



United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-281983

April 14, 1999

The Honorable Pete Sessions
House of Representatives

Subject: Acquisition Reform: Review of Selected Best-Value Contracts

Dear Mr. Sessions:

This letter responds to your request for information regarding the government's best-value awards to contractors other than those submitting the lowest-priced offers.¹ In addressing your request, we identified best-value contracts that included premiums, the dollar amount of those premiums, and the documentation government buyers used to support their award decisions. We have defined premiums as the difference between the awardee's evaluated price and that of the lowest acceptable offeror. We reviewed the regulations that cover best-value awards and over 250 contracts whose solicitations stated that the government was willing to consider offerors other than the lowest one. These contracts were awarded by 37 buying organizations, which were chosen to reflect a broad range of agencies, the goods and services they purchased, and geographic locations. These organizations were not selected randomly; consequently, our results cannot be generalized to all buying organizations.

INFORMATION ON CONTRACTS REVIEWED

Of the over 250 contracts we reviewed, 53 were awarded to other than the lowest offeror because the buying official decided that a higher offeror provided the government the best value. Those 53 contracts had evaluated prices totaling about \$5.3 billion. The premiums accounted for about 7 percent, or about \$367 million, of the total value.

¹ The Federal Acquisition Regulation (FAR) defines "best value" as the expected outcome of an acquisition that provides the greatest overall benefit in relation to the government's requirement. Agencies can obtain the best value using different types of source selection approaches to reflect the relative importance of cost or price. The best-value source selection approach discussed in this report is one in which the government can award a contract to other than the lowest-priced offeror if the buyer determines that a particular higher-priced proposal would provide a greater value to the government and that this greater value is worth the extra cost.

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The Federal Acquisition Regulation (FAR) does not specify the types of goods or services for which premiums may be paid. However, we found that the majority of contracts that involved premiums were for sophisticated government products and services. These included contracts for cleanup activities at a former nuclear production facility, construction of chemical weapons disposal facilities, and procurement of various items such as amphibious transport dock ships and radar shelters.

Laws and the FAR require the government to clearly state evaluation factors and their relative importance in the solicitation and require award decisions to be based solely on those factors. For the 53 contracts we reviewed, government buyers complied with the requirements and linked their decisions for selecting the higher-priced proposals to the key evaluation factors identified in the solicitations. The FAR was changed in 1997 to require agencies to document, in the contract file, that the perceived benefits of the higher-priced proposal merited the additional cost.² Although contracts in our review predated this requirement, documentation citing such justifications was included for each of the 53 contracts.

Government buyers frequently based their decisions to choose higher-priced offers on the offerors' superior technical ability, exceptional management practices, or outstanding relevant experience. For instance, information in the contract file supported premium award decisions by relating the selection to the awardee's superior technical approach and exceptional management practices, which in some cases were expected to result in savings over the contract period. In one instance, the savings were expected to more than compensate for the premium. In another case, the awardee's ability to earn fees was linked to contract performance. If the awardee failed to deliver the expected performance, the fee would be reduced. We also found documentation that related the premium decision to the awardee's excellent ability to meet technical requirements within statutory timeframes because of superior relevant experience with similar previous contracts.

SCOPE AND METHODOLOGY

Federal agencies do not maintain central data showing whether government buyers awarded contracts to other than the lowest-priced offeror. We therefore used government databases to identify contracts for which the solicitation provided for this approach. We focused our review on new contracts awarded in fiscal years 1996 and 1997 through full and open competition with more than one offeror and initial obligation values of \$500,000 or more.³ For civilian buying organizations, we looked at contracts with initial obligations of \$500,000 to \$1 million and of \$2.5 million and above. For military buying organizations, we looked at contracts with initial obligations of \$500,000 to \$1 million and of \$5 million and above.

² FAR Part 15.101-1(c) revised in September 1997 and implemented January 1, 1998.

³ "Full and open competition" when used regarding a contract action means that all responsible sources are permitted to compete.

During fiscal years 1996 and 1997, military and civilian buying organizations awarded 1,954 such contracts.

Within this universe of contracts, we selected 37 buying organizations so as to cover the broad range of military and civilian agencies, the goods and services they purchased, and geographic locations.⁴ These organizations were not selected randomly; consequently, our results cannot be generalized to all buying organizations. For each selected buying organization, we reviewed all contracts meeting our review criteria. They totaled 404 awards, or about 21 percent of the universe. We reviewed solicitation information for these contracts and identified 262 whose solicitation stated that the government was willing to consider other than the lowest offeror.⁵

In those instances where awards were made to other than the lowest offeror, we reviewed documentation in the contract file to determine the benefit the government expected to receive in exchange for the premium. When documentation was not clear, we discussed our analyses with appropriate agency officials. We also obtained and reviewed federal acquisition regulations and buying organization guidance related to contracting by negotiation and best-value procurement, including the recently revised FAR Part 15, which covers negotiated procurements.

We conducted our work from June 1998 to April 1999 in accordance with generally accepted government auditing standards.

AGENCY COMMENTS AND OUR EVALUATION

We provided a draft of this letter to the Department of Defense (DOD) and the Office of Federal Procurement Policy (OFPP) for formal review and comment. We also provided copies to the civilian agencies included in our review. In its comments, DOD concurred with our findings. DOD's comments are enclosed. OFPP did not provide written comments but in oral comments recommended that we state that the best-value awards we discuss here—those made to other than the lowest-priced offeror—reflect only one type of best-value approach. This comment has been incorporated where appropriate. The civilian agencies generally had no comments on the draft.

⁴ The agencies were the Army, the Navy, and the Air Force; the departments of Agriculture, Commerce, Energy, Health and Human Services, Justice, Transportation, and Veterans Affairs; the General Services Administration; the National Aeronautics and Space Administration; and the Social Security Administration.

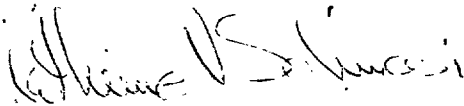
⁵ Other contracts were eliminated from our review because they were to be awarded to the lowest technically acceptable offeror, they were incorrectly coded in the databases and did not meet our criteria, or information was not available.

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As arranged with your office, we plan no further distribution of this letter until 30 days from the issue date unless you publicly announce its contents earlier. At that time, we will send copies to the Honorable Deidre A. Lee, Administrator for the Office of Federal Procurement Policy; the Honorable William S. Cohen, Secretary of Defense; the Honorable Louis Caldera, Secretary of the Army; the Honorable Richard Danzig, Secretary of the Navy; the Honorable F. Whitten Peters, Acting Secretary of the Air Force; the Honorable Daniel R. Glickman, Secretary of Agriculture; the Honorable William M. Daley, Secretary of Commerce; the Honorable Bill Richardson, Secretary of Energy; the Honorable David J. Barram, Administrator of the General Services Administration; the Honorable Donna E. Shalala, Secretary of Health and Human Services; the Honorable Janet Reno, Attorney General; the Honorable Daniel S. Goldin, Administrator of the National Aeronautics and Space Administration; the Honorable Kenneth S. Apfel, Commissioner of Social Security; the Honorable Rodney E. Slater, Secretary of Transportation; and the Honorable Togo D. West, Jr., Secretary of Veterans Affairs.

Please contact me at (202) 512-4841 if you or your staff have any questions concerning this report. Major contributors to this effort were Ralph Dawn, Maria Storts, Marion Gatling, Philip Goulet, Arthur Cobb, William T. Woods, and Stephanie J. May.

Sincerely yours,



(f.c.)

David E. Cooper
Associate Director, Defense Acquisitions Issues

Enclosure

COMMENTS FROM THE DEPARTMENT OF DEFENSE

ACQUISITION AND
TECHNOLOGY
DP/CPF

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

April 1, 1999

Mr. David E. Cooper
Associate Director, Defense Acquisitions Issues
National Security and International
Affairs Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Cooper:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, ACQUISITION REFORM: Review of Selected Best-Value Contracts, dated March 18, 1999 (GAO Code 707345/OSD Case 1771).

The DoD concurs with the GAO findings of the draft report. The report contains no conclusions or recommendations.

The GAO reported that, based on its review of over 250 contracts awarded by DoD and other government buying organizations, the government paid about a seven percent premium (\$367 million) for best-value awards to contractors other than those submitting the lowest-priced offers. GAO found that the majority of the contracts that involved premiums were for sophisticated government products and services. GAO reported that government buyers complied with the laws and Federal Acquisition Regulation requirements and generally linked their decisions for selecting the higher-priced proposals to the key evaluation factors identified in the solicitations. In addition, GAO noted that justification that the perceived benefits of the higher-priced proposal merited the additional cost was included in the contract file for each of the contracts reviewed. Government buyers frequently based their decisions to choose higher-priced offerors on the offerors' superior technical ability, exceptional management practices, or outstanding relevant experience.

Thank you for providing us the opportunity to comment on the draft report.

Sincerely,

Eleanor R. Spector
Director, Defense Procurement



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