Comptroller General
of the United States

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of: Signal Corporation

File: B-275502.3; B-275502.4

Date: July 6, 1998

Richard J. Conway, Esq., William M. Rosen, Esq., and Karen Lau, Esq., Dickstein Shapiro Morin & Oshinsky, for the protester.
J. Patrick McMahon, Esq., McMahon, David & Brody, for InfoPro, Inc., an intervenor.
Arthur I. Rettinger, Esq., and William P. McGinnies, Esq., Department of the Treasury, for the agency.
Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that protester's proposed rates for labor categories that made up a majority of the anticipated level of effort created an unacceptably high level of performance risk where protester's proposed rates were substantially lower than rates the protester was charging for similar work under another contract.

DECISION

Signal Corporation protests the Department of the Treasury, U.S. Customs Service's award of a contract to InfoPro, Inc., under request for proposals (RFP) No. CS-95-064 for software support services. Signal primarily challenges the agency's determination that Signal's proposed labor rates were unrealistically low and therefore created an unacceptably high performance risk in Signal's proposal.

We deny the protest.

BACKGROUND

The Customs Service issued the RFP on May 17, 1996, seeking proposals to provide various software support services for the Applications Development Division (ADD) of Custom's Office of Information and Technology under a fixed-price

indefinite-delivery, indefinite-quantity contract for a base year with 4 option years.[1] The agency expects that a significant amount of the near-term work under this contract will encompass redesigning software to be Year 2000 (Y2K) compliant. In this regard, the RFP's SOW provided:

> The Contractor shall assess existing Customs technology and evaluate alternative hardware or software architectures. The Contractor shall redesign or modify existing software systems, and develop new software in anticipation of future Customs requirements . . . and respond to various legislative changes mandated by Congress, the Office of Management and Budget (OMB), Treasury and other governmental agencies.

The solicitation listed 12 labor categories and the estimated number of hours for each category that the agency anticipated would be necessary for contract performance. Offerors were required to propose fully burdened, fixed hourly rates for each category and to provide information regarding fringe benefits, overhead, and general and administrative (G&A) rates. A majority of the RFP's listed estimate of required hours were under three labor categories: senior programmer/analyst, mid-level programmer/analyst, and junior programmer/analyst.

The SOW described the functional duties that personnel under each labor category would be required to perform, along with required general and specialized experience. With regard to the programmer/analyst categories, the RFP stated:

> DUTIES: The Programmer/Analyst(s) support complex application problems involving all phases of software development and maintenance. Programmer/Analyst personnel analyze systems requirements, develop detailed design specifications, develop block diagrams and logic flow charts, and translate detailed designs to computer programs. . . . The Programmer/Analyst(s) test, debug and refine computer programs to produce the required product . . . .
>
> . . . . .

[1]The ADD is responsible for the design, development, enhancement, testing, implementation and maintenance of computer application programs supporting all of the Customs asset management, administrative support, enforcement and commercial cargo processing systems, and is also responsible for developing computer programs, conducting initial unit testing, and responding to all levels of inquiry pertaining to application development systems processing. RFP Statement of Work (SOW) § 1.2.2.

> Specialized Experience: The Contractor should provide personnel who collectively possess experience in the following areas:
>
> > -demonstrated COBOL and CICS programming experience in an IBM or IBM-compatible mainframe environment . . . .[2]

As initially issued, section M of the solicitation stated that proposals would be evaluated on the basis of technical qualifications (80 points)[3] and price considerations (20 points). Regarding price evaluation, section M.6.1 of the RFP stated:

> Separately and apart from the technical evaluation, a price evaluation will be performed. This will consist of conducting an analysis of each individual proposal to first determine if proposed prices accurately and adequately portray the work that is to be performed, and if they are reasonable and realistic. . . . In addition to the price evaluation, the Government may examine proposed prices to determine if the proposed price would introduce potential performance risks or otherwise [a]ffect the quality of services provided from the selection of the individual proposal . . .
>
> . . . . .
>
> In addition to the foregoing, the Government may examine individual proposals for potential performance risks introduced by the individual proposals pricing structure (i.e. the Offeror's ability to retain a qualified staff to prevent performance disruptions, etc.). [Emphasis added.]

Section M.6.2 of the RFP also advised offerors that proposals would be evaluated in accordance with Federal Acquisition Regulation (FAR) clause 52.222-46, "Evaluation of Compensation for Professional Employees," which provides that "Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories . . . may be viewed as evidence of failure to comprehend the

---

[2]Section 1.5.2 of the SOW advised offerors that "The Data Center uses . . . CICS as its transaction processing monitor," that "all ADD application system are developed using VS COBOL II, Easytrieve, and SAS programming languages," and that "Command level CICS, CA-ROSCOE, TSO and 'C' programming languages are used as the on-line program development systems."

[3]The solicitation allocated 60 points for evaluation of technical proposals and 20 points for the offeror's oral presentation.

complexity of the contract requirements." Finally, section L.9.2 of the RFP advised offerors that "[t]he burden of proof as to cost credibility rests with the Offeror."

Initial proposals were submitted in June, 1996. Following an initial evaluation, the agency established a competitive range consisting of six proposals, including Signal's and InfoPro's. Signal prepared its proposal based on its understanding that award would be made to the offeror submitting the low cost, technically acceptable, proposal, Hearing Transcript[4] (Tr.) at 20-21, 76, and its proposed price was the lowest of the competitive range offerors.[5] Following establishment of the competitive range, discussions were conducted, during which the agency advised offerors that contract performance would require "strong Year 2000 support," Tr. at 24-25, and advised Signal that several of its proposed rates were unrealistically low.

Best and final offers (BAFO) were submitted more than a year later, on August 5, 1997. In its BAFO, Signal increased several of its rates, including those for programmer/analysts, proposing hourly rates for mid-level programmer/analysts and senior programmer/analysts of [deleted] and [deleted], respectively. In addition, Signal's August 5 BAFO offered two new labor categories--[deleted] and [deleted]--for which it proposed rates of [deleted] and [deleted], respectively.[6] Signal states that these two categories were proposed because [deleted]. Tr. at 24-25, 182-196. However, Signal proposed only 1 hour per year for each of these two new labor categories.

---

[4]Citations to the hearing transcript refer to the hearing that our Office conducted in connection with this protest.

[5]Total initial prices proposed by the competitive range offerors ranged from Signal's low of [deleted] to a high of $18,581,221. It is not clear what formed the basis for Signal's obviously mistaken understanding of the evaluation scheme that was set forth in the RFP.

[6]Paragraph 10.0 of the RFP's SOW permitted offerors to propose labor categories other than those listed in the solicitation, providing:

> If the Offeror proposes an alternative solution requiring categories of personnel not listed, the Offeror must provide a comparable statement of duties as well as general and specialized experience required.

Following submission of the August 5 BAFOs, the agency became concerned that the proposed labor rates for programmer/analysts were unrealistically low. By letters sent to each offeror on October 14, the agency reopened discussions, explaining:

> After reviewing and evaluating the BAFOs . . . in particular the labor rates proposed by all offerors, the Customs Service has serious concerns about the proposed hourly rates for the three Programmer/Analyst categories in which the majority of effort is anticipated. Due to significant recent changes in the hiring and retention conditions for these labor categories, the Customs Service believes that prices are not, or may not be realistic. The already competitive labor market for programmers has changed dramatically because of various Year 2000 efforts and the resulting increased demand for COBOL (especially COBOL CICS) programmers, thereby driving up the salaries/labor rates for these positions. It is believed further that offerors have proposed labor rates for these positions based on the low end of the talent scale for COBOL CICS programmers. As such, it would be difficult to find highly skilled and experienced programmers at the proposed rates. Based on our analysis of the labor rates, the upward salary trend in the market place for these positions and skill sets, and the likely difficulty in hiring qualified programmers at the proposed rates/salaries, Customs is providing offerors an opportunity to submit another BAFO.
>
> Offerors are reminded of the applicability to this requirement of Federal Acquisition Regulation 52.222-46, Evaluation of Compensation for Professional Employees . . . which deals with the issue of proposed rates and/or compensation being too low and a contractor's inability to recruit and retain qualified staff as a result. Failure to comply with this clause may constitute sufficient cause to reject an offeror's proposal.

With these letters, the agency issued RFP amendment No. 2, which eliminated price as a point-scored evaluation factor, advised offerors that "[a]ward will be made to that responsible offeror whose proposal contains the combination of those criteria offering the best overall value to the Government," and stated that "the Government is more concerned with obtaining superior technical features than with making an award at the lowest overall cost."

The second round of BAFOs was submitted on October 28. Despite the agency's clearly-stated concerns regarding the rates proposed for programmer/analysts,

Signal neither increased its rates for those categories,[7] nor provided any meaningful response to the agency's concerns. In contrast, InfoPro increased its programmer/analyst rates, proposing hourly rates for mid-level programmer/analysts of $48, and for senior programmer/analysts of $70.

Although Signal's second BAFO continued to propose mid-level and senior programmer/analysts for [deleted] and [deleted], respectively, Signal substantially increased the proposed rates for its two new labor categories--[deleted] and [deleted]--to [deleted] and [deleted], respectively. However, Signal's October 28 BAFO continued to propose a total of 1 hour per year for each of those categories. Signal's final BAFO offered a total evaluated price of [deleted]; InfoPro's final BAFO offered a total evaluated price of $19,995,600; the technical scores of their proposals were virtually equal.[8] In accordance with section M.6.1 of the RFP, the agency performed a risk assessment that was separate and apart from the evaluation of technical proposals, specifically considering the performance risk associated with each offeror's proposed labor rates. In evaluating Signal's proposed rates the contracting officer stated:

> Although these [Signal's] unrealistically low rates were brought to Signal's attention twice (cost discussions following initial proposal and in Amendment No. 2)[,] Signal chose not to offer realistic rates, especially for the Senior and Midlevel Programmer/Analyst positions. As noted in §§ M.6.1-6.2 and FAR § 52.222-46(b), this represented significant risk that Signal would not be able to attract and retain competent professional employees.
>
> . . . . .
>
> I believe that Signal's low rates indicate a "failure to comprehend the complexity of the [contract] requirements["] stated under FAR § 52.222-46, Evaluation of Compensation for Professional Employees. Although Signal did raise their rates in their first BAFO in response to negotiations, they did not raise any rates for the second BAFO. Furthermore, they did not offer any explanation in their second BAFO as to why they chose not to increase the labor rates. In effect, Signal either chose to ignore RFP Amendment 2 or they believed that their compensation/rates were adequate. In any event, it is believed that

---

[7]In its protest, Signal represented that it did, in fact, increase its programmer/analyst rates in the October 28 BAFO. However, at the hearing, Signal acknowledged that this representation was factually inaccurate. Tr. at 92.

[8]InfoPro's technical proposal received a score of [deleted] points; Signal's proposal received a score of [deleted] points.

> Signal does not fully understand or recognize the dynamic and quickly changing labor market forces for these programmer/analyst positions . . . . and the sizable labor market demand for programmer/analyst positions with COBOL CICS experience in Washington, D.C. metropolitan area.

In specifically comparing InfoPro's proposal to Signal's, the contracting officer concluded: "I believe that the significantly lower performance risk (i.e., ability to recruit and retain Programmer/Analysts) and realistic labor rates presented by InfoPro justifies the higher price and additional [deleted] over Signal's price proposal." Following this determination, a contract was awarded to InfoPro. This protest followed.

DISCUSSION

Signal protests that it was unreasonable for the agency to determine that Signal's proposed labor rates created a high performance risk and that InfoPro's proposal reflected lower risk. In our view, the record establishes the reasonableness of the agency's assessment.

In evaluating the proposals, the agency considered the functional duties which the RFP stated programmer/analysts would be required to perform,[9] along with the required special skills--that is, "demonstrated COBOL and CICS programming experience," SOW at § 10.2--and compared the proposed rates with the rates the agency was being charged for similar services under other contracts. Among other things, the agency considered the rates that Signal was charging Customs to provide COBOL/CICS programmers to perform Y2K tasks under General Services Administration (GSA) schedule contract No. GS-35F-4488G. Under that contract, Signal was charging Customs between $65 and $80 per hour to perform Y2K work on COBOL/CICS systems.[10] That is, under the GSA contract, Signal was charging rates that were [deleted].

The agency points out that there are several indications that Signal intended to perform the contract's Y2K requirements with personnel provided under the higher priced [deleted] labor categories, rather than with personnel provided under the

---

[9]There is no dispute that the RFP contemplated "strong Year 2000 support," and that Signal clearly understood those requirements. Tr. at 24-25, 182-196. Consistent with the requirements, the RFP's qualifications for the programmer/analysts were stated in terms of functional capabilities rather than educational degrees or specified years of experience.

[10]At the hearing, Signal's program manager testified that [deleted].

lower-priced programmer/analyst categories.[11] First, with the agency report responding to the protest, the contracting officer submitted a memorandum, written after a post-award debriefing with Signal personnel, which stated:

> During the discussion of how Customs performed the price analysis/labor-rate analysis, the [contracting officer] asked why Signal elected not to change their labor rates in response to RFP Amendment No. 2 . . . . Signal indicated in response to this issue, they proposed 2 additional labor categories [deleted] and that they intended to shift the hours from the programmer/analyst positions to these 2 categories.

At the hearing, Signal's Vice President who was responsible for submission of Signal's BAFOs acknowledged that the [deleted] categories were inserted in response to the agency's desire for "strong Year 2000 support," and that the personnel Signal would provide under the programmer/analyst categories [deleted]. Tr. at 24-25. More specifically, Signal's Vice President testified, "the idea there was . . . to go beyond and augment what could be provided by the mid-level and senior level programmer/analyst." Tr. at 25.

Similarly, Signal's program manager testified that the [deleted] categories were proposed to address the agency's concerns regarding Signal's low programmer/analyst rates. Tr. at 191-192. Additionally, the program manager was specifically asked: "[I]f there is a demand for Y2K COBOL/CICS programmers, who do you expect to perform that work under the protested contract?" After asserting that the programmer/analysts would be [deleted], Signal's program manager acknowledged, "If though there were time constraints under which the government was operating and they wanted to get in some high powered people, we weren't going to get them for those [programmer/analyst] rates." Tr. at 192-193.

Finally, Signal's own consultant, retained to assist Signal in pursuing this protest, testified as follows:

> Q. [I]s it your opinion based on your review of the documents that, in fact, Signal intended to use substantially more hours . . . for those two [deleted] labor categories?
>
> A. That would be my opinion . . . .

Tr. at 306.

---

[11]Section H.16 of the RFP, "Ordering Procedures," requires that the contractor will propose specific labor hours, by skill category, for each task order issued under the contract.

The evaluation of competing proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating those needs, and it is the agency that bears the burden of difficulties flowing from a defective evaluation. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115 at 8. Thus, it is not the function of our Office to reevaluate proposals; rather, we review the agency's evaluation to ensure that it was fair, reasonable, and consistent with the criteria stated in the solicitation. VSE Corp., B-247610.2, Aug. 6, 1992, 92-2 CPD ¶ 81 at 6.

In evaluating proposals, an agency's consideration of the risks associated with unrealistically low rates is always a proper consideration, and in evaluating the risks associated with proposed labor rates, an agency may properly consider the rates an offeror is charging, or has recently charged, for similar services under other contracts. See, e.g., Information Spectrum, Inc., B-256609.3, B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251 at 12; Planning Sys., Inc., B-246170.4, Dec. 29, 1992, 92-2 CPD ¶ 445 at 4-5; Stanley Assocs., Inc., B-232361, Dec. 22, 1988, 88-2 CPD ¶ 617 at 5-7.

Here, the solicitation repeatedly advised offerors that the agency would evaluate the performance risks associated with an offeror's proposed labor rates. In performing that evaluation, the agency considered the fact that Signal was charging Customs significantly higher rates to provide Y2K COBOL/CICS programmers under the GSA schedule contract, and concluded from that information that Signal's lower proposed rates for programmer/analysts created substantial performance risk.[12] On this record we cannot question the agency's determinations regarding Signal's proposed rates.[13]

Further, the indications that Signal intended to meet the agency's needs for Y2K COBOL/CICS programmers under the [deleted] labor categories--for which it offered 1 hour per year, per category--also provide a reasonable basis for the agency's assessment that Signal's proposal presented a high performance risk. Under task order contracts such as this, where the contractor must propose labor hours, by skill category, for each task order issued, a proposal offering relatively low rates for labor categories with high estimated quantities of hours, and high rates for labor categories with low estimated quantities of hours, presents the risk

---

[12]The record shows that the agency also had other reasons to view Signal's rates as creating performance risk. Signal states that its programmer/analyst rates were based on [deleted].

[13]Signal's protest also asserts that the agency considered only the fully burdened rates, without considering the base rates that would actually be paid to employees. Signal's assertion is factually inaccurate. The record shows that the agency considered the base rates that would be paid to various personnel performing the tasks, as well as the applicable fringe benefits, overhead and G&A rates.

that, in performing the contract, the agency and contractor will experience disagreements which require resolution under the contract's disputes clause, and which an agency may properly consider in determining whether to accept a particular proposal. Stanley Assocs., Inc., supra. Here, Signal's proposed rates of [deleted] and [deleted] for labor categories for which it offered 1 hour per year created a reasonable basis for the agency to conclude that Signal's proposal presented a high performance risk. In sum, the record provides no basis to sustain Signal's protest.[14]

The protest is denied.

Comptroller General
of the United States

[14]Signal's protest contains various other allegations, including the assertion that the agency's October 14 letter to Signal constituted "less than meaningful discussions" regarding the agency's concern that Signal's programmer/analyst rates were unrealistically low. In light of the specific concerns expressed in that letter, this allegation is without merit; it is difficult to imagine a way in which the agency could have been more explicit about its concerns. Signal also complains that the agency should have adjusted Signal's proposed price to reflect a price the agency believed to be realistic. To the extent Signal is suggesting that the agency should have increased Signal's proposed programmer/analyst rates for evaluation purposes, an agency is not permitted to make such adjustments. J&J Maintenance, Inc., B-244366.2, Mar. 7, 1994, 94-1 CPD ¶ 177 at 11. We have considered all of Signal's other protest allegations and find in them no basis for sustaining the protest.