



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** Oshkosh Truck Corporation

**File:** B-252708.2

**Date:** August 24, 1993

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Lane L. McVey, Esq., McKenna & Cuneo, for the protester.  
Robert G. Fryling, Esq., Saul, Ewing, Remick & Saul, for  
Kovatch Corporation, an interested party.

John Dodds, Esq., Department of the Air Force, for the  
agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

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### DIGEST

1. Price evaluation conducted in connection with the award of fixed-price contract for trucks, was unobjectionable where the agency conducted an analysis sufficient to conclude that the awardee's low prices met the evaluation criteria of realism, reasonableness, and completeness; there is nothing objectionable in an agency's acceptance of a below cost offer.

2. In evaluation of performance risk, agency reasonably evaluated protester's past performance as evidencing "moderate" risk, where that performance included various contract delinquencies.

3. Agency decision to award contract to offeror with lower priced, lower technically rated proposal was reasonable where source selection authority determined that there was no significant technical difference between the proposals and that the higher technical score did not justify price premium.

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### DECISION

Oshkosh Truck Corporation protests the award of a contract to Kovatch Corporation under request for proposals (RFP) No. F09603-92-R-70155, issued by the Department of the Air Force, for the manufacture and supply of fuel cargo tank trucks. Oshkosh raises various issues concerning the agency's price analysis, risk assessments, and award decision.

We deny the protest.

The RFP, issued on May 26, 1992, contemplated the award of a multi-year, fixed-priced contract for the design, development, testing, and production of the A/S32R-11 (R-11) refueler truck. The R-11 refueler is designed to receive, transport, store, dispense, and recover fuels. Offerors were to provide fixed unit prices for two first articles, 616 production units (154 per year for 4 years), 616 optional production units (up to 154 per year for 4 years), and data including technical manuals and production drawings.

The RFP provided that proposals would be evaluated on the basis of an integrated assessment of the offeror's ability to satisfy the requirements. The solicitation listed technical and cost as evaluation factors in descending order of importance. Under the technical factor, the following subfactors were to be evaluated, also in descending order of importance: (1) reliability and maintainability; (2) engineering; (3) manufacturing; (4) management; and (5) logistics.

The technical evaluation was to consist of a color rating; a proposal risk rating;<sup>1</sup> and a performance risk rating. The color and proposal risk ratings were to be based on soundness of approach and understanding/compliance with the requirements. Performance risk (evaluation of probability of successful contract performance) was to be based on data provided by the offeror and other sources and was equal in relative importance to the color-proposal risk assessment. The RFP further provided that proposed costs would be evaluated to ensure realism, reasonableness, completeness, and to ensure that the offerors adequately understood the scope of the required work. The RFP advised offerors that "unrealistically low estimates will be deemed reflective of a lack of technical competence or indicative of a failure to comprehend the complexity and risks of the contract requirements, and may be penalized during the evaluation to the extent of rejection." Award was to be made to the responsible offeror whose proposal represented the best value to the government considering price and other factors.

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<sup>1</sup>The color ratings included blue (exceptional), green (acceptable), yellow (marginal), and red (unacceptable). Proposal risk included factors such as potential for disruption of schedule, increase in cost, or degradation of performance and was rated from "low" (little potential) to "moderate" (potential to cause some disruption, etc., but able to overcome difficulties with close government monitoring) to "high" (likely to cause significant disruption, etc. even with close monitoring).

Four offerors, including Oshkosh and Kovatch, submitted proposals by the July 24 closing date. In the initial evaluation, the evaluators rated all four proposals as red (unacceptable) with Oshkosh rated "moderate" on proposal risk and Kovatch rated "high." Because all four proposals were considered susceptible to being made acceptable, they were all included in the competitive range. Cost proposals were reviewed by the Defense Contract Audit Agency (DCAA), Defense Contract Management Area Office (DCMAO), and the Air Force price analyst. The price analyst concluded that none of the cost proposals met the requirements of realism, reasonableness, and completeness.

Discussions were conducted with each offeror covering various technical and cost issues. Three of the four offerors submitted responses to the agency's clarification requests and deficiency reports and submitted best and final offers (BAFOs) by the February 12, 1993 closing date. Kovatch proposed to perform the basic contract requirements for \$89,323,116 and the optional items for \$82,100,589, for a total price of \$171,423,705. Oshkosh proposed to perform for \$92,530,196 (basic) and \$101,919,931 (options) for a total price of \$194,460,127. In general, the evaluators found no strengths, weaknesses, or risks in the proposals of Oshkosh and Kovatch.

In the technical evaluation, Oshkosh's proposal received an exceptional (blue) rating with a moderate risk for reliability and maintainability and acceptable (green) rating with a low risk in the remaining technical areas. Oshkosh's blue rating was based on the strength of its offer of a longer mean-time-between-failures rate. Oshkosh's proposal was rated as a moderate risk based on first article test concerns. Since the reliability and maintainability subfactor was most important, Oshkosh received an overall exceptional (blue)/moderate risk technical rating. Kovatch's proposal was rated acceptable (green) with a low risk in all technical areas but engineering, where it was rated acceptable (green)/moderate risk, based on a component design. The risk was not considered significant enough to warrant a moderate risk overall, so Kovatch was rated acceptable (green)/low risk overall. With regard to performance risk, Oshkosh received a moderate rating based on nine relevant contracts, on four of which it had been delinquent. Kovatch received a low performance risk rating based on its performance on a Navy contract for similar refuelers.

The price analyst reviewed the proposals and found both Oshkosh and Kovatch to have met the requirements of realism, reasonableness, and completeness, and to be within 2.5 percent of the government assessment. The source selection authority (SSA) was briefed on the results of the

various evaluations and concluded that, based on an integrated assessment of technical considerations and evaluated prices, the Kovatch proposal provided the best value. Since the SSA found no significant difference between the two technical proposals, he concluded that the cost premium involved in awarding to a higher rated, higher priced offeror was not justified. Accordingly, the Air Force awarded Kovatch the contract on March 10, 1993. Following a debriefing, Oshkosh filed this protest with our Office.

Oshkosh contends first that the Air Force failed to properly conduct a price analysis of Kovatch's proposal. Specifically, Oshkosh argues that the agency analysis failed to recognize that Kovatch's prices were unrealistically low and either reflected a lack of understanding of the contract scope or constituted a "buy in."

Cost realism, which measures the likely cost of performance, ordinarily is a mandatory consideration when a cost-reimbursement contract is involved since the government in general will be obligated to bear the actual cost of performance. Generally, cost realism is not a factor in the evaluation of proposals when a fixed-price contract is to be awarded, since the government's liability is fixed, and the risk of cost escalation is borne by the contractor. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 336. However, since the risk of poor performance when a contractor is forced to provide services at little or no profit or with an underestimated workforce is a legitimate concern in evaluating proposals, an agency in its discretion may, as it did here, provide for a price realism analysis in the solicitation of fixed-priced proposals.<sup>2</sup> Id. The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. See Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6. Even where a solicitation warns that low prices may result in lowered technical scores, an agency is not required to downgrade a proposal. See VSE Corp., B-247610.2, Aug. 6, 1992, 92-2 CPD ¶ 81.

Here, the RFP described the aspects of realism, reasonableness, and completeness to be evaluated. Realism was described as costs that were compatible with proposal scope and effort and being neither excessive nor

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<sup>2</sup>While the protester and the agency have referred to the evaluation of proposals as a cost realism and price realism evaluation, because the RFP contemplated fixed prices, price realism is actually the appropriate term. See The Fletcher Constr. Co., Ltd., B-248977, Oct. 1992, 92-2 CPD ¶ 246.

insufficient for the effort to be accomplished. Reasonableness was described in terms of fully justified and documented cost data, i.e., developed by using appropriate and acceptable methodologies, factual and verifiable data, and estimates supported by valid and suitable assumptions and estimating techniques. Completeness was evaluated based on whether all RFP-required cost information had been submitted and tracked to the specification items/elements. Contrary to the protester's assertions, our review of the record confirms that the Air Force did all that was required in the way of a price analysis under the RFP.

For example, the record reflects that the Air Force had the DCAA conduct an audit which included analysis of Kovatch's direct and indirect rates using generally accepted accounting principles. DCMAO operations analysts and engineers evaluated Kovatch's labor hour and material allocability issues through discussions with Kovatch, review of its historical cost data and current operations, and application of theoretical technical premises. Air Force price analysts evaluated material, subcontract, and other direct costs through contractor discussions and review of supporting data such as vendor quotations, purchase history, and estimating sheets.

As contemplated by the RFP, the focus of the analysis was on acceptability of the proposal, and all price/cost issues were addressed in discussions. The Air Force questioned Kovatch about its low profit rate and other price-related issues, and Kovatch answered all such questions to the satisfaction of the Air Force evaluators. For example, with regard to profit, Kovatch increased its overall profit on the basic units and explained its confidence in its pricing due in part to firm pricing agreements with material suppliers. In addition to Kovatch's confidence in its pricing, it explained that obtaining a contract of this magnitude would be a boost to its company, employees, suppliers, and surrounding communities. Based on its evaluation, the Air Force concluded that Kovatch's prices were compatible with the scope of the proposal and effort and were supported by fully justified and documented cost data which could be tracked to the various specification items. DCAA and DCMAO found Kovatch's direct and indirect rates, and labor and material estimates to be reasonable. Based upon their review of Kovatch's proposal, the Air Force price analysts concluded that its prices were realistic, reasonable, and complete. Overall, the agency found no indication that the awardee lacked understanding of the requirements. Based on our review of the record, we find no basis to conclude that either the Air Force's price analysis or its conclusions about Kovatch's understanding were erroneous.

We have reviewed the several pricing issues which Oshkosh believes the Air Force either did not recognize or failed to adequately evaluate including: Kovatch's use of differing overhead rates for different aspects of the contract; an alleged failure to price the cost of all employees working on the contract; alleged "buy-in" prices on various technical data line items; failure to account for the cost of borrowing money to cover alleged losses; and insufficient profit. Oshkosh infers that Kovatch's profit will be consumed by these aspects of its pricing strategy, and will result in a significant loss and risk of nonperformance by Kovatch.<sup>3</sup>

We find Oshkosh's allegations without merit. They are primarily based on Oshkosh's interpretations of the Kovatch proposal and speculation concerning the cost impact of those interpretations. For example, Oshkosh claims that Kovatch estimated too few direct labor hours for truck production to account for the number of proposed personnel, and thus, would lose more than \$2 million over the life of the contract. While Oshkosh speculates that each proposed employee will spend all his annual work time on this contract, Kovatch's proposal does not indicate that this is the case. In fact, the number of hours proposed to complete each truck is consistent with the proposed cost of those hours.

Oshkosh also speculates that Kovatch's proposed prices for the cost of technical drawings and manuals are inadequate to cover the actual cost of their production. The Air Force reviewed these prices and concluded that Kovatch's use of technical information furnished by the manufacturers of major components and its intent to perform work in-house accounted for its lower price. For example, since Oshkosh manufactures most of its own components, the Air Force expected that the cost of developing technical data would be greater than if that data were furnished by an outside manufacturer. While Oshkosh has experienced difficulty and apparently great expense (see infra) in producing technical data under the predecessor R-11 contract, this provides no

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<sup>3</sup>Although Oshkosh is concerned that Kovatch may be unreasonably low priced with regard to profit and technical data prices, the submission of a below cost offer is not itself legally objectionable. See H. Angelo & Co., Inc., B-244682.2, Oct. 30, 1991, 91-2 CPD ¶ 407. Whether a contract can be performed at the offered price is a matter of the offeror's responsibility, Virginia Mfg. Co., Inc., B-241404, Feb. 4, 1991, 91-1 CPD ¶ 113. We will not review a contracting officer's affirmative determination of responsibility absent circumstances not alleged here. See 4 C.F.R. § 21.3(m)(5) (1993).

basis to assume that Kovatch will experience the same difficulties. In this regard, the Air Force was satisfied with Kovatch's abilities based on its successful production and delivery of similar data on its Navy contract. The record discloses no reason to question the agency's assessment.

Oshkosh next contends that the agency improperly evaluated its performance risk based on erroneous information and failed to give it proper credit for its prototype vehicle. While it is not the function of our Office to evaluate proposals de novo, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Information Sys. & Networks Corp., 69 Comp. Gen 284 (1990), 90-1 CPD ¶ 203. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

In reviewing Oshkosh's past performance, the agency originally identified 65 matters for clarification, all but nine of which were adequately answered by the protester during discussions. These nine formed the basis of Oshkosh's "moderate" performance risk rating. Five of the unresolved issues related to start-up problems and production delinquencies, while the other four related to untimely corrective actions. In particular, the agency noted that Oshkosh was late in delivery of production units on an Air Force snow-blower contract due to technical problems; was delinquent in first article testing for an Army contract and had been placed in an Army contractor improvement program for 1 year; and on the predecessor R-11 contract, had \$4 million withheld to force correction of unacceptable technical submissions and had been subject to three performance suspensions due to nonconforming supplies and other problems. As to consideration of the prototype, the agency explained that it considered it under proposal risk, but did not ascribe it much weight since, at the time of proposal, the prototype was incomplete and untested.

In its protest submissions, Oshkosh asserts that these problems have been corrected or represented the fault of the government and not Oshkosh. In this regard, it explained that it had corrected the start-up problems and that the snow-blower delivery schedule had been extended due to engineering change proposals (ECPs) and thus, represented advantages to both parties, not poor performance. On its Army contract, Oshkosh explained that neither the length of delay nor the responsibility for it have been determined, and thus, the agency should not consider the alleged delinquency. Oshkosh also contends that its prototype, virtually complete and inspected by the Air Force during a

site visit on this procurement, should be considered in the performance risk assessment.

We find reasonable the agency's rationale for its evaluation, notwithstanding Oshkosh's explanations. With regard to the snow-blowers, the agency explains that Oshkosh's failure to correct numerous technical problems that surfaced when the vehicles were fielded, led to a stop work order. We note that while ECPs are beneficial to both parties, the contract modification indicating "advantages to both parties" reflects the fact that Oshkosh was partly responsible for the necessity of the ECPs. The Air Force properly considered this information in its performance risk evaluation. Similarly, while responsibility for delays has not yet been determined, the Army advises that test delays were exacerbated by vehicle breakdowns occasioned by Oshkosh-caused deficiencies, and that there is a significant disagreement between the parties as to responsibility for the delays. Since a contractor's dispute of an agency's view of its prior performance does not render agency consideration of the underlying deficiency improper, see MCI Constructors, Inc., B-240655, Nov. 27, 1990, 90-2 CPD ¶ 431, we find the Air Force properly considered these delays. We also find delinquencies associated with the predecessor R-11 contract to be highly relevant and note that Oshkosh offers no excuse for its technical data deficiencies and related delinquency. Since the prototype was unfinished and untested at the time of proposal, and did not constitute past performance, we find the agency properly considered the prototype under proposal risk.<sup>4</sup> Accordingly, we find the Air Force reasonably concluded that Oshkosh should be rated "moderate" in performance risk.

Oshkosh next argues that the SSA's cost-technical trade-off was flawed because he was not briefed on Kovatch's actual low profit and likely losses. Had the SSA been properly briefed, Oshkosh contends that the SSA would have found its proposal, not Kovatch's, to be the best value. We disagree.

Notwithstanding a solicitation's emphasis on technical factors, an agency properly may award to a lower priced, lower technically scored offeror if it reasonably decides that the cost premium involved in awarding to a higher rated, higher priced offeror is not justified given the level of technical competence available at the lower cost. General Offshore Corp., B-246824, Apr. 1, 1992, 92-1 CPD ¶ 335. The determining element is not the difference in technical merit, per se, the significance of that

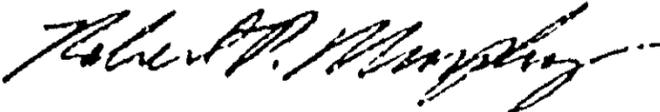
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<sup>4</sup>Oshkosh received due credit under the evaluation. The evaluators advised the SSA that the prototype was considered a strength under the logistics subfactor.

difference. Id. Agency officials have broad discretion in making price/technical trade-offs and the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. General Servs. Engr'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. In this case, the record supports the SSA's decision to award the contract to Kovatch even though Oshkosh's technical rating was higher.

Contrary to Oshkosh's arguments, the SSA was fully briefed on Kovatch's aggressive low profit strategy. As discussed above, we find no error in the evaluators' assessment that Kovatch fully understood the solicitation requirements and had proposed a price sufficient to support successful completion of the contract. In making his source selection, the SSA noted that Kovatch proposed a design that met all RFP requirements at a price lower than that proposed by the other offerors, and that Kovatch's performance records reflected its ability to perform the proposed effort. Further, the SSA found no significant technical difference between the acceptable offers, and Oshkosh has not identified any significant technical superiority associated with its proposal. The only subfactor for which Oshkosh received a higher rating was for reliability and maintainability; otherwise the two proposals had identical color/adjectival ratings. In view of the significant price difference (\$3.2 million for the basic units and \$23 million for the combined base and option quantities), the technical closeness of the proposals, and the higher proposal and performance risks assigned to Oshkosh, the SSA's decision was reasonable and supported by the record.

The protest is denied.

  
for James F. Hinchman  
General Counsel