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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest over Proposed Award of an Air Force Contract for an Electronic Security System]

FILE: B-192038

DATE: January 3, 1979

MATTER OF: Dynatrend, Inc.

- DLG00505

DIGEST:

1. Based on review of Air Force record, GAO rejects view that award selection decision downgraded technical/management merit contained in protester's proposal or unduly emphasized cost quantum.
2. Contracting agency's evaluation of competing cost proposals involves exercise of informed judgment; consequently, GAO will not second-guess cost realism decision unless not reasonably founded. Moreover, although Government cost estimates may be used in evaluating proposed costs, estimates should be used with caution given uncertainties associated with cost contracting.
3. GAO cannot question Air Force's position that proposed costs were evaluated and compared with Air Force cost estimates and that proposed costs were adjusted for "realism and risk" at three levels of increasing risk.
4. To extent protester's proposal was to be accorded merit because of relative closeness to Government's cost projections, record of evaluation shows that merit was accorded proposal. Nevertheless, since protester's costs were only about 7 percent closer to Air Force's "most probable" cost estimate than were costs of proposed awardee, GAO cannot conclude that protester's proposal was more cost realistic than that proposed by awardee given uncertainties in cost estimating art.

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5. Ultimate Air Force selection decision is seen as founded on judgment that between two proposals which are substantially equal from viewpoints of technical, management, and cost realism, proposal to be selected is one having most advantageous "probable cost"--lowest cost quantum.
6. In questioned procurement, GAO considers all offerors to have been on notice that award standard would require consideration of cost quantum assuming substantial equality of offerors on all other evaluation standards; moreover, under 10 U.S.C. § 2304(g) (1976) price (cost quantum) must be given appropriate consideration in all negotiated procurements. Thus, proposed award cannot be questioned because of Air Force's alleged improper use of cost estimates for proposals.
7. Fact that Air Force did use certain uniform assumptions as part of its overall cost analysis does not undercut Air Force assertion that "company unique" factors, especially stemming from skill mixes, were also taken into consideration in assessing cost realism.
8. To extent cost proposals were "normalized" in manner inconsistent with policy guidelines contained in Dynalectron decision, GAO nevertheless finds no evidence that protester's higher cost proposal was prejudiced by use of technique.
9. Risk relating to possibility that selected small business concern might have to comply with cost accounting standards--not now applicable to small concerns--was "speculative" cost risk which Air Force properly did not evaluate.

10. Protester's decision not to establish "separate cost center" for proposed contract work--thereby allegedly prejudicing protester--did not result from Air Force pressure. Moreover, proposed awardee's overhead rates were "capped" as well as evaluated under audit of awardee's approved accounting system.
11. Protester's allegations concerning "unpriced labor" and so-called "other cost risks" supposedly present in awardee's proposal are of insufficient weight to question legitimacy of proposed award.
12. GAO is unable to honor protester's request for release of documents denied to protester by Air Force.

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This protest questions the proposed award of an Air Force contract for an electronic security system. For the reasons set forth at length below, we cannot question the proposed award.

The procurement was conducted under a formal "source selection" procedure involving evaluation by a Source Selection Evaluation Board (SSEB), a Source Selection Advisory Council (SSAC), two "ad hoc" panels, and a Source Selection Authority (SSA). The Air Force has permitted the protester to examine narrative descriptions of the evaluation process as well as other Air Force responses to the protest. Many of documents evidencing the SSEB, SSAC, and SSA deliberations leading to the proposed award have been withheld, however, from the protester by the Air Force. Nevertheless, in deciding the protest, we have reviewed those restricted documents. Furthermore, since award has not been made, we must be circumspect in discussing the facts of the procurement.

The protest is also the subject of related litigation (Dynatrend Incorporated v. Harold Brown, Civil Action No. 78-972) in the United States District Court for the District of Columbia in which the presiding judge has approved a stipulation between the parties to this controversy. The approved stipulation expresses a court's interest in a decision by our Office. Therefore, the protest will be considered on the merits. See E. I. du Pont de Nemours & Company, et al., B-190611, September 22, 1978, 78-2 CPD 218.

Background

On June 17, 1977, the Electronic Systems Division of the Air Force Systems Command, Hanscom Air Force Base, Massachusetts, issued request for proposals (RFP) solicitation No. F19628-77-R-0229. The solicitation requested proposals to provide up to 217.5 man-years of systems engineering and technical services under a cost-plus-award-fee contract for a wide range of planning, evaluating, and monitoring activities in connection with

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the Department of Defense base and installation security program. The objective of the program is to provide a standardized electronic security system that can be used by the Army, Navy, and Air Force to protect valuable sites and facilities against various threats.

Section D of the RFP set forth the factors to be evaluated in reviewing the proposals and the relative weights to be assigned each as follows:

"General Criteria. Each proposal will be evaluated on its compliance with the complete RFP document and the offeror's responsibility determined in accordance with the procedures of ASPR. The Government's and the offeror's assessment of risk will also be considered in each evaluation. * * *

"Specific Criteria. Each proposal will be evaluated in the following specific criteria areas to assess the offeror's ability to meet the * * * engineering and integration objectives specified in each of the major work breakdown structure levels * * *:

- "A. Technical
- "B. Management
- "C. Cost

"The criteria areas above are listed in descending order of importance. The technical area is of significant importance and will be given greater relative ranking in the evaluation process than the next two areas (management and cost). The cost area is important but of somewhat less significance than the management area.

"Detailed Items.

"Technical Area. The following items will be considered in the evaluation of the technical area. They are listed in descending order of importance.

"Systems Engineering Management/Systems Engineering. * * *

"Supporting Project Management Activities. * * *

"Mission Equipment Support. * * *

"Test and Evaluation. * * *

"Operational Site Activation. * * *

"Management Area. The following items will be considered in the evaluation process for the management area. They are presented in descending order of importance. The first item will be given a higher ranking than the second and third items which are of approximately equal importance.

"Management Plan. * * *

"Corporate Capability. * * *

** * * Support Team Capability. * * *

"Cost. The cost proposal will be evaluated to determine cost realism/reasonableness and most probable cost of the offeror's proposal to the Government, as well as comparability with the Government cost estimate. Special attention will be given to the determination of cost risks inherent in each offeror's proposal. The proposals will be evaluated in terms of the proposed total cost for the level of effort required and any other potential costs or cost considerations the offerors may identify in the implementation of the required efforts. Items such as average costs per man hour, overhead rates and allocation, cost implications of the skill mix/level proposed, and expensing of travel costs will be evaluated."

The RFP also provided (at paragraph 10, Solicitation Instructions and Conditions) that "[t]he contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered."

On August 4, 1977, Dynatrend, Inc., Analytical Systems Engineering Corporation (ASEC), and several other companies submitted proposals in response to the RFP. By letter dated November 23, 1977, Dynatrend was informed by the contracting officer that its proposal had been determined to be within the competitive range. All the other offerors were also found to be within the competitive range.

Discussions with all offerors were completed on January 17, 1978. Best and final proposals were received on March 20, 1978. As a result of the reevaluation of proposals, all deficiencies were found to be resolved and new technical, management and cost risk assessments were made.

SSEB Evaluation

A summary of the SSEB's findings, as adjusted by evaluations of final proposals and as reported to the SSAC on April 7, 1978, was as follows:

ASEC

Dynatrend

Technical

Overall quality is acceptable with low risk.

Overall quality is excellent with the exception of systems engineering management/system engineering which is acceptable. Overall risk is low.

Management

Very satisfactory with low risk.

Very satisfactory with very low risk.

CostASEC

Proposed cost* and fee was approximately 15 percent less than Government estimate of probable cost.

Dynatrend

Proposed cost* and fee was approximately 8 percent less than Government estimate of probable cost.

In addition, as to each proposal, specific strengths, weaknesses and areas of risk were found by the SSEB. Specifically, as to ASEC's proposal, the SSEB noted that the proposal showed "knowledge of systems engineering management."

The contracting officer has reported the facts of the SSEB evaluation presentation to the SSAC as follows:

"* * * In the technical and management areas, the strengths, weaknesses and areas of risks were highlighted in the presentation. In the cost area, a description of the cost analysis approach was provided before presenting the results of the evaluation in this area. The initial and [final] prices, as well as cost track of changes, as explained by the offeror and as evaluated by the cost team, were presented to the SSAC. In addition, a detailed presentation of the risk assessments and the Government's optimistic, most probable, and pessimistic cost estimates for each offer were provided to the SSAC."

SSAC Evaluation

Following the SSEB presentation, the SSAC analyzed the proposals. A summary of the SSAC's findings is as follows:

* The amount of ASEC's final proposed cost and fee was also significantly lower than Dynatrend's proposed cost. Similarly, Air Force "optimistic, probable, and pessimistic" cost analyses showed ASEC to be significantly lower than Dynatrend.

ASEC

Technical

Dynatrend

Low risk-*
Presented one of the stronger proposals. The proposal ranked strongest for the systems engineering management/systems engineering item, the most important item, but ranked among the weaker proposals for the test and evaluation item.

Low risk-*
Presented one of the stronger proposals. Ranked among the weaker proposals for the most important item, but ranked strongest for the remaining items.

(Although the SSAC listed Dynatrend in second position--one position ahead of ASEC--the narrative accompanying the ranking noted that "Dynatrend and ASEC are very close together.")

Management

ASEC

Dynatrend

Presented the second strongest proposal. The overall risk is low.

Presented the strongest proposal. There are no weaknesses and the overall risk is very low.

Cost

Cost risk of the proposals ranged from medium to high with two firms at lower risk than Dynatrend. Several firms, including Dynatrend, are ranked with lower cost risk than ASEC. On the other hand, as between ASEC and Dynatrend, the SSAC concluded that ASEC afforded the probability of accomplishing the work at least cost based on the analysis which showed that ASEC's cost even as projected for likely growth was lower than Dynatrend's proposed cost without adjustment for growth. Because of inherent limitations in cost estimating, the SSAC found it impossible to determine precisely where an offeror's actual cost would fall.

* Neither ASEC nor Dynatrend were ranked first overall--that ranking went to another offeror which is not a party to the protest.

Weighing all of the above, ASEC ranked third in the cost area; Dynatrend ranked sixth.

SSAC Overall Conclusions

The final conclusions of the SSAC were: (1) no offer was superior in all areas; and (2) the relative differences between the best offers in terms of technical and management criteria were not of sufficient magnitude to be a main distinguishing feature in the selection. The SSAC considered the strongest overall proposal to have been submitted by a concern other than Dynatrend or ASEC. Finally, the SSAC noted that ASEC had performed on four Electronic Systems Division contracts--the most significant of which did not experience cost overruns; also Dynatrend's previous experience was considered "very good."

SSA Evaluation

In mid April, the SSAC reported the results of its analysis to the SSA, the Commander of the Electronic Systems Division.

Because the SSA found that the reported results were not conclusive enough to make a selection, he convened two panels to provide additional information for use in making a decision. These panels were to concentrate in the areas of strengths and weaknesses in the front running proposals, which group included ASEC and Dynatrend.

The technical panel found that the Dynatrend proposal had the lowest risk in both technical and management areas followed very closely by ASEC and another offeror. The analysis of the cost panel showed that, given the Air Force's "most probable skill mix," ASEC's proposal was the lowest cost of all. Dynatrend's computed cost was significantly higher than ASEC's cost.

The panels reported the results of their analyses to the SSA. The SSA concluded that the technical proposals of Dynatrend, ASEC and a third offeror were essentially equal and that, even considering the merits of the proposals in the management area, it was not clear which proposal should be selected. The SSA then found:

"The technical and cost risks associated with acceptance of the offers [ASEC and the third offeror] with a lower proposed price do not justify their selection based upon the small difference in price [between these offers]. On the other hand, the minor differences in the technical and management strengths of the ASEC and Dynatrend proposal do not justify selection of the significantly higher priced proposal of Dynatrend. The evaluation analysis shows the ASEC proposal offers the best combination of technical, management and cost advantages."

(A revised version of the SSA's selection rationale also makes mention of an "element of cost risk" in Dynatrend's cost proposal attributed to 41 man-years of indirect labor included in the proposal.) On May 12, 1978, ASEC was announced as the successful offeror.

Dynatrend's grounds of protest are summarized in the paragraphs below.

Disregard of Dynatrend's Technical Merit

Necessarily Means Improper Weight Was Given

To Cost

Dynatrend was not cited by the Air Force for any deficiencies during negotiations; moreover, it has heard that the SSAC evaluation report in April 1978 supported the conclusion that Dynatrend's offer was significantly better than others in the technical and management area. No offeror was judged at that time by the SSAC to have a superior cost proposal.

Although the SSA concluded that proposals were relatively equal technically, Dynatrend still believes its technical and management proposal was rated superior to ASEC; therefore, the selection of ASEC--given that company's lower proposed cost for the work--must necessarily be seen as giving improper weight to the low quantum, in itself, of the ASEC cost proposal. (Dynatrend goes on to make other arguments based on the assumption of its technical/management superiority. It is unnecessary to summarize these arguments in view of our conclusions (discussed below) supporting the Air Force's judgment of the essential equality of the Dynatrend-ASEC proposals.)

ASEC's Cost Is Not Most Realistic

Defense Acquisition Regulation (DAR) § 3-807.2 requires the procuring agency to undertake an independent cost analysis. In this case, the solicitation identifies three general factors which the cost analysis must evaluate and which determine each offeror's relative standing in the cost area. The three factors are "cost realism/reasonableness," "most probable cost of the offeror's proposal," and "comparability with the Government's cost estimate." The latter factor is usually considered as an element of the first two and rarely emphasized as a separate item in procurements of this nature.

GAO reasonably accords broad discretion to agency determinations of cost realism. However, an agency's determination will be found unsatisfactory if it "is not supported by a reasonable basis" or unless "all nonspeculative cost risks are analyzed." Management Services, Inc., 55 Comp. Gen. 715 (1976), 76-1 CPD 74. The Air Force's action in this case fails both standards.

Government Cost Estimate

What does "comparability with the Government's cost estimate," mean? At a minimum, it should require that any proposal falling more than 15-20 percent below the estimate be rejected in the absence of clear evidence that

the proposed cost was realistic. Closer scrutiny should be required than if only cost realism or cost risk were the standard, because otherwise the "comparability" language would be meaningless.

In point of fact, the Air Force did not use its own cost estimate in evaluating proposals contrary to RFP guidance. The estimate--which was ultimately considered valid by the Air Force--was not used as an explicit or implicit evaluation standard. Although the contracting officer pointed to ASEC's prior contract experience for similar engineering experience, no analysis was made of how much comparable work was involved; consequently, it is fair to conclude that no consideration was given to the Government's cost experience for comparable work.

The Air Force has never purchased similar services for anywhere close to the amount proposed by ASEC; moreover, contrary to the Air Force position that no valid comparison can be made to other smaller purchases of systems engineering support, Dynatrend insists that certain contracts (for example, Computer Sciences Corporation Air Force contract No. F19628-76-C-0191 and Mitre Corporation contracts Nos. F19628-78-C-0001 and F19628-79-C-0001) are comparable. Finally, the Air Force position is inconsistent with the very existence of the estimate which was undoubtedly compiled from experience on similar contracts.

Failure To Make Proper Cost Analysis

The Air Force improperly evaluated cost proposals by relying on: (1) "DCAA-recommended, not actually experienced, indirect rates;" (2) "Bureau of Labor Statistics, not actually experienced, direct rates;" and (3) Air Force estimated needed labor skills.

Moreover, the SSA and an advisory panel improperly singled out a cost risk element in Dynatrend's proposal which was not properly a risk. This element--supposedly relating to the Air Force's inability to track 41 man years of indirect labor--was not given any weight by the contracting officer in the cost analysis. Therefore, it appears that the SSA was overreaching in order to justify his determination.

Finally, the Air Force did not follow the approach regarding "normalizing" cost offers as specified in Dynalectron Corporation, 54 Comp. Gen. 562 (1975), 75-1 CPD 17. The decision stated that "normalizing" is to be used where, unlike the case here, there is no logical basis for differences in cost proposals or insufficient information for evaluation.

Cost Accounting Standards

Dynatrend has adopted an accounting system in accordance with cost accounting standards in deference to the strong preference of the Defense Contract Audit Agency (DCAA). To Dynatrend's knowledge, ASEC and five of the other offerors do not comply with these standards. Small business concerns are exempt from cost accounting standards by regulation.

In the course of preparing its cost proposal, Dynatrend included its properly allocable general and administrative (G&A) expenses. During the course of evaluations, it learned that other offerors did not include corporate G&A in their cost proposals. The other offerors set up separate cost centers and only included the nominal G&A directly allocable to those centers, omitting the common corporate expenses which also benefit the cost objectives of the separate centers. Consequently, Dynatrend was significantly prejudiced in its ability to compete with the proposed costs of the other offerors. Important from the Air Force's point of view, the Air Force will face the clear risk that it will bear the increased cost from any required conversion to cost standards by ASEC that might occur during the 3-year performance period. Dynatrend submits that this cost risk factor was not analyzed.

Unpriced Labor

Another area in which the Air Force did not assess obvious cost risks stems from the use by other offerors of large amounts of unpriced labor. Rather than have DCAA audit the best and final offers, the Air Force performed the audit itself, based on the offerors

tracing all charges back to audited figures. What the Air Force completely overlooked and failed to assess was the fact that ASEC dropped a substantial amount of labor from the direct category to indirect, something which could have been clearly seen in ASEC's best and final offer.

The Air Force failed to consider that much of ASEC's unpriced labor is from different cost centers and much is applicable to the 217.5 man-year requirement of the RFP. The obvious and substantial risk, a certainty really, is that ASEC will be audited by DCAA. DCAA will force ASEC to charge the indirect labor to the contract and the Air Force will be faced with a much costlier contract than it anticipated.

Other Cost Risks

It is evident from the proposed selection of ASEC that the procuring activity did not analyze other obvious cost risks inherent in ASEC's proposal: (1) ASEC's proposed costs per man-year are considerably below the actual experienced rate of ASEC and its major subcontractors, particularly GTE Sylvania, for comparable work; (2) ASEC's indirect costs are based on a newly-formed operation so that there is no actual data to evaluate; (3) ASEC's proposal represents a significant change in the nature of its business--considering the huge amount of proposed subcontracting--and it has little or no experience in managing such substantial and numerous work order subcontracts, little or no experience with its proposed major subcontractors and little or no experience controlling subcontractor spending, performance and schedule adherence; (4) ASEC has a frequent experience of cost overruns on contracts with the Air Force; (5) ASEC's proposed direct labor rates are chiefly based not on present employees, but speculative hiring rates; (6) ASEC and all other offerors were not assessed a cost risk stemming from the Air Force's negotiation of a cost ceiling on Dynatrend's overhead rates--a ceiling which was more restrictive than the ceilings negotiated with other offerors.

The Air Force's recent positions that cost risk should not be assessed ASEC because ceiling rates apply only during the first year, that the Air Force anticipates buying all proposed man-years of support and that separate cost center overhead is less dependent than home plant overhead on general business fluctuations are simply contradicted by the record which shows that the Air Force was seriously concerned by overhead escalation and believed separate cost center operators were more risky.

The Air Force reply to Dynatrend's arguments are summarized below in the sections keyed to Dynatrend's grounds of protest.

Disregard of Technical/Management Merit

It was not until the technical panel found the ASEC, Dynatrend, and another proposal to be essentially equal technically that the SSA focused attention and analysis on cost considerations; moreover, it is not true as alleged by Dynatrend that the SSA acted in unseemly haste in selecting ASEC. The SSA was first briefed on April 14 by the SSAC. The SSA considered the evaluation results presented and then requested more information through the technical and cost panels. The panels did not perform a complete reevaluation of proposals but concentrated on pointing out differences to the SSA. No recommendations were made by the panels--whose reports were not lengthy. On May 10 and May 11, the SSA considered the information provided before making his decision on May 12. Against the backdrop of the SSAC briefing of April 14, the time taken to make the selection was not unduly short.

ASEC's Cost Is Not Most Realistic

Government Cost Estimate

This factor was considered during the evaluation. A mere comparison at the total cost level was inappropriate because all offerors, to varying degrees, proposed lower fee arrangements, lower skill mixes, and lower indirect costs (audited by DCAA as acceptable) than the Government

estimated. In addition, the facts clearly show total reliance could not have been placed on this type of comparison because all the proposals considered for award contained elements of unrealistic cost estimating, especially in the labor rate area. Price competition is widely recognized as a reliable basis for determining reasonableness of price. Granted, for the type of contract proposed, competition may not be the best determinant of cost realism. However, it must be considered as a reasonable guide in view of the number and distribution of competing prices. Further, appropriate assessments for risk and realism were made, wherever cost estimates appeared unrealistic, in developing the most probable cost estimate for each offeror.

The Air Force did not ignore the cost estimate and prior cost experience, nor did it fail to evaluate proposals in terms of proposed total costs for the level of effort required. Proposed total costs were evaluated and compared with the cost estimate. Proposed costs were adjusted for realism and risk. The analysis data further shows that after these evaluations and adjustments the probable cost under a contract with Dynatrend would also have been significantly higher than proposed. This indicates that the mere fact that total proposed cost was within the cost estimate range does not justify a conclusion that it is price realistic.

The Air Force's contract experience record shows that ASEC has performed well on two engineering services contracts and that cost overruns were not experienced on either contract.

Failure To Make Proper Cost Analysis

The record of the cost evaluation shows that the Air Force made a proper evaluation.

The facts cited in the SSA's memorandum of 12 May, the Contracting Officer's Statement of Facts and Findings, as well as the cost panel's evaluation data and reports clearly show that both contractor and Government skill mixes were evaluated. The only significant "company unique" cost factors were overhead rates and indirect

man-year allocations by Dynatrend. "Company unique" factors were considered as far as possible given the unique requirements of this procurement and Dynatrend benefited from this more than anyone else.

Cost Accounting Standards and Separate Cost Centers

As acknowledged in the Dynatrend protest, small business concerns are exempt from accounting standards by regulation. Government audit of all cost proposals was performed. Cost estimates questioned by the auditors were assessed and taken into account in evaluating cost risks and developing the Government's probable cost estimate for each proposal. Results of the preaward survey show that ASEC has an approved accounting system which will allow compliance with proposed contract requirements.

The choice of whether to use a separate cost center or a field rate for the proposed contract was solely up to each offeror. The Government cannot legally dictate how an offeror should establish his accounting system. The fact that most offerors chose to use separate cost centers for economy, convenience and/or cost advantage does not necessarily mean an increase in risk to the Government. Use of field burden rates is a common and acceptable accounting practice. Past and current contract experience shows that field burden rates have been economically and effectively used on service contracts. Poor or unrealistic cost or rate estimating could be a factor or problem whether or not a field rate is proposed. The rates proposed were audited and evaluated by the Government. Further, ASEC has agreed to an overhead ceiling rate provision in the contract.

Unpriced Labor

Cost analysis and audit of the ASEC proposal confirms that all 217.5 man-years of effort proposed were costed.

Other Cost Risks

The facts clearly show that all cost risks were considered and evaluated. Contractor experience and performance record were evaluated in making a determination of contractor responsibility. The ESD contract experience record shows that ASEC has performed well on two engineering services contracts (F19628-75-C-0158 and F19628-76-C-0205). Cost overruns were not experienced on either contract. The protester alleged that ASEC proposed a "huge amount" of subcontracting. Proposal information shows both offerors proposed to subcontract approximately the same proportion of contract effort. Dynatrend alleged that "ASEC's proposed direct labor rates are chiefly based not on present employees, but speculative hiring rates." Proposal data shows, however, that both offerors planned to acquire approximately the same number of new hires.

The fact that overhead ceiling risk was considered is inherent in the fact that an overhead ceiling rate provision was negotiated with all offerors. It should also be realized that the negotiated ceiling rates apply only through the first full accounting period at time of award. Further, the Air Force anticipates need for all man-years proposed, especially in earlier years of contract performance. Separate cost center overhead rates are not as dependent as home plant rates on other business changes/fluctuations. The cost risks under these parameters are minimal and speculative.

The facts show clear and justifiable reasons for the SSA's conclusion that the 41 man-years proposed as indirect labor represented a cost risk. The protester accurately referred to negotiations where adjustments were necessary to correct double counting of clerical and support personnel in direct and indirect cost. That action in itself verifies the risks related to cost and direct labor traceability addressed by the SSA.

However, no cost adjustment was assigned for this potential risk in developing the most probable cost for this offer.

GAO AnalysisDisregard of Technical/Management Merit

This argument essentially questions the technical judgment of the Air Force--specifically that of the SSA --in ultimately deciding that the proposals of Dynatrend and ASEC were essentially equal. It is well-established, however, that, unless the procuring agency's technical judgments are unreasonably founded, GAO accepts those decisions given the technical complexity of matters typically involved in the evaluation of proposals for requirements of the kind being purchased here. Union Carbide Corporation, B-188426, September 20, 1977, 77-2 CPD 204.

The SSEB did use the word "excellent" in describing the merit of Dynatrend's technical proposal while using the word "acceptable" in describing the merit of ASEC's technical proposal. Nevertheless, we do not equate the descriptive difference as meaning that Dynatrend's technical proposal was considered to be "significantly better" than ASEC's technical proposal especially in view of the identical, overall (low) risk assessments assigned the proposals in this area. Moreover, contrary to Dynatrend's understanding, at no time was Dynatrend's technical and management proposal ever rated "significantly better" than ASEC's proposal in the technical and management areas based on our review of the record. Dynatrend's specific statement that its proposal was so ranked by the SSAC is specifically contradicted by the record which shows the SSAC considered the technical proposals of Dynatrend and ASEC to be "very close together." As to the ranking of proposals in the management area, the SSAC found ASEC's second ranked proposal to be of low risk compared with Dynatrend's rating of very low risk. Although the two management risk assessments differ, we find no evidence that these assessments effectively rated Dynatrend as significantly superior in the management area, let alone superior, when the combined technical/management assessments were considered. Moreover, we find nothing in the record to question the SSA's judgment that Dynatrend's and ASEC's proposals were closely ranked in noncost areas by all evaluation panels such that a selection decision based on technical/management merit was not in order. Nor do we find that the SSA acted unduly quick in making the selection given the nearly 4-week period of time during

which source selection material was reviewed by the official. Consequently, we reject the view that the selection decision disregarded the technical/management merit contained in Dynatrend's proposal or unduly emphasized cost quantum.

ASEC's Cost Is Not Most Realistic

Before discussing the merits of this issue under its various sub-issues, it is important to examine the meaning of the "cost" standard of the RFP. That standard was an attempt to convey to offerors the importance of "cost realism, cost reasonableness and most probable cost" of each proposal. All of these factors underscore the elemental maxim that in cost reimbursement procurements evaluated costs rather than proposed costs provide a sounder basis for determining the most advantageous proposal since the Government is required--within certain limits--to pay the contractor's actual, allowable and allocable costs. 52 Comp. Gen. 870, 874 (1973). To the same effect, (DAR) § 3-807.2(c) (1976) provided:

"Cost analysis is the review and evaluation of a contractor's cost or pricing data * * * and of the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency. It includes the appropriate verification of cost data, the evaluation of specific elements of costs * * * and the projection of these data to determine the effect on prices of such factors as:

- "(i) the necessity for certain costs,
- "(ii) the reasonableness of amounts estimated for the necessary costs,
- "(iii) allowances for contingencies,
- "(iv) the basis used for allocation of indirect costs; and
- "(v) the appropriateness of allocations of particular indirect costs to the proposed contract."

* * * * *

"Among the evaluations that should be made, where the necessary data are available, are comparisons of a contractor's or offeror's current estimated costs with:

- "(i) actual costs previously incurred by the contractor or offeror;
- "(ii) his last prior cost estimate for the same or similar item or a series of prior estimates;
- "(iii) current cost estimates from other possible sources * * *."

Further, we have observed that the procuring agency's judgment as to the methods used in developing the Government's cost estimate and the conclusions reached in evaluating the proposed costs are entitled to great weight since the procuring agencies are in the best position to determine realism of costs and must bear the major criticism for cost overruns experienced by reason of defective cost analyses. As was stated in Grey Advertising, Inc., 55 Comp. Gen. 1111, 1133 (1976), 76-1 CPD 325:

"* * * a contracting agency's evaluation of competing cost proposals involves the exercise of informed judgment, and we 'will not second-guess a cost realism determination unless it is not supported by a reasonable basis.' Management Services, Incorporated, [supra]. Such determinations may be reasonable even though a detailed 'in-depth' analysis is not conducted. See, for example, ILC Dover, supra, in which we upheld the Navy's determination that an offeror's proposed costs were 'fair and reasonable for the effort proposed,' even though the record did not indicate that the Navy did anything more than 'carefully' evaluate proposals and obtain DCAA field pricing support.* * *"

As to the specific use of Government cost estimates of the type involved in the controversy here, we have specifically approved their use in cost evaluation while cautioning against undue reliance on the estimates given the uncertainties associated with cost reimbursement contracting. Vinnell Corporation, B-180557, October 8, 1974, 74-2 CPD 190.

All of these cost principles are for use in guiding the selection of the offeror whose proposed costs will ultimately be the lowest--recognizing the imprecision inherent in the Government's cost evaluation process.

Government Cost Estimate

We cannot question the Air Force's position that proposed total costs were evaluated and compared with the Air Force cost estimates and that these proposed costs were adjusted for "realism and risk" at three levels of increasing risk.

To the extent that Dynatrend's proposal was entitled to be accorded merit because of its relative closeness to the Government's cost projections, we consider that the record of evaluation shows that merit was accorded the proposal. It must be remembered, however, that Dynatrend's cost proposal was only about 7 percent closer to the Air Force's "most probable" cost estimate than ASEC's cost proposal was. Given the uncertainty inherent in the cost estimating art, we cannot conclude that Dynatrend's proposal was--purely from the standpoint of comparability with the Government's "most likely" projected costs--a more cost realistic proposal than that offered by ASEC.

GAO not determined that

Thus, the ultimate selection decision must be seen as founded on a judgment that, as between two proposals which are substantially equal from the viewpoint of technical, management, and cost realism, the proposal to be selected is the one having the most advantageous "probable cost"--lowest cost quantum. On this score, the RFP provided that award would be made by accepting the proposal whose price and other

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factors were "most advantageous" to the Government. We consider all offerors to have been on notice that this award standard would require consideration of cost quantum assuming the substantial equality of offerors on all other evaluation standards including cost realism. Grey Advertising, Inc., supra. Indeed, as pointed out in Grey Advertising, under 10 U.S.C. § 2304(g) (1976), price (cost quantum) must be given appropriate consideration in all negotiated procurements.

Therefore, the proposed award to ASEC cannot be questioned because of the Air Force's alleged improper use of its cost estimates for the proposals.

Failure To Make Proper Cost Analysis

As noted above and as recognized by Dynatrend, procuring agencies are given wide latitude in determining the scope and methods of cost analysis. Thus, we see no objection to the Air Force's use of DCAA recommended rates, Bureau of Labor Statistics rates, and varying labor skill mixes in an attempt to evaluate proposed costs. Also, since Dynatrend's offer was closer to the Government's realistic cost projection than was ASEC's offer, the citation of a 41 man-year risk of indirect labor cost in Dynatrend's cost proposal was not prejudicial to Dynatrend--especially since no cost adjustment was made for this "risk."

The fact that the Air Force did use certain uniform assumptions under its varying levels of cost assumptions as part of its overall cost analysis does not undercut the Air Force assertion that "company unique" factors, especially stemming from skill mixes, were also taken into consideration in assessing cost realism. We find that differing "special assessments" costs added

to ASEC's and Dynatrend's cost proposals were caused by Air Force perceptions of the strengths and weaknesses of these proposals under various labor mixes.

To the extent cost proposals were "normalized" in a manner inconsistent with the policy guidelines contained in the Dynalectron decision, supra, we nevertheless find no evidence that Dynatrend's higher cost proposal was prejudiced by the "normalizing" that was used. As we stated in Dynalectron:

"* * * By aiming 'high' [in technical merit] an offeror may risk being downgraded to some extent technically, because significant departures from the technical guideline will be penalized, but at the same time its costs, however excessive they may be, will be reduced to a standard normalized amount. On the other hand, an offeror which aims 'low' will not only be downgraded technically, but will also have its costs normalized upwards."

We see no evidence in the record that Dynatrend's proposal--which was higher in cost than ASEC's proposal--was downgraded in the technical area through use of this approach to the company's disadvantage.

Cost Accounting Standards

Since small business concerns are exempt from cost accounting standards by regulation, the fact that ASEC, a small business, might be required to conform to the standards at some future date during contract performance is clearly a "speculative" risk--even assuming the requirement would necessarily increase costs to the Air Force--that the Air Force properly need not have evaluated.

As to the prejudice Dynatrend says it suffered by reason of not establishing a "separate cost center" as other offerors did, this was not a result of Air Force pressure but rather Dynatrend's own choice. Therefore, and since the Air Force established ceilings on ASEC's overhead rates which were evaluated pursuant to Government auditing of ASEC's approved accounting system, we cannot question the proposed award under this aspect of the protest.

Unpriced Labor

We see nothing in the present record of cost analysis to question Air Force's position that ASEC's final proposal does "cost" all 217.5 man-years of effort.

Other Cost Risks

(1) The record shows that the Air Force questioned ASEC about its proposed labor costs. ASEC then presented an analysis which lent credence to its proposed salaries based on a greater Boston area salary survey. In any event, the Air Force nevertheless adjusted ASEC's proposed costs upward in this area for perceived risk.

(2) The ceiling negotiated on ASEC's overhead rates, the lack of cost overruns experienced on ASEC's earlier contracts and the other limits of overhead cost risk mentioned by the Air Force support the Air Force's indirect cost evaluation.

(3) We find no basis to question the Air Force position that the quality of ASEC's management proposal plus the proposed contractor's prior contract experience gives satisfactory assurance for contract performance.

(4) The Air Force position that two ASEC engineering contracts did not experience cost overruns supports the proposed award.

(5) Since both Dynatrend and ASEC are proposing to hire about the same number of new employees, ASEC's proposed direct labor rates are no more speculative than Dynatrend's rates from this viewpoint.

(6) The basic reason a more restrictive overhead ceiling was negotiated with Dynatrend was that the Air Force felt "home plant rates" are more dependent on fluctuations and, hence, more risky. Although this assumption may be subject to question as applied to all possible circumstances, we see no reason to question the overall Air Force assessments of cost risks and cost projections because of the varying overhead ceilings negotiated here.

Freedom of Information Act Request

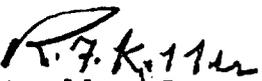
Dynatrend, Inc., requests "access to the Air Force record submitted to GAO" in response to the company's protest. Dynatrend makes this request pursuant to the Freedom of Information Act and GAO regulations concerning the availability of GAO records.

Dynatrend states that it has pursued Freedom of Information Act procedures with the Air Force, but "has been unable to obtain more than a tiny portion of the relevant record from the Air Force." Nevertheless, as noted above, the Air Force has permitted the company to examine certain Air Force responses to the protest.

Our Office has no authority under the Freedom of Information Act to determine what information must be disclosed by other Government agencies. Reza Seyyedini Art and Film Production - Reconsideration, B-191470, September 29, 1978, 78-2 CPD 245.

As to the request for release of information under GAO's regulations concerning the public availability of its records, section 81.4(e), Title 4 of the Code of Federal Regulations, provides that where, as here, a Federal agency other than our Office has the primary interest in a record, a request for the record shall be transferred to the agency with the primary interest, and the requester notified of that action. Since Dynatrend already requested release of the documents in question from the Air Force, it is unnecessary for us to transfer the request. Consequently, we are unable to honor the request.

Protest denied.


Deputy Comptroller General
of the United States