



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Vanguard Research, Inc.

File: B-242633; B-242633.2

Date: May 30, 1991

William M. Rosen, Esq., Dickstein, Shapiro & Morin, for the protester.
Lawrence M. Farrell, Esq., McKenna & Cuneo, for SKW Corporation, an interested party.
Gregory H. Petkoff, Esq., and Major James O. Sutton, III, Esq., Department of the Air Force, for the agency.
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Award of a cost-reimbursement contract to a higher-rated, higher-cost offeror is not objectionable where award on that basis was consistent with the solicitation's stated evaluation methodology, and the agency reasonably determined that successful offeror's superior management and technical proposal justified award at the higher cost.
2. Where agency does not specifically conduct discussions with protester concerning an accounting deficiency in its initially proposed cost structure, but protester otherwise has knowledge of the deficiency and subsequently revises its cost structure in its best and final offer, which the agency accepts at face value as accurate, protester has not been competitively prejudiced.
3. Allegation that the source selection authority was biased and prejudged protester, the incumbent contractor, as incapable of performing the follow-on requirement, is denied where the record contains no evidence of bias and the evaluation and award decision were reasonable and in accordance with the solicitation's stated evaluation methodology.

DECISION

Vanguard Research, Inc. protests the award of a contract to SKW Corporation under request for proposals (RFP) No. F05603-90-R-0006, issued by the Department of the Air Force for analytical support services for the United States Space Command's Center for Aerospace Analysis, Peterson Air Force Base, Colorado. Vanguard essentially argues that the award to SKW, the higher-cost offeror, was improper because the agency did not make a rational cost/technical tradeoff decision, that the agency did not conduct meaningful discussions with Vanguard concerning a deficiency in its cost proposal, and that the source selection authority (SSA) was biased against Vanguard.^{1/}

We deny the protest.

BACKGROUND

The RFP, issued on July 27, 1990, contemplated the award of a cost-plus-fixed-fee contract for the base year and 4 option years. The RFP contained three evaluation factors listed in descending order of importance--management, technical, and cost. The RFP stated that management was the most important evaluation factor, that technical was the second most important evaluation factor, and that cost, while still significant, was the least important evaluation factor. The RFP further stated that the total cost (for the base year and 4 option years) would be evaluated for completeness, reasonableness, and realism. The RFP advised that the award would be made to the responsible offeror which best demonstrated its ability to satisfy the objectives and requirements of the RFP in a manner most advantageous to the government.

Ten firms submitted initial proposals by the closing date of August 28. After the initial evaluation by the agency's source selection evaluation team (SSET), the agency determined that five offerors, including Vanguard, the incumbent, and SKW, were within the competitive range. Following discussions with each offeror within the competitive range, best and final offers (BAFOs) were requested with a closing date of November 23.

^{1/} The Air Force has furnished our Office with evaluation reports and documents containing proprietary information. Although we are unable in this decision to reveal technical details concerning the evaluation, our decision is based on a review of all relevant reports and exhibits submitted to our Office by the Air Force.

BAFOs were evaluated by the SSET using a color rating of blue (exceptional), green (acceptable), yellow (marginal), and red (unacceptable). These color ratings were given for the management and technical evaluation factors and their respective subfactors. The color ratings also were generally supported by narrative evaluations reflecting the strengths, weaknesses, and risks of each offer with respect to each evaluation factor and subfactor.

SKW received an overall exceptional (blue), low risk rating for the management evaluation factor and an overall acceptable (green), moderate risk rating for the technical evaluation factor. Specifically, the SSET determined SKW to be exceptional for all three management subfactors (capability delivery, personnel, and task order management plan) and to be acceptable for all five technical analysis area subfactors. In contrast, Vanguard, which offered the lowest cost, received an overall acceptable (green), low risk rating for the management evaluation factor and an overall marginal (yellow), high risk rating for the technical evaluation factor. Thus, although SKW was not the low-cost offeror (it was the second low-cost offeror), the SSET determined, based on SKW's overall exceptional rating in the management area, the most heavily weighted area, and its overall acceptable rating in the technical area, that SKW submitted the most advantageous offer.

The results of the SSET's final evaluation of proposals were presented to the SSA. The SSA determined, based on the RFP's stated evaluation methodology, that SKW's proposal provided the best overall value to the government. The SSA stated that while all proposals in the competitive range were adequate when measured against the evaluation factors, SKW's proposal offered the best combination of management and technical expertise. The SSA found that SKW was superior with respect to management organization to accomplish the requirements of the statement of work and management oversight to control costs. The SSA also found that SKW demonstrated its technical proficiency in all five evaluated technical analysis areas and that its technical proposal exceeded the minimum requirements of the RFP and indicated SKW's strong capability to meet the agency's present and future analytical needs. The SSA further stated that although SKW's proposed cost was not the lowest, the superiority of its management and technical proposal more than offset the 25 percent difference in cost between SKW's proposal and Vanguard's proposal. Therefore, the agency awarded a contract to SKW on December 26. Following a post-award debriefing, Vanguard filed this protest.

COST/TECHNICAL TRADEOFF

Vanguard first challenges the award to SKW, the higher-cost offeror, and argues that the agency did not make a proper cost/technical tradeoff decision.^{2/}

Concerning an agency's evaluation of proposals, we will examine an agency's evaluation to insure that it is fair and reasonable and consistent with the evaluation criteria stated in the RFP. Conax Florida Corp., B-241743, Feb. 26, 1991, 91-1 CPD ¶ 214. A protester's disagreement with the agency's evaluation is itself not sufficient to establish that the agency acted unreasonably. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Further, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Spectra Technology, Inc.; Westinghouse Elec. Corp., B-232565; B-232565.2, Jan. 10, 1989, 89-1 CPD ¶ 23. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Awards to offerors with higher technical scores and higher costs are proper so long as the result is consistent with the evaluation criteria and the procuring agency has reasonably determined that the technical difference is sufficiently significant to outweigh the cost difference. Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44.

Here, Vanguard does not challenge the agency's evaluation of the management and technical proposals. We therefore simply relate the agency's major evaluation findings. With respect to management, the most important evaluation factor, the record shows that SKW was rated exceptional and determined to

^{2/} Initially, Vanguard also argued that the agency failed to conduct meaningful discussions and did not properly evaluate aspects of its proposal involving its proposed personnel, its reliance on government participation in performance of the contract, its understanding of the agency's composition and mission, and that the SSA served as a de facto member of the SSET. The agency rebutted these arguments in its agency report. Vanguard, in its comments to the agency report, did not address these issues. Therefore, we deem these issues to be abandoned, and we will not address them. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

have a high probability of success. SKW proposed qualified personnel and evidenced its ability to maintain qualified staffing for the duration of the contract. SKW, teamed with its proposed subcontractor, had relevant experience in all technical analysis areas. The record further shows that SKW proposed a thorough and logical task order management plan which evidenced technical and schedule feasibility and SKW's reasonable allocation of computer simulation time, personnel mix, level of effort, and travel requirements.

In contrast, Vanguard was rated acceptable with respect to management. Vanguard intended to perform a substantial portion of the work in-house with the use of only one senior technical staff person, while it proposed the use of three senior technical staff persons by its subcontractor. The record shows that while Vanguard itself generally has had a stable workforce and a low personnel turnover rate, the agency was concerned with Vanguard's reliance on its subcontractor for these technical personnel. The agency believed Vanguard's ability to deliver the task order products might be compromised, thereby posing some risk to the government.

With respect to technical, the record shows that SKW was rated acceptable with moderate risk. The record reflects that SKW's technical presentations for the five technical analysis areas--architecture and systems performance, system survivability-sustainability and reconstitution, operational plans, utility, and functional and dynamic time line--were all acceptable, with SKW demonstrating its understanding of the agency's mission, proposed analysis outcomes, technical analysis approaches, and analysis tailoring. SKW's team capabilities and team past experience in the technical analysis areas also were acceptable.

In contrast, with respect to technical, the record shows that Vanguard was rated marginal with high risk. The record shows that Vanguard's proposal did not have one significant strength noted for any of the five technical analysis areas, and its discussions of the technical analysis approaches and its technical capabilities were found by the agency to be weak and inadequate. The agency also found that Vanguard failed to demonstrate an adequate understanding of the agency's mission, that it focused too narrowly on the range of likely tasks, that it failed to completely assess risks, and that it had an inadequate familiarity with appropriate analytical tools. Finally, the agency found that Vanguard exhibited an overreliance on close and continuous government oversight and supervision for quality control, indicating its lack of independent quality control.

In sum, the records show that the agency determined SKW to be superior in the management and technical areas. Since the protester was not challenged the agency's evaluation, and since the agency found, and the records show, that SKW's proposal offered the best overall combination of management and technical expertise and skills, and that SKW's proposal was rated higher than Vanguard's proposal in both of these areas, we conclude that the agency was reasonably justified in awarding the contract to SKW, the technically superior, higher-cost offeror.

COST DISCUSSION

Vanguard next contends that the Air Force failed to conduct meaningful discussions regarding an accounting deficiency in its initial cost proposal, specifically Vanguard's failure to include separate overhead rates for its headquarters and offsite field locations. Vanguard argues that the Air Force failed to give it an opportunity after it submitted its BAFO to explain the realism of its cost proposal and to point out that, historically, it has never incurred cost overruns in the performance of cost-type contracts. Vanguard's argument however, is misplaced because the agency accepted Vanguard's BAFO costs at face value as accurate. The agency's conclusion that Vanguard's costs were high risk was a direct result of Vanguard's marginal, high risk technical rating.

Concerning the cost evaluation factor, the RFP stated that cost proposals would be compared to the independent government estimate and evaluated for completeness, reasonableness, and realism (including compatibility with an offeror's management and technical proposals) and that an offeror's proposal would be presumed to represent its best efforts to respond to the RFP. Offerors were required to have estimating and accounting systems adequate to determine applicable contract costs, and an offeror's direct labor rates and other direct and indirect costs were required to be reasonable. The RFP stated that rates would be verified with the Defense Contract Audit Agency (DCAA) and formally audited if deemed necessary.

At the time of submission of its initial cost proposal, Vanguard proposed a single, company-wide overhead rate covering its facilities in both Fairfax, Virginia, its headquarters location, and Colorado Springs, Colorado, its offsite field location where Vanguard proposed to perform much of the work if it were awarded the contract. The company-wide overhead rate was calculated based upon cost figures for the Virginia metropolitan area which were higher than those for Colorado. While DCAA initiated an audit following receipt from the agency of Vanguard's initial cost proposal, DCAA was unable to complete the audit because Vanguard denied DCAA access to accounting documents necessary to validate elements

in Vanguard's cost proposal, and because Vanguard had not corrected a significant, previously disclosed accounting deficiency--specifically, that Vanguard had not calculated an offsite field overhead rate separate from its headquarters overhead rate. While Vanguard indicated to DCAA that it was in the process of calculating an offsite field overhead rate for its Colorado Springs facility and that it would submit a revised proposal, Vanguard did not do so until its BAFO, after discussions were concluded. By this time, the Air Force had advanced so far in the procurement process that there was insufficient time prior to award for DCAA to validate Vanguard's revised BAFO cost structure, which included the offsite field overhead rate.

In the final evaluation of BAFOs, the Air Force did accept Vanguard's revised BAFO costs, including its separate overhead rates, at face value as accurate without an audit. Thus, any failure by the Air Force to formally advise Vanguard that its lack of an offsite field overhead rate for its Colorado Springs facility separate from its headquarters overhead rate was unacceptable did not prejudice Vanguard.^{3/} However, while Vanguard was the low-cost offeror, with its cost proposal being 27 percent less than the government estimate, the SSET rated Vanguard as high risk with respect to cost. Based upon its marginal technical rating and its proposed use of its less costly and less technically experienced Colorado Springs personnel for a substantial portion of the contract effort, the SSET determined that Vanguard could not perform acceptably without close quality control monitoring by the Air Force. The SSET further believed that any subsequent decision by Vanguard to rely to a greater extent upon its more costly and more experienced Fairfax personnel to perform required tasks would result in Vanguard incurring additional costs, thus making its costs high risk in relation to its technical proposal.

^{3/} Additionally, we note that Vanguard was well aware of the problem with its single overhead rate. For this acquisition (as well as for previous acquisitions) DCAA had placed Vanguard on notice that its single overhead rate cost structure was unacceptable and constituted a significant accounting deficiency. The record shows that over the past 2 years, for three previous cost-reimbursement type proposal audits and one accounting system audit, DCAA had informed Vanguard that its cost accounting structure was unacceptable because it did not include separate offsite field and headquarters overhead rates.

For discussions in a negotiated procurement to be meaningful, contracting agencies must advise offerors in the competitive range of deficiencies in their proposals and afford them the opportunity to correct the deficiencies by submitting revised proposals. Federal Acquisition Regulation, 15.611; Signal Corp., B-241349 et al., Feb. 26, 1991, 91-1 CPD ¶ 213. While perceived cost deficiencies generally are appropriate matters for discussions between the contracting agency and an offeror, where an agency has decided not to conduct such discussions and the offeror has suffered no competitive prejudice as a result, the agency's failure to advise the offeror of cost-related deficiencies in its proposal provides no basis to disturb an award. See A. T. Kearney, Inc., B-237731, Mar. 19, 1990, 90-1 CPD ¶ 305.

The record shows that various technical deficiencies in Vanguard's proposal, which the agency believed raised risks regarding its costs, were disclosed to Vanguard during discussions. The agency requested Vanguard to describe its technical capabilities, to clarify and explain its technical approaches for the performance of the technical analysis tasks, and to discuss its approaches for the assessment and mitigation or avoidance of risks. The agency also requested information from Vanguard concerning its team's past performance, qualifications, and capabilities, and Vanguard's use of its Colorado Springs facility as the primary place of performance. The agency concluded that Vanguard inadequately described and discussed its technical analysis approaches and technical capabilities, it too narrowly focused on the range of likely tasks, it failed to completely assess risks, and it had an inadequate familiarity with analytical tools. The agency also concluded that Vanguard lacked independent quality control, instead relying on close government oversight and supervision for quality control. The agency was further concerned with whether Vanguard's Colorado Springs personnel had the level of technical expertise necessary to accomplish a substantial portion of the RFP's technical requirements.

Based on the record of discussions, we find that Vanguard was reasonably apprised of the agency's concerns with its technical capabilities. In our view, based on Vanguard's responses to these technical issues, the agency reasonably concluded that Vanguard's proposal remained high risk.

ALLEGED BIAS OF SSA

Vanguard alleges that the SSA was biased and prejudged Vanguard as incapable of performing. To support its allegation, Vanguard refers to the minutes of the agency's business strategy panel (BSP) meeting and a conversation between an Air Force official and Vanguard personnel.

With respect to alleged bias of the SSA, the protester must submit convincing proof that the SSA had a specific and malicious intent to harm the protester in order for our office to question the award on this basis, since contracting officials are presumed to act in good faith. Parameter, Inc., B-241652, Feb. 28, 1991, 91-1 CPD ¶ 229.

First, at the BSP meeting, the SSA discussed not exercising the final option under Vanguard's predecessor indefinite delivery, indefinite quantity labor hour contract with firm fixed-price labor rates. Instead, he advocated recompeting the follow-on requirement for award under a cost-plus-fixed-fee contract which would give a contractor the most flexibility and latitude in delivering the technical expertise necessary to perform the various technical analyses in support of the agency's mission. The record shows that the SSA under the current acquisition was the agency's Chief Quality Assurance Evaluator under Vanguard's predecessor contract, and for 3 years he issued acceptably-rated certificates of service to Vanguard. Although Vanguard's performance of assigned tasks under its firm fixed-price contract was acceptable, the agency withheld the assignment of certain tasks that Vanguard indicated would cause it to lose money unless the agency negotiated a price adjustment on a task order basis. Because of the potential financial and performance risks which a contractor could encounter under a firm fixed-price contract, those at the BSP meeting, including the SSA, believed that a cost-reimbursement type contract would minimize those risks and afford a contractor the opportunity to obtain the most technically qualified personnel to perform higher level technical tasks as contemplated by the statement of work. The record shows that Vanguard even suggested this approach to the SSA while performing under its firm fixed-price contract. We find the account of the SSA's discussion at the BSP meeting to be reasonable and not to reflect bias.

In addition, Vanguard refers to a conversation on January 30, 1990, between its personnel and an Air Force contracting official who allegedly stated that the ultimately designated SSA was biased. The Air Force official has submitted an affidavit explaining that at the time of the conversation, no decision had been made concerning the designation of an SSA. The Air Force official, with respect to his alleged statement, explained that he may not have clearly conveyed that regardless of whom was designated as the SSA, all offerors, including Vanguard, would be treated equitably during the procurement process.

We find that the events referenced by Maniari do not constitute evidence that the SOA was placed against Maniari. The ultimate source selection decision was reasonable and in accordance with the WFR's stated evaluation methodology and fully supported by the record.

Accordingly, the protest is denied.


for James F. Hinchman
General Counsel