



Comptroller General
of the United States

Washington, D.C. 20548

Decision

REDACTED VERSION*

Matter of: Titan Corporation

File: B-260557.2

Date: July 18, 1995

L. L. Fowler for the protester.

Kenneth S. Kramer, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Computer Sciences Corporation, an interested party.
Barbara J. Amster, Esq., Department of the Navy, for the agency.

Jeanne W. Isrin, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency, in performing cost realism analysis, reasonably applied indirect rates (labor overhead, material/subcontract overhead, and general and administrative) recommended by the Defense Contract Audit Agency which were higher than the proposed rates where solicitation provided that contract work would be performed primarily at contractor site, the proposed rates were for a cost center reasonably viewed as associated with performance of customer-site work, and the applied rates were for work at contractor site.
2. Contracting agency, in performing cost realism analysis, reasonably used direct labor rates recommended by Defense Contract Audit Agency as actual, currently approved rates, instead of significantly lower proposed rates, where solicitation placed offerors on notice that they would need to clearly justify any significant departure from current compensation levels, and proposal did not establish that the proposed drastic reduction in labor rates was a realistic projection of probable cost over the potential 5-year term of the contract.
3. Contracting agency, in performing cost realism analysis, reasonably adjusted upward proposed labor escalation rate to reflect rate in Data Resource Index where offeror's proposed rate was considered unrealistically low, offeror's proposal

*The decision issued on July 18, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

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contained no support for the rate, Defense Contract Audit Agency was unable to provide any information regarding historical escalation rates for the contractor, and contracting officials applied the rate to all proposals equally.

DECISION

Titan Corporation protests the award of a contract to Computer Sciences Corporation (CSC) under request for proposals (RFP) No. N66001-91-R-0026, issued by the Naval Command Control and Ocean Surveillance Center, Research, Development, Test and Evaluation Division (NRaD), for systems integration support for Navy theater command centers.

We deny the protest.

The solicitation was originally issued in July 1991. After receipt of initial proposals in September 1991, however, reevaluation of the agency's procurement approach led to the procurement being placed on hold until September 1994. At that time, NRaD requested "updated initial technical and cost proposals," advising offerors of its intention to evaluate proposals and make award without discussions.

As amended, the RFP contemplated award of a cost-plus-fixed-fee, indefinite delivery contract for a 1-year base period with two 2-year option periods. The solicitation generally provided for award to be made to the offeror whose conforming proposal was most advantageous to the government, cost and other factors considered. The RFP specifically listed, in descending order of importance, three evaluation factors: (1) corporate experience and (2) corporate personnel resources, which were described as being of equal importance (and which each had an undisclosed weight of 40 percent), and (3) cost (20 percent).

Titan, CSC, and a third firm submitted updated initial proposals in 1994. The proposal of the third offeror was evaluated as the high-cost, low-technical proposal, essentially leaving only CSC's and Titan's proposals in the competition. As set forth below, CSC's proposal received the highest overall greatest value score (GVS):

Offeror	Technical Score	Cost Score	Total GVS
CSC	69.65	20.00	89.65
Titan	68.92	19.95	88.87

Although CSC's proposal received a slightly higher technical score than Titan's, NRaD considered the technical proposals to be "essentially equal." Likewise, while Titan's proposed cost (\$22,672,532) was substantially lower than CSC's (\$24,824,389), Titan's evaluated cost (\$25,575,545) was \$58,972 more than CSC's evaluated cost (\$25,516,573), and the agency considered the realistic cost of both proposals to be "essentially the same total dollar amount." CSC's proposed fee (\$1,201,062), however, was substantially lower than Titan's (\$1,918,435). The Navy

decided that CSC's proposal represented the best value to the government because it had the higher technical score, the lowest realistic cost, and the lowest proposed fee. In explaining the selection of CSC, contracting officials noted that:

"[g]iven the fact that these two proposals are essentially equal otherwise, awarding to CSC on the basis of the cost realism will provide the overall greatest value to the Government as their proposed fixed fee is substantially lower than that proposed by Titan. . . . While the cost realism analysis is a good indication of what the contract may in fact cost the Government, it is still at best only an estimate. The proposed fixed fee is a fixed amount the contractor will in fact get."

Upon learning of the resulting award to CSC, Titan filed this protest with our Office.

COST EVALUATION

Titan claims that its cost proposal was misevaluated in four areas: (1) the use of indirect rates applicable to a cost center different from that proposed by Titan; (2) the use of direct labor rates higher than those proposed for two employees; (3) the application of a [deleted] percent labor escalation rate whereas Titan had proposed a [deleted] percent rate¹; and (4) the use of a subcontractor estimate higher than that proposed. Titan maintains that these upward adjustments to its proposed cost were unjustified, leading to an unreasonably high evaluated cost and the improper selection of CSC.

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed cost is not controlling, since it is only an estimate and may not provide a valid indication of the final actual cost the government will be required to pay. Federal Acquisition Regulation (FAR) § 15.605(c); Purvis Sys. Inc., 71 Comp. Gen. 203 (1992), 92-1 CPD ¶ 132. Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Sabre Sys., Inc., B-255311, Feb. 22, 1994, 94-1 CPD ¶ 129. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's realism determination is limited to considering whether it was reasonable. Infotec Dev., Inc., supra. Based upon our review of the record, we conclude that the agency's cost realism analysis was reasonable.

Indirect Rates

¹Labor escalation provides for the increase in labor costs due to inflation or other usual salary increases over the life of a contract, and, as indicated here, is accomplished by the use of a percentage multiplier that is applied to proposed direct labor costs. Infotec Dev., Inc., B-258198 et al., Dec. 27, 1994, 95-1 CPD ¶ 52.

In its cost proposal, Titan proposed a [deleted] percent labor overhead rate, a [deleted] percent general and administrative (G&A) rate, and a [deleted] percent material/subcontract (M/S) overhead rate. Titan stated in the "Introduction" to the cost proposal that "Advanced Digital Systems (ADS), a division of the Titan Corporation, is pleased to submit this proposal. . . ." Likewise, standard form 33, submitted with the proposal, listed the name of the offeror as "Advanced Digital Systems a Division of the Titan Corporation." Titan's cost and contractual matters proposals contained numerous other references to Titan and/or ADS (as well as references to Titan Systems Division and Titan Systems Group as the prime contractor). Accordingly, when the contracting officer contacted the Defense Contract Audit Agency (DCAA) for assistance in her analysis of Titan's proposed rates, she described the offeror as the "Titan Corporation, Advanced Digital Systems (ADS) Division."

DCAA initially recommended use of ADS's indirect rates for Titan-site work, as set forth in Titan's current forward pricing proposal, which were substantially higher than the rates proposed by Titan: a [deleted] percent labor overhead rate as opposed to the proposed [deleted] percent rate, a [deleted] percent G&A rate as opposed to the proposed [deleted] percent rate, and a [deleted] percent M/S overhead rate as opposed to the proposed [deleted] percent rate.² However, when DCAA contacted Titan requesting information as to the cost center on which it was basing its proposed [deleted] percent labor overhead rate, Titan responded that "[t]he rates used in this proposal were from Titan Engineering Services (TES) which is now a part of Advanced Digital Systems." DCAA thereupon recommended to the contracting officer acceptance of Titan's proposed indirect rates as consistent with Titan's current forward pricing rate proposal, but with the stipulation that the rates were Titan's customer-site rates and were not applicable for work performed at Titan's site. When informed by the contracting officer that the work was to be performed at Titan's site, the DCAA auditor stated that Titan-site work was under Titan's cost center 2 (the cost center for ADS), and again recommended the indirect rates it had originally recommended—a labor overhead rate of [deleted] percent, a G&A rate of [deleted] percent, and an M/S overhead rate of [deleted] percent. Since the DCAA-recommended rates were the same rates as proposed by Titan for Titan-site work in a March 1994 cost proposal and in response to a 1993 solicitation, the Navy performed the cost realism analysis using the indirect rates recommended by DCAA. The contracting officer attributed Titan's considerably lower proposed indirect rates to Titan's error in proposing its customer-site rates, with which the proposed rates were consistent, instead of Titan-site rates.

Titan contends that the contracting officer improperly based the cost realism analysis on the indirect rates (labor overhead, G&A, and M/S overhead) for a Titan cost center (ADS—Titan cost center No. 2) different from the one proposed by

²A "forward pricing rate agreement" is a written agreement negotiated between the government and a contractor concerning the billing rates to be utilized by a contractor for a specified period of time. FAR § 15.801; Purvis Sys. Inc., supra.

Titan.³ According to the protester, its proposal clearly stated that TES would be the performing entity, with a separate rate center. Titan notes in this regard that it began its description in its cost proposal of its professional compensation plan by stating that "Titan Engineering Services has a compensation structure . . . ," while its contractual matters proposal specifically stated that "[t]he work will be performed by ADS's Titan Engineering Services Division which is a separate rate center." In addition, Titan points out that it identified TES to the DCAA as the cost center from which it derived its proposed rates. NRaD, on the other hand, maintains that contracting officials reasonably believed that ADS, not TES, was the appropriate cost center; while there were only the two above references to TES in Titan's three-volume proposal, there were numerous references to Titan and/or ADS. For example, NRaD notes, three of the five letters of commitment in the proposal from individuals proposed by Titan to work on the subject contract indicated that they were to be employees of ADS, while the letters of the remaining two individuals indicated that they were to be employees of Titan Corporation; none mentioned TES.

We agree with the agency that although Titan's proposal twice referenced TES, it left somewhat unclear the precise relationship between TES and ADS, the entity which (along with Titan generally) was most often mentioned in the proposal. In any case, however, the clarity of the proposal aside, we think NRaD reasonably applied the higher rates in its evaluation.

In this regard, NRaD reports that even if Titan's proposal had unequivocally stated that it was based on TES cost data, it would not have accepted TES indirect rates for this contract because DCAA had indicated that they were customer-site based rates and, to the contracting officer's knowledge, TES had previously been associated with customer-site work. Indeed, in a 1993 proposal submitted to the procuring activity, Titan itself had stated that TES "has a lower G&A rate than ADS and its primary focus is performing engineering effort on-site at customer facilities." Here, in contrast, the solicitation provided that "[w]ork would be performed primarily at the contractor's facilities," with "[o]nly a small portion of the effort under this contract [to] be performed on a Government installation." Titan's proposal provided no explanation as to how a cost center primarily associated with customer-site work could be utilized to perform a major contract where the work would be performed primarily at the contractor site without causing a significant, relative increase to its indirect costs to account for the additional expense of performing using contractor-furnished facilities. See Purvis Sys. Inc., supra. Further, a contracting officer may generally rely on DCAA advice in performing a cost realism analysis absent evidence that the advice is incorrect. Sabre Sys., Inc.,

³Titan explains that it utilizes several different indirect cost centers—each with separate overhead rates and G&A rates—in its accounting system for purposes of accumulating and allocating costs to be charged to appropriate contracts. Personnel are assigned to a cost center and their direct labor and other direct costs are burdened with rates that are unique to that cost center.

supra. In these circumstances, we do not believe that NRaD would have been required to accept Titan's proposed indirect rates even if clearly identified as those for TES since TES was reasonably associated with performance of customer-site work, whereas the work contemplated here was primarily contractor-site work.

Direct Labor Rates

Titan maintains that the Navy, in its cost realism analysis, improperly used direct labor hourly rates for two Titan employees which were higher than the rates proposed by Titan. The proposed rates were approximately 18 and 26 percent lower than the rates recommended by DCAA as the currently approved rates for the individuals as set forth in Titan's employee master file. The contracting officer considered the proposed rates unrealistic, and instead used the higher rates recommended by DCAA. Titan does not dispute that the rates used by NRaD were the currently approved rates, but argues that since its proposal contained letters of commitment from the two employees in which they agreed to work at the lower rates, the agency should have accepted the lower rates for cost realism purposes. (Titan explains in its protest that the two are part-time employees who agreed to work at a lower rate in consideration of acquiring full-time employment with Titan, which entailed greater benefits than they had as part-time employees.)

NRaD's refusal to accept Titan's proposed labor rates for the employees was reasonable. An offeror is responsible for affirmatively demonstrating in its proposal the reasonableness of its proposed costs. See Radian, Inc., B-256313.2; B-256313.4, June 27, 1994, 94-2 CPD ¶ 104. Further, the solicitation here reasonably advised offerors that in performing the cost realism analysis of proposed costs, the agency would place great emphasis on current compensation levels. In this regard, the RFP stated that "[f]or cost realism purposes offerors, including subcontractors, shall submit current unloaded direct labor rates for all proposed personnel," and that "[r]ealistic personnel compensation will be determined by utilizing actual annual salaries of all proposed personnel and these rates will be used to arrive at a realistic cost for evaluation purposes." In our view, offerors were on notice that they would need to clearly justify any significant departure from current compensation levels. Furthermore, since the RFP advised offerors of the agency's intent to award without discussions, offerors were on notice that any such justification must be furnished with their initial proposals.

We find nothing in Titan's proposal, however, which established that the proposal of such a drastic reduction in labor rates was a realistic projection of probable cost over the potential 5-year term of the contract. Nowhere in the letters of commitment from the two employees, nor elsewhere in Titan's proposal, is there an indication that the employees had committed to working on the contemplated contract at the greatly reduced proposed labor rates (plus the proposed [deleted] percent escalation) over the entire, 5-year contract period. Indeed, one of the letters specifically described the proposed compensation as the employee's "starting salary," while the other letter stated that the employee had agreed to the proposed labor rate "[t]o increase the likelihood that Titan will be awarded this contract" but

did not contain any commitment not to seek increases after award in future contract years. Under the circumstances, the agency could reasonably be concerned that, even if the proposed individuals were willing now to accept significantly lower compensation, this lower compensation could lead to low morale and job performance problems which could necessitate replacement of the employees at a higher cost sometime during the 5-year period of the contract. Thus, we think the agency could reasonably rely on DCAA's position that the proposed labor rates for these two individuals were an unrealistic projection of probable cost over the potential 5-year term of the contract.

Escalation Rate

Titan objects to NRaD's application of an annual [deleted] percent labor escalation factor to Titan's direct labor hourly rates, instead of the [deleted] percent rate proposed by Titan. NRaD considered the proposed [deleted] percent escalation rate unrealistic, and since DCAA could furnish no information about historical, actual escalation rates for Titan and Titan's proposal provided no historical data or analysis supporting the [deleted] percent rate, NRaD applied a [deleted] percent escalation rate to determine the realistic future rates for Titan (as well as for all other offerors and subcontractors proposing an escalation rate of less than that amount), based on the latest recommended Data Resource Index (DRI) rate.

The agency's approach was reasonable. An agency should adjust cost proposals in its cost realism analysis to reflect the agency's reasonable projection of anticipated escalation in labor rates over the term of the contract. Sabre Sys., Inc., supra. In doing so, a proposed wage escalation rate is properly increased where the higher rate is justified based on a comparison with, among other things, published rate surveys. See Advanced Technology and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230. Although Titan asserts that a [deleted] percent escalation factor was consistent with current economic price projections over the next 5 years, the current state of the defense industry and the current general economic conditions in the geographic areas in which the work will be performed, Titan did not include this supporting explanation in its proposal but, rather, raised it for the first time in its protest. Since an agency's evaluation is dependent upon the information furnished in a proposal, it is the offeror's burden to submit an adequately written proposal for the agency to evaluate, especially where, as here, the offeror is on specific notice that the agency intends to make award based on initial proposals without discussions. Infotec Dev., Inc., supra. Given Titan's failure to support in its proposal its prediction regarding labor escalation rates, and the fact that NRaD, not Titan, must bear the risk if actual rates are greater than those predicted in the proposal, we think the agency reasonably applied the wage escalation rate in the DRI rate survey.

Subcontractor Cost

Titan generally argues that NRaD made an unjustified upward adjustment to the proposed cost of its subcontractor, RGB Technology, Inc., from \$280,267, as

proposed, to \$340,090, as evaluated. The record indicates that the upward adjustment to RGB's proposed cost was based on: (1) the use of the actual, current labor rate recommended by DCAA for one employee which was higher than proposed; (2) the application to RGB's labor costs of the same DRI escalation rate of [deleted] percent rate recommended by DCAA which was applied to all proposals and was applied here because RGB's proposed [deleted] percent escalation rate was considered unrealistically low, RGB did not offer any support in its proposal for the proposed [deleted] percent rate, and DCAA possessed no historical escalation data for RGB; and (3) the application of the 1994 indirect rates (current as of the time of the evaluation), recommended by DCAA. Titan specifically claims that RGB's costs should have been increased by no more than \$24,613 based on RGB's proposed provisional 1995 indirect rates, submitted to DCAA on March 8, 1995—i.e., after award was made and the protest was filed. Titan's protest furnishes no basis for questioning the adjustments to RGB's proposed cost.

As discussed above, we find reasonable the agency's use of the current, actual labor rates and—at least in the absence of a supporting, convincing explanation in the proposal to the contrary—the DRI escalation rate recommended by DCAA. Further, Titan does not explain, nor is it otherwise evident, why it was unreasonable for the agency to rely on the indirect rates then currently approved and recommended by DCAA (rather than on rates not yet even submitted to DCAA).

GREATEST VALUE DETERMINATION

Titan argues that NRaD improperly departed from the RFP's evaluation criteria because, in its determination as to which proposal offered the greatest value to the government, NRaD considered the fact that Titan's proposed fee (\$1,918,435) was substantially higher than CSC's (\$1,201,062), whereas the RFP did not specifically state that the proposed fee would be an evaluation factor. Titan's position is without merit. Since the solicitation provided for the evaluation of cost, and an offeror's proposed fixed fee is a probable, direct cost to the government of award to that offeror, the agency's consideration of the proposed fee in its source selection decision was consistent with the solicitation. In any case, we have held that where proposals are essentially equal technically and in estimated cost, a fee may be an appropriate discriminator available to contracting officials. See generally Ferguson-Williams, Inc., 68 Comp. Gen. 25 (1988), 88-2 CPD ¶ 344.

DISCUSSIONS

Titan complains that it was never given a chance to rebut the "misunderstandings" upon which NRaD based its cost evaluation, which Titan maintains could have been corrected through discussions. The RFP, however, clearly advised offerors of the agency's intent to award without discussions. Therefore, Titan could not reasonably presume that it would have a chance to clarify or improve its proposal through discussions; the burden was on Titan to submit an initial proposal that adequately demonstrated its own merits, and the protester ran the risk of not receiving award by failing to do so. Infotec Dev., Inc., supra. Since the RFP clearly advised offerors

of the agency's intent to award without discussions, and there was a reasonable basis for concluding that CSC's proposal represented the best overall value to the government, we find no basis to object to the agency's decision not to conduct discussions. FAR § 15.610(a)(4); Facilities Management Co., Inc., B-259731.2, May 23, 1995, 95-1 CPD ¶ 274.

The protest is denied.

Robert P. Murphy
General Counsel