



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Defense Technology, Inc.

File: B-271682

Date: July 17, 1996

F. Stuart Hodgson, for the protester.

Susan K. Luther, Esq., Department of the Navy, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to evaluate the increased technical risk which allegedly would result from awardee's proposal to reduce compensation for its incumbent technical instructors is denied where agency reasonably concluded that the proposed reduction would not adversely affect the quality of performance, because (1) the instructors would still be compensated at above-market rates (exceeding those at which the protester's instructors were to be paid); (2) the awardee's proposal indicated an ability readily to replace its proposed instructors; and (3) any risks associated with substitutions would be minimal since the solicitation contemplated award of a fixed-price contract and provided that any replacement personnel required the prior approval of the contracting officer and had to possess qualifications equal to or higher than the qualifications of the personnel being replaced.

DECISION

Defense Technology, Inc. (DTI) protests the award of a contract to VSE, Inc. under request for proposals (RFP) No. N00164-95-R-0008, issued by the Naval Surface Warfare Center, Naval Ordnance Station (NAVORDSTA), Louisville, Kentucky, for training program support for the Mark 15 Close-In Weapons System (CIWS). DTI challenges the evaluation of technical and price proposals.

We deny the protest.

The solicitation contemplated the award of an indefinite delivery, indefinite quantity labor-hour contract to furnish CIWS training and instruction support to NAVORDSTA for a 1-year base period, with four 1-year option periods. The solicitation listed 10 courses on the Mark 15 CIWS, ranging in length from 1 to

12 weeks, that were to be taught by the contractor. The RFP stated that "[t]wo instructors will be required simultaneously to perform in accordance with the Statement of Work," and estimated the agency's annual requirement at 4,174 regular and 120 overtime technical instructor hours.

The solicitation listed three technical evaluation factors: (1) personnel qualifications, which was described as having four times the weight of (2) corporate experience—including subfactors for experience in similar or related fields and record of past performance—and (3) management/organization combined. In addition, the solicitation provided for evaluation of the realism of the offerors' estimated prices, cautioning that unrealistic personnel compensation rates would not only be considered in the cost realism evaluation, but could also reduce the technical score. Award was to be made to the offeror whose conforming proposal was determined to be most advantageous to the government; the solicitation specified that the proposal offering the best value "will be selected using a weighted methodology where the technical score is assigned more weight than price, but where each additional point of technical superiority diminishes at an increasing rate." The solicitation stated that the government was "willing to pay a Premium Amount, equal to 30% . . . to move from the lowest evaluated price of a minimally technically acceptable proposal (score of 70) to the highest achievable technical proposal (score of 100)." (The RFP set forth a mathematical (polynomial) formula by which the premium factor the government was willing to pay could be determined for any given difference in technical score between acceptable proposals. See General Offshore Corp.-Riedel Co., a Joint Venture, B-271144.2; B-271144.3, July 2, 1996, 96-2 CPD ¶ ____.

The Navy received three offers, including those of VSE (the incumbent contractor) and DTI. Although the composite technical score of DTI's initial proposal warranted an adjectival rating of "good," and application of the agency's mathematical formula to DTI's technical score and low price indicated that DTI's initial proposal was the most advantageous, the agency determined that DTI's proposal was unacceptable. Specifically, agency evaluators questioned DTI's proposal to divide the instruction duties among eight different instructors; noting that the solicitation provided that "[t]wo Instructors will be required simultaneously to perform," the agency concluded that using eight instructors overall (instead of fewer) would make it virtually impossible to have two instructors available for the duration of each class, resulting in a loss of continuity and seriously undermining the level of instruction. Given DTI's unacceptable approach to performance, the Navy determined that negotiations with all offerors were necessary to afford it (as well as another offeror whose proposal had been found to be unacceptable) an opportunity for award. (VSE's initial proposal was found to be acceptable.) Following discussions with all offerors, the agency requested best and final offers (BAFO).

In response to the agency's discussion questions, DTI in its BAFO reduced the number of proposed instructors from eight to three. Although the Navy found DTI's revised offer to be acceptable, awarding it a composite technical score of 88.72 points and an adjectival rating of "good," the agency found VSE's BAFO to be most advantageous. Not only did VSE's offer remain the highest ranked technically, with a score of 95.41 points and an adjectival rating of "excellent," but, as a result of a reduction in proposed labor rates and overall price, VSE's BAFO price (\$1,358,945) was now slightly lower than DTI's (\$1,367,195). Upon learning of the resulting award to VSE, DTI filed this protest with our Office.

As an initial matter, DTI challenges the Navy's decision to conduct discussions rather than make award to it on the basis of its initial proposal. The RFP incorporated the clause at Federal Acquisition Regulation (FAR) § 52.215-16(c) (Alternate III) (Aug. 1991), which states in pertinent part:

"The Government intends to evaluate proposals and award a contract without discussions with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary."

Since the RFP advised that discussions would be conducted if "necessary," and the agency determined that discussions were in fact necessary--due to the problems with both DTI's and the third offeror's proposal--there was nothing improper in the agency's decision not to proceed with award on the basis of initial proposals. There is nothing in the FAR language above that compels agencies to make award based on initial proposals. See Milcom Sys. Corp., B-255448.2, May 3, 1994, 94-1 CPD ¶ 339; Perez Hous. Maintenance, B-249309, Nov. 12, 1992, 92-2 CPD ¶ 341.

DTI argues that the Navy failed to evaluate the increased technical risk and impact on the quality of performance which it believes will result from VSE's BAFO price reduction. In this regard, VSE's BAFO significantly reduced the proposed base year compensation for its two instructors--by more than [deleted] percent from the rates initially proposed and by [deleted] percent from the rates at which the employees were paid in the second quarter of 1995. DTI believes this reduction in compensation will have a negative impact on staff retention and morale, and thus will increase performance risk.

In reviewing protests against proposal evaluations, we will consider only whether the evaluation was reasonable and consistent with the RFP. Information Spectrum, Inc., B-256609.3, B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251, aff'd, B-256609.6, Sept. 28, 1995, 95-2 CPD ¶ 150.

The record shows that the agency reasonably determined that VSE's compensation reduction would have a minimal negative effect on contract performance. Although the proposed salaries would be lower than the instructors previously had received, the agency noted that the salaries remained above the market rate. In this regard, VSE's proposed base year compensation was between [deleted] percent higher than DTI's proposed compensation for its two primary instructors (and [deleted] percent higher than DTI's overall blended rate for its three instructors) and also exceeded the compensation proposed by the third offeror. While the difference in compensation proposed by DTI and VSE diminished somewhat over the potential 5-year term of the contemplated contract, VSE's proposed compensation would exceed the compensation of DTI's two primary instructors throughout the potential contract term. The agency further noted that VSE's proposed compensation was [deleted] higher than the government's minimum rates for personnel performing the same function.

In addition, the agency determined that VSE's proposal indicated an ability to replace its proposed instructors if necessary. In this regard, VSE explained in its proposal that it maintains a staff of [deleted] full-time personnel recruiters, pays all of its staff bonuses for recruiting new employees, recruits among former military members and civilian employees of the Department of Defense (DOD) affected by DOD's ongoing downsizing, and has available for use on the contract three prospective employees who are experienced CIWS trainers/instructors. The Navy also specifically concluded that any risks associated with substitutions would be minimal, since replacement personnel had to be approved by the contracting officer and had to possess qualifications equal to or higher than the qualifications of the personnel being replaced, and the fixed-price character of the contemplated contract transferred the financial risk of obtaining qualified replacements to the contractor.

We conclude that the Navy reasonably determined that VSE's proposed reduction in compensation would not significantly increase performance risk. Although it is not possible to say with certainty that the reduction in their compensation will not adversely effect the performance of VSE's incumbent instructors, we believe that the fact that the instructors will still be paid at above-market rates supports the agency's determination that a significant adverse impact on the instructors' performance is unlikely. Moreover, given the evidence of VSE's ability to replace its incumbent instructors—that is, the availability of identified, experienced replacements and the existence of an extensive recruiting organization—and the requirement for any replacements to possess equal or higher qualifications and meet

with the contracting officer's approval, the agency could reasonably conclude that if replacement of instructors becomes necessary, this could be accomplished without significant adverse impact on contract performance.¹

DTI questions why the composite technical evaluation score of its BAFO increased only insignificantly relative to the score of its initial proposal (from 87.78 to 88.72 points), when its previously unacceptable proposal had become acceptable. The Navy explains, however, that DTI's breakdown of the number of hours proposed per instructor was not included in DTI's initial technical proposal, but instead was furnished as part of its price/cost proposal. DTI's initial proposal score therefore did not reflect the negative impact of this deficiency (*i.e.*, it was inflated), giving the incorrect impression that DTI's BAFO did not increase DTI's score very substantially. Our review of the record provides no basis to question this explanation.

DTI challenges other aspects of the evaluation and conduct of discussions, but the record provides no basis to question the agency's overall determination that VSE's proposal was most advantageous to the government. In this regard, competitive prejudice is an essential element of a viable protest, and where no competitive prejudice is shown or is otherwise evident, our Office will not sustain a protest even if a deficiency in the procurement is evident. *See Latins Am., Inc.*, 71 Comp. Gen. 436 (1992), 92-1 CPD ¶ 519. It is clear that the allegedly improper agency actions did not result in competitive prejudice to the protester. For example, DTI challenges the evaluation of its proposal under the subfactor (under the corporate experience factor) for record of past performance on the basis that the agency's failure to contact contracting officials familiar with DTI's prior contracts made it impossible to evaluate the quality and effectiveness of DTI's past performance. However, even the maximum score under this subfactor would increase DTI's overall composite technical score only from 88.72 to 89.57 points, still well below VSE's score of 95.41 points. Likewise, although DTI argues that the Navy failed to advise it during discussions that individual evaluators had concluded that resumes submitted with DTI's initial proposal did not demonstrate that its instructors possessed hydraulics/pneumatics experience or the ability to comply with administrative policy, the effect of these concerns on DTI's overall score was at most insignificant; DTI's score would have remained well below VSE's even if DTI had been permitted to address any evaluator concern in this regard.

DTI generally alleges that the agency's actions, taken together, evidence a pattern of bad faith on the agency's part. A finding of bad faith requires evidence that

¹Although DTI also claims that the agency failed to account for the impact on VSE's instructors of VSE's proposal not to charge the government for any overtime hours, we note that its position is based on a misunderstanding of VSE's proposal.[deleted]

contracting officials intended to injure the protester, Marquette Elecs., Inc., B-262016.2; B-262016.3, Feb. 15, 1996, 96-1 CPD ¶ 98; Oliver Prods. Co., B-245762.2, Apr. 28, 1992, 92-1 CPD ¶ 501; prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition. Stabro Labs., Inc., B-256921, Aug. 8, 1994, 94-2 CPD ¶ 66. DTI's allegation consists solely of the protester's speculation as to the agency's motives—for example, that failure to contact contracting officials familiar with DTI's past performance was motivated by an intention to favor VSE. This speculation is not supported by any evidence. This allegation therefore provides no basis for overturning the award to VSE.

The protest is denied.

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