



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: VGS, Inc.

File: B-233116

Date: January 25, 1989

DIGEST

1. In a negotiated procurement, award to a higher cost, higher technically ranked offeror is not objectionable where the solicitation award criteria made technical considerations more important than cost and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.
2. Procuring officials are afforded a reasonable degree of discretion in the evaluation of proposals and their evaluation will not be disturbed where not shown to be arbitrary or in violation of procurement laws or regulations.

DECISION

VGS, Inc., protests the contract award to Vector Research, Inc., under request for proposals (RFP) No. MDA903-88-R-0081, issued by the Defense Supply Service (DSS) for support and analytical services for the acquisition management information system (AMIS) used by the Office of the Under Secretary of Defense for Acquisition. VGS objects to the contract award to Vector, a higher cost, higher rated offeror. VGS also contends that its proposal was improperly evaluated.

We deny the protest.

The RFP, issued on July 26, 1988, was for the necessary personnel, materials, facilities, and other services to provide support for four major subsystems of the AMIS. The system is hosted on government-owned VAX computer equipment. The RFP contemplated award of a cost-plus-fixed-fee contract for 1 base year and 4 option years and advised offerors that award would be made to the best overall response to the solicitation, cost and other factors considered. The RFP further provided that proposed cost would be evaluated to

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determine whether it reflected understanding of the project, was based on adequate estimating procedures, was realistic in terms of the offeror's proposed technical approach, and was reasonable when compared to any similar complex effort. The RFP added that proposed cost would not be assigned a numerical weight and would be subordinate to technical considerations. Technical evaluation criteria were divided between two equally weighted areas: (1) technical approach (with six factors of varying weights); and (2) organizational qualifications (with seven factors of varying weights).

The agency received six initial proposals in response to the RFP. Following an initial technical evaluation, three proposals were rejected as technically unacceptable. Of the three remaining proposals included in the competitive range, VGS' was ranked last technically, considerably below the top-ranked proposal of Vector and only slightly higher than the fourth ranked proposal which had been rejected as technically unacceptable. Written discussions were conducted with the three offerors in the competitive range and best and final offers (BAFO) were requested for September 27. Following technical evaluation of the three BAFOs, Vector's proposal was rated superior by a significant margin. VGS' proposal remained third-ranked.

DSS states that cost evaluation of BAFOs revealed that Vector's proposed total cost of \$11,809,480 was consistent with the high caliber of personnel proposed and included no evidence of hidden costs. The agency also considered the second-ranked offeror's proposed total cost of \$10,654,738 to be consistent with the quality of personnel it proposed. DSS, however, considered the \$6,651,903 proposed total cost of VGS, the third technically ranked offeror, to be inconsistent with the quality of proposed personnel since it included salaries for key technical personnel that were clearly lower than local area averages for the experience and skill cited in the proposal. As a result, the agency considered VGS' proposed total cost not to be a realistic representation of total costs to the government over the life of the contract. The agency also found that VGS' proposed cost did not adequately account for the estimated \$70,000 to \$100,000 cost of a VAX minicomputer, which VGS proposed to purchase.

Award was made to Vector on September 30 since DSS considered its proposal to represent the best overall response. The agency considered Vector's higher proposed cost to be outweighed by its significant technical superiority. By letter dated October 3, VGS received notice of the award to Vector. VGS filed its protest in our Office on October 7.

VGS objects to the agency decision to award to Vector at a proposed cost nearly double its proposed cost. VGS also contends that its BAFO was improperly evaluated because: (1) the agency considered areas not stated as evaluation criteria in the RFP; or (2) poorly supported its conclusion and failed to consider facts presented in VGS's proposal.

In assessing the relative desirability of proposals and determining which offer should be accepted for award in a negotiated procurement, the procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the government's best interest and is consistent with the evaluation scheme set forth in the solicitation. Comarco, Inc., B-225504, B-225504.2, Mar. 18, 1987, 87-1 CPD ¶ 305. The government is not required to make award to the firm offering the lowest cost unless the RFP specified that cost will be the determinative factor. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. We have upheld awards to higher rated offerors with significantly higher proposed costs where it was determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. Id.

Further, it is not our function to reevaluate technical proposals, since the determination of the government's needs and the best method of accommodating those needs is primarily the responsibility of the procuring agency. We will examine an evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria. Fairfield Machine Co., Inc., B-228015, B-228015.2, Dec. 7, 1987, 87-2 CPD ¶ 562. Moreover, the protester has the burden of affirmatively proving its case and mere disagreement with a technical evaluation does not satisfy this requirement. Structural Analysis Technologies, Inc., B-228020, Nov. 9, 1987, 87-2 CPD ¶ 466.

Here, the RFP specifically stated that cost considerations would be subordinate to technical considerations and that award would be made to the offeror providing the best overall response to the RFP. Award to a technically superior, higher cost offeror, therefore, was permissible under the terms of the RFP. In our view, then, the determinative issue for resolution is whether the agency reasonably evaluated VGS' BAFO.

VGS contends that three of the items mentioned during its debriefing as deficiencies in its BAFO were not clearly stated as evaluation criteria in the RFP: (1) weakness with VAX systems software and hardware as they relate to

operations and maintenance of VAX systems; (2) weakness in not having a VAX on site; and (3) weakness in discussing the future needs and design characteristics of the AMIS.

A contracting agency need not specifically identify the evaluation subfactors it uses if they are reasonably related to the evaluation criteria set out in the solicitation. Federal Auction Service Corp.; Larry Latham Auctioneers, Inc.; Kaufman Lasman Assocs., Inc., B-229917 et al., June 10, 1988, 88-1 CPD ¶ 553. DSS argues that the three items listed above are reasonably related to the evaluation criteria set out in the RFP, specifically four of the six factors listed under technical approach in the evaluation scheme: (1) knowledge of the capabilities and operation of, as well as recent experience with, computer systems similar in capability to that described in the solicitation's statement of work (which includes VAX hardware and software, as admitted by the protester); (2) technical ability to develop and maintain a system responsive to changing requirements and methodologies; (3) ability to recognize the dynamic nature of the system's environment and the need to remain responsive to changing directions; and (4) clear understanding of the mission and goals of the system.

More specifically, with regard to VGS's weakness with VAX systems and hardware as they relate to operations and maintenance of VAX systems, the chairman of the agency's technical evaluation panel (TEP) emphasizes that the RFP did not require VAX systems operators or maintenance personnel and no offeror, including VGS, was penalized for not offering such capabilities. The chairman does identify six sections of the RFP, however, which do address the agency's VAX hardware and software operations and maintenance requirements. In response, the protester concedes these topics were covered in the RFP but reiterates they were not specifically mentioned in section M of the RFP as evaluation criteria.

As for VGS' perceived weakness in not having a VAX on site, the chairman of the TEP explains that while the RFP did not specifically require the offeror to have an on-site VAX minicomputer, in judging the quality of an offeror's expertise, if an offeror had an on-site VAX and had in-house programmers using that VAX hardware, the TEP members reasonably could infer that those offerors had better and more recent experience than those without current access to an in-house VAX. In reply, the protester asserts that "recent experience using hardware and software on a daily basis" was not explicitly stated as an evaluation criterion.

Finally, as to VGS' weakness in discussing the future needs and design characteristics of the AMIS, the TEP chairman states that while these topics were not specifically required to be discussed, they did relate to capabilities offerors were requested to demonstrate under section M of the RFP, such as the technical ability to develop a management information system responsive to changing requirements and methodologies, and the need to remain responsive to changing direction from Congress, the Office of Management and Budget, and the Office of the Secretary of Defense. The TEP chairman also observes that the potential life of the contract is 5 years, during which the AMIS was expected to change and grow, and he states that if an offeror was able to describe AMIS requirements in both a present and future context, the TEP could reasonably infer that an offeror truly understood those requirements. In response, VGS argues that the emphasis in the RFP was on the present system which is what it addressed. It also thinks it unreasonable to expect a contractor to speak to possible future needs if the government cannot now identify them.

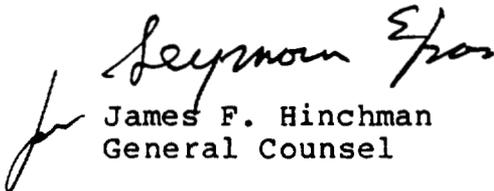
Based on our review of this record, we cannot conclude that these concerns of the agency were not reasonably related to the evaluation criteria stated in the RFP. To state, as has the protester with regard to the first two of these items, that they were not explicitly stated as evaluation criteria under section M of the RFP begs the question. The issue is whether they are concerns which the evaluators reasonably could relate to those criteria which were listed in the RFP. We think the agency has shown such a reasonable connection. For example, as indicated above, one factor used to evaluate an offeror's technical approach was its knowledge of the capabilities and operation of, as well as recent experience with, computer systems similar in capability to that described in the RFP's statement of work. We would agree with the chairman of the TEP that it is not unreasonable, in judging offerors' expertise with the type of system described in the RFP, to consider and to evaluate as a strength an offeror's possession, in-house, of the same type of equipment as used by the agency plus a staff experienced in working with it on a daily basis as opposed to an offeror without current access to the equipment in-house whose staff has had some experience working with it at customers' sites. Similarly, we think that in the context of a system expected to change and grow over a potential 5-year contract period, it was not unreasonable for the agency's evaluators to consider as relevant an offeror's understanding of the system such that it could describe that system in terms of how it could be improved and evolve to meet the agency's goals.

This aspect of the protest is therefore denied.

VGS also contends that an additional three items mentioned during its debriefing as deficiencies in its BAFO should not have been found to be deficient: (1) experience with microcomputer hardware and software; (2) experience with VAX hardware and software; and (3) experience with the type of programming, planning and budgeting system used by the agency. It appears to us that the difference in opinion between the protester and the contracting agency in these areas largely concern the propriety of the agency's evaluation of individuals' resumes contained in VGS' proposal as to the extent and quality of their experience in tasks relevant to this contract. The evaluators' conclusions in this regard are supported by a memorandum prepared by the chairman of the TEP in response to VGS' protest in which he addresses in detail and with reference to specific individuals' resumes as presented in that firm's proposal the deficiencies perceived in the proposed staff's experience. VGS' more general assertions that staff members have a certain number of months or years of experience is not sufficient to satisfy the protester's burden of establishing an improper technical evaluation. Further, given DSS' concerns over VGS' understated costs, which VGS does not dispute, it is questionable whether the cost differential between VGS and Vector would remain as large should VGS' costs be adjusted upward pursuant to a cost realism analysis.

Finally, VGS argues that DSS violated the stay provisions of the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d) (Supp. IV 1986), in not suspending performance of Vector's contract. We need not discuss this contention in detail since Vector's continuing performance did not prejudice VGS in view of our holding that VGS' proposal was properly rejected. We note, however, that in similar factual circumstances we have found the argument without merit. See BDM Management Services Co., B-228287, Feb. 1, 1988, 88-1 CPD ¶ 93.

The protest is denied.


James F. Hinchman
General Counsel