



Comptroller General
of the United States
Washington, D.C. 20548

438411

Decision

Matter of: Calibre Systems, Inc.

File: B-257722

Date: November 1, 1994

Thomas E. Chilcott, Esq., Odin, Feldman & Pittleman, for the protester.
Seth Binstock, Esq., General Services Administration, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly evaluated awardee's cost proposal is denied where proposal was evaluated in accordance with the evaluation method set forth in the solicitation and the protester has not provided any basis to find the contracting agency's determinations unreasonable.
2. Protester is not an interested party to assert that the contracting agency failed to fulfill its responsibilities under the Service Contract Act where the protester would not be in line for award even if the allegations were correct.

DECISION

Calibre Systems, Inc. protests the award of a contract to VGS, Inc., under request for proposals (RFP) No. GSC-KEGB-9319, issued by the General Services Administration (GSA) for conversion and sustainment engineering services in support of, among other things, the Department of the Army's Force Builder Decision Support System Project. Calibre argues that the agency improperly evaluated VGS's cost proposal, and failed to fulfill its responsibilities under the Service Contract Act.

We deny the protest in part and dismiss it in part.

The Army's Force Integration Support Agency manages force structuring information by utilizing automated information development and analysis tools, including the Force Builder Automated Information System and the Structure and Manpower Allocation System. Both of these systems have been housed

on a proprietary hardware platform and operating system, but current Army policies require that the systems switch to an open systems environment. This solicitation contemplates a contract to provide support in moving these systems to an open systems environment and then integrating the systems, as well as to provide ongoing operation, maintenance, and enhancement support to the system during and after the moving process.

The solicitation was issued on August 27, 1993, and anticipated award of an indefinite delivery, indefinite quantity contract with provisions for both fixed-price and cost-plus-fixed-fee delivery orders over a 1-year base period with up to 4 option years. For each contract year, the solicitation contained one schedule for the fixed-price delivery orders and one schedule for the cost-plus-fixed-fee delivery orders, as well as estimated hours for each labor category. For the fixed-price schedules, offerors were to propose fully burdened, fixed-price, hourly rates for each labor category, reflecting all direct costs; indirect costs; and profit. For the cost-plus-fixed-fee schedules, offerors were to propose ceiling unburdened hourly rates for each labor category, reflecting salary and fringe benefits, as well as ceiling indirect cost rates.

The solicitation provided for application of the Service Contract Act of 1965 (SCA), as amended, 41 U.S.C. §§ 351-358 (1988), which requires that employees normally be paid at least the minimum hourly wages set forth in Department of Labor (DOL) area wage determinations. 41 U.S.C. § 351(a)(1). The solicitation stated that the wage determination was not yet available, but would be provided prior to price/cost negotiations. The RFP also incorporated by reference the clause at Federal Acquisition Regulation (FAR) § 52.222-46, "Evaluation of Compensation for Professional Employees," which, among other things, advises offerors that the agency will evaluate offerors' total compensation plans for the professional employees covered by the solicitation in order to assess the impact of the plan on recruitment and retention of professional employees.

The RFP provided that award would be made to the offeror whose proposal was most advantageous to the government, price and other factors considered. Technical proposals would be evaluated under four equally important evaluation factors, not at issue here, with a maximum possible technical score of 100. Offerors' proposed prices/costs would be considered independently of the technical factors and would not of themselves be accorded any specific numerical rating; excessively high or low prices might be considered unrealistic and excluded from further

consideration. For evaluation purposes, the government would use ceiling labor rates and the contractor's site overhead rate to determine the total cost for each proposal.

On October 13, eight proposals were submitted and evaluated, and the contracting officer established a competitive range of six. Discussion questions were issued and the responses evaluated, leaving three offeror's proposals, including those submitted by Calibre and VGS, in the competitive range. Additional discussion questions were issued on February 25, 1994. On that same day, amendment No. 008 was issued to, among other things, include DOL's applicable wage determination. After evaluating the responses to the additional discussion questions, the contracting officer decided there was a need to resolve outstanding cost issues, and proceeded with oral discussions. All three offerors' proposals subsequently remained in the competitive range and best and final offers (BAFO) were requested from each.

Evaluation of BAFOs commenced on April 28, and the contracting officer concluded that, due to changes in the bidding methodology of the offerors, none of the firms proposed prices could be determined fair and reasonable. On May 6, discussions were reopened. The contracting officer subsequently determined that all outstanding cost issues were resolved and that discussions could be closed. BAFOs there were requested and evaluated.

The agency concluded that all three offerors were essentially equal in their abilities to meet the RFP's requirements, and that all offerors submitted reasonable costs/prices. The contracting officer decided to award the contract to VGS, since it received the highest technical score and submitted the lowest fair and reasonably priced offer. After the unsuccessful offerors were notified of the agency's decision, Calibre filed an agency-level protest of the award. Upon the denial of that protest and the June 10 award to VGS, Calibre filed the instant protest in our Office.

COST EVALUATION

As an initial matter, Calibre argues that the method chosen by the agency to evaluate offers bears little relation to the way the services will actually be ordered and the contractor paid. In short, Calibre asserts that the evaluation method set forth in the solicitation created the opportunity for an initial pricing scheme conceived as an improper buy-in with later recovery through the fixed-price delivery orders. We dismiss this basis of protest as untimely. Under our Bid Protest Regulations, protests of apparent solicitation improprieties must be filed prior to

the date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1994). Here, the solicitation's evaluation scheme, along with the estimated hours for both fixed-price and cost-plus-fixed-fee delivery orders, was apparent from the face of the solicitation. Since this basis of protest was not filed until after award of the contract, it is untimely and will not be considered. See GTE Customer Networks, Inc., B-254692.2, Feb. 24, 1994, 94-1 CPD ¶ 143.

Calibre contends that GSA improperly failed to require all offerors to base their cost proposals on the same workweek. Calibre, which based its cost proposal on a 40-hour workweek, argues that the contracting officer understated the effect of the disparate workweeks on the cost proposals, and asserts that VGS's use of a 50-hour workweek improperly allowed it to buy into the procurement.

Until the second BAFOs were submitted, VGS's proposal was based upon a fully compensated 45-hour workweek.¹ As a result, its hourly rates were lower than those for a 40-hour workweek. In its second BAFO, VGS changed its direct hour base from a 45-hour workweek to a 50-hour workweek; consequently, its proposed fixed burden rates and cost ceiling rates were revised further downward.

The solicitation did not prohibit offerors from structuring their cost proposals using 45- or 50-hour workweeks, and Calibre has provided us no basis to conclude that VGS's doing so was improper. VGS's decision to so structure its cost proposal was a matter of business judgment, and the contracting agency was free to decide whether such an arrangement was acceptable. See, e.g., Milcom Sys. Corp., B-255448.2, May 3, 1994, 94-1 CPD ¶ 339; Quantum Research, Inc., B-242020, Mar. 21, 1991, 91-1 CPD ¶ 310; National Technologies Assocs., Inc.; JWK Int'l Corp., B-229831.2; B-229831.3, May 13, 1988, 88-1 CPD ¶ 453.

Calibre next argues that the agency improperly evaluated VGS's cost proposal by accepting its proposed 50-hour workweek. The record shows that the agency considered the impact of VGS's proposed 50-hour workweek on both its own cost proposal and on the competition in general. The cost analysis report for the second BAFOs states that the contract specialist was concerned with VGS's revised labor rates based on its revised hourly workweek. However, in its BAFO, VGS stated that it had used a 50-hour workweek in the past; during the first 3 years that VGS was in business, the firm had a mandatory 50-hour workweek which was audited and approved by DCAA. VGS also stated that it had managed

¹The third offeror's cost proposal also was based upon a 45-hour workweek.

multiple cost centers with different workweeks. Finally, VGS, which stated that it uses as a standard the 45-hour workweek, explained that its current employees had indicated a willingness to shift to a 50-hour workweek for this project. Although concerned about the shift from a 45-hour to a 50-hour workweek, the contract specialist recommended acceptance of the labor rates based on VGS's history of a mandatory 50-hour workweek schedule. The report also noted that VGS had provided payroll records to support the proposed labor rates.

The price negotiation memorandum also states that the only concern the contracting specialist had about VGS's proposal was its revised hourly workweek. Although the firm stated that it had previously used a 50-hour workweek, the contracting specialist determined that a review of different workweek schedules was necessary to examine the effect of VGS's revision. The memorandum contains a comparison matrix in which all three offerors are evaluated on the basis of both a 40-hour workweek and a 45-hour workweek; under both scenarios, VGS remained low by a significant amount. In fact, even under Calibre's own calculations of its offer under a 50-hour workweek scenario, its price/cost is significantly higher than is VGS's under its proposed 50-hour workweek schedule. Moreover, Calibre does not now argue that it would have been willing to propose a 50-hour workweek.

The agency was certainly aware that one of the reasons for VGS's lower rates was its proposed 50-hour workweek, and Calibre has not provided any basis to show that the agency unreasonably decided that VGS's cost proposal was acceptable. As to Calibre's allegation that VGS is buying in to this contract, even an alleged buy-in (offering cost estimates less than anticipated costs during performance) by a low-priced offeror furnishes no basis to challenge an award where the agency knows the realistic estimated cost of the contractor's performance before award and makes award based on that knowledge. Hattal & Assocs., 70 Comp. Gen. 632 (1991), 91-2 CPD ¶ 90; Geophex, Ltd., B-246033, Feb. 13, 1992, 92-1 CPD ¶ 186; PTI Envtl. Servs., B-230070, May 27, 1988, 88-1 CPD ¶ 504.

Calibre also asserts that GSA paid insufficient attention to VGS's proposed facility charge. This facility charge was VGS's way of recovering the expenses for the separate facility it intended to use for performance of this contract, and the firm supplied the agency with a chart to show how the charge would be calculated, as well as figures for the various components of the calculation. Calibre argues that the contracting officer improperly accepted this calculation based upon an agency review of its components, and should have asked Defense Contract Audit Agency to

verify those components. In a similar vein, Calibre also argues that GSA paid insufficient attention to VGS's subcontractors' handling charges. Calibre asserts that since VGS included these charges in its proposal, and subcontractors' handling rates were confidential, the evaluation ignored these costs.

An agency is not required to conduct an in-depth analysis or to verify each item in conducting a cost realism analysis. Hattal & Assocs., supra; Ferguson-Williams, Inc.; Hawk Management Servs., Inc., B-232334; B-232334.2, Dec. 28, 1988, 88-2 CPD ¶ 630. Since such an analysis necessarily involves the exercise of informed judgment and the agency is clearly in the best position to make that assessment, our Office will review such a determination only to ascertain whether it has a reasonable basis. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. Here, Calibre has not identified, and we do not discern, any specific error in the agency's analysis of VGS's cost proposal. Moreover, the record shows that the agency was concerned enough about these issues to ask detailed discussion questions with respect to each, eliciting additional information from VGS at various stages of the procurement. As a result, it can hardly be said that these areas of VGS's proposal were ignored. Since we have no reason to find the agency's cost analysis of VGS's proposal unreasonable, we deny this basis of protest.

SERVICE CONTRACT ACT

Calibre asserts that GSA improperly failed to fulfill its obligations under the SCA and its associated regulations, and that the agency improperly failed to review VGS's proposed professional personnel compensation plan with respect to indicated SCA noncompliance.

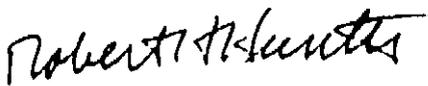
We need not consider this protest ground since Calibre would not be in line for award even if we found that the allegation had merit. Applying Calibre's calculation of the adjustments it asserts should be made for VGS's wage rates to comply with the SCA, Calibre would still not be the lowest-priced offeror. See Ebon Research Sys., B-253833.2; B-253833.3, Nov. 3, 1993, 93-2 CPD ¶ 270.² There is an

²While Calibre also argues that GSA improperly failed to timely request an applicable wage determination and include it in the solicitation, and improperly phrased discussion questions to suggest that the SCA and the wage determination applied only to the cost-plus-fixed-fee ceiling rates, these allegations are untimely raised, and our review of the record shows that even if the allegations were true, the

(continued...)

intervening offeror whose price is significantly lower than Calibre's, therefore, the protester is not an interested party to raise this protest ground, as it lacks the requisite direct economic interest to do so. See U.S. Defense Sys., Inc., B-248928, Sept. 30, 1992, 92-2 CPD ¶ 219.

The protest is denied in part and dismissed in part.


Robert P. Murphy
Acting General Counsel

²(...continued)
71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379 (prejudice is an essential element of a viable protest); PacOrd, Inc., B-253690, Oct. 8, 1993, 93-2 CPD ¶ 211