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Decision

Matter of: General Dynamics Advanced Information Systems, Inc.

File: B-411771; B-411771.2

Date: October 20, 2015

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Per David Midboe, Esq., and Kelly Rogers, Esq., Department of the Navy, Naval Sea Systems Command, for the agency.

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DIGEST

Protest challenging agency's cost realism analysis is sustained where the analysis was premised on errors in the agency's interpretation of substantiating data submitted in connection with the protester's cost proposal.

DECISION

General Dynamics Advanced Information Systems, Inc. (GDAIS), of Fairfax, Virginia, protests the award of a contract to Lockheed Martin Mission Systems and Training, of Washington, District of Columbia, by the Department of the Navy, Naval Sea Systems Command, under request for proposals (RFP) No. N00024-14-R-5352, for the Navy's surface electronic warfare improvement program (SEWIP) block 1B3 full rate production requirement. GDAIS alleges that the agency conducted an unreasonable cost realism analysis by erroneously assuming that GDAIS proposed uncompensated overtime to meet the RFP's level of effort requirements, and as a result made an incorrect and unreasonable upward adjustment to GDAIS's cost proposal.

We sustain the protest.

BACKGROUND

The Navy issued the RFP on December 2, 2014, as part of an evolutionary acquisition program to provide enhanced shipboard electronic warfare capabilities for early detection, analysis, threat warning, and protection from anti-ship missiles. The RFP contemplated an award on a lowest-priced, technically acceptable basis, for the full rate production of hardware, provisioned item orders, first article testing, and supporting engineering services. Under the RFP, the contract line item numbers (CLINs) for hardware production, provisioned item orders, and first article testing requirements (CLINs 100-400) were firm-fixed-price (FFP) CLINs. In contrast, the engineering services CLINs--divided into engineering services CLINs (500-504), and field engineering services CLINs (600-604)--were cost-plus-fixed-fee (CPFF) level of effort CLINs. As relevant to CLINs 500-604, the RFP specified the total level of effort requirement as follows: 7,500 hours for each engineering services CLIN (500-504) and 1,500 hours for each field engineering services CLIN (600-604), for a total of 45,000 CPFF hours.

Also concerning the overall level of effort requirement for the CPFF CLINs, the RFP included a level of effort clause which provided that “[t]he total level of effort for the performance of this contract shall be 45,000 total man-hours of direct labor, including subcontractor direct labor.” Agency Report (AR), RFP, at 0051-0052. This clause also provided that:

Of the total man-hours of direct labor set forth above, it is estimated that 0 man-hours are uncompensated effort.

Uncompensated effort is defined as hours provided by personnel in excess of 40 hours per week without additional compensation for such excess work. All other effort is defined as compensated effort. If no effort is indicated in the first sentence of this paragraph, uncompensated effort performed by the Contractor shall not be counted in fulfillment of the level of effort obligations under this contract.

Id. at 0052.

Concerning the cost/price evaluation, the RFP provided that:

For each estimated CPFF CLIN, the Government will evaluate the realism of the Offeror’s proposed costs by considering the Offeror’s proposed labor mix, proposed labor rates, material costs, burden rates and other costs in light of data available to the Contracting Officer, including the relationship of such proposed costs to the effort described in the Offeror’s proposal, and Government estimates for: (1) material costs, (2) direct

labor costs, (3) overhead and G&A costs, and (4) any other costs which are likely to be incurred by the Offeror.

Id. at 0111.

The RFP instructions detailed the information that offerors were to provide to support the realism of their proposed costs for the CPFF CLINs. In this regard, offerors were to include “[a] basis of estimate (BOE) of the work scope to be performed,” and “[d]etailed estimating documentation on how the estimate was developed,” including the source data used. As relevant, the source data requirements included the following:

- i. Proposed labor hours per unique labor categories. The Offeror shall submit its Price and Cost summaries in accordance with the offeror’s accounting structure.
- ii. Direct labor costs shall be provided separately by labor category per calendar year or per fiscal year.

Id. at 0101. Finally, the instructions also provided that:

For direct and indirect rates, regardless of prime or subcontractor, offeror shall provide substantiating data [for] costs. Substantiating data shall include Forward Pricing Rate Agreement (FPRA). If an [FPRA] is not available, Offerors must use a Forward Pricing Rate Recommendation (FPRR) with additional substantiating data, such as historical information. The Offeror shall provide a copy of its most recent FPRA or FPRR. If a FPRA or FPRR is not available the Offeror shall provide historical rate information for the last three years.

Id. at 0102.

After receipt of proposals, the Navy conducted a non-cost/price evaluation, which concluded that both GDAIS and Lockheed were technically acceptable. Concerning cost/price, the Navy’s cost realism evaluation concluded that GDAIS’s proposed costs required upward adjustment in two areas. First, the Navy made an upward adjustment of \$[DELETED] to account for [DELETED]. AR, Tab 2, Cost/Price Analysis Team (C/PAT) Report, at 0117. That adjustment is not disputed in this protest. Second, the Navy made adjustments of \$[DELETED] under the engineering services CLINs (500-504), and \$[DELETED] under the field engineering services CLINs (600-604)--a total adjustment of \$[DELETED]--“to remove solicitation-prohibited (and thus unrealistic) uncompensated overtime that General Dynamics proposed.” Id.

Concerning the uncompensated overtime adjustments, although GDAIS provided detailed cost breakdowns of labor categories, hours, rates, and costs in its cost proposal's CPFF basis of estimate, the C/PAT's evaluation relied upon a separate attachment to GDAIS's electronic proposal, designated "B4044 SEWIP [Uncompensated Overtime] Summary" (uncompensated overtime summary). This attachment presented a table listing each labor category proposed under each CLIN. For each labor category, the uncompensated overtime summary specified the "Traditional Labor Cost," "Decremental Labor Cost," "Ratio" of the decremental labor cost to the traditional labor cost, "Proposed Hours," "Effective Hours," and "Uncompensated Hours." AR, Tab 3, Uncompensated Overtime Summary, at 0711. As relevant, for each CLIN the "Decremental Labor Cost" and "Proposed Hours" columns of the uncompensated overtime summary corresponded with the total costs and proposed labor hours for each labor category identified for each CLIN in the CPFF basis of estimate. A separate table on the first page of the uncompensated overtime summary identified the sum of the "Uncompensated Hours" column for each CLIN, including [DELETED] hours in connection with the CPFF level of effort CLINs. Id. at 0710.

Based on the table on the first page of the uncompensated overtime summary, the C/PAT concluded that GDAIS had proposed to divide the total requirement of 45,000 hours into two groups: [DELETED] compensated hours, and [DELETED] uncompensated overtime hours. Since the RFP's level of effort clause provided that "uncompensated effort performed by the Contractor shall not be counted in fulfillment of the level of effort obligations," the C/PAT concluded that it was obligated to add [DELETED] compensated hours to GDAIS proposal, and account for the costs associated with those additional hours. AR, RFP, at 0052. As a result of the cost realism adjustments as detailed above, the final cost realism evaluation was as follows:

	Proposed Cost	Evaluated Cost
Lockheed	N/A ¹	\$24,948,286
GDAIS	\$(DELETED)	\$24,958,467

AR, Tab 2, Cost/Price Analysis Team (C/PAT) Report, at 0117.

¹ GDAIS's protest challenged only the cost realism evaluation of its own cost proposal. Accordingly, documentation concerning Lockheed's cost proposal and the Navy's evaluation thereof was not included in the protest record, and Lockheed's proposed costs, and any adjustments made in determining Lockheed's evaluated cost, are unknown.

On the basis of the evaluation, the source selection authority concluded in the source selection decision, that:

As this is a Lowest-Price Technically Acceptable procurement, Lockheed Martin is the clear awardee. While it is technically acceptable, General Dynamics' proposal is \$10,181 higher than Lockheed Martin's; hence, General Dynamics' proposal is not the Lowest-Priced Technically Acceptable offer.

AR, Tab 8, Source Selection Decision, at 1959. The Navy made the award to Lockheed on June 25. The agency then provided GDAIS with redacted evaluation documents on July 5, and with an oral debriefing on July 7. This protest followed.

DISCUSSION

GDAIS alleges that the Navy mistakenly and unreasonably concluded that its proposal contained [DELETED] uncompensated overtime hours within the CPFF CLINs. GDAIS contends that its cost proposal was fully compliant with the solicitation; included voluminous, detailed cost breakdowns accounting for the required 45,000 CPFF hours; and explicitly recognized that "[a]s per the RFP, the use of [uncompensated overtime] will not be exercised for the CPFF CLINs." AR, Tab 3, GDAIS Cost Proposal, at 0262. According to GDAIS, nothing in its proposal, including the uncompensated overtime summary, is inconsistent with the RFP's level of effort clause requirements or supports the agency's determinations concerning the proposal of uncompensated overtime hours.

The Navy responds that the C/PAT's conclusion concerning GDAIS's proposal of uncompensated overtime hours was reasonable based on the uncompensated overtime summary provided with GDAIS's proposal. The Navy asserts that the presence of the uncompensated overtime summary in GDAIS's proposal, which on its face identified uncompensated overtime hours for each CLIN including [DELETED] uncompensated overtime hours under the CPFF CLINS, created at a minimum an ambiguity as to whether GDAIS proposed uncompensated overtime hours to fulfill the level of effort requirement in contravention of the RFP's requirement. The Navy further asserts that other inconsistencies exist, both within GDAIS's cost proposal and between the cost proposal and the uncompensated overtime summary, which render GDAIS's proposal ambiguous. The Navy argues that, in light of the presence of the uncompensated overtime summary in the proposal, among other inconsistencies concerning the use of uncompensated overtime, the C/PAT reasonably concluded that GDAIS had proposed [DELETED] compensated hours and [DELETED] uncompensated overtime hours for the CPFF CLINs, and that the proposed costs required adjustment.

When an agency evaluates proposals for the award of a contract that includes cost-reimbursable line items, an offeror's proposed estimated cost for the cost-

reimbursable line items is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13; Metro Machine Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 9; Federal Acquisition Regulation (FAR) § 16.301. As a consequence, 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 costs are likely to be under the offeror's unique technical approach, assuming reasonable economy and efficiency. FAR §§ 15.305(a)(1), 15.404-1(d)(1), (2); The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147 at 3.

Our Office will review an agency's cost realism analysis, when it has been protested, to determine whether it is reasonably based and not arbitrary. The Warner/Osborn/G&T Joint Venture, B-256641.2, Aug. 23, 1994, 94-2 CPD ¶ 76 at 5. In this regard, our Office will examine whether an agency's most probable cost adjustment is premised on an unreasonable consideration of uncompensated overtime in the cost realism analysis. See SRS Techs., B-291618.2, B-291618.3, Feb 24, 2003, 2003 CPD ¶ 70; Combat Sys. Dev. Assocs. Joint Venture, B-259920.2, June 13, 1995, 95-2 CPD ¶ 162. Based on our review of the record in this case, we find the Navy's conclusion that GDAIS proposed [DELETED] uncompensated overtime hours under the CPFF CLINs to be unsupported and unreasonable.

As described above, the C/PAT's conclusion that GDAIS proposed [DELETED] uncompensated overtime hours is premised on the proposal's uncompensated overtime summary attachment, which identified uncompensated overtime hours under each CLIN, including [DELETED] hours attributed to the CPFF level of effort CLINs. Based on its analysis of the uncompensated overtime summary, the C/PAT concluded that the [DELETED] uncompensated overtime hours the summary assigned to the CPFF CLINs were within the 45,000 CPFF hours described in GDAIS's cost proposal, such that GDAIS's proposal consisted of only [DELETED] compensated hours and [DELETED] uncompensated overtime hours for the CPFF CLINs. Our review of the uncompensated overtime summary leads us to conclude, however, that the agency lacked a reasonable basis for interpreting GDAIS's cost proposal in this manner. We further conclude, based on our review, that the C/PAT's analysis erred due to its failure to recognize and account for subcontractor hours clearly described in the cost proposal.

As an initial matter, our review of the record shows that, when read in the context of the entire price proposal, it is apparent that the "Effective Hours" and "Uncompensated Hours" set forth in the uncompensated overtime spreadsheet were not a part of the proposed hours described in GDAIS's CPFF basis of estimate, and that the uncompensated overtime spreadsheet as a whole was provided only as additional substantiation of the realism of GDAIS's proposed labor rates. In this regard, we note that none of the sections of GDAIS's proposal on

which the Navy based its uncompensated overtime conclusions, or which the Navy now identifies as ambiguous, are actually within the cost proposal's CPFF basis of estimate, which provided the detailed cost breakdowns of GDAIS's proposed labor categories, hours, rates, and costs for the CPFF CLINs. Rather, the information relied upon by the C/PAT, and now alleged to be ambiguous, is largely contained within proposal "Appendix B," concerning "Explanatory Notes--General Dynamics Cost Estimating Narrative" and the attached uncompensated overtime summary. AR, Tab 3, GDAIS Cost Proposal, at 0388.

The appendix explains that:

GDAIS maintains a total time reporting (fulltime accounting) timekeeping system whereby employees record all hours worked. GDAIS' uncompensated overtime pricing methodology recognizes the uncompensated hours worked by employees which reduces the direct labor forward pricing rates accordingly. This labor estimating approach provides more accurate project cost accounting and is the method preferred by [the Defense Contract Audit Agency].

GDAIS calculates direct labor [Forward Pricing Rate Proposal] rates to include decrements based on the historical total hours worked by employees in the previous measurement period.

AR, Tab 3, GDAIS Cost Proposal, at 0394. The appendix advises that where it is required to substantiate decremented labor rates, "GDAIS includes a table that estimates the [uncompensated overtime] impact for each proposed [Forward Pricing Rate proposal] or contract labor category . . . as substantiated by historical performance"--essentially, the uncompensated overtime summary. Id. at 0395.

On our review of the proposal and the uncompensated overtime summary, it is readily apparent that the uncompensated overtime summary is the table provided for the purpose of substantiating decremented forward pricing rates as described in the proposal's "Explanatory Notes--General Dynamics Cost Estimating Narrative." Id. at 0388. Accordingly, this table reflects only the historical ratio of uncompensated overtime captured by GDAIS's total time accounting system based on the average hours worked for each labor category, as applied to the hours proposed for the RFP. Although the table was provided to substantiate the realism of the decremented forward pricing rates in GDAIS's proposal, the uncompensated overtime summary does not provide that the "Effective Hours" or "Uncompensated Hours" are proposed hours to be delivered under the RFP. Thus, we conclude that C/PAT's reliance on these columns of the uncompensated overtime summary to reach conclusions about the composition of GDAIS's proposed hours was misplaced.

Further, we conclude that GDAIS's submission of the uncompensated overtime summary was consistent with the RFP's requirement to "submit its Price and Cost summaries in accordance with the Offeror's accounting structure," and "use a Forward Pricing Rate Recommendation (FPRR) with additional substantiating data, such as historical information." AR, RFP, at 0101-0102. In this case, GDAIS proposed decremented forward pricing as established by historical information in its total time accounting system and as set forth in its FPRR. The uncompensated overtime summary provided additional substantiating data for the realism of GDAIS's proposed labor rates, as requested by the RFP. We note the Navy's cost evaluation itself concluded that the proposed decremented rates were verified by GDAIS's most recent FPRR, were realistic, and required no adjustment.²

Next, the record demonstrates that there was no inconsistency between the "Proposed Hours" set forth in the uncompensated overtime summary and the hours in GDAIS' cost proposal, and that the C/PAT's conclusion that the two could not be reconciled was in error. Specifically, the Navy asserts in its agency report that the C/PAT's attempt to reconcile the uncompensated overtime summary with the price proposal was complicated by the fact that neither the uncompensated overtime summary's "Proposed Hours" or "Effective Hours" columns corresponded to the CPFF hours detailed in the price proposal. The agency argues that neither column of the summary contained sufficient hours to match the cost proposal or meet the RFP level of effort requirement but that, invariably, the "Effective Hours" (inclusive of uncompensated overtime) column was closer. Agency Report at 21.

As an example, the Navy explains that under CLIN 500, the uncompensated overtime summary identified "a total of [DELETED] 'Proposed Hours' and [DELETED] 'Effective Hours,' neither of which correspond to the 7500 hours

² Concerning decremented rates, GDAIS argues--and we agree--that although the RFP's level of effort clause prohibited offerors from applying uncompensated overtime hours to the 45,000 level of effort requirement, it did not prohibit GDAIS employees assigned to the contract from performing uncompensated overtime on other objectives, or prohibit the proposal of decremented rates. The Navy responds that, nonetheless, GDAIS's proposal did not explain this approach, and failed to substantiate that it had sufficient work for each labor category to justify the decremented rates. To the contrary, however, GDAIS's cost proposal notes that its staffing of the engineering services CLINs would [DELETED]. GDAIS Cost Proposal, at 0143. Additionally, the proposal explained:

[DELETED]

Id. at 0243. Consistent with this approach, the significant majority of labor categories in GDAIS's proposal are proposed for [DELETED].

required” for that CLIN. Id. The C/PAT also noted that the uncompensated overtime summary included labor categories for which there were no uncompensated overtime hours, such that it did not appear that the tables were limited to a subset of labor categories impacted by uncompensated overtime, but instead contained all labor categories proposed.³ Id. On this analysis, the Navy contends the C/PAT concluded that it was unclear whether GDAIS’s cost proposal included or excluded the uncompensated overtime hours described in the uncompensated overtime summary, and the C/PAT reasonably resolved the proposal ambiguity in a manner that protected the government against unsubstantiated cost savings--by concluding that [DELETED] uncompensated overtime hours were proposed within the 45,000 hours level of effort requirement, and adding [DELETED] compensated hours to the proposal.

The record, however, demonstrates that the C/PAT analysis involved a clear error, in that it failed to recognize and account for [DELETED] subcontractor hours detailed by GDAIS’s CPFF basis of estimate under each engineering services CLIN (500-504), and [DELETED] subcontractor hours under each field engineering services CLIN (600-604). See AR, Tab 3, GDAIS Cost Proposal, at 0266-0358. In this regard, a close comparison of the uncompensated overtime summary to the cost proposal shows that the uncompensated overtime summary includes proposed hours for each labor category proposed by GDAIS, but does not include the subcontractor hours. When the subcontractor hours are added to the uncompensated overtime summary’s “Proposed Hours,” it is apparent that the sum exactly matches the hours per CLIN required by the RFP and described in the cost proposal. That is, there is no inconsistency between the hours. Accordingly, the C/PAT’s contemporaneous analysis, concluding that the uncompensated overtime summary hours did not correspond to the price proposal and suggesting that [DELETED] uncompensated overtime hours were proposed within the required level of effort hours, was in error and was unreasonable.

Finally, the Navy alleges that notwithstanding the 45,000 hours described in GDAIS’s cost proposal, or the purpose of the uncompensated overtime summary, the proposal’s use of uncompensated overtime was ambiguous because uncompensated overtime hours that GDAIS proposed for the FFP CLINs (which the Navy acknowledges were permitted by the RFP) were included in the cost proposal. In this regard, the Navy asserts that the number of uncompensated overtime hours attributed to the FFP CLINs in the uncompensated overtime summary directly

³ This alleged inconsistency is also explained by the cost proposal’s “Explanatory Notes--General Dynamics Cost Estimating Narrative,” which explains that “Non-exempt employees . . . and employees in an Operations Support classification, who are compensated for all hours worked, are exempt from working [uncompensated overtime],” and their base rates have no decrements.” AR, Tab 3, GDAIS Cost Proposal, at 0394.

corresponds to the number of uncompensated overtime hours that GDAIS's FFP basis of estimate indicated it intended to utilize for the FFP CLINs. The Navy argues that where the two values are connected for the FFP CLINs, the proposal strongly indicates that the number of uncompensated overtime hours specified in the uncompensated overtime summary equals the number of uncompensated overtime hours anticipated in the performance under each CLIN--including [DELETED] uncompensated overtime hours under the CPFF CLINs. The Navy argues that this interpretation is not unreasonable where the uncompensated overtime summary did not indicate any difference in the treatment of uncompensated overtime between the FFP and CPFF CLINs.

We conclude that the Navy's argument again misunderstands the GDAIS proposal. In this regard, while the uncompensated overtime summary does not describe any difference in the use of uncompensated overtime between the FFP and CPFF CLINs (the uncompensated overtime summary contains no descriptions or narratives whatsoever), the FFP basis of estimate and CPFF basis of estimate narratives in the cost proposal clearly distinguish the approaches to uncompensated overtime between the two types of CLINs. In this connection, the FFP basis of estimate narrative contains a section which discusses GDAIS's company policy on uncompensated overtime, and specifically identifies the anticipated number of uncompensated overtime hours to be provided under each FFP CLIN. In contrast, the CPFF basis of estimate narrative contains no discussion of the company policy on uncompensated overtime, does not identify any uncompensated overtime hours anticipated to be provided within the 45,000 CPFF hours proposed, and specifically acknowledges that "[a]s per the RFP, the use of [uncompensated overtime] will not be exercised for the CPFF CLINs." AR, Tab 3, GDAIS Cost Proposal, at 0262. Accordingly, we cannot conclude that GDAIS's use of uncompensated overtime to complete the RFP's FFP CLINs provides support for the C/PAT's conclusion that GDAIS improperly proposed [DELETED] uncompensated overtime hours to fulfil the CPFF CLINs.

CONCLUSION

On the basis of our review of the record, we sustain the protest because the Navy erred in concluding that the protester proposed uncompensated overtime to fulfill the RFP's level of effort requirements in contravention of the solicitation, and made an erroneous upward adjustment of \$[DELETED] to the protester's estimated costs. The record demonstrates that the C/PAT's analysis was unreasonably premised on a single summary spreadsheet provided for the purpose of substantiating the realism of GDAIS's proposed rates, which the agency misinterpreted as proposing uncompensated overtime effort. In addition, we conclude that the C/PAT was unable to reconcile GDAIS's uncompensated overtime summary with the company's actual proposed hours due to its failure to recognize and account for subcontractor hours set forth in the CPFF basis of estimate. Additionally, we cannot conclude that the treatment of uncompensated overtime proposed under the FFP CLINs supports

the C/PAT's interpretation of GDAIS's proposed hours under the CPFF CLINs. Here, because the subtraction of \$[DELETED] from GDAIS' cost proposal would render GDAIS the lowest-priced technically acceptable offeror, GDAIS was prejudiced by the agency's error.

RECOMMENDATION

We recommend that the agency perform and document a reasonable cost realism evaluation of GDAIS's proposal, including a new analysis of the detailed cost breakdown information for CLINs 500-604, as set forth in GDAIS's cost proposal and supporting documentation. Under the terms of the RFP, the agency may also elect to conduct discussions with the offerors concerning their cost/price proposals, request revised cost proposals, and conduct a new cost realism analysis.

We also recommend that the protesters be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling
General Counsel