

Arsenoff



**The Comptroller General  
of the United States**

Washington, D.C. 20548

---

# Decision

**Matter of:** Department of the Navy; PRC/VSE and  
Associates--Requests for Reconsideration

**File:** B-232999.2; B-232999.3

**Date:** July 14, 1989

---

## DIGEST

1. Decision is affirmed where new arguments advanced in support of agency's rationale for a selection decision involving reported preaward technical consultations with the requiring activity are not documented, persuasive, or timely raised.
2. General Accounting Office recommendation to recompute requirements beyond the base year in lieu of permitting the agency to supplement the record to support its rationale for a cost/technical tradeoff decision based on the awardee's lack of incumbency is affirmed where substantial contract performance has occurred and where both competing parties now have the benefit of incumbency.

---

## DECISION

The Navy and PRC/VSE and Associates (a joint venture referred to as PVA) request reconsideration of our decision, DynCorp, B-232999, Feb. 14, 1989, 89-1 CPD ¶ 152, sustaining the protest of an award to PVA for engineering and technical support services under request for proposals (RFP) No. N00123-88-R-0279, because the record did not reflect a rational basis for the contracting officer's selection decision.

We affirm our prior decision.

The RFP provided that award was to be based on an analysis of three criteria--technical, management and cost--with the combined significance of technical and management being greater than cost. DynCorp, the incumbent contractor, was rated 10.5 percent higher than PVA in the more heavily weighted combined technical/management area while its evaluated cost was less than 4.5 percent higher than the awardee's. The technical evaluation narrative concerning

046119/139232

DynCorp's proposal contained no criticisms, while significant deficiencies were described with respect to PVA's proposal. The calculations of the contracting officer in conformance with the criteria set forth in the RFP yielded a higher "greatest value" score for DynCorp; notwithstanding this differential, the contracting officer's rationale for awarding the contract to PVA was set forth as follows:

"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 possesses. Considering the number of personnel required and the type of effort involved, one can expect there to be little difference in the quality of 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."

We sustained DynCorp's protest because the record contained no explanation as to how PVA's lack of incumbency accounted for the numerous deficiencies found by the agency's technical evaluators in PVA's proposal--deficiencies such as proposed employee skill mixes that were not called for by the RFP, a failure to understand basic requirements in the areas of missile engineering analysis and telecommunications, and a failure to insure that equipment would be installed and operational when required. Moreover, we specifically noted that, in reaching its award decision, and later in explaining that decision, the agency had in no way addressed a "major deficiency" found by the evaluators in PVA's proposed use of an interim facility before moving to a permanent one sometime during contract performance--a circumstance which the evaluators concluded would have a "significant negative impact" on contract performance and which would, in their view, pose a "high risk for interruption of service." In light of the substantial performance which had already occurred under PVA's contract, we recommended that the Navy's option requirements be re-competed no later than the end of the base contract year.

First, the Navy contends that we erred in concluding that the contracting officer determined the two proposals to be "essentially equal technically"; according to the agency, no such determination was ever made. Instead, the Navy argues that the contracting officer acknowledged that DynCorp's proposal was technically superior to PVA's acceptable proposal but determined that the technical differences between the two were not sufficient to justify paying a

higher cost to DynCorp. We do not believe that our characterization of the contracting officer's determination that the proposals were "essentially equal technically" was incorrect. The agency's report stated that the contracting officer had concluded that the "small numerical difference in the technical proposals has little to do with actual ability to perform"; thus, we believe the language of our decision fairly summarized what transpired. Nonetheless, even if the contracting officer did not specifically reach a conclusion of essential technical equality, we would review the agency's award to the lower-rated, lower-cost offeror in the same manner with the same result; in all such cases, we review the record to determine whether or not it contains documentation which evidences the rationale for the source selection decision. See Tracor Jitco, Inc., 54 Comp. Gen. 896 (1975), 75-1 CPD ¶ 253.

Next, the agency contends that the contracting officer's decision to discount the significance of the evaluators' concerns about PVA's proposal in connection with her selection decision was the reasoned product of preaward consultations with representatives of the Navy's requiring activity. As a result of those consultations, it is now reported that the contracting officer concluded: that PVA's plan to use an interim facility compared favorably to the agency's prior experience with DynCorp's own changes in location during its 20-year incumbency (which apparently occurred without a disruption in service); that PVA's allegedly inadequate assurances of timely equipment deliveries were of no consequence because most of the needed equipment was of a standard type which could be expeditiously ordered and delivered; and that PVA's deficiencies in the area of missile engineering analysis would not result in performance deficiencies.<sup>1/</sup>

At the outset, we note that the report of the consultations between the contracting officer and representatives of the requiring activity appears to constitute relevant argumentation which was previously available to the agency but not timely presented during our consideration of DynCorp's protest; as such, and since the Navy has not indicated why the information was not provided at the appropriate time,

---

<sup>1/</sup> In addition to these new arguments, the Navy reiterates a number of other arguments which we previously considered and rejected. Repetition of arguments previously made does not meet the requester's burden of demonstrating an error of fact or law which warrants modification of our earlier decision. Kos Kam, Inc.--Request for Reconsideration, B-226495.2, June 29, 1987, 87-1 CPD ¶ 640.

the arguments do not provide a proper basis for reconsidering our previous decision. Telenet Communications Corp.--Request for Reconsideration, B-224561.2, May 22, 1987, 87-1 CPD ¶ 535. Moreover, as discussed below, we are still not persuaded by the Navy's untimely assertions that its selection decision was reasonably justified in light of relevant argumentation to the contrary presented by DynCorp and the detailed documented record of the technical evaluation, which listed numerous serious deficiencies in PVA's proposal--deficiencies which remain, in our view, unaddressed on the record. Tracor Jitco, Inc., 54 Comp. Gen. 896, supra.

For example, the Navy now suggests that, as a result of the technical consultations, the contracting officer concluded that disruptions in service resulting from PVA's plan to move its entire operation to a permanent facility during the first year of contract performance would present no more of a problem than that experienced by the agency during DynCorp's incumbency as the result of some changes in location of that firm's facilities. However, DynCorp points out that it occupied its main facility for approximately 20 years and only added relatively small satellite facilities from time to time when directed by the government to accommodate small changes in contract requirements. Moreover, the documented record discloses that the evaluators (who were presumably familiar with the performance history of the incumbent) regarded PVA's proposed move to another principal facility as a "major deficiency" posing "high risks" to successful performance.

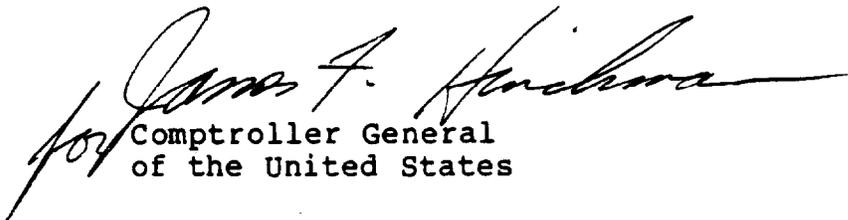
Also, the Navy now suggests that, with respect to PVA's lack of adequate assurances that equipment would be installed and operational when needed, the contracting officer was assured by the technical activity during her consultations that the equipment was largely of a standard variety which could be purchased and delivered expeditiously. This undocumented analysis, however, stands in contrast to the record of the technical evaluation which characterized the defect in PVA's proposal as a "glaring problem" for which PVA received its lowest scores, and we are presented with no details on the record to determine its reasonableness. Further, in the area of missile engineering analysis (where the record of the technical evaluation states that PVA's proposal confused a contractor's basic responsibility to test missile hardware with evaluation of the test equipment itself), the Navy now simply states, without providing any supporting rationale, that the contracting officer and the technical activity later believed that this deficiency would not result in any performance problems.

In light of the foregoing, we are presented with no basis warranting modification of our earlier decision. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1988).

Finally, PVA joins the Navy in requesting reconsideration of our recommendation to recompute the agency's requirements for the option years. In essence, they contend that the remedy is disproportionate to the seriousness of the procurement deficiency. In lieu of recompetition, both parties suggest that, for example, we should modify our decision to permit the Navy the opportunity to reevaluate PVA's proposal.

We do not think this suggestion is feasible at this point. Given that PVA is currently performing the disputed contract, it is not possible to reconsider the initial award determination as if the award had not yet been made. The Navy can only judge at this time whether PVA is performing as well as expected. However, it is not fair to determine whether the initial selection was justified based on the awardee's performance subsequent to the award. We therefore believe our recommendation that the option be recomputed is appropriate.

The previous decision is affirmed.

  
for Comptroller General  
of the United States