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of the United States**

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Decision

Matter of: DynCorp International LLC

File: B-406523.2; B-406523.3

Date: December 16, 2013

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Kevin P. Mullen, Esq., Ethan E. Marsh, Esq., and Charles L. Capito, Esq., Jenner & Block LLP, for Gulfstream Aerospace Corporation, the intervenor.

Jared D. Minsk, Esq., Department of the Air Force, for the agency.

Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging an agency's evaluation of the protester's past performance is denied, where the agency reasonably assessed the relevance and quality of the protester's past performance in accordance with the solicitation's evaluation criteria.
 2. In a negotiated procurement for the award of a fixed-price contract, a price realism evaluation is required where the solicitation provides that the agency will evaluate prices to determine an offeror's understanding and may reject a proposal for offering low prices.
 3. An agency did not conduct misleading discussions where the agency identified elements of protester's pricing that the agency believed to be too low and asked the protester to either verify its pricing or explain the basis of its low prices.
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DECISION

DynCorp International LLC, of Fort Worth, Texas, protests the award of a contract to Gulfstream Aerospace Corporation, of Savannah, Georgia, under request for proposals (RFP) No. FA8106-11-R-0001, issued by the Department of the Air Force

for contractor logistics support for C-20 and C-37 aircraft.¹ DynCorp challenges the agency's past performance and price evaluations, conduct of discussions, and selection decision.

We deny the protest.

BACKGROUND

The RFP, issued under the commercial acquisition procedures of Federal Acquisition Regulation (FAR) Part 12, provided for the award of a fixed-price indefinite-delivery/indefinite-quantity contract for full and partial logistics support for C-20 and C-37 aircraft.² The C-20 and C-37 aircraft are militarized versions Gulfstream's GIII, GIV, GV, and G550 aircraft. Contracting Officer's (CO) Statement at 1.

A detailed performance work statement (PWS) was provided that described the aircraft and required services. Offerors were informed that the C-20 and C-37 aircraft, which were purchased from Gulfstream, are primarily used by the military services to provide worldwide airlift support for the Vice President, cabinet-level dignitaries, senior military leaders, and other government executive officials. PWS at 4. The aircraft are assigned to main operating bases at Andrews Air Force Base (AFB), Maryland; Hickam AFB, Hawaii; Marine Corps Base Kaneohe Bay, Hawaii; MacDill AFB, Florida; Ramstein Air Base, Germany; and Naval Air Station Sigonella, Italy. See id. at 5-7.

¹ Northrop Grumman Technical Services, Inc. was the incumbent contractor for logistics support for the C-20 aircraft, and Gulfstream was the incumbent for the C-37 aircraft. See Northrop Grumman Tech. Servs., Inc., B-406523, June 22, 2012, 2012 CPD ¶ 197 at 2.

² Full contractor logistics support includes all aircraft maintenance and personnel, materials and inspections, launch and recovery of aircraft, management of all government-owned spares and support equipment through a contractor operated and maintained base supply system; repair and overhaul of all repairable spares at FAA certified repair stations; maintenance and repair of all support equipment; aircraft paint; engine/auxiliary power unit repair and overhaul. Performance Work Statement at 4. Partial contractor logistics support will be provided only at Andrews Air Force Base, Maryland, and does not include organizational level maintenance, inspections, and personnel; or launch and recovery of aircraft. Id. at 5.

The RFP stated that award would be made on a best-value basis, considering: technical, past performance, and price.³ Offerors were informed that the agency would first evaluate whether proposals were acceptable under the technical factor. The RFP provided that proposals that were determined to be technically acceptable would then be the subject of a past performance/price tradeoff analysis to determine which proposal reflected the best value. RFP amend. 8, append. L § 1.1.1.

With respect to past performance, offerors were informed that the agency would evaluate the offeror's demonstrated recent/relevant record of performance and assign one of the following performance confidence assessment ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). As relevant here, a substantial confidence rating reflected a high expectation that the offeror would successfully perform the required effort, and a satisfactory confidence rating reflected a reasonable expectation that the offeror would successfully perform the required effort. RFP amend. 8, append. L § 2.3.1.

Offerors were instructed to submit past performance information for both the offeror and for key or critical subcontractors or teaming partners. RFP amend. 6, append. K § 5.1. In this regard, the RFP requested that offerors provide past performance information for four to seven recent/relevant contracts for itself and two to three recent/relevant contracts for each subcontractor-teaming partner. Id. § 5.3. To be considered recent, the past performance was required to have been performed within three years of the issuance of the RFP. RFP amend. 8, append. L § 2.3.2.1. Offerors were informed that the agency's assessment of relevance would consider "things such as similar service, similar complexity of the effort, breadth and depth of skills, similar contract scope and type, contract magnitude and schedule." Id. § 2.3.2.2. The RFP also provided that in assessing relevance of the offeror's past work the agency would compare the work that the offeror performed with the work it proposed to do under the RFP. Offerors were also informed that contracts for the support, management, and maintenance of Gulfstream aircraft would be considered more relevant than those that did not. Id.

With respect to price, the RFP included 268 contract line items (CLIN), for which offerors were required to provide fixed prices. Some CLINs sought fixed flying-hour rates by aircraft tail number; and offerors were informed that these fixed rates must include all materials, parts, components, subscriptions, and manual/publications updates to provide maintenance and supply support at each aircraft site to meet mission capability and dispatch reliability requirements, unless specifically excluded.

³ The technical factor included the following subfactors: program management, resource management, maintenance, and phase-in. RFP amend. 8, append. L § 2.1.1.

See, e.g., RFP at 31. Offerors were informed that prices would be evaluated for reasonableness and unbalancing. In addition, the RFP warned that:

Unreasonable prices or estimates may be grounds for eliminating a proposal from the competition based upon an apparent lack of understanding of the requirement. Offerors are also cautioned to not use underbidding as a pricing strategy with the intention of “getting well” or recovering under-bid costs after contract award via Requests for Equitable Adjustments (REAs) or other devices. Pricing will also be evaluated for completeness which is considered an aspect of reasonableness.

RFP amend. 8, append. L § 2.4.2.

The Air Force received proposals from four offerors, including DynCorp and Gulfstream. CO’s Statement at 13. Following an initial evaluation, the agency established a competitive range that included all four proposals, and conducted a number of rounds of discussions. DynCorp received evaluation notices (ENs) concerning its technical proposal, past performance, and initial proposed price of \$459.9 million. Agency Report (AR) at 4. As relevant here, DynCorp received a number of ENs indicating where DynCorp’s pricing was lower than the independent government estimate (IGE),⁴ asking DynCorp to verify its pricing, and if DynCorp verified the price to explain the basis of its fixed pricing. For example, DynCorp received ENs stating that its pricing appeared too low for flying hours (CLINs X047 to X085), for main operating base maintenance, for contractor operated and maintained base supply, and for a number of CLINs for which DynCorp neglected to provide a price.⁵ See, e.g., AR, Tab 23, ENs, DYN-CP-011, DYN-CP-012, DYN-CP-027, and DYN-CP-029.

⁴ The IGE initially was \$758.7 million. After receiving final proposal revisions, the agency revised the IGE to \$678.1 million to reflect “cost savings achieved by combining the C-20 and C-37 requirements.” AR at 4.

⁵ DynCorp also received some ENs concerning pricing that appeared high compared to the IGE. For example, the agency notified DynCorp that its proposed phase-in pricing (CLIN 0001) appeared high relative to the government estimate, and asked DynCorp to verify and explain the basis of its pricing. In particular, the agency stated that “[i]f any part of Phase-In pricing is verified correct, provide explanation of pricing and why it appears to be priced high considering PWS Phase-In instructions.” AR, Tab 23, ENs, DYN-CP-008.

DynCorp's and Gulfstream's final revised proposals were evaluated as follows:

	DynCorp	Gulfstream
Technical	Acceptable	Acceptable
Past Performance	Satisfactory Confidence	Substantial Confidence
Evaluated Price	\$639.0 million	\$649.9 million

AR, Tab 59, Final Briefing to Source Selection Authority (SSA), at 19.

The SSA concluded that Gulfstream's superior past performance assessment outweighed DynCorp's slight price advantage (1.7 percent or \$10.8 million). In making this judgment, the SSA reviewed the underlying basis for the firms' respective past performance assessments, specifically commenting upon the merits of each firm's identified recent/relevant past performance. The SSA recognized that the mission of the C-20 and C-37 aircraft was to transport dignitaries around the world, and noted that Gulfstream's higher past performance rating gave him greater confidence in Gulfstream's ability to successfully perform the contract. AR, Tab 68, Source Selection Decision, at 18-23.

Award was made to Gulfstream, and this protest followed a debriefing.

DISCUSSION

DynCorp challenges the agency's evaluation of its past performance and price, and contends that the agency conducted misleading discussions with DynCorp that caused the firm to raise its price. DynCorp also contends that the agency's evaluation errors resulted in a flawed past performance/price tradeoff. We have considered all of DynCorp's arguments, although we address only its primary ones, and find that none provide a basis for questioning the agency's conduct of the procurement.

Past Performance Evaluation

DynCorp raises numerous challenges to the agency's evaluation of its past performance, arguing that its confidence assessment rating should have been higher than satisfactory confidence. In this regard, DynCorp complains that its performance on two prior contracts (as a prime contractor at Andrews AFB and as a subcontractor to Northrop Grumman) for support services for the C-20 and C-37 aircraft should have been assessed as relevant. See Protester's Comments at 17. DynCorp also complains that its performance of other contracts supporting non-

Gulfstream aircraft (such as its support of the C-21 aircraft) were only assessed as relevant, despite the fact that the agency found these contracts to be extremely similar.⁶ Id. at 23. Lastly, DynCorp complains that agency placed too much weight on its marginal performance of a contract at Sheppard AFB, despite the fact that the agency concluded that this contract was only “somewhat relevant.” Id. at 26.

An agency’s evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of agency discretion which we will not disturb unless the agency’s assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. See e.g., Yang Enter., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5. Since the agency is responsible for defining its needs and the best method for accommodating them, we will not substitute our judgment for reasonably-based past performance ratings. See MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. An offeror’s mere disagreement with an agency’s judgment is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Here, the record shows that the agency’s satisfactory confidence assessment of DynCorp’s past performance was reasonable. The agency’s past performance evaluation team (PPET) reviewed the information provided for each contract to determine its similarity with regard to scope, magnitude, and complexity and reviewed information concerning the quality of the contractor’s performance.

With respect to DynCorp’s performance at Andrews AFB, the PPET recognized that the protester was supporting the C-20 and C-37 aircraft, but found that the scope of DynCorp’s performance under this contract was limited to providing main operating base maintenance support at only Andrews AFB, and not worldwide as will be required under this procurement. The PPET concluded that, although DynCorp maintained Gulfstream aircraft under this contract and had some similarities in magnitude, the contract lacked similarity in scope and complexity. In this regard, the PPET noted that DynCorp performed only organizational level maintenance under the Andrews AFB, which is only one part of a larger requirement for the C-20/C-37 program and did not provide, for example, contractor owned and maintained base supply. AR, Tab 46, Final Past Performance Consensus for DynCorp’s Andrews AFB Contract, Program Management, at 20-21. DynCorp does not show that its performance of the Andrews AFB contract encompassed all elements of the work necessary to perform the C-20/C-37 contract to be awarded here, but argues that the scope, complexity, and magnitude of the Andrews AFB contract was similar enough in its judgment to warrant a relevant rating. See

⁶ The Air Force’s C-21 aircraft were manufactured by Lear Jet, Inc.

Protester's Comments at 19-21. This disagreement with the agency's judgment, however, does not show it to be unreasonable.

DynCorp also complains that, notwithstanding the agency's judgment that DynCorp's Andrews AFB performance was only somewhat relevant, its performance of this contract should have been rated as exceptional, and not merely very good. In this regard, DynCorp states that the past performance questionnaire for this contract indicated primarily exceptional performance. Protester's Comments at 22. The Air Force agrees that the questionnaire it received for DynCorp's performance at Andrews AFB indicated primarily exceptional performance, but states that the PPET also reviewed ratings in the contractor performance assessment reporting system (CPAR) for this contract. The agency states that the CPAR ratings showed mostly very good ratings, and that the narrative comments indicated that DynCorp's actual performance was closer to being satisfactory. Based upon the information contained in the questionnaire and CPARs, the PPET assigned an overall rating of very good for program management. AR at 15. We find no merit to DynCorp's contention that the agency could not consider the import of the CPARs ratings and narratives in determining that DynCorp's record reflected very good, rather than exceptional, performance of this Andrews AFB contract.

With respect to DynCorp's subcontract supporting Northrop Grumman's current logistics support contract for the C-20 aircraft, the PPET recognized that Northrop Grumman's contract was essentially the same as the work solicited here for supporting the C-20 aircraft. The PPET found, however, that DynCorp's subcontract was not relevant with respect to program management, given that DynCorp had no program management responsibility under the subcontract. See AR, Tab 46, Final Past Performance Consensus for DynCorp's C-20 Subcontract, Program Management, at 5-6; Tab 57 Proposal Analysis Report, at 123. Although DynCorp argues that it explained in its proposal how it supported Northrop Grumman's program management, see Protester's Comments at 21, this narrative does not demonstrate its responsibility for program management aspects of the prime contract.

With respect to DynCorp's performance of other contracts supporting non-Gulfstream aircraft, such as its support of the C-21 aircraft, the PPET recognized that these contracts were extremely similar to the work to be awarded here. See AR, Tab 57 Proposal Analysis Report, at 123. Nevertheless, the PPET considered this work to be relevant, rather than very relevant, only because the RFP provided that support for Gulfstream aircraft was to be considered more relevant than support of non-Gulfstream aircraft. See RFP amend. 8, append. L § 2.3.2.2. Although DynCorp disagrees that this performance should be assessed as only relevant, it does not demonstrate that the agency's evaluation was inconsistent with the solicitation. In any event, the SSA in his consideration of DynCorp's past performance recognized that the contracts supporting non-Gulfstream aircraft were

“essentially the same type of support and scope of services” required here. See AR, Tab 68, Source Selection Decision, at 8.

With respect to DynCorp’s performance at Sheppard AFB, the PPET found from the CPAR ratings for this work that DynCorp’s performance was marginal in a number of regards. The PPET noted, however, that DynCorp’s “adverse performance exhibited on this contract was tempered by the Somewhat Relevant ratings given to the contract.” AR, Tab 57, Proposal Analysis Report, at 148. The PPET concluded that the marginal ratings did not indicate less than a satisfactory confidence assessment. See AR, Tab 46, Final Past Performance Consensus for DynCorp’s Sheppard AFB Contract, Program Management, at 5-6; Tab 57, Proposal Analysis Report, at 148. We find that the record does not support DynCorp’s contention that the agency gave undue weight to the adverse ratings in CPARs for this contract given that it was only viewed as somewhat relevant. The record shows that this contract was only a one part of DynCorp’s overall past performance that was considered in determining its satisfactory confidence rating, and that the agency’s SSA and evaluators recognized that the adverse past performance was mitigated by the fact that the contract was only somewhat relevant. See, e.g., AR, Tab 68, Source Selection Decision, at 9.

Price Realism and Discussions

DynCorp also complains that the agency improperly assessed the realism of its low price, although the solicitation provided only for a price reasonableness assessment. See Supp. Protest at 5; Protester’s Supp. Comments at 13. DynCorp also contends that the agency’s realism assessment was unreasonable, because the agency compared the firm’s proposed prices to the IGE before the agency recognized that the IGE was “inflated.” Supp. Protest at 6-7. DynCorp contends that it was prejudiced because the agency, using the “inflated IGE” concluded that DynCorp’s initial proposed prices were too low and “counsel[ed] [DynCorp] during discussions to raise multiple CLIN prices.” Id. at 2, 13-15. DynCorp also states that Gulfstream received fewer discussion questions concerning its low prices and that this disparate treatment had the effect of minimizing DynCorp’s price advantage. Id. at 14.

First, contrary to DynCorp’s argument, the RFP plainly informed offerors that the agency would review prices to determine if they demonstrated “an apparent lack of understanding of the requirement,” and reserved the right to eliminate proposals from the competition based on this lack of understanding. See RFP amend. 8, append. L § 2.4.2. Under these circumstances, DynCorp cannot claim to have been misled about the agency’s intentions with respect to evaluating price. See Optex Sys., Inc., B-408591, Oct. 30, 2013 CPD ¶ at 4.

Next, we find no merit to DynCorp’s argument that the agency’s price realism evaluation must have been unreasonable, where the agency revised the IGE after

receiving final proposal revisions and did not reassess the realism of offerors' proposed prices based upon the revised IGE. The record shows that, after receiving final proposal revisions, the Air Force lowered the IGE from \$758.7 million to \$678.1 million to reflect "cost savings achieved by combining the C-20 and C-37 requirements." See AR at 4. Nevertheless, DynCorp offers no explanation of how this revision to the IGE caused any prejudice to the protester, given that its initial overall price remained low even compared to the revised IGE and that the comparison of its initial proposed price to the IGE had no impact upon DynCorp's failure to price a number of CLINs.⁷

We also find no merit to the protester's contention that the Air Force conducted misleading and disparate discussions with DynCorp. In negotiated procurements, if an agency conducts discussions, the discussions must be meaningful. That is, agencies must lead offerors into the areas of their proposals that contain significant weaknesses or deficiencies, and it may not mislead offerors. The Boeing Co., B-311344 et al., June 18, 2008 CPD ¶ 114 at 49. Here, the Air Force had concerns with DynCorp's pricing in a number of areas, and asked for verification and/or explanation of the pricing. For example, DynCorp was asked:

The proposed overall price for Flying Hours (CLINs X047-X085) appears low relative to the Government estimate. Overall, CLINs X047-X063 for C-20 Flying Hour pricing appears to be priced low compared to Government estimates. Was any material cost excluded from Flying Hour CLINs that was incorrectly priced under Phase-In (CLIN 0001)?

Verify Flying Hour pricing (CLINs X047-X085). If verified as correct, provide explanation of your basis of estimate used to develop proposed pricing. Ensure pricing is in accordance with CLIN descriptions as well as PWS requirements.

See AR, Tab 23, ENs, DYN-CP-011. In response to these discussions, DynCorp provided missing prices (which alone resulted in an increase in its price of approximately \$113 million) and increased other prices. DynCorp was not required to increase any of its prices, and could instead have provided an explanation for its pricing. Although DynCorp disclaims its exercise of business judgment, see Protester's Supp. Comments at 17-18, the protester has simply failed to

⁷ DynCorp acknowledges that correcting its failure to price all CLINs resulted in its initial proposed price increasing from \$495.8 million to \$608.9 million. See Supp. Protest at 14 n.8.

demonstrate how the agency's requests for more support for its pricing misled the firm.⁸

We also find no merit to DynCorp's suggestion that the agency's pricing discussions were disparate, because Gulfstream received fewer ENs questioning that firm's low prices. The record shows that both firms received discussion questions appropriate to their particular proposals. Gulfstream received fewer discussions questions concerning whether its pricing was too low, because Gulfstream's initial proposed price was significantly higher than DynCorp's initial proposed price. In response to discussions, Gulfstream raised some of its proposed prices and lowered others.

Selection Decision

DynCorp also contends that the agency's past performance/price tradeoff analysis was unreasonable, because of the agency's underlying evaluation errors. See Protester's Comments at 29. As described above, the record does not support DynCorp's challenges to the agency's evaluation and conduct of discussions, and accordingly we find no merit to DynCorp's objection to the agency's selection decision based upon those alleged errors.

The protest is denied.

Susan A. Poling
General Counsel

⁸ In its supplemental comments, the protester argued for first time that in some instances the Air Force failed to inform DynCorp that its pricing was too high, although Gulfstream had received such discussions. See Protester's Supp. Comments at 22. This complaint is dismissed as it was not raised within 10 days of DynCorp's receipt of documents providing it with the basis for its allegation.