

Cooper



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PRC/VSE Associates Joint Venture

File: B-240160; B-240160.2; B-240160.3

Date: October 30, 1990

Joel Feidelman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.
Ruth Y. Morrel, Esq., for DynCorp, an interested party.
Charles J. McManus, Esq., Department of the Navy, for the agency.
Sabina K. Cooper, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency treated offerors equally with regard to use of Department of Labor area wage determination rates where the request for proposals was not misleading as to wage rates, similar cost questions were posed to offerors during discussions, and both offerors had an opportunity to respond.
2. Discrepancy in wage rates proposed in awardee's technical and cost proposals does not warrant disturbing award where there is no evidence in the record of fraud or deliberate misrepresentation and the amount of the discrepancy is extremely small with respect to the difference between the proposals of the awardee and the next low offeror, so that no prejudice will result to the latter.
3. Agency cost realism analysis had a reasonable basis where the agency reviewed awardee's response to agency cost discussions; verified labor categories, hours proposed, labor and burden rates; and verified other costs with the Defense Contract Audit Agency.
4. Agency cost realism analysis was proper where agency accepted awardee's supplying of facility at no cost and ceiling on general and administrative rates and employee health and welfare benefits, since, under the contract awarded, the firm waived its rights to recover costs above the caps throughout the life of the contract and agreed that these costs would not be allocated to any other government contracts.

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5. Agency properly conducted technical evaluation of a proposal which offered minimum area wage determination rates where the solicitation mandated a reduction in technical score only if such rates were found to be unrealistic.

DECISION

PRC/VSE Associates Joint Venture (PVA) protests the award of a contract to DynCorp under request for proposals (RFP) No. N00123-89-R-0662, issued by the Navy for engineering and technical support services at the Naval Weapons Analysis Center, Seal Beach, California. PVA asserts that the Navy treated the offerors unequally with regard to their proposed use of Department of Labor (DOL) wage rates; did not conduct a reasonable cost realism analysis of DynCorp's proposal; and performed a flawed technical evaluation. PVA also challenges the Navy's failure to detect, and acceptance of DynCorp's explanation for, an inconsistency in wage rates between the firm's technical and cost proposals.

We deny the protests.

The RFP, issued August 2, 1989, provided for a 1-year, cost-plus-award-fee contract with four successive 1-year options. Proposals were to be evaluated on the basis of three listed criteria--technical, management and cost; technical and management were of equal weight and their combined significance was greater than that accorded to cost, with 60 points assigned to technical factors and 40 points to cost. The solicitation noted that the importance of cost would rise with the degree of equality of proposals in relation to the technical factor. Cost was to be evaluated for "realism, reasonableness and reliability." The RFP reminded offerors that:

"rates identified in the Department of Labor (DOL) Wage Determination are minimums. Proposals should reflect realistic rates which may be higher than DOL rates. Any variance in the offeror's historical rates (direct or indirect) and the proposed rates must be explained and fully supported. Unrealistic rates will be considered in the risk assessment and may result in a reduced technical score."

The solicitation also indicated that offerors could determine the staffing arrangement as they saw fit, within certain constraints, such as the RFP's explanation of estimated needs. Twenty-eight of the proposed employees were deemed to be key employees for whom resumes, including the individuals' proposed salaries (annual and hourly), and signed statements

of commitment, were to be provided. Award fee was not to be considered in proposal evaluation.

The Navy received three proposals by the September 20 closing date. Following discussions, the Navy received best and final offers (BAFO) by the March 19, 1990, closing date from all offerors. PVA, the incumbent contractor, proposed a total cost, excluding award fee and phase in and phase out costs, of \$127,314,308; DynCorp proposed a cost of \$120,008,777; a third offeror proposed a cost of \$139,056,131. The Navy adjusted DynCorp's proposed cost upward to \$121,238,611 to include a 4 percent annual labor escalation factor commencing in October 1989, rather than October 1990, as DynCorp originally proposed. After the adjustment, DynCorp's evaluated price was \$6,075,697 lower than PVA's evaluated price, a difference of 5 percent.

Following proposal evaluation, the Navy reported the following normalized point scores:^{1/}

	<u>Technical and Management</u>	<u>Cost</u>	<u>Total</u>
DynCorp	60.00	40.00	100.00
PVA	59.62	38.09	97.71

Based on the determination that award to DynCorp represented the greatest value to the government, the Navy made award to DynCorp on June 15, 1990. PVA protested that award to our Office on June 21, July 2, and August 13. Since the initial protest was filed within 10 calendar days of award, the Navy has suspended performance of the contract during consideration of the protest.

AREA WAGE DETERMINATION RATES

PVA first argues that the Navy led PVA to believe that the firm would be penalized, in both the technical evaluation and cost realism analysis, if it proposed across-the-board use of DOL Area Wage Determination (AWD) minimum wages for nonexempt employees, which comprise over 90 percent of the contract work force, and yet the agency accepted DynCorp's proposal to pay precisely such minimum wages with no cost or technical penalty.

^{1/} DynCorp's raw technical score was 31.8; PVA's was 31.6. Under the normalization formula the offeror with the highest raw score was awarded full points (60 for technical management and 40 for cost).

Our review of the record demonstrates that PVA's conclusion that it would be penalized for proposing AWD minimum wages was not reasonable and that the Navy did not treat offerors unequally with respect to the use of such wages. The RFP did not require offerors to offer wages above the AWD minimums; rather, the solicitation noted that realistic rates may be higher than minimum wages and that any variance in an offeror's proposed rate from its historical rates must be explained and supported. The Navy further advised that unrealistically low rates might result in a reduced technical score. During discussions, the Navy asked both PVA and DynCorp how they intended to perform using wage rates that were substantially lower than the rates of previous years. Both offerors responded, with PVA citing differences in the location, size, particular mix of skills in the work force, and performance criteria required for this contract as opposed to previous efforts, and DynCorp demonstrating that its proposed unloaded direct labor rate was higher, not lower, than its previous contract rate. Accordingly, we find no basis for PVA's assertion that the Navy treated offerors differently with respect to the issue of AWD minimum wages, since the RFP and the discussion questions emphasized to both offerors that wages must be realistic under the particular circumstances of the contract in question.

PVA further argues that a discrepancy discovered during the bid protest process between DynCorp's technical and cost proposals as to the wage rates proposed for 5 of its 6 key employees subject to AWD minimums^{2/} casts doubt on the integrity of the evaluation process.

PVA originally alleged that the salaries DynCorp actually offered to potential key nonexempt employees were not accurately reflected in DynCorp's cost proposal. Upon reviewing its submissions to the Navy during the bid protest proceedings, DynCorp discovered that the salaries of 5 of its 6 potential key employees were proposed at AWD minimums in its cost proposal, while the resumes of those personnel submitted with its technical proposal accurately reflected the higher proposed salaries DynCorp actually offered to those employees. DynCorp attributed the inconsistency in its proposal to the lack of communication and coordination among the individuals who assisted in the preparation of the company's submissions and to the unusual requirement, added by amendment just before the proposal due date, that resumes contain salary information. DynCorp emphatically denies, with supporting affidavits from the cost proposal manager and the technical proposal manager, that the inconsistency represented an

^{2/} There are 28 key employees in a proposed work force of about 700.

attempt to deliberately mislead the Navy as to the proposed labor costs of key personnel in its cost proposal, while garnering an advantage from the higher salaries on the resumes submitted with the technical proposal. PVA argues that our Office should not accept DynCorp's explanation of the discrepancy and that the error has tainted the procurement process.

Our review of the record reveals that DynCorp did in fact submit a cost proposal containing AWD minimum wages for non-exempt key personnel, and a technical proposal containing resumes reflecting higher salaries for 5 of those employees. The record demonstrates that an August 15, 1989, amendment of the RFP required offerors to submit resumes for 28 key personnel and to identify their "proposed salary (annual and hourly)." Of these 28, 6 employees under 2 categories, Operations Specialist (OS-1) and Weapons Specialist (W-1), are subject to AWD minimum wages. The resumes DynCorp submitted to the Navy for five of these individuals contained average proposed salaries of \$14.51 for OS-1 and \$13.84 for W-1, exactly 5 percent above their 1988 hourly rate, which already exceeded the AWD minimum wage. The rate of the sixth employee increased by more than 5 percent since his classification changed. However, DynCorp's cost proposal set forth the AWD minimum of \$13.47 as the proposed salary for the OS-1 and W-1 categories, creating a discrepancy in proposed salary for five of the six key employees subject to AWD minimums. The Navy did not notice the discrepancy and indicated in its evaluation that DynCorp proposed all nonexempt employees at the AWD rates.

DynCorp's explanation of how the discrepancy occurred, supported by sworn statements of the responsible employees, is credible, and we have found no evidence of fraud or deliberate misrepresentation on DynCorp's part in the extensive record on this issue. In addition, the impact on DynCorp's proposed costs due to the discrepancy between the AWD minimums and the rates proposed on the individuals' resumes results in a total increase over 5 years of \$173,000, if all employees in the two affected categories were paid at the higher rates. If only the six key employees at issue receive the higher rates, the total increase over 5 years would be under \$16,000.^{3/} This is a small increase in cost considering that DynCorp's evaluated costs were more than \$6 million lower than PVA's costs. Accordingly, there is no prejudice to PVA's competitive position even if DynCorp's

^{3/} The two nonexempt categories constitute 5.4 percent of the level of effort and the key employees represent .5 percent of the total effort.

contract cost is increased to conform to the wage rates offered in its technical proposal.

COST REALISM ANALYSIS

PVA challenges the Navy's evaluation of DynCorp's cost proposal, and the Navy's determination that DynCorp's financial situation was secure enough that the firm would be able to perform the contract despite the caps proposed on certain costs.

The solicitation provided that cost would be evaluated for realism, reasonableness and reliability. PVA asserts that the Navy failed to conduct a proper cost realism analysis of DynCorp's unrealistically low cost proposal. PVA argues that DynCorp's labor rates are unrealistic since the firm will not be able to hire current employees at the AWD minimums; that DynCorp's fiber optic link is not in place, and its installation will be charged to the government; and that DynCorp's hardware is incompatible with the existing system.

When a cost reimbursement contract is to be awarded, the offeror's estimated costs of contract performance and their proposed fees should not be considered as controlling since the estimates may not provide valid indications of final actual costs which the government is required, within certain limits, to pay. The government's evaluation of estimated costs thus should be aimed at determining the extent to which the offeror's estimates represent what the contract should cost, assuming reasonable economy and efficiency. This determination in essence involves an informed judgment of what costs actually would be incurred by acceptance of a particular proposal. Science Applications Int'l Corp., B-232548, B-232548.2, Jan. 22, 1989, 89-1 CPD ¶ 52. Because the contracting agency clearly is in the best position to make this cost realism determination, our review is limited to a determination of whether the agency's cost realism is reasonably based and not arbitrary. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

An agency is not required to conduct an in-depth analysis or to verify each item in conducting a cost realism analysis. Ferguson-Williams, Inc. et al., B-237334, Dec. 28, 1988, 88-2 CPD ¶ 630. 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 estimated cost of the contractor's performance before award and makes award based on that knowledge. PTI Environmental Serv., B-230070, May 27, 1988, 88-1 CPD ¶ 504.

In addition, where labor constitutes a substantial portion of the cost of performance, as it does here, an agency's cost realism analysis may involve comparative evaluations of the labor mix and cost proposed in two technically acceptable proposals. Electronics Warfare Integration Network, B-235814, Oct. 16, 1989, 89-2 CPD ¶ 365. Comparing proposed labor rates for categories covered by the Service Contract Act to the DOL AWD is one useful approach. Tracor Marine, Inc., B-234018, Apr. 21, 1989, 89-1 CPD ¶ 399. Moreover, there is nothing improper in the acceptance of an offer of no charge for certain costs or caps on certain costs to the government, where these items would not be reimbursable under the contract or otherwise. See Raytheon Support Serv. Co., 68 Comp. Gen. 567 (1989), 89-2 CPD ¶ 84.

The record (portions of which were not released to the protester but all of which we have reviewed in camera) indicates the Navy conducted a reasonable cost realism analysis of DynCorp's proposal. The Navy relied upon information from the cognizant Defense Contract Audit Agency (DCAA) auditors for verification of labor and burden rates proposed, and from the requiring activity for verification of labor categories, labor mix and labor hours proposed. This analysis resulted in upward adjustments to both offerors' proposed costs. Both offerors were advised of the deficiencies in their initial cost proposals during discussions and both submitted revised cost proposals in response to the discussions. The analysis of DynCorp's BAFO resulted in an upward adjustment to DynCorp's proposed costs of \$1,229,834 reflecting an adjustment for a 4 percent escalation in direct labor rates beginning October 1, 1990, not taken into account.

The record demonstrates that DynCorp's proposed labor rates in its BAFO were reviewed by DCAA and evaluated by the Navy. DCAA conducted a full audit of DynCorp's exempt and nonexempt rates for reasonableness, consistency of approach, methodology and compliance with the RFP. DynCorp was able to demonstrate to the Navy in response to discussion questions that its proposed unloaded labor rates were actually higher than its 1988 labor rates, and that the firm intended to hire its work force at the rates proposed for all labor categories in accordance with the salaries indicated. In order to confirm its intention, DynCorp offered a firm ceiling on the labor cost of the program in its BAFO. DynCorp's offer also included a cap on the general and administrative (G&A) costs chargeable to the government; a cap on the required health and

welfare benefit cost to the government;^{4/} and a facility at no cost. DynCorp has unconditionally agreed not to charge the government for any overruns in areas subject to cost ceilings, either directly or indirectly, on this or any other government contract.

The record also establishes that PVA's overall proposed labor rates exceed the DOL AWD by only approximately 1 to 2 percent and that DynCorp could increase its direct labor costs by as much as 5 percent and still remain the low offeror. Moreover, DynCorp's evaluated labor rates were actually approximately 1 percent higher than PVA's, supporting the Navy's determination that DynCorp's rates were realistic.

Since DynCorp offered to cap the cost to the Navy of its ESOP contributions, G&A expenses, and facility costs, and recoup its unreimbursable costs from its anticipated award fee, the Navy properly sought additional data upon which to base its determination of DynCorp's financial viability due to the potential for significant unbillable actual costs to the contractor. Accordingly, the Navy obtained from DCAA DynCorp's Form 10K reports, annual reports that the firm had submitted to the Securities and Exchange Commission, for fiscal years 1988 and 1989. The financial information in the reports was used by the Navy to perform several financial stability tests. These test results, in combination with financial data on DynCorp's ready assets (cash and short-term investments), indicated that DynCorp had access to adequate financial resources to compensate for any loss of revenue DynCorp might experience, despite the firm's highly leveraged debt equity structure and large debt service requirements.

Moreover, the record shows that independent auditors certified that the company's financial statements, which state that unrecorded liabilities from either lawsuits or administrative proceedings would not have a material adverse affect on the company's consolidated financial position, fairly present DynCorp's financial position. The Navy also received assurances from DynCorp that it would comply with the Service Contract Act with respect to employee benefits, and that, in the aggregate, employees will receive benefits exceeding the AWD required rate. In any case, whether or not a company performs a contract in accordance with the Service Contract Act is a matter for the DOL, which is responsible for enforcement of the act, Starlight Serv., Inc., B-210762, May 7, 1983, 83-1 CPD ¶ 229, and even an offer of rates below

^{4/} The AWD requires all nonexempt employees to receive health and welfare benefits averaging \$1.84/hour. Of this sum, \$.83/hour represents retirement benefits in the form of Employee Stock Ownership Plan (ESOP) contributions.

the appropriate wage determination does not necessarily show an intent to violate the act. K and P Inc. and Kuch Maintenance Serv., Inc., B-212263 et al., Oct. 11, 1983, 83-2 CPD ¶ 436.

In addition, the record indicates that, although the Navy concluded that certain risks might exist because of personnel turnover due to the proposed use of minimum AWD wages and the possibility of the firm experiencing a loss of revenue of approximately \$1.3 million per year, given the proposed cost ceilings, these factors did not warrant a reduction in the overall technical assessment of the quality of DynCorp's proposal. The contracting officer had determined in reviewing the current unemployment rates that, due to the downturn in available employment in the aerospace industry in the contract location; the addition of several labor categories to the contract at high AWD rates, not included in prior contracts; and the increase in relevant AWD rates from 5.5 to 10 percent over the 1988 rates, the AWD rates and classifications were sufficient to enable DynCorp to recruit employees other than those currently employed by PVA, although DynCorp stated that it intended to hire as many of the incumbent work force as possible. DynCorp noted in its proposal that it had approximately 2,000 resumes in its tracking system and has received over 160 letters requesting consideration for employment since award of the contract was announced, without having advertised or recruited.

With respect to PVA's other assertions concerning DynCorp's technical proposal, specifically its proposed fiber optic link and hardware, the record indicates that DynCorp's data transmission equipment has been installed with no charge to the Navy and that its computer system met the requirements of the solicitation.

Accordingly, we find that the record establishes that the Navy conducted an adequate cost realism analysis of DynCorp's proposal.

TECHNICAL EVALUATION

PVA challenges the Navy's decision to include, in the scoring of areas not questioned in the Navy's BAFO request, the scores of one of the five evaluators from the initial proposal evaluation. This evaluator was unavailable to score BAFOs. Without that evaluator's scores, both PVA's and DynCorp's raw technical scores were 31.7; with that evaluator's scoring included, PVA's score was 31.6 and DynCorp's was 31.8. PVA argues that the Navy's decision to include some of the fifth evaluator's initial proposal evaluation scores in the BAFO review prejudiced PVA and lacked a rational basis. PVA also

asserts that DynCorp's unrealistic proposed wage rates should have led the Navy to reduce DynCorp's technical score.

Our review of the record does not support PVA's assertions that it was prejudiced as a result of the Navy's evaluation of either offeror's technical proposal. Although the Navy did lower PVA's score by .1 on the rescoring of BAFOs, even if the Navy had based the final technical scores solely on the ratings made by those evaluators who had reviewed the BAFOs, which PVA itself calls the "only rational" choice, the absolute equality of the technical scores for the two offerors would not affect the award to DynCorp. The record establishes that the basis for award to DynCorp was its low price in a situation where offerors' technical proposals were essentially equal.

We find PVA's argument that DynCorp's claimed unrealistic proposed wage rates should have led the Navy to reduce DynCorp's technical score to be misplaced. Since, as discussed in detail above, the Navy reasonably concluded that DynCorp's wage rates were realistic, no reduction in the technical score could have resulted.

In view of our finding that the Navy properly performed the technical evaluation and cost realism analysis, we see no basis to object to the Navy's decision to award to DynCorp as having submitted the most advantageous offer to the government.

The protests are denied.


for James F. Hinchman
General Counsel