claims made by each firm in its proposal regarding work accomplished on independent research and development projects and other contracts which had direct application to the instant procurement. It was also noted that the bulk of the work claimed by each firm was in the same areas. To assure equitable treatment in the cost realism evaluation, it was deemed advisable to have a team visit each firm to determine the exact status of this work and the amount of work accomplished which would in fact have direct application to this procurement. \* \* \*"

On May 5, 1972, each offeror was advised of an impending team visit by the following telegram:

"1. A team representing the Contracting Officer will visit your facility at \* \* \*. A unilateral presentation is requested which will permit the team to assess the status of the solid state, micro wave integration, and strip line design and packaging techniques for the Frequency Synthesizer and up and down converters;

B-176182

and the high power amplifier design which you have proposed as being available to apply to the development of 'Small Terminals' per our RFQ No. DAAB07-72-Q-0141.

"2. This visit is not to be construed as a re-opening of negotiations, nor will any further revision to your proposal be required or permitted."

The plant visits were conducted on May 8 through 10, 1972, and the team's conclusions therefrom were furnished the contracting officer on May 18, 1972. The past performance and cost/cost realism evaluations were completed on May 15 and 22, 1972, respectively.

IIT-DCD's contemporaneous reaction to the visit made at its plant is shown by a letter written to the contracting officer on May 25, 1972. Therein, IIT-DCD stated that it was "very pleased to have [had] the opportunity to host the team"; recounted its presentation, which it considered to have "actually verified the information contained in our technical proposal"; confirmed "that the intent of the plant visit as expressed in the telex, was accomplished"; and took "this opportunity to thank you for your visit." It was also emphasized that IIT-DCD had valuable experience in areas not demonstrated during the plant visit.

On June 8, 1972, 14 days after this letter was written and a month after the visit occurred, IIT-DCD protested to our Office, stating:

"The final paragraph of the Contracting Officer's telegram to the contrary, it is our firm conviction that these facility visits, the one at IIT DCD taking place on May 9, 1972, were, in fact, used to alter the cost and technical evaluations of the competitors and that in view of the very limited scope of the visit inquiries were solely intended for that purpose.

"Therefore, after three months of technical and cost negotiations and submission of last and final bids, the Contracting Officer did in fact thereby reopen negotiations. It is our contention that award must be based upon results as of submittal of last and final bids."  
(Emphasis added.)

In regard to this basis for protest, we first observe that you have not contended, nor does the record indicate, that the plant visits involved "bilateral" as opposed to "unilateral" presentations. Second, you have not maintained, and the record does not reflect, that any offeror was afforded an opportunity to revise its proposal as a result of the plant visits. Third, the factual premise upon which the initial protest was based is incorrect. Final technical merit ratings had been assigned prior to the plant visits and were not altered as a result of the visits. The cost/cost realism evaluation was not completed before the visits and thus there was no existing cost/cost realism evaluation to be "altered" by the visits. Indeed, it is the administrative position that the plant visits, which were intended to provide verification of factual representations in offerors' proposals, "were considered to be necessary in order to complete the cost/cost realism evaluation."

What constitutes "negotiations" or "discussions" was examined in our decision 51 Comp. Gen. 479, 481 (1972), wherein we stated:

"We have reviewed several of our more recent decisions bearing on the question of what constitutes discussions and conclude that resolution of the question has depended ultimately on whether an offeror has been afforded an opportunity to revise or modify its proposal, regardless of whether such opportunity resulted from action initiated by the Government or the offeror. Consequently, an offeror's late confirmation as to the receipt of an amendment and its price constituted discussions (50 Comp. Gen. 202 (1970)), as does a requested 'clarification,' which result in a reduction of offer price (48 Comp. Gen. 663 (1969)) and the submission of revisions in response to an amendment to a solicitation (50 Comp. Gen. 246 (1970)). On the other hand, an explanation by an offeror of the basis for its price reductions without any opportunity to change its proposal was held not to constitute discussions (B-170989, B-170990, November 17, 1971). We believe, therefore, that a determination that certain actions constitute discussions must be made with reference to the opportunity for revision afforded to offerors by those actions. If the opportunity is present, the actions constitute discussions."

B-176182

In view of the absence of any evidence that the offerors under the instant procurement were extended an opportunity for proposal revision pursuant to the plant visits, we are unable to conclude that those visits constituted a reopening of negotiations, and therefore the initial contention of your protest is without merit.

The remainder of your protest is principally devoted to a request that our Office instruct the procuring agency that award to ITT-DCD, not RCA, would represent the greatest value to the Government. Alternatively, you ask that we direct the Army to reopen negotiations for the purpose of providing offerors an additional opportunity to clarify the status of their independent research and development programs and furnish other information concerning the cost realism of their proposals.

You do not contend that RFQ -0141 contained an inadequate expression of the criteria for evaluation of proposals and their relative importance, nor do you maintain that the evaluation deviated from the statement of criteria and their importance in the solicitation. Simply put, your argument is that the substantive determinations of the evaluators do not support a conclusion that award to RCA would represent the greatest value to the Government.

RFQ -0141, as amended, contained the following statement of the criteria for proposal evaluation and their relative importance:

"D.1 Evaluation Areas. Evaluation will be in three areas:

1. Technical (See Subsection D.7)
2. Past Performance (See Subsection D.8)
3. Cost/Cost Realism (See Subsection D.9)

To receive consideration for award a rating of no less than 'Acceptable' must be achieved in each area. The technical area is by far the most important and constitutes over sixty percent (60%) of the total evaluation. The past performance area is of lesser importance than technical but greater than cost. For relative importance of factors and subfactors in each area, refer to the referenced subsections. \* \* \*

"D.2 Basis for Award. Any award to be made will be based on the best overall proposal with consideration given to:

- (i) technical merit;
- (ii) contractor's past performance; and
- (iii) cost/cost realism, in that order (see D.1 for relative order of importance).

The prime objective is to select the offer which represents the greatest value to the Government.  
\* \* \*

\* \* \* \* \*

"D.7 Evaluation Factors (Technical Area)

The Government's principal objective in the SHF Satellite Communications Terminal program is to obtain equipments which meet the required performance, within the specified time frame, while meeting the criteria of an equipment design which results in the lowest cost in production. The same thinking must be applied to the consideration of life cycle costs. In this respect, equipment designs which are unduly complex should be avoided and the use of non-standard components should be held to an absolute minimum. Proposals will be evaluated by a selected team of qualified technical personnel to determine the extent that each bidder is capable of successfully accomplishing the contractual requirements. Each bidder must establish his capability with a proposal that completely covers all evaluation factors and specifically addresses each deliverable item and all contractual clauses. Factors to be used in the evaluation and the relative importance of each are as follows:

(NOTE: Factors of equal importance are listed horizontally)

B-176182

**First Priority - Technical (Proposal Volume I)**

**Second Priority - Test (Proposal Volume II)**

**Third Priority - Management - Support (Proposal Volumes III and IV)**

**NOTE:** The technical factor constitutes over  $\frac{1}{2}$  of the total technical area evaluation score. To achieve a rating of 'Acceptable' in the technical area a rating of no less than acceptable must be achieved for each of the above five [sic] factors.

The order of each subfactor below is indicated by numerical listing under their associated factors with Number 1 indicating the highest relative importance of each subfactor group. Subfactors having the same number are of equal importance. The subfactor groups for each factor are:

**TECHNICAL:**

The subfactors itemized below will be evaluated on the basis of the understanding of stated requirements, the adequateness/completeness of the proposal, and the degree to which the design meets the stated requirements:

- \* 1 - System Trade-offs
- \* 2 - Antenna
- \* 2 - Transmitter
- \* 2 - Receiver
- \* 2 - Modem
- 3 - Electrical integration
- 3 - Mechanical integration
- 4 - Product assurance
- 5 - Echo suppressors

\* To achieve a rating of 'Acceptable' in the technical factor a rating of no less than acceptable must be achieved for each of these subfactors.

**TEST PROGRAM:**

The subfactors itemized below will be evaluated on the basis of the completeness/adequateness of the proposal, the basis of understanding of technical requirements, and the manner of implementation:

B-176182

- 1 - Methods of test/checkout
- 1 - Understanding of testing requirements
- 2 - Test equipment
- 2 - Reliability and Maintainability demonstration

"MANAGEMENT:

The subfactors itemized below will be evaluated on the basis of the completeness/adequateness of the proposal and the basis of understanding of Government requirements:

- 1 - Program Management plan to include the Program Management Control and Reporting System
- 1 - Personnel
- 2 - Company experience
- 3 - Make or Buy

"SUPPORT:

The subfactors itemized below will be evaluated on the basis of the completeness/adequateness of the proposal and the basis of understanding of the technical requirements:

- 1 - Documentation
- 2 - Spare parts, provisioning, RPSLs and RPSTLS.
- 3 - Training

"D.8 Evaluation of Contractor's past performance will be based upon information required to be furnished under Subsection D.5 as verified or supplemented by information obtained from other Government agencies. In the event quoter indicates that it does not have a record of past performance, this area will be evaluated through an overview of his potential for satisfactory performance.

(NOTE: Provision of this solicitation requiring full, accurate, and complete information).



**"D.9 Cost/Cost Realism.**

As part of proposal evaluation and in order to minimize potential or built-in cost growth, the Government intends to evaluate the realism of offerors' proposed costs in terms of the offerors' proposed approach. Proposals may be penalized to the degree that the proposed costs are unrealistically low.

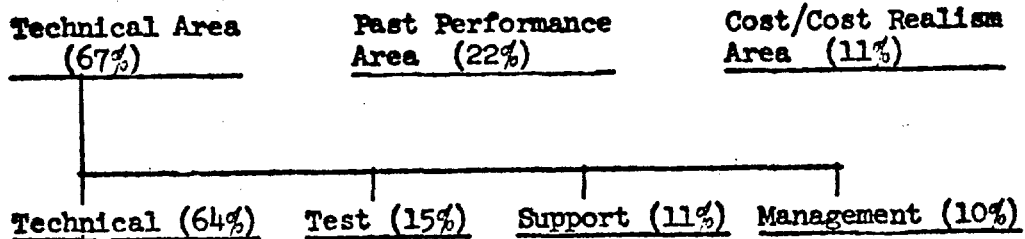
The factors itemized below will be evaluated on the basis of the completeness/adequateness of the proposal and the basis of understanding of stated requirements:

- 1 - Validity of proposed cost in relation to the specific technical approach to include:
  - (a) proposed man hours,
  - (b) proposed materials, subcontracts and other direct charges.
- 1 - Adequacy of contractor's estimating system
- 2 - Adequacy of cost estimates in areas of high technical risk.
- 2 - Areas of significant cost variation indicative of quoter's lack of understanding of the problem or capacity to perform.
- 3 - Contracts of comparable complexity and size.

The relative importance of the above factors is indicated by the number preceding the factor with the number 1, indicating the highest relative importance. Factors having the same number are of equal importance."

A diagrammatic summarization of these provisions, including the precise weight of each factor, is as follows:

B-176182



9 Major Areas \*  
Relative Importance

Factor

1	System Trade-Offs
2	Antenna
2	Transmitter
2	Receiver
2	Modern
3	Electrical Integration
3	Mechanical Integration
4	Product Assurance
5	Echo Suppressors

\*Each of the 9 major areas was divided into sub-areas. Each sub-area was evaluated for completeness of proposal, technical approach, and the degree the proposed design meets technical requirements. These 3 criteria were applied to each sub-area in regard to each of the 4 configurations in which the equipment was required.

Each proposal was numerically scored under every factor in the "Technical Area." We are advised by the Army that it considers the "technical" portion thereof to be the "major area of technical risk," and the "test," "support," and "management" portions to bear "minimal technical risk." In regard to the nine evaluation factors under the major technical areas portion, RCA and IIT-DCD achieved identical scores under "System Trade-Offs." However, RCA was considered superior to IIT-DCD in each of the remaining eight factors, under which the difference in score between the two offerors ranged from approximately 1 to 25 points. It is the Army's position that these scoring differences reflect its opinion that the IIT-DCD proposal represents a substantially higher technical risk than the proposal of RCA.

When the scores of the nine evaluation factors were weighted and averaged, RCA's total score under the "technical" portion exceeded that of ITT-DCD's by 4 points. RCA also attained higher scores in the "test" and "management" portions by margins of 2.4 and 10.7 points, respectively. ITT-DCD's proposal was assigned a score under the "support" portion which was above that of RCA's by 9.9 points. Thus, for the entire "Technical Area," RCA's total weighted score exceeded that of ITT-DCD's by 3 points.

The "Past Performance" and "Cost/Cost Realism" Areas were not numerically scored, although respectively they were approximately one-third and one-sixth as important as the "Technical Area." RCA and ITT-DCD were deemed to have equally satisfactory records of past performance. The procuring activity concluded that ITT-DCD's proposal was minimally cost realistic, while that of RCA was most cost realistic.

Upon consideration of the evaluation results, the contracting officer selected the proposal of RCA as representing the greatest value to the Government since it achieved the highest technical merit rating, had a satisfactory record of past performance, and was judged to be most cost realistic. The Fort Monmouth Procurement Branch Board of Awards concurred in the contracting officer's selection.

We preface our discussion of your contention that an award to ITT-DCD would represent the greatest value to the Government, with the observation that your protest often speculates upon the difference in "bidders' prices". Of course, in this negotiated procurement, which contemplates a cost-plus-incentive-fee contract, competitors were requested to submit quotations of estimated total cost, plus proposed fee. RCA's final quotation of estimated total cost plus proposed fee substantially exceeded ITT-DCD's.

Your initial argument is that where two offerors are essentially equal in technical and other areas, award must be made to the offeror proposing the lowest cost to the Government. It is your position that the evaluation results have established RCA and ITT-DCD as essentially equal in the "Technical" and "Past Performance" areas, and therefore the greatest value to the Government would result from an award to ITT-DCD, which has quoted the lower estimated total cost plus proposed fee.

B-176182

In support of this argument you cite as a "similar" case our decision reported at 50 Comp. Gen. 246 (1970), which involved a negotiated procurement for research and development services to be performed on a cost-plus-a-fixed-fee basis. In that case an award was made to the offeror (TI) which had proposed the lower estimated cost, even though a competitor (SRL) received a higher technical merit rating. In denying SRL's protest against the award to TI, we stated:

"In response to SRL's allegation that the lower cost estimate submitted in the technically inferior TI proposal was considered as controlling, we are advised that the technical differences in the two proposals did not warrant the incurrence of additional costs that would have been occasioned by accepting SRL's proposal. In fact, the technical evaluation team considered the difference in point scores to be insignificant. \* \* \* In this regard, we are advised that:

'\* \* \* Both bidders were rated relatively high which indicated a high technical capability to perform the requirements of the contemplated contract and the additional 6 point rating assigned to [SRL's] proposal did not justify the expenditure of extra money. The 78 point rating assigned to the [TI] proposal established that they were quite capable of performing the required work, and to place undue emphasis on the 84 point rating of [SRL] would have been superfluous to the requirements of the [Government] and did not warrant the expenditure of additional funds.'

"Where, as here, two offerors are essentially equal as to technical ability and resources to successfully perform a research and development effort, the only consideration remaining for evaluation is price. In such a situation, we believe that the lower priced offer represents an advantage to the Government which should not be ignored. Indeed, ASPR 4-106.4 makes it clear that awards should not be for capabilities that exceed those determined to be necessary for successful performance of the work.

We view the award to TI as evidencing a determination that the cost premium in making an award to SRL, based on its slight technical superiority over TI, would not be justified in light of the acceptable level of effort and accomplishment expected of TI at a lower cost. The concepts expressed in ASPR 3-805.2 and 4-106.5(a) that price is not the controlling factor in the award of cost-reimbursement and research and development contracts relate, in our view, to situations wherein the favored offeror is significantly superior in technical ability and resources over lower priced, less qualified offerors. \* \* \* 50 Comp. Gen. at 248-49.

The determinative element in our 1970 decision was not the difference in technical merit scores per se, but the considered judgment of the procuring agency concerning the significance of that difference. This was recognized in our decision B-170633(1), May 3, 1971, in which we upheld the award of a Time and Material and Labor Hour type of contract to a technically superior offeror which had submitted the higher price proposal. Our 1970 decision was distinguished as follows:

"We agree that the point ranges in the two situations are not radically different. However, in the earlier case the contracting activity specifically determined that the differences in the technical proposals, which were regarded as insignificant, did not justify paying a price differential. It was further stated that the firm receiving the 78 point score was quite capable of performing the required work and that to place undue emphasis on the higher score 'would have been superfluous' to the agency's requirements and 'did not warrant the expenditure of additional funds.' In contrast, the findings in this case were that your proposal and the [successful offeror's] proposal were not equal and that acceptance of the higher priced offer was more advantageous to the Government."

We believe the situation in the instant case is analogous to that in the decision quoted immediately above. The "Past Performance" of RCA and IIT-DCD was regarded as equivalent. However, there is no indication of record that in regard to the "Technical" area, the procuring agency has regarded the proposals as "essentially equal" or the differences between the two to be "insignificant."

The technical superiority of RCA's proposal has been consistently recognized and we are advised that IIT-DCD's proposal "represents a substantially higher technical risk" than that of RCA. The contracting officer stated in his supplemental administrative report:

"Upon receipt of the technical evaluation and during his deliberations leading to the selection of the offer representing the greatest value to the Government, the Contracting Officer was assured by his technical advisors that the higher score assigned to the RCA proposal represented significant value to the Government. This finding was reassessed upon receipt of the IIT DCD protest in June 1972 and has again been reviewed in view of [IIT-DCD's] 7 August 1972 letter. In each case, the technical advisors have even more strongly reaffirmed their original recommendation that the technical differences in the two proposals should be regarded as being of paramount importance. As a result of numerous discussions with his technical advisors, the Contracting Officer has concluded that the IIT DCD proposal contains areas of higher technical risk than the RCA proposal. This increased technical risk greatly increases the potential for cost growth (overrun) under any resultant contract. Therefore, the Contracting Officer has concluded that the cost growth potential in the IIT DCD proposal more than offsets any apparent savings in the amount for which the contract would be awarded."

Additionally, the record before us does not support the contention that RCA and IIT-DCD were "essentially equal" technically or that the technical differences in their proposals were "insignificant." Accordingly, we must reject your argument that award must be made to IIT-DCD because it has quoted a lower estimated total cost plus proposed fee.

In your letter of September 6, 1972, you contend that the contracting officer's supplemental statement reveals two improprieties; (1) the contracting officer has changed the basis upon which RCA was selected for award, and (2) the Army has "rescored" the technical proposals after the filing of your protest and is improperly relying upon this revised evaluation in justifying the proposed award to RCA.

The initial administrative report did not dwell upon the technical merits of the two proposals, and properly so, because the sole basis for protest at that time was that the May 1972 plant visits constituted a reopening of negotiations. The alleged technical equivalency of the two proposals was first asserted in your response to the initial administrative report. The contracting officer's statement quoted above represented the first opportunity of the Army to address the contention that the two offerors were "essentially equal" technically. In our view, the contracting officer's statement does not reveal any "rescoring" of proposals; it merely asserts that upon receipt of the IIT-DCD protest, the Army's existing determination of the merits of the proposals was "reassessed," as a result of which his technical advisors have "reaffirmed their original recommendation." In view thereof, we are unable to agree with your contention that the contracting officer has changed the basis on which RCA was selected for award.

Your remaining arguments are directed to the "Cost/Cost Realism" area of evaluation and the conclusions of the procuring agency thereunder. The first of these arguments is that IIT-DCD's final quotation of estimated costs was not only realistic, but was more realistic than the proposal of RCA. This assertion is at variance with the procuring agency's determination that the RCA cost proposal was "most" realistic and that of IIT-DCD was "minimally" realistic.

The theme of your first argument is that the procuring activity had engaged in an evaluation of cost realism prior to the submission of best and final offers, as a result of which your cost proposal was deemed "realistic." You observe that in its best and final offer of April 26, 1972, IIT-DCD left unchanged its quotation for direct labor hours and changed other elements of its estimated cost and proposed fee. These changes were explained in IIT-DCD's best and final offer, and to our Office. You allege that the plant visits in May 1972 were in conjunction with a "new", or second, evaluation of cost realism, in which it was concluded that your cost proposal was "unrealistic." You question the propriety of such a conclusion since IIT-DCD had explained the bases for the alterations in estimated costs and proposed fee made in its final offer, and since its quotation for direct labor hours (with which the plant visits were concerned) remained unchanged. In essence, you contend there was no rational basis upon which IIT-DCD's cost proposal could be deemed "realistic" before submission of its best and final offer, and "unrealistic" thereafter. This "before-and-after" theory is expressed as follows in your letter of September 6, 1972:

The contracting officer's contention that a new evaluation of cost realism was appropriate after the submission of best and final offers, because of ITT DCD's reduction in proposed costs, is misleading. The important fact in rebutting this generalization is that the reduction in ITT DCD's estimated costs did not affect its projected costs for direct labor. Since the proposed direct labor costs remain the same as those negotiated earlier, the reduction at the time of best and final offers cannot be used as a justification for taking another look at ITT DCD's experience in three relatively minor areas and making a new evaluation concerning technical risks, i.e., additional hours required to complete development. In other words, since the reduction in price did not affect direct labor hours, it could not have been the cause of a new evaluation of the realism of proposed direct labor costs." (Emphasis added.)

This argument rests upon several misconceptions. First, there were not two evaluations under the "Cost/Cost Realism" evaluation criterion. As we stated above, there was only one evaluation, conducted after receipt of best and final offers. Thus, before the submission of best and final offers, there was no evaluation in existence of ITT-DCD's cost proposal deeming it "realistic", to be subsequently changed to a determination that the proposal was "unrealistic." We regard it as logical to withhold the evaluation of cost realism until the offerors' best and final offers are submitted, for reasons stated as follows by the contracting officer:

"ITT DCD has expressed surprise that the cost realism evaluation was not initiated prior to receipt of best and final offers. The reason for this becomes obvious when one considers the fact that from the time of submission of original proposals in January 1972 through submission of best and final offers in April 1972, ITT DCD effected approximately a forty-percent (40%) reduction in proposed costs. Further, of the forty-percent (40%), approximately fifteen-percent (15%) was effected between completion of negotiations on 14 April 1972 and close of negotiations on 26 April 1972. From this it may be seen that an evaluation of cost realism prior to receipt of best and final offers would be of questionable value. \* \* \*"



Your protest also is inclined to equate the evaluation of the realism of its proposed direct labor hours to the entire "Cost/Cost Realism" evaluation criterion, set forth in Section D.9. of RFQ -0141, quoted above. An examination of that section shows that proposed man-hours constituted only one subfactor, of 1 of 5 factors, within the "Cost/Cost Realism" area. The protest, in our opinion, places considerably more emphasis on the importance of this subfactor than was attributed to it by the contracting agency. As indicated above, the sole initial basis of the instant protest was that the plant visits constituted an improper reopening of negotiations. The plant visits grew out of concern about the accuracy of offerors' proposed direct labor hours. While an explanation of the plant visits necessarily involved a discussion of this concern, it did not mean that other evaluation factors in the "Cost/Cost Realism" area had been ignored or were of no consequence. The other factors simply were not considered in issue in the initial administrative report on your protest. Within this context, we view as erroneous your subsequent statements such as:

"We note again that the contracting officer's concern about cost realism is apparently confined to the area of direct labor hours necessary to complete the program."

Finally, the procuring agency did not determine, as you maintain, that ITT-DCD's cost proposal was "unrealistic." The contracting officer has explained his opinion as follows:

"The Contracting Officer has not at any time determined the ITT-DCD Best and Final Offer to be unrealistic. However, as in the case of the technical area where there can be a differential in the merit of acceptable technical proposals, there can also be variations in the degree to which cost proposals are realistic. In the instant case, the ITT proposal was considered to be minimally cost realistic while the RCA proposal exhibited a much higher degree of cost realism."

In view of the foregoing, we are unable to agree with your contention that, before submission of best and final offers, the procuring agency determined ITT-DCD's cost proposal to be "realistic" and later changed that determination to "unrealistic"; your contention that it was improper to have initiated the evaluation of cost realism only after receipt of best and final offers; or with your equation of direct labor hours to the entire "Cost/Cost Realism" evaluation area.

Your argument that the cost realism of ITT-DCD's proposal is greater than that of RCA's is dependent, in part, upon consideration of the latter's performance under the SHF Ground and Airborne Tactical Satellite Communication Terminals program. Both ITT-DCD and RCA have alleged that the other has experienced, under prior Government contracts, cost growth of such magnitude as to cast serious doubt upon the credibility of the other's cost proposal. Each party has stated that the portrayal to this Office of its performance by the other is factually inaccurate. Apart therefrom, RCA and ITT-DCD have each stated to our Office that its proposal under RFQ -0141 included an account of its performance under prior contracts, and we have no reason to believe that such accounts were inaccurate. It is axiomatic that the procuring agency has the expertise and the primary responsibility for the evaluation of this information, and the record indicates that the agency evaluated RCA and ITT-DCD as equally satisfactory on Past Performance, based upon the information submitted with their proposals. In view thereof, and in the absence of any evidence that such information was inaccurate or that the evaluations were arbitrary, we are not in a position to advise the Army that we find the ITT-DCD cost proposal to be more cost realistic than that of RCA.

Your next contention is that the contracting officer erred in determining that ITT-DCD's projection of direct labor cost was "unrealistic." We are advised by the contracting officer that a more accurate expression of his determination is that ITT-DCD's "projection of direct labor cost, particularly the specific man-months proposed was \* \* \* considered to be extremely optimistic in view of the areas of technical risk disclosed during evaluation of the technical area."

You state that in determining the realism of an offeror's projected direct labor costs, consideration should be given to independent research and development (IR&D) and prior related Government contracts which it has performed, because the Government will not be charged for direct labor to the extent an offeror has completed development work applicable to the instant procurement. You then identify eleven areas, in addition to those which were the subject of the plant visits, in which ITT-DCD has performed applicable development work. You also refer to related work ITT-DCD has performed in connection with the Navy's AN/WSC-2 satellite program and the Air Force's AN/GSQ-119 communications program. Therefore, you maintain, any determination of the realism of ITT-DCD's projected direct labor costs, which is based solely upon the observations made at the plant visits, did not take into consideration the totality of ITT-DCD's prior efforts and therefore cannot be sustained.

We have been advised by the Department of the Army that in the evaluation of the realism of offerors' projected direct labor costs, emphasis was placed upon the areas examined at the plant visits because those areas were of significant technical risk, entailing the possibility of a large increase in labor hours if an offeror's development was not as advanced as it had represented in its proposal. In regard to the areas of IR&D which are set forth in your protest, and which you were not requested to show during the plant visits, we are informed that the Army either considered them to be of such low technical risk as to justify the conclusion they would require little additional effort, or that the subitem involved was to be obtained through subcontract rather than being developed and manufactured by the offeror itself.

In this connection, ITT-DCD's performance under the AN/WSC-2 and AN/GSQ-119 programs was extensively set forth in its proposal, and we are advised by the Army that its evaluation of the ITT-DCD proposal included consideration of its experience thereunder.

Under these circumstances, we are aware of no basis upon which our Office would be warranted in disturbing the administrative conclusions regarding the realism of ITT-DCD's projected direct labor costs.

Your final argument is that even if the contracting officer were correct in determining that ITT-DCD's cost proposal was "unrealistic" in the direct labor area, award to ITT-DCD would represent the greater value to the Government.

Of the total effort required to design, develop, fabricate and test the small satellite terminals, you attribute 10 percent to "Development of Brassboards in New Design Areas." The items of equipment examined in the May 1972 plant visits, you assert, constitute no more than 50 percent of the brassboards required in new design areas. Therefore, the plant visits were concerned with only 5 percent of the total projected costs for the entire project. You then present two hypothetical situations: one in which RCA's development of the items seen at the plant visits was 20 percent beyond that of ITT-DCD's, and the other in which ITT-DCD had completed no development whatsoever in the areas which were the subject of the plant visits. In either case, you maintain, ITT-DCD's projected costs would still be lower than RCA's and therefore ITT-DCD's offer represents the greater value to the Government.

The record indicates that, after the plant visits, the evaluators at the using agency advised the procuring activity that RCA had completed more of the tactical synthesizer, high voltage power supply, down converter, up converter and strategic synthesizer than any of the other offerors. This conclusion was supported by charts summarizing each offeror's percentage of completion of these subsystems. The percentage of completion was then translated to an equivalent reduction in the Independent Government Cost Estimate (IGCE). In view of the extensive work accomplished by RCA, the IGCE was reduced by \$879,000. The less extensive work completed by ITT-DCD resulted in a reduction of the IGCE of approximately \$346,000, creating a difference of approximately \$533,000 in the amount the IGCE was reduced as a result of the Government's assessment of the status of the work seen at the plant visits. This difference of \$533,000 is less than the difference between ITT-DCD's and RCA's final estimated total costs plus proposed fee. Thus, the plant visit report would appear to support ITT-DCD's contention that the additional work required of it on the tactical synthesizer, high voltage supply, down and up converters and strategic synthesizer would result in a cost increase less than the difference between its final estimated total cost plus proposed fee and that of RCA.

However, this does not compel the conclusion that the total costs incurred by ITT-DCD during the performance of the contract would be less than those of RCA, which is the basis upon which you claim an award to ITT-DCD would represent the greater value to the Government. The tactical and strategic synthesizers, down and up converters, and high voltage supply are only part of the work to be accomplished under PFG -0141, and the evaluation of offerors' development of these items constituted only a portion of the "Cost/Cost Realism" evaluation. As the contracting officer stated in his supplemental report:

"\* \* \* ITT DCD is of the apparent belief that the plant visits and the subsequent inputs to the evaluation of cost realism was a significant factor in selection of the successful offeror. Such was not the case. As previously stated, the primary factor in selection of the successful offer was the technical merit of the proposal. Further, the plant visits were but a portion of the overall cost/cost realism evaluation. \* \* \*"

B-176182

We note, for example, from the cost realism evaluation that the difference between the very favorable overhead rate projected by IIT-DCD and that adopted in the IGCE alone would virtually extinguish any advantage enjoyed by IIT-DCD over RCA in their final cost proposals.

In our decision reported at 50 Comp. Gen. 390, 410 (1970), we stated:

"Our Office has noted that the award of cost-reimbursement contracts requires procurement personnel to exercise informed judgments as to whether submitted proposals are realistic concerning the proposed costs and technical approach involved. B-152039, January 20, 1964. We believe that such judgment must properly be left to the administrative discretion of the contracting agencies involved, since they are in the best position to assess 'realism' of costs and technical approaches, and must bear the major criticism for any difficulties or expenses experienced by reason of a defective cost analysis."

From our review of the record in the instant case, we are unable to conclude that the Department of the Army has arbitrarily exercised the discretion committed to it in evaluating the offers or in proposing to make award to RCA.

Accordingly, your protest is denied.

Very truly yours,

R.F. KELLER

Deputy Comptroller General  
of the United States