

DOCUMENT RESUME

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[Review of Contracts Awarded to Raycomm, Inc., Freehold, New Jersey, by the Army Electronics Command, Fort Monmouth, New Jersey]. PSAD-77-64; B-173487. February 16, 1977. 8 pp.

Report to Sen. Edward M. Kennedy; Sen. Edward W. Brooke; by Robert F. Keller, Deputy Comptroller General.

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Congressional Relevance: Sen. Edward M. Kennedy; Sen. Edward W. Brooke.

Authority: 49 Comp. Gen. 330. 55 Comp. Gen. 231. B-186657 (1976).

The validity of allegations that there were irregularities in awarding three Army contracts to Raycomm, Inc., was investigated. Requests for the proposals for the contracts awarded in 1971, 1973, and 1975 listed the type of software products and technical services required and contained estimates of the number of hours of labor by category required to provide these products and services during the period of the contracts. The best and final offers from each of the competing firms were evaluated and preaward surveys were made at several companies that submitted the lowest offers to ascertain their competency to perform the required work. In each case, Raycomm Industries, Inc., made the lowest final offer and was awarded the contract. Findings/Conclusions: Review of the procedures followed in awarding the three contracts did not disclose any inconsistencies with the Armed Services Procurement Regulation. The contracts were awarded to the lowest offeror in accordance with criteria specified in the requests for proposals. Although it is true that due to the labor mix and related pricing of the orders actually placed subsequent to contract award, the total work ordered would have cost less based on the price quotations of the unsuccessful bidders, the contract was based on the lowest dollar value for the total estimated hours for all categories of labor to be provided, as shown in the solicitations. (SC)

01119



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

FEB 16 1977

B-173487

The Honorable Edward M. Kennedy
The Honorable Edward W. Brooke
United States Senate

This is our report pursuant to your requests on behalf of TEK-MAR, Inc., Peabody, Massachusetts, that we determine the validity of allegations that there were irregularities in awarding three Army contracts. TEK-MAR, who did not receive any of the contract awards, stated in its May 10, 1976, letter to you that irregularities in the three procurements prevented them from obtaining the contracts. Also, they felt that the regulations and procedures for Government procurements must be improved to provide more equitable, open, realistic, and competitive bidding for all firms. Generally, TEK-MAR's complaints address the following areas:

- Unbalanced offers.
- Negotiation procedures and inflated Government estimates.
- Preaward surveys.
- Personnel qualifications.

We reviewed contract files and interviewed cognizant personnel at the Electronics Command, Fort Monmouth, New Jersey. We also discussed the contracts with personnel at the Defense Contract Administration Services District, Springfield, New Jersey, and the Defense Contract Audit Agency, Newark and Fort Monmouth, New Jersey.

Our review of the procedures followed by the Electronics Command in awarding the three contracts did not disclose any inconsistencies with the Armed Services Procurement Regulation. The contracts were awarded to the lowest offeror in accordance with criteria specified in the requests for proposal. Also preaward surveys were completed to ascertain that the offerors were capable of performing the contracts.

The results of our review follow.

BACKGROUND

The Electronics Command contracts for the technical services and noncomputer software products which are beyond its capacity to provide and has procured technical services and software products since the 1950s. The three most recent contracts were awarded in 1971, 1973, and 1975. Each request for a proposal listed the type of software products and technical services required and contained estimates of the number of hours by labor category required to provide these products and services during the period of the contract. The requests for proposal also stated that the Government might elect not to order any work under the contracts.

The Electronics Command received six or more initial offers for each solicitation. Subsequently, they requested and received a best and final offer from each competing firm. These were evaluated and preaward surveys were made at several companies that submitted the lowest offers to ascertain their competence to perform the required work.

In each case, Raycomm Industries, Inc., of Freehold, New Jersey, made the lowest final offer and was awarded the contract.

After contract awards, delivery orders were issued requiring the contractor to initiate technical services and produce specific software products on a quick response basis. The Electronics Command and Raycomm negotiated the estimated manhours, by labor category (such as engineering, technical writing, illustrating, and clerical), required to produce the software product for each delivery order.

UNBALANCED OFFERS

TEK-MAR's letter stated that for three contracts Raycomm offered to provide certain categories of labor at \$1.00 an hour, \$1.50 an hour, and some labor categories at no charge. TEK-MAR further stated that less than 10 percent of the "low dollar" labor categories were actually purchased by the Electronics Command, thus, providing a financial advantage to Raycomm.

We found that, in addition to the labor rates cited above, Raycomm offered to provide other categories of labor at various prices ranging up to \$12.00 an hour for clerical services and technical writers. This method of proposing, in which some labor categories are offered at unrealistically low rates and others at much higher rates, is referred to as

unbalanced bidding. Other companies, including TEK-MAR, have made unbalanced offers to the Electronics Command.

It is our position that while unbalanced bidding is not illegal and does not per se require rejection of the unbalanced bid, it is nevertheless in the best interests of the Government to discourage unbalanced bidding through appropriate solicitation safeguards, 49 Comp. Gen. 330 (1969). Moreover, where the bid is materially unbalanced there may be doubt that award results in the lowest price to the Government due to the uncertainty attached to the actual amount of services to be used, as opposed to the amounts estimated for evaluation purposes. Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 CPD 164.

With respect to the low dollar rate labor hours solicited and actual hours procured under each contract, we found that as of June 30, 1976, the Electronics Command had obtained the following amounts of labor:

- Under the 1971 contract it had obtained 2,380 labor hours at \$1.00 an hour and 149,060 hours at rates substantially higher. The 2,380 hours represented 1 percent of the total labor hours offered at \$1.00 an hour in the 1971 contract.
- Under the 1973 contract it had obtained 9,449 hours at \$1.50 an hour and 456,270 hours at rates substantially higher. The 9,449 hours represented 21 percent of the total labor hours offered at \$1.50 an hour in the 1973 contract.
- Under the 1975 contract it had obtained 68,550 hours without charge and 264,320 hours with charge. The 68,550 hours represented 17 percent of the total labor hours offered without charge in the 1975 contract.

Both the Electronics Command and Raycomm prepared their own labor hour estimates for each proposed delivery order and negotiated an acceptable quantity and labor category mix for each purchase. Negotiation documents disclosed that, in all instances, both estimates were similar and in no case did Raycomm attempt to overuse high dollar labor categories and avoid furnishing services in the low dollar labor categories.

TEK-MAR also questioned the justification of paying Raycomm \$12.00 an hour for clerical services provided under the 1975 contract when Raycomm had been paid only \$3.75 an hour for the same services under the 1973 contract.

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TEK-MAR is correct in its statement that Raycomm was paid \$12.00 an hour for clerical services on the 1975 contract compared to \$3.75 for the same services on the 1973 contract. However, this type of situation can occur as long as unbalanced bids are legally permissible. Award is made on the basis of total price, even though wide fluctuations may exist between the hourly rates quoted for a specific category (or categories) on a current offer and those previously paid by the Government on a prior procurement.

The Electronics Command made various changes in its solicitations after the first procurement in 1971 in an attempt to minimize unbalanced bidding. These included (1) reducing labor categories from 18 to 5 and (2) requiring solicitations to be made on a small business set-aside basis. It was thought that the 1975 solicitations would preclude unbalanced offers because most small businesses could not tolerate losses which might occur from unbalanced offers. Such losses could result if delivery orders required significantly more labor than was anticipated in the categories offered at unrealistically low rates.

The Electronics Command's changes did not produce the desired results. Currently, the Command is studying a suggestion, made by a contractor, to eliminate unbalanced offers by further combining the five labor categories into one composite labor category.

Recently we concluded that a method of bidding on requirements-type contracts used by the General Services Administration to prevent unbalanced bidding was acceptable, particularly where the agency had difficulty in forecasting the estimated amounts of each item due to fluctuations in actual usage. The method discussed in Michael O'Conner, Inc., B-186657, November 30, 1976, 76-2 CPD 456, was for the Government to state in the request for proposals a price for each type of building alteration service to be performed, such as installation of a certain type of door. No estimate was included in the request for proposals for the amount of services to be ordered during the contract period. Bidders were permitted to submit only a single discount (or premium) percentage factor to be applied to each type service. We recommended that, at a minimum, historical ordering data should be included to provide potential bidders with some idea of the magnitude of work that might be required.

We believe a variation of the procurement method described above might be feasible at the Electronics Command. The method we have in mind would entail the Government inserting in requests for proposals prices for each labor category. Offerors would be permitted to increase or decrease these amounts by as large a percentage factor as they wished; however, they could only submit one percentage factor to cover all labor categories. The low offer would be the one with the largest percentage discount, or in the event all offerors offered premium factors, the company offering the lowest such factor.

We recommend that the Secretary of Defense direct the Electronics Command to explore the feasibility of using the procurement method outlined above to contract for services of the type discussed in this report.

Another statement made by TEK-MAR in its letter was:

"If you compute the prices of the 2nd and 3rd placed firms against the actual labor categories purchased by Ft. Monmouth in each of the three procurements, you will find that Raycomm, Inc., was not the true lower bidder in all cases."

It is true that due to the labor mix and related pricing of the orders actually placed subsequent to contract award, the total work ordered would have cost less based on the price quotations of the unsuccessful bidders. However, the contract was based on the lowest dollar value for the total estimated hours for all categories of labor to be provided, as shown in the solicitation. Actual hours required were not known in advance and were negotiated separately with the successful contractor for each delivery order at the time of issue. Also, the suggestion by TEK-MAR assumes that those firms would have negotiated the same number of hours within each labor category to do the same work. This assumption overlooks the fact that the various companies may use different methods and labor mixes to produce identical products.

INFLATED GOVERNMENT ESTIMATES
AND NEGOTIATION PROCEDURES

TEK-MAR stated in its letter that:

"There is a definite pattern whereby Ft. Monmouth personnel provided inflated estimates of certain labor categories in all three procurements and, in

effect, caused all offerors (except Raycomm, Inc.) to price themselves out of the bidding."

In order to determine whether the Electronics Command's past experience could be used as a basis for projecting future contract requirements, we analyzed delivery orders awarded through June 30, 1976, under each of the three contracts. We found that software products ordered generally differed from contract to contract. Therefore, we believe that the Command did have difficulty in predicting realistic manhour requirements for each contract. Further, we found no evidence that Command personnel purposely inflated labor estimates.

TEK-MAR also stated that, in response to each of the three proposal requests, they submitted the lowest initial offer but were never contacted by Command personnel to discuss the scope of work, approach, prices, facilities, etc. Records show that TEK-MAR did submit the lowest initial offers; however, when the interested parties were asked to submit a best and final offer, TEK-MAR no longer placed as the lowest offeror. According to the terms of the solicitation, which met the requirements of the Armed Services Procurement Regulation, the Government did not have to enter into negotiations after receipt of the initial offers.

PREAWARD SURVEYS

TEK-MAR charged that the Electronics Command unnecessarily performed a preaward survey of its company for the 1975 solicitation because Raycomm was the lowest offeror and had already performed two previous contracts.

The Electronics Command requested the Defense Contract Administration Services to perform preaward surveys to determine the ability of the three lowest offerors to perform the contract. This request was made (1) because Electronics Command officials were not certain that Raycomm possessed the financial capability to withstand the possible loss that might result from its low offer, (2) because there was a very short time available to award the contract (June 2, 1975, to June 30, 1975), and (3) to ascertain if the next two offerors, including TEK-MAR, were capable of performing the contract.

The preaward surveys found Raycomm and the next low offeror to be capable of performing the contract. Defense Contract Administration Services Region, Boston, Massachusetts, who performed the preaward survey at TEK-MAR, recommended against award to the company because it did not (1) have an adequate accounting system, (2) show adequate resources of qualified people to perform to the contract, (3) have sufficient working

capital to finance the procurement, and (4) exhibit a full understanding of the technical requirements of the bid package.

PERSONNEL QUALIFICATIONS

TEK-MAR requested that we perform an indepth investigation on the work experience and educational background of the personnel employed by Raycomm.

In its preaward survey of Raycomm for the 1975 procurement the Defense Contract Administration Services District, Springfield, New Jersey, stated:

"A review of resumes of current personnel, anticipated for utilization on this procurement reveals that they meet or exceed the requirements delineated in the solicitation. It may be necessary for the offeror to procure the services of additional draftsmen and illustrators; consequently, resumes of approximately 12 applicants, received within the past 60 days, were reviewed and found to be satisfactory."

We selected as our sample 29 out of 114 billings made during the period July 1973 through September 1976 for the last two contracts. These billings included costs related to services of 681 people; however, some were duplicates because the individuals worked under more than one job classification and/or on more than one contract. As a result, some individuals' services were split and billed accordingly.

Using a combination of sampling techniques, we examined resumes for 133 employees and found that all had experience and educational backgrounds to support their positions as classified by Raycomm.

This report contains a recommendation to the Secretary of Defense on page 5. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. Therefore, copies of the report are being sent to the four committees and to the Secretary of Defense.

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We are also sending a copy to the Lieutenant Governor of the Commonwealth of Massachusetts.

Sincerely yours,


Deputy Comptroller General
of the United States