



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Vinnell Corporation

File: B-270793; B-270793.2

Date: April 24, 1996

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Clarence D. Long III, Esq., and Scott W. Singer, Esq., Department of the Air Force, for the agency.

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DIGEST

1. Agency's assessment of an offeror's proposal as entailing "moderate" proposal risk under a single evaluation factor does not mandate an upward adjustment of the offeror's proposed costs where the record reflects that the agency reasonably considered the aspect of the offeror's proposal which it assessed as entailing "moderate" risk and determined that no cost adjustment was warranted.

2. New and independent grounds of protest concerning specific aspects of the agency's cost realism analysis and proposal risk assessment are untimely where the protester knew, or should have known, of these protest bases upon its receipt of the agency report, but first raised these bases of protest in a supplemental protest and in its comments on the agency report filed more than 14 days after the protester's receipt of the agency report.

DECISION

Vinnell Corporation protests the award of a contract to Serv-Air, Inc. under request for proposals (RFP) No. F04689-95-R-0015, issued by the Department of the Air Force, for military housing maintenance and civil engineering services.

We deny the protests in part and dismiss them in part.

The RFP, issued on May 5, 1995, provided for the award of a cost-plus-award-fee contract, with certain fixed-price elements, for a base period of 1 year with four 1-year options. The successful contractor will provide military housing maintenance and repair services for 806 dwellings, and all labor (including professional engineering and architectural services), equipment, materials, and supplies to support other facilities, and the equipment installed on those facilities, at the Onizuka Air Station and certain other Air Force facilities in Sunnyvale, Pleasanton, and Mountain View, California.

The RFP requested that each offeror submit a management/technical and a cost proposal, and provided detailed instructions for their preparation. The solicitation stated that award would be made to the responsible offeror whose offer, conforming to the solicitation, represented the best value to the government; that the evaluation areas to be considered were, in descending order of importance, management, technical, and cost; and that cost was significantly less important than management and technical. The solicitation listed the following management and technical evaluation criteria and factors:

A. Management Criterion

Factor 1: Key Personnel

Factor 2: Program Management

B. Technical Criterion

Factor 1: Operations and Maintenance

Factor 2: Environmental

Factor 3: Military Family Housing

Factor 4: Scenario

Factor 5: Resource Management

Factor 6: Engineering and Planning

The solicitation informed offerors that factors 1 and 2 within the management criterion were equal in importance, and that, under the technical criterion, factors 1, 2, and 3 were equal in importance, with factors 4 and 5 being less important than factors 1, 2, or 3, and factor 6 being the least important. The RFP advised offerors that their proposals would be evaluated for proposal risk, which would involve the assessment of whether the proposed methods of accomplishing the requirements of the contract were, for example, risky, standard, or practical. Offerors were also informed that their proposals would be evaluated for performance risk, which would involve the assessment of the agency's confidence in each offeror's ability to successfully perform as proposed based upon, among other things, the offeror's work record and experience. The solicitation informed offerors that their cost proposals would be evaluated for realism, completeness, and reasonableness.

The agency received five proposals, including Vinnell's (the incumbent contractor) and Serv-Air's, by the RFP's closing date of July 7, 1995. In accordance with the applicable source selection plan, the management/technical proposals were evaluated for performance and proposal risk,¹ as well as under a color/adjectival rating scheme,² for each of the listed management and technical evaluation factors. The proposals of Vinnell, Serv-Air, and another offeror were included in the competitive range. Written and oral discussions were conducted, during which offerors were permitted to, among other things, comment on any concerns raised by the Defense Contract Audit Agency (DCAA) regarding the offerors' proposed direct and indirect cost rates. Best and final offers (BAFO) were requested, received, and evaluated.

Vinnell's BAFO received a rating of "blue" under the key personnel factor of management and ratings of "green" under the other management factor and under each of the technical factors. Vinnell's proposal was also rated as having "low" proposal and performance risk under each of the technical and management factors. The agency determined, based upon its comparison of Vinnell's proposal with the agency's independent government estimate, and review of Vinnell's proposed direct and indirect rates, person-years of effort, labor mix, and other direct rates and costs, that Vinnell's cost proposal was realistic, complete, and reasonable, and made no adjustments to Vinnell's proposed cost of \$49,295,711.

Serv-Air's proposal received a rating of "green" under each of the evaluation factors, and was rated as having "moderate" proposal risk under the program management factor and "low" proposal risk under each of the other technical and management factors. Serv-Air's proposal was rated as having "low" performance risk under all factors. The agency, through the same methods it had used in evaluating Vinnell's proposal, determined that Serv-Air's cost proposal was realistic, complete, and reasonable, and made no adjustments to Serv-Air's proposed cost of \$46,361,820.

The cognizant source selection official determined that Serv-Air's proposal represented the best overall value to the government under the evaluation criteria and factors set forth in the solicitation, and award was made to Serv-Air on December 18.

¹The evaluation ratings for proposal risk and performance risk were high, moderate, and low.

²The color/adjectival ratings were blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable.

After being informed that Serv-Air had received the award and being debriefed by the agency, Vinnell filed a protest with our Office, specifically asserting that the agency improperly "failed to conduct any cost realism analysis or other cost analyses" of the offerors' proposals, and that because of this "Serv-Air's management proposal was improperly evaluated." Specifically, Vinnell pointed out that Serv-Air's proposal provides for the use of its "Capella" computer system to automate certain administrative functions and to justify "fewer personnel than would be required absent utilization of such a program." Vinnell notes that although the agency evaluated Serv-Air's proposal as having "moderate" risk under the program management factor because of its concerns with "Capella" and Serv-Air's attendant staffing level, it made no adjustment to Serv-Air's proposed costs. The protester argues that the agency's failure to make any upward cost adjustment here was unreasonable.

When an agency evaluates a proposal for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 15.605(c). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represents what the contract should cost, assuming reasonable economy and efficiency. McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. Infotec Dev., Inc., B-258198 et al., Dec. 27, 1994, 95-1 ¶ 52.

First, we note that the agency, in response to Vinnell's initial argument that the agency failed to perform any cost realism analysis, described and documented its analysis in its report responsive to the protest. The only specific aspect of the cost analysis that Vinnell protested (in its initial protest) involves its contention that Serv-Air's probable costs should have been increased to account for the evaluated moderate risk under the program management factor relating to Serv-Air's use of the Capella computer system.³

³Vinnell also argued in its initial protest that the agency improperly evaluated its management/technical proposal, acted improperly by permitting offerors to amend their initial proposals in response to discussions, and evaluated proposals under an unstated evaluation factor. The agency in its report submitted in response to this protest addressed in detail each of these arguments. Vinnell subsequently informed our Office that it was not pursuing these protest grounds.

The record shows that Serv-Air proposed the use of its "Capella" computer system as part of its management and technical approach. According to Serv-Air, Capella "'automates' 20 major functional support areas," such as purchasing, planning and estimating, and job cost accounting. Essentially, all of the information needed for the management of the contract by Serv-Air will be maintained on Capella. For example, as described by Serv-Air, the administrative work, such as preparing work-orders, planning the work to be accomplished, checking to see if the required materials are available, establishing work schedules, managing inventory levels, and estimating and tracking associated costs, are performed on-line. Serv-Air maintains that because Capella automates the necessary administrative processes, it can perform the administrative tasks quicker and more efficiently than they have been performed historically. Serv-Air adds that because, for example, the work schedules and inventory levels are continually accessed and updated by the personnel administering the contract, the information maintained on Capella remains current, which further enhances Serv-Air's ability to efficiently schedule and perform the work required.

The agency found in its evaluation of Serv-Air's management/technical proposal that, as described by Serv-Air, Capella will provide "critical information for decision-making and management of the contract at all levels of [Serv-Air's] organization," and would "benefit . . . the Government because it should reduce time in contract management and save cost in manning reductions." However, the agency confirmed during discussions that Serv-Air had not used, and was not using, Capella in the performance of any contracts, and that although Serv-Air's proposed key personnel "have over 230 years of related experience and proven similar experience," they apparently did not have experience with Capella or training as to its operation. The agency concluded here that Serv-Air's proposed management approach, which relied heavily on the successful implementation of Capella, could "potentially cause some disruption of schedule, increase in cost, or degradation of performance" because, among other things, Serv-Air's proposed time savings and manning reductions may not be realized. The agency thus assessed Serv-Air's proposal as having "moderate" proposal risk under the program management factor. As mentioned previously, the agency did not make any upward adjustments to Serv-Air's proposed costs because of this risk assessment.

The protester contends that since the agency assessed Serv-Air's management proposal as having "moderate" risk because of its concerns with Capella, the agency was also required to adjust Serv-Air's proposed costs upwards. In support of this contention, the protester points to a statement appearing in the source selection advisory council (SSAC) report that should problems occur with Capella, "work-arounds may include using standard methods and/or hiring additional staff," and to a statement made by the source selection authority (SSA) in his source selection decision that the risk associated with Serv-Air's management approach associated with its proposed use of Capella "is minimized by the availability of existing

management systems and/or additional personnel." The protester concludes that because the agency recognized that Serv-Air's Capella system entailed "moderate" risk, and that a possible remedy should the system not work as planned would be to add personnel, the agency acted unreasonably in not adjusting Serv-Air's proposed costs upwards to account for the costs associated with adding these personnel.

We find nothing unreasonable with the agency's determination not to upwardly adjust Serv-Air's proposed costs because of the agency's concerns with Serv-Air's use of Capella. The agency considered the administrative efficiencies offered by Capella and their impact on the labor hours required for successful performance of the contract, and weighed these considerations against Serv-Air's lack of experience with the system. Although the agency concluded that there was "moderate" risk associated with Serv-Air's use of Capella, there is nothing in the record indicating that the agency believed, or should have believed, that it was more likely than not that Serv-Air would not perform at its proposed costs. In this regard, a government cost realism determination is no more than an informed judgment of what costs should be reasonably incurred by acceptance of a particular proposal. See CACI, Inc.--Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542.

The fact that there is some risk associated with an aspect of a proposal does not mean that an agency cannot regard the costs of performance, as proposed, as realistic, inasmuch as risk is simply a reflection of the degree to which what is proposed may or may not happen. Specifically, a proposal that is assessed as having moderate risk is one that, according to the agency's source selection plan, "[c]an potentially cause some disruption of schedule, increase in cost, or degradation of performance. However, special contractor emphasis and close government monitoring will probably be able to overcome difficulties." That being so, we see no reason why an agency should be required, in performing a cost realism analysis, to adjust costs to reflect what may not happen in circumstances where the agency believes that what is proposed is most likely to happen.

Vinnell argues in a supplemental protest, filed with our Office on February 9, that the agency unreasonably evaluated Serv-Air's proposal under the technical factors as having "low" rather than "moderate" proposal risk, basically contending that since Capella was a prominent aspect of Serv-Air's technical approach, the evaluated risks associated with its use should have also been considered in evaluating proposal risk under the technical factors. In this protest, Vinnell also argues that the agency improperly failed to account for the effect of Serv-Air's acquisition by the Raytheon Company during the pendency of this procurement in its evaluation of various aspects of Serv-Air's proposal. In its comments on the agency report, filed with our Office on February 12, the protester again raises these two supplemental arguments, and also asserts that the agency's cost realism analysis is flawed because the agency failed to upwardly adjust Serv-Air's proposed costs to account for what

Vinnell characterizes as the agency's acknowledgment of "a significant shortfall in Serv-Air's manning, independent of its evaluation of Capella."

Our Bid Protest Regulations require that protests not based upon solicitation improprieties be filed not later than 14 calendar days after the basis of protest is known, or should have been known, whichever is earlier. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1996). The protest bases set forth in Vinnell's supplemental protest and comments are based upon information contained in the agency report on the protest, which was received by Vinnell on January 26; Vinnell's supplemental protest and comments on the agency report were filed, respectively, 15 and 18 days after Vinnell's receipt of the agency report. Thus, we consider these supplemental protest grounds untimely filed.

Vinnell nevertheless contends that the arguments raised in its supplemental protests and comments on the agency report are "inextricably intertwined" or "embodied" in its initial protest to our Office. The timeliness of specific bases of protest raised after the filing of a timely protest depends upon the relationship the later-raised bases bear to the initial protest. GE Gov't Servs., B-235101, Aug. 11, 1989, 89-2 CPD ¶ 128. Where the later raised bases present new and independent grounds for protest, they must independently satisfy our timeliness requirements; conversely, where the later raised bases merely provide additional support for an earlier, timely raised protest basis, we will consider the later-raised arguments. Id.

In our view, each of the later-raised arguments raised in Vinnell's supplemental protest and comments on the agency report constitute new and independent bases of protest, rather than additional supporting material for its earlier protest contentions. Specifically, Vinnell's later-raised argument concerning the reasonableness of the agency's "low" proposal risk assessment of Serv-Air's proposal under the technical factors provides no support for, and is distinct from, its argument that Serv-Air's proposed costs should have been adjusted upwards because its proposal received a "moderate" proposal risk rating under the program management factor of management. That is, the later-raised argument challenges the agency's evaluation of proposal risk, whereas the initial argument involves a challenge to the propriety of a distinct aspect of the agency's cost evaluation; a challenge to an agency's evaluation of proposal risk under a specific evaluation factor is distinct from, and provides no support for, an assertion that the agency's evaluation of cost proposals was flawed. Similarly, the protester's specific arguments that the agency unreasonably failed to consider in the cost and technical evaluation the effect of Serv-Air's acquisition by Raytheon is not "inextricably intertwined" with Vinnell's initial assertion that the agency "failed to conduct any cost realism analysis or other cost analysis" of the offerors' proposals. Additionally, Serv-Air's argument, in its comments on the agency report, that the agency cost realism analysis is flawed because it failed to account for a "significant shortfall in Serv-Air's manning . . . independent of Capella" is, by its very terms, independent of

the protester's initial protest against the failure to upwardly adjust Serv-Air's costs because of Capella.

Vinnell argues, in the alternative, that its later-raised protest bases are timely because they are based upon documents received from the agency on January 31 in response to Vinnell's complaints that the agency report as issued failed to include a number of documents specifically requested by Vinnell in its initial protest.

Although the documents received by Vinnell on January 31 provide additional support for Vinnell's supplemental protest bases, it is clear from our review of the record that Vinnell knew or should have known of each of its supplemental protest bases upon its receipt of the agency report on January 26. This report consisted of 12 notebooks of documents, including, among other things, the source selection evaluation board (SSEB) report, the SSAC report, and DCAA and Defense Logistics Agency (DLA) reports. The SSEB and SSAC reports provide summaries of Serv-Air's proposal, and a factor-by-factor evaluation summary that sets forth the ratings of the proposal. These reports describe in some detail Serv-Air's proposed management/technical approach and the agency's evaluation of the proposals under each of the evaluation criteria and factors.

Specifically, the narrative descriptions in the SSEB and SSAC reports contain considerable information regarding Serv-Air's Capella system and the agency's views as to its merits; it is clear from the narratives that Capella was integral to Serv-Air's entire proposal, and that the agency determined that it entailed a "low" proposal risk with regard to the technical factors. As such, Vinnell should have known from these documents alone of its protest basis regarding the agency's determination that under the technical factors Serv-Air's proposal posed "low" rather than "moderate" proposal risk. Similarly, because the DLA, DCAA, SSEB and SSEC reports discuss Serv-Air's acquisition by Raytheon, and there is no mention in the SSEB and SSAC reports of the impact of that acquisition on Serv-Air's proposed costs or technical ratings, it should have been readily apparent to Vinnell that the agency had not accounted for the effect of the acquisition on the merits of and risks associated with Serv-Air's management/technical approach and proposed costs in its evaluation of Serv-Air's proposal. Finally, Vinnell's protest basis concerning the agency's acknowledgment of "a significant shortfall in Serv-Air's manning, independent of Capella," is based upon the deficiency reports and clarification requests issued by the agency and Serv-Air's responses, all of which were included in the agency's report.

In sum, Vinnell's supplemental protests were untimely filed more than 14 days after the bases of protest were known or should have been known, and will not be considered.

The protest is denied in part and dismissed in part.

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of the United States