



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Dynalantic Corporation

**File:** B-274944.2

**Date:** February 25, 1997

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## **DIGEST**

Exclusion of proposal from the competitive range without discussions, thereby leaving a competitive range of one, is not reasonable where: (1) the deficiencies cited are minor in relation to the scope of work and the revisions necessary to correct them; and (2) excluded offeror's price is [deleted] million lower than sole remaining offeror's.

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## **DECISION**

Dynalantic Corporation protests the award of a contract to Marine Safety International (MSI) under request for proposals (RFP) No. N00600-96-R-0749, issued by the Department of the Navy for ship handling simulation services. Dynalantic contends that it was improperly excluded from the competitive range without discussions based on an unreasonable technical evaluation.

We sustain the protest.

## **BACKGROUND**

The RFP was issued on February 7, 1996 and contemplated the award of an indefinite-quantity fixed-price contract for a base year and 9 option years to the offeror whose proposal provided the best value to the government. The solicitation required offerors to submit technical proposals organized according to the following technical evaluation factors, which were listed in the RFP in descending order of

importance: Technical Approach; Personnel; and Management Plan.<sup>1</sup> According to the RFP's statement of work (SOW), offerors were to construct a facility to house the ship handling simulator complex; install and configure the simulator equipment and training stations; provide all personnel and technical services necessary to run the ship handling simulator complex for a period of up to 10 years; and remove the complex at the conclusion of contract performance.

For their price proposals, offerors were directed to complete and submit the fixed-price schedule set forth at section B, which required unit prices for estimated quantities of 3,360, 4,300, and 5,000 hours per contract year. In this regard, the pricing schedule required offerors to propose one comprehensive hourly rate for performing any hour of required service. Cost or price was approximately equal in importance to the combination of all other evaluation factors.

Several amendments were issued, and a pre-proposal conference and site visit were conducted on February 23, 1996. By the May 23 closing date, two offers were received--from Dynalantic and MSI. On June 11, a three-member technical evaluation panel (TEP) completed its evaluation of the offerors' technical proposals and forwarded a consensus evaluation to the contract specialist--who was the cognizant contracting official for this procurement--which rated Dynalantic's and MSI's proposals as follows:

<u>Factor</u>	<u>Dynalantic</u>	<u>MSI</u>
Technical Approach	Unacceptable	Outstanding
Personnel	Better	Outstanding
Management Plan	Unacceptable	Outstanding
Overall Rating	Unacceptable	Outstanding

The contract specialist briefly reviewed Dynalantic's submitted pricing schedule and determined that Dynalantic's proposed pricing exceeded the Navy's available funding; Dynalantic had proposed a total price of approximately [deleted] million. Based on the TEP's "unacceptable" rating, the contract specialist excluded Dynalantic's proposal from the competitive range, leaving MSI as the sole competitor.

MSI's proposed pricing strategy also exceeded the Navy's available funding; MSI had proposed a total price of approximately [deleted] million. Consequently, the

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<sup>1</sup>A past performance proposal, not at issue in this protest, was also required.

contract specialist conducted several rounds of discussions with MSI--which ultimately resulted in the agency's reducing the minimum hours required by the solicitation. On September 19, the Navy awarded the contract to MSI for approximately [deleted] million. On October 1, pursuant to Federal Acquisition Regulation (FAR) § 15.1004, the Navy provided a debriefing to Dynalantic. On October 7, Dynalantic filed this protest; contract performance has been continued by the Navy under a "best interest" justification. 31 U.S.C. § 3553(d)(3)(C)(i)(I) (1994).

## PARTIES' POSITIONS

The RFP set forth a five-tier adjectival scoring system which was to be used to evaluate offerors' technical proposals: Outstanding, Better, Acceptable, Marginal, and Unacceptable. Of significance to this protest, the RFP specified use of the "unacceptable" rating where:

"the offeror's technical proposal has many deficiencies and/or gross omissions: Failure to understand much of the scope of work necessary to perform the required tasks; failure to provide a reasonable, logical approach to fulfilling much of the [g]overnment's requirements; failure to meet many personnel requirements of the solicitation. (When applying this adjective to the technical proposal as a whole, the technical proposal must be so unacceptable that it would have to be completely revised to attempt to make it other than unacceptable.)" (Emphasis added.)

The Navy has identified several alleged deficiencies that it argues would require a major revision of Dynalantic's technical proposal in order to make the proposal marginally acceptable. According to the Navy, "gross omission of information on building and grounds"; the protester's proposed use of an "excessive" quality control panel; and the failure to propose adequate staffing warranted rating Dynalantic's proposal technically unacceptable.

Dynalantic contends that the deficiencies cited by the Navy were either patently unreasonable or minor and correctable. In light of the Navy's evaluated strengths in Dynalantic's proposal--including "state of the art technology," "more realism than required," "Better" personnel, and a "strong start-up team"--Dynalantic argues that its proposal was sufficiently meritorious to be included in the competitive range, and that the Navy could have realized potential savings of approximately [deleted] million by holding discussions with the protester.

## ANALYSIS

The Competition in Contracting Act (CICA) of 1984 requires that if an agency conducts discussions, it do so with all responsible offerors whose offers are in the competitive range. 10 U.S.C. § 2305(b)(4)(A)(i) (1994). The FAR provides that the competitive range must include all proposals that have a reasonable chance of being selected for award and that any doubt as to whether a proposal is in the competitive range should be resolved by inclusion. FAR § 15.609(a) (FAC 90-31).

There is a tension between the necessarily broad discretion of an agency, acting through the contract specialist, to determine what proposals are realistically competitive, and the mandate of the FAR that, when there is doubt, the questionable proposal should be included. The question posed by the FAR, consistent with the full and open competition requirement of CICA, is not whether a reasonable contract specialist might under the circumstances prefer a competitive range of one, but whether the excluded competitors have a reasonable chance of being selected after the opportunity for improvement. Birch & Davis Int'l, Inc. v. Christopher, 4 F.3d 970, 973-974 (Fed. Cir. 1993).

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency and in considering an agency's evaluation of proposals and subsequent competitive range determination we will not evaluate the proposals anew in order to make our own determinations as to their acceptability or relative merits. Beneco Enterprises, Inc., 70 Comp. Gen. 574 (1991), 91-1 CPD ¶ 595. However, we will examine the record to determine whether the agency's evaluation was fair, reasonable and consistent with the evaluation criteria, and in particular, consider whether the documentation and analysis supporting the agency's technical conclusions are supported and rationally related to the stated evaluation factors, as required by FAR § 15.612(d)(2) (FAC 90-32). Programmatics, Inc.; Telesynetics Corp., B-228916.2; B-228916.3, Jan. 14, 1988, 88-1 CPD ¶ 35.

In this case, as explained below, we find that Dynalantic's proposal was unreasonably evaluated as unacceptable, and further conclude that Dynalantic's proposal was improperly excluded from the competitive range.

#### Facility Deficiencies

As noted above, the RFP required offerors to construct the facility which would house the ship handling simulator training stations. The ship handling simulator complex was to be designed with a "Blue Side" and "Gold Side"; each side was required to house a ship handling simulator training station comprised of a full mission bridge simulator (360 degree visual display), radar room and bridge wing simulator (225 degree visual display), and two 12-person learning feedback centers. Each learning feedback center was to be used on a stand-alone basis with its adjacent simulator or, by means of removable wall panels, configured with the other

learning feedback centers into a large auditorium space. The solicitation also required each simulator's computer operator station to be located in the associated learning feedback center.

Despite high evaluation ratings for most of Dynalantic's proposed equipment,<sup>2</sup> the TEP concluded that Dynalantic's proposal was unacceptable under the Technical Approach factor because of "gross omissions" regarding Dynalantic's proposed facility. In this regard, for the facility portion of the proposal--which was to be included in the Technical Approach discussion--the solicitation directed offerors to include a "[b]uilding picture/drawing/rendering, description and plan, and work intended on surroundings, including walkways, planted areas (if any) and parking area."

According to the TEP, Dynalantic's proposal failed to provide "adequate information or description to evaluate" its proposed facility; the TEP reported that because of these deficiencies, the TEP was unable to evaluate the facility's "utility within the context of exterior appearance." The TEP stated that the only illustration of Dynalantic's proposed building--a 1-inch by 3-inch rectangular picture--was blurry, and indicated the use of a red color on the building exterior that intensified the Navy's aesthetic concerns about the facility's appearance.

The TEP also reported that based on Dynalantic's use of the term "renovation" in one of its construction schedules, the TEP concluded that Dynalantic misunderstood the facility requirement--and that the construction schedule's references to "renovation" indicated the contractor's intent to renovate an existing government building, instead of constructing a new building as required by the RFP. Finally, because Dynalantic's facility diagram depicted [deleted] and did not otherwise show removable panels--or the location of the computer operator stations--the TEP determined that Dynalantic's facility description was grossly deficient.

The TEP's conclusions regarding Dynalantic's proposed facility are not supported by the record. First, despite the TEP's claims of inadequate detail, our review of Dynalantic's proposal shows approximately 11 pages of facility information including: a dimensional "plan view" and "elevation view" of both the full mission bridge simulator and bridge wing simulator; a diagram of the ship handling simulator complex layout; two detailed construction schedules; and a small computer-generated picture of the proposed entrance to its facility--indicating a red brick rectangular building with five window fronts, parking spaces, and basic

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<sup>2</sup>Each simulator was to be equipped with the following principal subsystems: a pilot house; ship controls, displays and communications; radar simulation; and a visual subsystem.

landscaping. Dynalantic's proposal also includes several paragraphs of narrative description, indicating that Dynalantic will subcontract the actual construction portion to an experienced local government contractor, and that:

"The building for [the Navy's Ship Handling Complex] will be erected on the site provided by the government, located on the Naval Station, Norfolk, Virginia, at the Surface Ship and Submarine Pier area off Hampton Blvd. Dynalantic will, at its own expense, design, erect, provide, maintain and be responsible for the building, utilities, ship handling simulator systems, grounds immediately surrounding and made available for the complex, and parking areas."

Although the Navy correctly points out that Dynalantic's proposal did not include certified architectural renditions of its proposed facility or a schematic layout of the facility's landscaping and parking area, the RFP did not require this level of detail. In this regard, the Navy concedes that the technical focus of this requirement is for simulator equipment and support services. Moreover, the Navy admits that the required facility construction does "not pose a significant challenge"; in fact, the RFP specifically described "a steel pre-fabricated building, on a concrete slab, sheathed with an aesthetic siding" as an example of a suitable facility for this effort.

A review of Dynalantic's construction schedule confirms that this is exactly what the protester proposed. While the TEP contends that Dynalantic's use of the term "renovation" called into question the contractor's understanding of the requirement, we think the only reasonable interpretation of the "renovation" reference--taken in context with the proposal narrative--is that Dynalantic would configure the interior of the facility constructed by its subcontractor to accommodate its proposed simulator complex layout. Although Dynalantic's facility diagram does not depict removable panels or the computer operator station locations, as pointed out by Dynalantic, its proposal narrative specifically states that its learning centers "[c]an be opened such that all four combined serve as [an] auditorium" and that each computer operator station "is located in a learning feedback center."<sup>3</sup> In this regard, although the TEP downgraded the protester's proposal for [deleted].

Given the amount of facility detail set forth in Dynalantic's proposal, we think the Navy's reliance on the protester's "blurry" picture as a basis for downgrading Dynalantic to an unacceptable rating is unreasonable. To the extent the TEP downgraded Dynalantic's proposed facility based on the picture's depiction of a "red" exterior, we find this unreasonable because the RFP specifically required the simulator complex facility to convey a "primarily red brick appearance." In sum, we

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<sup>3</sup>Dynalantic's proposal included three separate references which stated that the computer operator stations were located in the learning feedback centers.

find no basis in the record to support the TEP's conclusion that Dynalantic's proposal contained "gross omissions" regarding its proposed facility.

Based on the TEP's facility evaluation, the TEP determined that Dynalantic did not understand this requirement, and therefore evaluated the protester's proposal as unacceptable under the Technical Approach factor.<sup>4</sup> We find this conclusion unreasonable. First, as discussed above, it appears from the record that Dynalantic's drawings and descriptive narrative regarding its proposed facility were more than sufficient to convey Dynalantic's intent to construct a 20,000-square foot red exterior prefabricated rectangular building as well as its proposed configuration of the simulator training complex. Clearly, as indicated above, Dynalantic understood that it was to build and configure the ship handling simulator complex facility; to the extent the TEP desired additional detail such [deleted] this could have been readily requested and provided in discussions.

The record also shows that the TEP awarded high technical ratings for most of Dynalantic's proposed simulator equipment, and that the TEP described Dynalantic's proposed image generator and related simulator equipment items as "exceeding" the RFP's technical requirements, and providing "more realism than required." At the hearing on the protest, the TEP chairman testified that Dynalantic clearly understood the installation, technology, and operation of the simulator training equipment. Under these circumstances, we agree with Dynalantic that for the Technical Approach factor its proposal should have been rated at least "marginally acceptable."

#### Management/Staffing Deficiencies

The RFP required offerors to propose enough personnel to provide at least four simultaneous 20-hour ship handling simulator training sessions per week and to provide an organization plan ensuring quality management and monitoring of the

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<sup>4</sup>The SOW required the simulators to be equipped with pre-existing ship handling programs, but to be also capable of accommodating individual training programs written by ship commanders for unique training needs. The TEP's evaluation shows that it concluded Dynalantic misunderstood the trainer mission because its proposal did not convey Dynalantic's understanding that the commanding officer may choose to write his own training program. This conclusion is completely unsupported by the record; for example, Dynalantic's proposal specifically acknowledges that simulator "flexibility is most important for ship directed training under the specific direction of the ship [commanding officer]" and that "in cases where the [commanding officer] elects not to use the [c]ontractor's curriculum, the [commanding officer] will be furnished a guide to using the training resources of the [complex]."

overall ship handling simulator training mission. Based on two deficiencies in the "Management and Staffing Plan" section of Dynalantic's technical proposal, the TEP found Dynalantic's proposal unacceptable under the Management Plan evaluation factor.

First, the TEP questioned whether Dynalantic intended to provide four full-time facilitators--who were required by the RFP in order to offer four simultaneous 20-hour training sessions per week. Although Dynalantic's proposal included resumes and full-time employment commitments for four facilitators, identified these personnel as "compris[ing] the full time instructional staff" at the complex, and stated that "facilitator/instructors will be scheduled as needed to satisfy the custom ship visit plan," Dynalantic's proposal also described its full-time staff as including "two facilitators." The TEP also determined Dynalantic's proposal was unacceptably deficient under the Management Plan evaluation factor because the TEP concluded that Dynalantic had proposed "[e]xcessive procedures related to quality control" which imposed "unacceptable subjective evaluation by non-Navy personnel."

In its protest, Dynalantic does not dispute the TEP's concerns regarding its proposed management plan. Dynalantic admits that it stated, inadvertently, that its staff included "two" full-time facilitators instead of the requisite "four," and concedes that the TEP may have misunderstood the purpose of its proposed quality control team--which was offered as an additional set of personnel, to be used in addition to the key facilitators and personnel running the simulator complex.

Instead, the basis for Dynalantic's challenge to the TEP's Management Proposal evaluation lies in its disagreement with the weight the TEP gave the above-referenced deficiencies. Dynalantic argues that the identified deficiencies are akin to informational deficiencies which could have been clarified easily without a major revision to its proposal, and, consequently, the Management Approach section of its proposal should have been rated "marginal" instead of unacceptable. We agree.

As argued by Dynalantic, simply changing one word in its proposal--e.g., replacing the word "two" with the word "four"--would have eliminated any ambiguity regarding Dynalantic's full-time facilitator staffing intentions. As noted above, Dynalantic's proposal included resumes for four facilitators; under the Personnel factor, one facilitator received an "outstanding" rating, one facilitator was evaluated as "better," and the remaining two facilitators were rated "acceptable." Even if we conclude (as urged by the TEP chairman) that Dynalantic either "misunderstood" the Navy's requirement for four full-time facilitators, or otherwise proposed an unacceptable technical solution of two full-time facilitators, given Dynalantic's inclusion of four facilitator resumes and corresponding employment commitments in its proposal, we think that any ambiguity in this area could have been remedied without a substantial proposal rewrite.

With respect to Dynalantic's proposed quality control team, we think the TEP's conclusion that this "deficiency" constituted a fatal flaw in Dynalantic's proposed Management Approach is similarly unreasonable. First, contrary to the TEP's conclusion, Dynalantic did not propose a "non-Navy" panel; the protester's proposal specifically stated that its "Quality Action Team" (QAT) would include and be composed of "invited representatives" from "NAVSURFLANT [the requiring Navy activity for this procurement]."

In its proposal, Dynalantic described its QAT in part by stating that "Dynalantic ha[d] priced their [ship handling complex] services to the Navy based on some 5,000 man-hours devoted to monitoring, enforcing, and improving the quality of the shiphandling [sic] training." The TEP chairman testified that in addition to concerns about a non-Navy panel overseeing the Navy's training performance, the agency did not want to bear the expense of Dynalantic's proposed QAT. These concerns could have been readily addressed and corrected through discussions.

First, despite the TEP's interpretation to the contrary, our review of Dynalantic's proposal supports the protester's contention that its proposed QAT was not intended to "critique" the Navy's ship officers or impose a burden on Navy personnel, but rather was intended to provide a secondary support staff whose sole task would be to "provide follow-up and ensure the Navy's full satisfaction" with the simulator training complex and Dynalantic's key personnel (e.g., the facilitators) and technical support. The record shows that the [deleted].

In any event, the solicitation did not specifically require contractors to propose a quality control team; instead, the RFP simply required offerors to include "the proposed lines of responsibility, authority, and communication through which the task will be managed, and the procedure to be taken to insure quality control and cost control." Since Dynalantic's proposal otherwise explained its project organization and staffing approach,<sup>5</sup> since its proposed support team was rated "Better" by the TEP, and since a specific quality control team was not required, we think Dynalantic reasonably could have alleviated the TEP's concerns without a substantial proposal rewrite--for example, [deleted]. In sum, we agree with the protester that the facilitator and QAT deficiencies did not reasonably warrant the "unacceptable" rating awarded by the TEP for the Management Plan factor.

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<sup>5</sup>The record shows that the TEP downgraded Dynalantic for omitting a "Figure 3-2" staffing diagram. At the hearing, the TEP chairman testified that despite this deficiency, it was able to identify Dynalantic's staffing approach. In this regard, Dynalantic proposed several points of contact between the Navy and its simulator training personnel; the primary point of contact--for overseeing the Navy's needs and ensuring quality control--was Dynalantic's proposed Director of Training.

## Totality of Marginal Deficiencies

In addition to the "unacceptable" deficiencies discussed above, the Navy identified several other areas of Dynalantic's proposal which it evaluated as "marginal." The Navy argues that even if we determine that the above-referenced Technical Approach and Management Plan deficiencies should have resulted in a rating of "marginal" instead of "unacceptable" under those factors, the totality of the "marginal" deficiencies in Dynalantic's proposal--combined with the deficiencies discussed above--renders the protester's proposal technically unacceptable and warrants its exclusion from the competitive range. Relying on our decision in Rice Servs., Ltd., 68 Comp. Gen. 112 (1988), 88-2 CPD ¶ 514, the Navy argues that collectively considered the "marginal" deficiencies in Dynalantic's proposal require a complete rewrite of its proposal and render the protester's proposal essentially noncompetitive with MSI's--which was properly rated outstanding.

We do not find Rice Servs., Ltd., to be controlling. Rice, in which we held that an offer's exclusion was proper, involved major as well as marginal deficiencies; here we are concerned with only marginal deficiencies which can be easily remedied.

For example, as discussed above, in light of the submitted facilitator resumes and narrative content indicating four full-time facilitators were available to perform, Dynalantic should be able to readily remedy the Navy's concerns about its proposal's statement indicating that only "two" full-time facilitators were proposed. In this regard, at the hearing, the TEP chairman's testimony showed that most of the TEP's evaluated "marginal" deficiencies in Dynalantic's proposal resulted from descriptive errors--e.g., omitting the term "photographic" in promising a compliant bow-image visual subsystem; omitting the term "21 ships" in identifying the proposed ship data base; providing the exact name of the identified host computer--which, when considered in the context of the TEP's simulator equipment evaluation determining that Dynalantic had offered "state of the art technology" and equipment which significantly "exceeds" almost all of the RFP's technical specifications, should be correctable with minimum government discussions and revisions by the contractor.

Regarding the remaining two deficiencies which arguably require substantive changes in the contractor's technical approach--Dynalantic's proposed full bridge simulator vertical field of view (VFOV) and tide database program--the record provides no basis for concluding that a substantial proposal rewrite is required for either deficiency. At the hearing, the TEP chairman testified that although Dynalantic's VFOV capability for its proposed full mission bridge simulator was evaluated as "marginal" based on the protester's offering of a 33-degree VFOV rather than the required 36-degree VFOV, this marginal deficiency "wouldn't be a big deal to fix." With regard to the full bridge simulator tide database deficiency, we simply note that this specification affects only 1 of 12 required databases for the full bridge

simulator--and compared with the totality of the other "marginal" deficiencies, does not by itself constitute a basis for concluding that a substantial proposal rewrite would be required.

In sum, although the TEP rated many aspects of Dynalantic's technical proposal as "marginal," as discussed above, the record provides no basis for concluding that the totality of these "marginal" deficiencies renders Dynalantic's proposal noncompetitive. In this regard, at the hearing, the contract specialist testified that if Dynalantic's proposal had received a "marginal" rating for each evaluation factor, he would have included the proposal in the competitive range and conducted discussions.<sup>6</sup> Since we think it is clear from the record that Dynalantic's proposal could be made "acceptable" without a substantial rewrite, and since Dynalantic's offered price was [deleted] million lower than the [deleted] million price offered by MSI, in light of the relative importance of price, we think Dynalantic's proposal as a whole could not properly be viewed as having no reasonable chance for award.<sup>7</sup> Under these circumstances, we conclude that the exclusion of Dynalantic's proposal from the competitive range was improper. *See* 47 Comp. Gen. 29 (1967) (even though sole remaining offeror was technically superior, exclusion of protester from competitive range without discussions was improper since protester's offered price was \$60 million lower than its competitor's); *Falcon Sys., Inc.*, B-213661, June 22, 1984, 84-1 CPD ¶ 658 (elimination of proposal from the competitive range, thereby leaving a competitive range of one, is improper where informational deficiencies were not so material that major revisions would have been required to make proposal acceptable).

In reaching this conclusion, we note that this case is distinguishable from those situations where the record makes it clear that, despite being technically acceptable, the excluded proposal had no reasonable chance for award when compared to

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<sup>6</sup>In his competitive range determination document, the contract specialist wrote that Dynalantic's pricing schedule appeared [deleted]. At the hearing, the contract specialist explained that this description simply referred to an assessment of Dynalantic's pricing approach [deleted] and that the reference to Dynalantic's pricing in no way constituted a negative assessment. The contract specialist confirmed the Navy's repeated representations that price did not factor into the agency's decision to exclude Dynalantic's proposal from the competitive range; specifically, the contract specialist testified that the sole basis for Dynalantic's exclusion was the TEP's determination that the protester's technical proposal was unacceptable.

<sup>7</sup>The RFP provided that the "Government may elect to pay a price premium of up to approximately 35 percent to select an offeror whose non-cost price evaluation factors (e.g. technical and past performance, if included) are superior." [Deleted].

another technically superior offer. See, e.g., Agriculture Technology Partners, B-272978; B-272978.2, Dec. 5, 1996, 96-2 CPD ¶ 226. Unlike those cases, here the Navy does not argue that Dynalantic lacked any reasonable chance for award. In fact, as confirmed by the contracting officer's hearing testimony, the Navy recognizes that the potential for the protester's proposal to become technically acceptable after minimal discussions warrants retaining Dynalantic's proposal in the competitive range.

#### Navy's Destruction of Individual Evaluators' Notes and Worksheets

The record shows that in accordance with its source selection plan, the Navy destroyed the TEP members' individual evaluation notes and worksheets. In its protest, Dynalantic urges our Office to sustain its challenge to the Navy's destruction of documents; Dynalantic contends that the Navy's practice violates FAR § 15.608(a)(3) (FAC 90-31), which requires the contracting agency to document its technical evaluation, and § 15.612(d)(1) (FAC 90-32), which requires the source selection official to consider "any rankings and ratings."

Our Office has criticized the Navy for its document destruction practices. See Dimensions Int'l/QSOFT, Inc., B-270966; B-270966.2, May 28, 1996, 96-1 CPD ¶ 257; Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3; B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56. However, we recognize that evaluators' individual notes and worksheets may or may not be necessary to determine the reasonableness of the agency's evaluation. Dimensions Int'l/QSOFT, Inc., *supra*; Southwest Marine, Inc.; American Sys. Eng'g Corp., *supra*.

In this case, the TEP's consensus evaluation--and the subsequent hearing--provided an adequate record for our review. Consequently, since our Office was fully able to review and examine the TEP's evaluation, we have no basis for sustaining Dynalantic's protest based on the agency's destruction of the individual evaluators' notes and worksheets. However, we think it is appropriate to emphasize that had the Navy not destroyed these documents, the requirement for oral testimony--and the resulting costs to be paid as part of our recommended corrective action--may well have been avoided.<sup>8</sup>

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<sup>8</sup>The Navy has since reported that it will discontinue this practice.

## RECOMMENDATION

As discussed above, we think the TEP's evaluation was unreasonable, and improperly deprived Dynalantic of a meaningful opportunity to compete by resulting in the exclusion of Dynalantic's proposal from the competitive range. Consequently, we sustain the protest.

In view of our findings above, we recommend that discussions be held with Dynalantic. Best and final offers should be solicited from both competitors and evaluated by a new TEP.<sup>9</sup> In the event that Dynalantic is selected for contract award of the remainder of the requirement, MSI's contract should be terminated.<sup>10</sup>

Since we sustain the protest, we also recommend that Dynalantic recover its costs of filing and pursuing its protest, including reasonable attorneys' and consultant fees. Bid Protest Regulations, § 21.8(d)(1), 61 Fed. Reg. 39039, 39046 (1996) (to be codified at 4 C.F.R. § 21.8(d)(1)). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly to the agency within 60 days after receipt of this decision. Bid Protest Regulations, § 21.8(f)(1), 61 Fed. Reg., supra (to be codified at 4 C.F.R. § 21.8(f)(1)).

The protest is sustained.

Comptroller General  
of the United States

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<sup>9</sup>Although we find no evidence of bad faith, we are nonetheless troubled by the quality of the TEP's evaluation; as discussed above, none of the TEP's cited deficiencies supports an "unacceptable" rating. Under these circumstances, we agree with the protester that a new TEP should be convened. See J. M. Cashman, Inc., B-233773, Apr. 14, 1989, 89-1 CPD ¶ 380.

<sup>10</sup>We understand that the construction phase of the requirement is nearly complete. However, the remaining simulator equipment installation and support services--the crux of this technical effort--have not been ordered. At the hearing, the TEP chairman testified that Dynalantic's proposed simulator equipment could be installed in the facility constructed by MSI; the TEP chairman also testified that Dynalantic's personnel could easily operate and run MSI's proposed simulator equipment.