



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: DynCorp
File: B-232999
Date: February 14, 1989

DIGEST

Protest is sustained where contracting officer has not fully justified her determination that the proposals of two competing offerors were technically equal and that award could, therefore, be made to the lower cost offeror. Rather, the evaluation record indicates that the awardee's proposal was not technically equivalent to the protester's proposal.

DECISION

DynCorp protests the award of a 1-year cost-plus-award-fee contract with four successive 1-year options to PRC/VSE and Associates (a joint venture referred to as PVA), under request for proposals (RFP) No. N00123-88-R-0279, issued by the Navy for engineering and technical support services at the Naval Weapons Station in Seal Beach, California. The award was made to PVA based on initial proposals because its cost estimate was low. In this regard, the contracting officer determined that the proposals of the two offerors were essentially equal technically despite DynCorp's higher technical and management score. The protester disagrees with this determination and objects to the conduct of the Navy's cost analysis. Since the protest was filed more than 10 days after the contract award, performance has continued during the consideration of the protest.

We sustain the protest on the basis that the contracting officer has not fully justified her determination that the two proposals were essentially equal technically. The record therefore does not support the contracting officer's rationale for selecting PVA.

The RFP, which was issued on April 13, 1988, provided that proposals were to be evaluated on the basis of three listed criteria--technical, management and cost; technical and

management were stated to be of equal weight and their combined significance was to be greater than that to be accorded to cost.

Two proposals were received by the amended June 20 closing date: DynCorp, the incumbent contractor, proposed a total cost of \$119,496,826; PVA's proposed cost was \$114,378,265-- a difference of less than 4.5 percent.^{1/} In the more heavily-weighted area of technical/management, DynCorp received 139.5 of the total 149.4 points possible, while PVA received 123.9.

In their narrative analysis, the technical evaluators did not criticize DynCorp's proposal, but they did express a number of concerns with respect to PVA's. For example, the evaluators noted that it contained weaknesses in the areas of data collection, conversion, and control, inventory control and data processing security.

Further, the evaluators questioned PVA's proposed labor skill mixes with respect to eight tasks listed in the RFP's Statement of Work (SOW). Five SOW tasks were found to be understaffed as to numbers or skill mix; three were found to be overstaffed. With respect to two other SOW tasks-- missile engineering analysis and telecommunications--the evaluators concluded that PVA did not appear to understand the technical requirements involved. The evaluators further stated that PVA's proposal did not contain assurances that its leased and fixed-asset equipment would be installed and operational when required. The evaluators also expressed concerns regarding PVA's proposal to use an interim facility for approximately 12 months until a planned new facility was constructed and ready for occupancy. They concluded that PVA's proposed two major moves of staff and equipment would, in all likelihood, have a significant negative impact on the performance of the contract. Finally, the evaluators concluded that discussions were not necessary because they would not yield fruitful results.

On August 16, final approval was given to a Business Clearance Memorandum (BCM) prepared by the contracting officer. Using the proposed costs together with the

^{1/} Neither cost estimate includes the award fee, which was not evaluated.

technical point ratings reported by the evaluators, the BCM reported the following "greatest value" scores:

	<u>Technical and Management</u>	<u>Cost</u>	<u>Total</u>
PVA	55.57	40.00	95.57
DynCorp	60.00	38.29	98.29

The contracting officer stated that, notwithstanding the numerical scores, PVA should be awarded the contract at its lower proposed cost. Her rationale was contained in the following statement:

"The difference in technical scores is based on incumbency and not because of significant technical superiority. PVA's only real weakness is due to a lack of on-site experience which only the incumbent [DynCorp] possesses. Considering the number of personnel required and the type of effort involved, one can expect there to be little difference in the quality in the work produced by either offeror. Therefore, the technical proposals are considered to be so close that the numerical difference does not merit the additional cost."

DynCorp argues that the decision that PVA's proposal was technically equal to its proposal was not rational. It alleges that the contracting officer ignored the major concerns expressed by the technical evaluators about the PV proposal.

The agency argues that the closeness of the scores and the fact that the evaluators did not believe that further discussions were necessary support the reasonableness of the contracting officer's determination. The agency argues that the weaknesses cited in the PVA proposal were primarily due to PVA's lack of direct experience in performing this function which has been performed by the incumbent for more than 20 years and involves more than 800 people as well as a great number of tasks which are particular to the Seal Beach Weapons Station. The agency characterizes the weaknesses as being based on unfamiliarity with operations at the facility which are minor in nature and easily resolved by a shift in staffing once PVA is on-site. Thus, the Navy concludes that its decision not to pay a cost premium of about \$5,000,000 to the higher-rated offeror was justified.

Even if cost is the least important evaluation criterion, a contracting agency may properly award to a lower-cost, lower-scored offeror if it determines that the cost premium is not justified. Dayton T. Brown, B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321. The selection should not be based on the difference in technical scores per se, but rather on the contracting agency's judgment concerning the significance of that difference, and on whether the record reflects that the judgment exercised was reasonable. See TEK, J.V. Morrison-Knudsen/Harnischfeger, B-221320 et al., Apr. 15, 1986, 86-1 CPD ¶ 365. However, in order to support such a decision, the record must contain a rationale as to why the contracting agency concluded that the point differential between two proposals rendered them essentially equal. If it does not, our Office cannot determine whether the decision regarding essential equality was rationally founded. See Applied Financial Analysts, Ltd., B-194388.2, Aug. 10, 1979 79-2 CPD ¶ 113. This is especially true here, given the fact that on this 5-year contract involving well over \$110 million, the difference in proposed costs was only about 4.5 percent.

While PVA's lack of incumbency may arguably account for some of the deficiencies listed by the evaluators, the contracting officer's brief rationale does not provide us with a sufficient basis to conclude that her cost/technical trade-off decision was rationally based. For example, it is not clear from the record how PVA's lack of incumbency accounts for such deficiencies as proposing a skill mix of employees not called for by the RFP 2/, or how its lack of incumbency explains why the PVA failed, in the evaluators' opinion, to understand the nature of basic RFP requirements in the areas of missile engineering analysis and telecommunications; also, lack of incumbency would not explain why PVA failed to address adequately when its equipment would be installed and operational.

Moreover, neither the contracting officer's discussion of her decision in the BCM nor the agency report addresses what the evaluators termed a "major deficiency" in PVA's proposal--its plan to use an interim facility for approximately 12 months and then move into a permanent facility which would be constructed if PVA got the award. The evaluators concluded that the fact that PVA would have

2/ The evaluators noted that PVA failed to propose computer operators for the AEGIS Weapons System task when the RFP called for mini-computers for this task, and did propose computer operators to perform the Readiness Data Base task when that task did not include a computer to operate.

to move its staff and large amounts of equipment to its permanent facility would have a "significant negative impact on the performance of this contract." The evaluators found PVA's assurances that the move could be accomplished over a 3-day weekend to be wholly inadequate to guard against a negative performance impact. Overall, according to the evaluators, the whole plan posed a "high risk for interruption of service."

In short, the record provides no assurance that the award to PVA was consistent with the terms of the solicitation, which assigned primary importance to technical considerations. We sustain the protest on this ground.

At the same time, we have reviewed the cost evaluation and find that PVA was reasonably determined to be the low offeror despite DynCorp's contentions to the contrary. Therefore, it would not be appropriate to recommend award to DynCorp. Under the circumstances, since PVA's base year performance is nearly half complete, we recommend that the Navy recompetes the procurement under a new solicitation so that a contractor can be selected no later than the start of the contract's first option period. We also find that the protester is entitled to recover its reasonable costs of filing and pursuing this protest, including attorney's fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1988).

for 
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