



Comptroller General
of the United States

Washington, D.C. 20548

REDACTED VERSION*

Decision

Matter of: JWK International

File: B-256609.4

Date: September 1, 1994

Keith L. Baker, Esq., Eckert Seamans Cherin & Mellott, for the protester.

William W. Goodrich, Jr., Esq., Thomas W. A. Barham, Esq., and John J. O'Brien, Esq., Arent Fox Kintner Plotkin & Kahn, for Value Systems Services, a Division of VSE Corporation, an interested party.

Ivana Sustersic, Esq., and Kathy Cowley, Esq., Department of the Navy, for the agency.

Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that procuring agency unreasonably evaluated protester's proposal as having a high performance risk is denied where the decision is based on the agency's reasonable determination that the protester's proposed salaries were low and its proposed uncompensated overtime was high.

2. Agency properly awarded contract without holding discussions with protester where solicitation indicated agency's intention to award the contract without holding discussions, and the agency reasonably determined that discussions were not necessary because the protester's proposal was unrealistically priced and presented a high performance risk and the awardee's proposal contained no deficiencies and was realistically priced.

3. Protest that agency improperly awarded contract at a price [deleted] higher than that offered by the protester is denied where the agency reasonably determined that the protester's price was unrealistic and that the awardee's technically superior and realistically priced proposal was worth the additional expense.

*The decision issued on September 1, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

DECISION

JWK International Corporation protests the award of a contract to Value Systems Services, a division of VSE Corporation (VSS) under request for proposals (RFP) No. N00019-92-R-0051, issued by the Naval Air Systems Command (NAVAIR) for the acquisition of logistics support services for Navy and Marine avionics weapons systems. JWK asserts that the Navy failed to follow the stated evaluation criteria, unreasonably evaluated its proposal, improperly failed to hold discussions, and failed to perform a price/technical tradeoff.

We deny the protest.

BACKGROUND

The RFP, issued on June 30, 1992, contemplated the award of an indefinite delivery/indefinite quantity contract for a base year and four 1-year options. Offerors were required to submit a technical proposal and a price proposal. The technical proposals were to be evaluated against the following four factors: Personnel, Sample Tasks, Management Plan/Manpower Utilization Matrix, and Corporate Experience. The personnel and sample task factors were equal in weight and the remaining two factors were listed in descending order of importance. Regarding price, the solicitation listed the labor categories and the estimated number of hours for each labor category that would be required to perform the contract. Offerors were required to propose fully burdened, fixed hourly rates for each labor category set forth in the RFP. The solicitation also provided that the prices would be evaluated for realism and that a price proposal determined to be unrealistic would be assessed as having a high performance risk. The solicitation provided that the price realism evaluation:

"may include consideration of actual salaries being paid for similar work under other NAVAIR contracts, salaries being paid for comparable civil service employees, excessive amounts of competitive time (uncompensated overtime), Defense Contract Audit Agency (DCAA) audit information, and evaluation of compensation for professional employees."

The solicitation informed offerors that the government intended to evaluate proposals and award the contract without holding discussions except for those conducted for the purpose of minor clarifications. The award was to be made to the offeror whose proposal was considered to be the most advantageous to the government; in reaching the award

decision, the technical factors were considered slightly more important than price.

Six offerors including the protester and the awardee responded to the solicitation. The technical proposals were evaluated by a technical evaluation team (TET) and the cost proposals were evaluated by a cost evaluation team (CET). The TET evaluated the proposals by assigning each factor, and the overall technical proposal, an adjectival rating of outstanding, better, acceptable, marginal, or unacceptable. The TET rated VSS better for sample tasks, acceptable for personnel, better for management plan and corporate experience, and better overall. JWK was rated acceptable for all four evaluation factors and acceptable overall.

In evaluating the price proposals, the CET compared the proposed labor rates to those being paid to comparable civil service employees, to those being paid on the fourth option year of JWK's incumbent contract, and to those being paid under similar contracts. The CET also considered the offerors' proposed compensation plans, including the amount of uncompensated overtime the offerors proposed, and information provided by the DCAA. The CET found that JWK proposed salaries that were too low, expected its employees to work an excessive amount of uncompensated overtime, and offered an average compensation plan (benefits package). As a result, the CET rated JWK's price proposal unrealistic with a high performance risk. VSS' price proposal was rated realistic.

The reports prepared by the TET and the CET were forwarded to the procurement review board (PRB), which was responsible for assessing risk, reducing technical scores where required, and recommending an offeror for award to the source selection official (SSO) who was responsible for selecting the awardee. The PRB found that JWK's low salaries and excessive uncompensated overtime presented a risk in the personnel area that JWK would be unable to retain a qualified work force. The PRB also agreed with the CET that JWK's low salaries and excessive uncompensated overtime resulted in an unrealistic price proposal that presented a high performance risk. On the other hand, the PRB found that VSS submitted a proposal that was technically better, with no critical deficiencies and a realistic price proposal. As a result, the PRB recommended VSS for award.

The SSO agreed with the PRB's recommendation. In doing so, he considered the evaluations performed by the TET, the CET, and the PRB. In addition, the SSO independently evaluated the proposals. The SSO concluded that excessive uncompensated overtime and low salaries proposed by JWK created a risk that JWK would be unable to retain its personnel and thus represented a high performance risk. The

SSO also agreed with the PRB that VSS offered a sound technical proposal and a realistic price proposal and that VSS offered the best value to the government. As a result, VSS was selected for award.

PROTEST OVERVIEW

JWK asserts that the Navy's determination that JWK's proposal presented a high performance risk is unreasonable because the Navy unreasonably determined that JWK's proposed salaries were too low and that JWK proposed excessive uncompensated overtime.¹ JWK also protests that the Navy improperly evaluated its proposal for corporate experience, improperly failed to hold discussions with the firm, and failed to perform a price/technical tradeoff to justify awarding the contract to VSS priced [deleted] higher than the price proposed by JWK.²

¹In its protest, JWK also argued that the Navy used performance risk as an unstated evaluation criterion and therefore improperly eliminated JWK's proposal from consideration for award based on performance risk. In its protest report, the Navy disputed this allegation, pointing out that the solicitation specifically provided that a price proposal that was judged unrealistic would be assigned high performance risk and that performance risk would be considered in determining which proposal was most advantageous to the government. Since JWK did not rebut the agency's explanation in the comments it submitted in response to the report, we consider this issue abandoned. Knoll N. Am., Inc., B-250234, Jan. 11, 1993, 93-1 CPD ¶ 26. Similarly, in its protest, JWK challenged the agency's evaluation of each technical factor. However, after receiving the agency report, which explained the basis of the evaluation for each factor, JWK only addressed the corporate experience factor in its protest comments. Accordingly, we find that JWK abandoned its protest of the evaluation of its technical proposal with respect to each technical factor except the corporate experience factor. Id.

²In the comments JWK submitted in response to the agency report on May 11, 1994, JWK for the first time asserted that the Navy improperly rated both JWK and VSS acceptable in the personnel area because the agency found that 89 percent of JWK's personnel were acceptable and only 75 percent of VSS' proposed personnel were acceptable. This protest ground was evident from the agency report which JWK received on April 12. A protest based on other than an impropriety apparent from the face of the solicitation must be filed within 10 working days after the protest basis is known or
(continued...)

As we discuss below, the Navy reasonably determined that JWK proposed low salaries and excessive uncompensated overtime resulted in an unrealistic price proposal and a high performance risk. We also conclude that the Navy reasonably evaluated JWK's corporate experience, correctly awarded the contract without holding discussions, and performed a proper price/technical tradeoff in determining to award the contract to VSS despite its higher price.

PROPOSAL EVALUATION

Personnel Factor and Price Realism/Performance Risk Assessment

The RFP required offerors to submit resumes for all personnel being proposed for the positions of Program Manager, Senior Logistics Manager, and Senior Analyst. The solicitation provided that the evaluation of proposals under the personnel factor would be based on the extent to which the resumes submitted by the offeror reflected the education and experience required by the labor category descriptions. The RFP also provided that annual salaries would be evaluated to verify the offeror's clear understanding of the work to be performed and their capability to obtain and keep suitably qualified personnel to meet mission objectives. The solicitation advised that unrealistic annual salaries and/or unrealistic fully burdened hourly rates would result in a reduced technical rating. With regard to price, the RFP required offerors to propose fully burdened, fixed hourly rates for each required labor category and to demonstrate support for the proposed rates. The solicitation provided that prices would be evaluated for realism, including consideration of "actual salaries being paid for similar work under other NAVAIR contracts, salaries being paid for comparable civil service employees, excessive amounts of competitive time, DCAA audit information, and evaluation of compensation for professional employees. . . ." The RFP also advised potential offerors that a price proposal that was determined to be unrealistic would be assessed as having high performance risk.

The PRB and the SSO determined that for the personnel factor JWK's proposal presented a risk that JWK would be unable to

² (...continued)

should have been known, 4 C.F.R. § 21.2(a)(2) (1994). Further, each new basis of protest must independently satisfy our timeliness requirements. Bendix Oceanics, Inc., B-247225.6, June 29, 1993, 93-2 CPD ¶ 25. Since this issue was evident from the agency report, but not raised within 10 working days after JWK received the report, it is untimely.

retain its personnel because it proposed low salaries and high compensated overtime. They also used this information to conclude that JWK's price proposal was unrealistic and presented a high performance risk. JWK argues that the Navy unreasonably determined that it proposed low salaries and excessive uncompensated overtime. According to JWK, because the Navy's evaluation of its proposal in these areas was unreasonable, its conclusion that JWK's proposal presented a high performance risk also is unreasonable.

Proposed Salaries

In determining that JWK's proposed salaries were too low to retain a qualified work force, the Navy compared JWK's proposed labor rates and salaries with the rates and salaries on JWK's incumbent contract; JWK's proposed average fully burdened labor rate with rates on contracts N00019-88-D-0076 and N000140-92-C-8004; JWK's fully burdened rates for key labor categories with those rates on other recently awarded contracts; JWK's proposed rates with the awardee's proposed rates and with the government's estimate; and JWK's proposed salaries with general schedule (GS) salaries of comparable civil service employees.

JWK challenges each basis which the Navy considered in determining that its proposed salaries were so low as to create a risk that JWK would be unable to retain qualified personnel to perform the contract.³ While we have considered each of JWK's arguments, our role is not to determine if each individual finding of the Navy concerning JWK's proposed salaries is accurate. Rather, our role is to determine whether the Navy had a reasonable basis for concluding that JWK's proposed salaries would create a risk that JWK would be unable to retain its work force. Based on our review, we conclude that the Navy reasonably determined that JWK's proposed rates, were below the awardee's proposed rates on recently awarded contracts. Consequently, we find that the Navy reasonably determined that JWK's salaries were

³JWK also asserts that the determination that its compensation plan represented a high risk is contradicted by a statement in the CET report that the compensation plan demonstrated realism and indicated the capability to obtain and keep suitably qualified personnel to meet mission objectives. The CET's positive comments, however, concerned only the benefits offered by JWK, such as sick leave, annual leave, and healthcare. The risk analysis, however, considered the overall compensation plan including the fully burdened rates which, as discussed, the agency found to be low.

sufficiently low as to create a risk that JWK would have difficulty retaining its personnel.'

JWK asserts that because it proposed its incumbent employees at their current salaries, the Navy's comparison of JWK's proposed rates with civil service salaries is irrelevant to JWK's ability to retain its work force. We disagree. A procuring agency may properly consider civil service rates for such comparison purposes. See VSE Corp., B-247610.2, Aug. 6, 1992, 92-2 CPD ¶ 81. JWK also asserts that the Navy's comparison of JWK's proposed rates for key employees against the proposed rates for the same employee categories on five other contracts is improper because these contracts are not comparable to the current solicitation. JWK has not established, however, that the contracts are not sufficiently similar to permit the comparison. Accordingly, we have no basis to conclude that the rates for the same labor categories were improperly compared.

Finally, in response to the Navy's comparison of JWK's proposed fully burdened rate of [deleted] to the government's estimate of \$30.08 and to VSS' proposed fully burdened rate of [deleted], JWK questions whether the government's estimate is realistic. Since the estimate is in line with the rate proposed by VSS and at the midpoint of the offers received, we have no reason to conclude that it is not realistic.

Uncompensated Overtime

The Navy found that JWK proposed to have its employees work 47 hours per week including 7 hours per week of uncompensated overtime. The Navy viewed 7 hours per week of uncompensated overtime as excessive and as contributing to the risk that JWK would be unable to retain its employees. The Navy reached its conclusion that JWK would require its employees to work 47 hours per week despite representations in the JWK proposal that its employees would work 45 hours per week because the Navy found that JWK understated its indirect hours (those hours associated with leave and holidays). More specifically, the Navy found that JWK proposed 200 indirect hours per year for each employee, including 80 hours for 10 paid holidays and 120 hours, or 15 days, for sick and annual leave. JWK's employees are

'JWK also asserts that the Navy erroneously determined that JWK's turnover on its incumbent contract was the result of unrealistically low salaries. Since we have concluded that the Navy reasonably determined that JWK proposed unrealistically low salaries on the current solicitation without regard to the turnover on its incumbent contract, we have not considered the turnover issue.

entitled to 5 days per year of sick leave and, based on their years of service, from 5 to 25 days per year of annual leave. Thus, the Navy concluded that the 200 indirect hours JWK included in its proposal for its employees were sufficient to cover only the leave earned by newer employees. The Navy computed that if the longer service employees used the leave they were entitled to, they would be required to work more hours per week than proposed to compensate for the additional hours they were out of the office on leave. On average, this amounted to 47 hours per week.

We find that the Navy reasonably concluded that despite JWK's representation in its proposal that its employees would work only 45 hours per week, they would be required to work more hours per week to account for the additional leave hours. Although JWK now attempts to explain that based on the leave most of its employees actually earn, JWK's proposed figure of 5 hours of uncompensated overtime per week was accurate, proposals generally must be evaluated solely on the basis of the information provided in the proposal. Monopole, S.A., B-252745, July 23, 1993, 93-2 CPD ¶ 51. The agency's evaluation was based on JWK's proposal as submitted and, on that basis, was reasonable. JWK's attempt now to further explain its proposal does not change that result.

Performance Risk

As stated above, the Navy concluded based on JWK's low salaries and excessive uncompensated overtime that JWK's proposed price was unrealistic and that its proposal presented a risk that JWK would be unable to retain its personnel and a high performance risk. JWK challenged the Navy's conclusion that its proposal presented a high performance risk because it did not believe that the Navy reasonably determined that it proposed low salaries and excessive uncompensated overtime. Since we have determined that the Navy's conclusions regarding these factors were reasonable, we also find the Navy reasonably determined that JWK's proposed price was unrealistic and that its proposal presented a high performance risk. In this regard, procuring agencies can reasonably conclude that a performance risk is created when a contractor is required to perform services with an undercompensated work force, Oshkosh Truck Corp., B-252708.2, Aug. 24, 1993, 93-2 CPD ¶ 115, and where employees are expected to work an excessive amount of uncompensated overtime. Quantum Research, Inc., B-242020, Mar. 21, 1991, 91-1 CPD ¶ 310.

Corporate Experience

The solicitation provided that the evaluation of corporate experience would be based on the extent, depth, and quality of recent corporate experience in performing the same or similar work. It further provided that past performance and "systematic improvement" would be evaluated and that particular emphasis would be placed on the degree to which an offeror could demonstrate a relationship between its past performance and its systematic improvements. According to the RFP, the evaluation could include contacting other customers of the offeror concerning the timeliness and quality of the offeror's performance. The TET found that JWK had experience relevant to the RFP requirements and rated JWK acceptable for corporate experience. However, the TET noted that some of the systematic improvements JWK cited concerned improvements in Navy processes rather than improvements in JWK processes. In reviewing the TET's evaluation, the PRB stated that internal documents showed better to average performance and demonstrated the ability to provide on time, within budget performance. On one contract, however, in Pensacola, JWK failed to comply with the substitution of personnel clause.

JWK protests that based on the PRB statement that JWK had recent relevant experience and better to average performance and the performance summary indicating that JWK received better to average evaluations on recent contracts, it should have received a higher rating than acceptable for corporate experience. According to JWK, it did not receive a higher rating because the PRB downgraded its proposal in light of its failure to follow the substitution of personnel clause when it performed a contract in Pensacola for the Air Force. JWK argues that it was unreasonable for the PRB to downgrade the evaluation of its proposal solely on this basis.

The PRB did not assign the acceptable rating to JWK's proposal based solely on concerns relating to the Pensacola contract. Rather, in evaluating JWK's proposal against the corporate experience factor, the TET found that JWK's experience was relevant and recent based on a review of 16 contracts, and gave JWK a rating of better for its performance on these contracts. The corporate experience factor, however, did not encompass only past contract performance; it also included consideration of the offeror's systematic improvements. The TET found that JWK's proposal discussed systematic improvements but in some cases it discussed agency improvements rather than JWK improvements. Based on its overall review, the TET rated JWK acceptable for corporate experience. Since JWK has not challenged the evaluation of its proposal under the corporate experience factor other than to the extent it argues that the PRB downgraded its proposal due to the Pensacola contract, we

have no reason to conclude that the evaluation was unreasonable.

AWARD WITHOUT DISCUSSIONS

JWK protests that the Navy improperly awarded the contract to VSS on the basis of initial proposals without holding discussions. JWK asserts that given its [deleted] price advantage, the agency should have held discussions with it concerning turnover.

Where a solicitation is issued by an agency of the Department of Defense, and it advises offerors of the agency's intent to award the contract without holding discussions, the agency may properly do so, even awarding a contract to a firm not offering the lowest price. Federal Acquisition Regulation § 15.610(a)(4); Macro Serv. Sys., Inc., B-246103; B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200. While the contracting officer has the discretion to hold discussions, in such circumstances, the contracting officer may dispense with discussions where he has a reasonable basis for concluding that the proposal of the intended awardee will result in the contract most advantageous to the government. See The Jonathan Corp., Metro Serv. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174.

Here, as discussed above, the Navy reasonably determined that JWK's proposal had a critical deficiency in the price area and that there was a high risk that JWK would be unable to retain its personnel. The Navy also reasonably determined that the proposal submitted by VSS had no deficiencies, was overall technically superior to the proposal submitted by JWK, and was reasonably and realistically priced. Accordingly, the Navy could reasonably determine that VSS' proposal represented the best value to the government and therefore properly could award the contract to VSS without holding discussions. See A Plus Servs. Unlimited, B-255198.2, Jan. 31, 1994, 94-1 CPD ¶ 52.

AWARD DECISION

JWK asserts that the Navy's decision to award the contract to VSS at a price higher than the price offered by JWK is unreasonable and inconsistent with the award criteria which provided that technical factors were only slightly more important than price factors. JWK asserts that it submitted an acceptable proposal at a substantial savings and that the Navy has not justified the award decision.⁵ JWK further

⁵JWK in its comments also argues that the agency may not reject or downgrade a fixed-priced offer because it is too
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argues that even if its price was considered unrealistic, the Navy still was required to consider JWK's low price in a price/technical tradeoff.

In a negotiated procurement, there is no requirement that award be made on the basis of cost or price unless the solicitation so specifies. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. Price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the stated evaluation criteria. Award may be made to a higher-rated, higher-priced offeror where the decision is consistent with the evaluation factors and the agency reasonably determines that the technical superiority of the higher-priced proposal is worth the additional expense. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44.

Here, in deciding to award the contract to VSS, the SSO stated that while JWK's proposal was acceptable overall, the excessive uncompensated overtime and high risk of personnel retention problems indicated a high performance risk which precluded JWK from offering the best value to the government. The SSO also considered that VSS' proposal had no deficiencies, realistic annual salaries, and low uncompensated overtime; based on this analysis, the SSO determined that the proposal submitted by VSS offered the best value to the government. The SSO pointed out that the contract to be awarded will support all major Navy tactical aircraft and weapon systems and, due to the widespread impact of the effort and the high performance risk, acceptance of JWK's proposal could result in a national security risk. JWK asserts that the SSO did not specifically discuss proposed price in his price/technical tradeoff, that is, that the SSO did not discuss JWK's [deleted] price advantage. However, in the statement the SSO prepared for the protest, the SSO states that, "I consciously made the decision that it was in the Government's best interest--most advantageous to the Government--to pay the rates proposed by VSE to gain the benefits of: low turnover; quality work; low rework; low government training, oversight and management, while

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low. JWK was aware of this basis of protest no later than April 12 when it received the agency's report, which explained the basis for the award decision. Since JWK did not raise this issue until more than 10 working days after it received the report, it is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).

avoiding extremely high performance risk with . . . JWK." Further, because he considered JWK's proposed price unrealistic, the SSO did not believe that the government would actually receive a price benefit if it awarded the contract to JWK. In this regard, far from considering JWK's proposed price an advantage, the SSO considered it a problem that could result in delayed and questionable performance. Thus, the SSO did consider price in deciding to award the contract to VSS. Accordingly, we find that the SSO properly followed the evaluation criteria and reasonably determined that an award to VSS presented the best value to the government.

The protest is denied.

Robert P. Murphy
Acting General Counsel