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Decision

Matter of: Johnson Controls World Services, Inc.

File: B-289942; B-289942.2

Date: May 24, 2002

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Alexander Bakos, Esq., and Robert A. Tepfer, Esq., National Aeronautics and Space Administration, for the agency.

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DIGEST

Protest challenging the agency's "best value" source selection decision is sustained where the record shows that there is insufficient information and analysis in the record, which includes both a contemporaneous source selection statement and a post-protest addendum to that statement, to determine that the award selection was reasonable.

DECISION

Johnson Controls World Services, Inc. (JCWS) protests the award of a contract to DynCorp Technical Services, LLC, under request for proposals (RFP) No. 9-BJ32-T63-0-24P, issued by the National Aeronautics and Space Administration (NASA) to procure center operations support services (COSS) for the Lyndon B. Johnson Space Center and associated facilities in Houston, Texas. JCWS primarily contends that the source selection authority's (SSA) "best value" determination was flawed.

We sustain the protest.

NASA issued this solicitation on July 25, 2001 seeking proposals to provide a wide array of support services to the Johnson Space Center under a contract using hybrid cost-reimbursement and fixed-price contracting methods, with an award fee provision, over a 2-year base period, with up to three 1-year option periods. The RFP's scope of work divided the support services into 14 separate annexes. Annexes 1-5 and 8-12 (administrative support, maintenance and repair, directed services,

operations, engineering services, information technology, environmental program, supply services, property and equipment, and transportation services, respectively), were categorized as routine services to be procured on a cost-reimbursable basis; annexes 7 and 14 (grounds maintenance and custodial services, respectively), were categorized as routine services to be procured on a fixed-price basis; annex 13 was comprised of non-routine services to be procured on a cost-reimbursable, indefinite-delivery, indefinite-quantity (ID/IQ) basis; and annex 6 was comprised of non-routine services to be procured on a fixed-price ID/IQ basis.

The RFP stated that proposals were to be evaluated against three evaluation factors: mission suitability, past performance, and cost/price. Mission suitability and past performance, when combined, were approximately equal to cost/price. RFP § M.6.0.

Under the mission suitability evaluation factor, NASA planned to assess the merit of the work proposed and the offeror's ability to actually provide what was offered. RFP § M.3.0. Proposals were to be adjectivally rated as "excellent," "very good," "good," "fair," or "poor," and assigned point scores based on four subfactors. The management approach subfactor and the technical performance subfactor were each worth a maximum of 400 points. The safety and health plan subfactor and the plan for small business subcontracting goals subfactor were each worth a maximum of 100 points. Id.

Past performance, including past performance under other contracts, safety and environmental performance, quality system experience, and historical financial performance and condition, was to be evaluated and assigned an adjectival rating. The evaluation was to be based on information provided by offerors in their proposals, as well as any other information obtained independently by the source evaluation board (SEB). RFP § M.4.0.

Section M.5.0 of the RFP divided the cost/price evaluation factor into three paragraphs: cost, price, and ID/IQ. The cost factor was to indicate the validity, realism and adequacy of each cost proposal and the probable cost that would be incurred in the performance of the effort. RFP § M.5.1. The RFP provided for a series of downward adjustments to an offeror's mission suitability score if the difference between its proposed and probable costs exceeded 5 percent. Id. With respect to price, the agency was to perform a price analysis of the fixed-price portions of all proposals. RFP § M.5.2. Finally, the agency was to use a model to evaluate the ID/IQ work. This model would evaluate the impact of proposed rates, coefficient factors, and proposed fee against an estimated future set of ID/IQ requirements. An estimated amount would be developed using this model and that amount would be used for selection purposes only. RFP § M.5.3.

NASA received proposals from seven firms on September 26. The SEB conducted an initial evaluation and presented the results to the SSA, who established a competitive range of four offerors, including JCWS and DynCorp. Written and oral discussions

were conducted with each offeror in the competitive range, and each was given the independent government estimate (IGE). NASA received final proposal revisions (FPR) on December 28. The SEB performed a final evaluation of each proposal and determined that all weaknesses and cost/price issues identified for JCWS, DynCorp, and Offeror A had been resolved; Offeror B failed to correct one minor weakness in its FPR. As shown in the following chart, the final evaluation results for JCWS and DynCorp¹ showed that the JCWS proposal received significantly higher point-scores than the DynCorp proposal, albeit at a somewhat higher probable cost/price:

	DynCorp	JCWS
Mission Suitability	684 points/Good	950 points/Excellent
Safety and Health Plan	70 points/Good	95 points/Excellent
Subcontracting Plan	70 points/Good	90 points/Excellent
Management Approach	312 points/Very Good	384 points/Excellent
Technical Performance	232 points/Good	380 points/Excellent
Past Performance	Very Good	Very Good
Total Probable Cost/Price	\$175,123,644	\$189,632,059

The SEB's final report, the bulk of which is devoted to a discussion of the cost/price evaluation factor, contains no comparative analysis of offerors' relative strengths under the mission suitability or past performance evaluation factors. Instead, the report merely references, as attachments, the SEB's detailed description of each offeror's significant strengths and strengths.² The narrative describing these major and minor strengths shows significant quantitative and qualitative differences between the JCWS and DynCorp proposals. Under the mission suitability evaluation factor, JCWS's proposal was evaluated as having 12 major strengths and 17 minor strengths, to DynCorp's 1 major strength and 23 minor strengths. The narrative supporting the SEB's findings shows that several of JCWS's major strengths appear to be beneficial to the government, and that many of the strengths in each proposal arise from its unique features. Under the past performance evaluation factor, JCWS's proposal was evaluated as having one major strength and three minor strengths, to DynCorp's one major strength and four minor strengths. Again, the narrative supporting the SEB's findings shows several apparent qualitative distinctions between the two proposals.

¹Offerors A and B were both evaluated as having a higher probable cost/price than DynCorp and JCWS; both had mission suitability scores and ratings lower than JCWS but higher than DynCorp; and both had "very good" past performance ratings.

²The record refers to "significant strengths" and "strengths" in some places, and to "major strengths" and "minor strengths" in other places. For the sake of clarity, this decision adopts the use of the latter terms.

The SEB presented its findings to the SSA in a January 18, 2002 briefing. The SEB's briefing charts contain no comparative analysis of the apparent qualitative differences between the two proposals under the mission suitability and past performance evaluation factors. The charts simply provide a one-phrase description of each offeror's major strengths and the number of each offeror's minor strengths. There is no additional substantive contemporaneous record of the contents of this briefing and ensuing discussion except the contemporaneous source selection statement.

In the contemporaneous source selection statement, the SSA acknowledged each offeror's adjectival ratings under the past performance and mission suitability evaluation factors and ranked the proposals in ascending order of their probable cost/price. He stated that the proposals of JCWS, Offeror A, and Offeror B received mission suitability ratings of excellent³ with no major weaknesses, but that all were higher in cost/price than DynCorp; he expressed his confidence in the SEB's probable cost analysis and price realism analysis. The SSA stated, without elaboration, that after hearing the SEB's presentation and discussion, he compared the mission suitability strengths of each offeror as reported by the SEB as well as the ranking of the offerors in cost/price in light of the relative importance of the evaluation factors, and concluded that Dyncorp represented the best value to the government. The SSA concluded, again without elaboration, that there were no discernable benefits offered by the excellent mission suitability ratings of the other proposals that offset the significant advantage of DynCorp's lowest cost/price.

NASA awarded the contract to DynCorp on January 31. JCWS was given a copy of the source selection statement during its debriefing, after which it filed its initial protest. JCWS alleged, among other things, that NASA improperly substituted a technically acceptable, lowest cost/price evaluation scheme for the stated best value approach. The agency subsequently determined that "contract performance is in the best interests of the United States and that urgent and compelling circumstances exist which significantly affect the interests of the United States" which would not permit waiting for our decision, and executed an override of the statutory stay of performance of the contract. See 31 U.S.C. § 3553(d)(3)(C)(i) (2000).

Along with the agency report filed in response to the initial protest, NASA filed an "addendum" to the source selection statement. NASA conceded that it did not "record the SSA's contemporaneous inquiries, judgments, tradeoffs and reasons for his selection in the formal selection decision," and stated that, "[t]o correct this omission in the record, NASA has recorded the oral deliberations of the SSA in an Addendum to the Source Selection decision." NASA's Mar. 18, 2002 Legal Memorandum at 9. As discussed below, in his post-protest addendum, the SSA makes conclusory and partial comparisons between some aspects of the JCWS and

³ The mission suitability rating for Offeror A was actually very good, not excellent.

DynCorp proposals, finds these two offerors essentially equivalent in past performance, and concludes that the value of JCWS's technical benefits did not offset the significant cost savings from DynCorp's proposal.

In its comments on the initial agency report, JCWS alleged that, even if the SSA's reasoning could be considered a best value analysis instead of a technically acceptable, lowest cost/price decision, the SSA's best value determination was "completely flawed." Protester's Mar. 29, 2002 Comments at 16. JCWS also alleged that NASA improperly failed to document the decision-making process, and raised several cost/price-related allegations.⁴ For the reasons discussed below, we sustain the protest.

JCWS contends that the SSA's best value determination is flawed because there is no evidence that the SSA conducted a comparative assessment and cost/technical tradeoff of the proposals as required by the Federal Acquisition Regulation (FAR) and applicable case law. The protester asserts that the SSA failed to discuss in any meaningful way the documented relative strengths of the offerors under the mission suitability evaluation factor, and failed to look qualitatively at the past performance findings for either offeror.⁵

⁴ Our review of these latter allegations shows them to be without merit. For example, JCWS cited the SSA's comment that, "[b]ased on historical and projected requirements, the large majority of future IDIQ work will be fixed price, and this is reflected in the COSS IDIQ pricing model," Addendum at 4, as evidence of an unannounced evaluation criterion. The record shows that the RFP, as amended, was sufficient to put offerors on notice of this information. JCWS's arguments, first raised in its supplemental comments, that the SSA improperly used this "unannounced evaluation criterion" in making his source selection decision, are untimely; our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. Baldt Inc., B-288315, Aug. 28, 2001, 2001 CPD ¶ 149 at 3-4 n.3. JCWS's supplemental protest also alleged that, during oral discussions, NASA led JCWS to believe it would revise the IGE with regard to the pricing of one annex but failed to do so. Even if NASA orally indicated it would revise the IGE, offerors cannot reasonably rely on oral modifications to an RFP which are inconsistent with its written terms, absent a written amendment, or confirmation of the oral modification. FAR § 15.206; see S³ LTD, B-287019.2 et al., Sept. 14, 2001, 2001 CPD ¶ 165 at 6. This principle provides fairness to all parties by ensuring competitions are conducted under equal terms. If JCWS believed NASA's requirements were not reflected in the IGE, it should have raised the matter prior to the next closing time for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (2002).

⁵ JCWS's alternative contention—that NASA improperly converted the RFP's stated best value scheme to a low cost/price, technically acceptable scheme—stems primarily from the emphasis placed on the cost/price evaluation factor in the SEB's final report, the source selection statement, and the addendum, and from references

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In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Shirley Constr. Corp., B-240357, Nov. 8, 1990, 90-2 CPD ¶ 380 at 6. Where, as here, cost/price and non-cost/price factors were of approximately equal weight, the source selection authority had the discretion to determine whether the technical advantage associated with JCWS's proposal was worth its higher price. Teltara, Inc., B-280922, Dec. 4, 1998, 98-2 CPD ¶ 124 at 2-3; see also FAR § 15.101-1(a), (c). In this regard, section 15.308 of the FAR requires a source selection decision to be based on a comparative assessment of proposals against all of the solicitation's source selection criteria and documented, and that the documentation include the rationale for any business judgments and tradeoffs made or relied on by the SSA. The propriety of the cost/price-technical tradeoff decision turns not on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's evaluation scheme. Cygnus Corp., B-275181, Jan. 29, 1997, 97-1 CPD ¶ 63 at 11.

In reviewing an agency's evaluation of proposals and source selection decision, we will examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. AIU North America, Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 7. An agency which fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. Matrix Int'l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 5. While source selection officials may reasonably disagree with the evaluation ratings and results of lower-level evaluators, Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 6-8, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the stated evaluation factors, and adequately documented. AIU North America, Inc., supra.

The contemporaneous source selection statement did not meet these requirements. Notwithstanding the fact that the JCWS proposal was scored significantly higher than the DynCorp proposal, as documented by the SEB,⁶ the source selection

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in the latter two documents to DynCorp's "adequacy" and "acceptability." We find this contention unpersuasive. In our view, the portions of the record cited by JCWS reflect NASA's focus on the cost/price evaluation factor as the single most important evaluation factor, which is consistent with the RFP's stated evaluation scheme.

⁶ JCWS's contention that NASA improperly failed to document the decision-making process extends to the SEB's evaluation, but the record shows this portion of the contention is without merit. As for JCWS's allegation that the agency failed to comply with the requirements of the source selection plan, alleged violations of a

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statement is devoid of any substantive consideration as to whether JCWS's proposal was a better value to the government than DynCorp's lower-rated, lower-priced one. While the SSA states that he compared the various mission suitability strengths of each offeror and found "no discernible benefits" in the other proposals that offset the "significant advantage" of the lowest cost/price offered by the DynCorp proposal, Source Selection Statement at 3, such general statements fall far short of the requirement to justify cost/technical tradeoff decisions. TRW, Inc., B-234558, June 21, 1989, 89-1 CPD ¶ 584 at 5.

In response to JCWS's protest, which specifically alleged that "there are no technical cost/price tradeoffs or other analyses of the proposals evident in the [source selection statement]," and recited features of its proposal that were not considered, JCWS Feb. 15, 2002 Protest at 9, 11-14, NASA submitted an addendum to the source selection statement, as noted above, to "correct this omission in the record." NASA's Mar. 18, 2002 Legal Memorandum at 9. Although our Office considers the entire record in determining the reasonableness of an agency's award decision, including statements made in response to a protest, we accord greater weight to contemporaneous materials rather than judgments made in response to protest contentions, such as the agency's assertions here. Beacon Auto Parts, B-287483, June 13, 2001, 2001 CPD ¶ 116 at 6. In any event, our review of the record here, even giving full consideration to the post-protest addendum to the source selection statement, shows that there is insufficient information and analysis in the record for us to determine that the award selection was reasonable. AIU North America, Inc., *supra*, at 7-11; see also Beacon Auto Parts, *supra*, at 7-8; Satellite Servs., Inc., B-286508, B-286508.2, Jan. 18, 2001, 2001 CPD ¶ 30 at 9-11.

We turn first to the addendum's discussion of the mission suitability evaluation factor, and the SSA's focus on the more heavily-weighted management approach and technical performance subfactors.

Under the management approach subfactor, the SEB evaluated JCWS's proposal as having 6 major strengths and 8 minor strengths, to DynCorp's 1 major strength and 14 minor strengths. JCWS's major strengths were associated with its quality control process, phase-in plan, ability to respond to emergency and high-priority unplanned work, use of personal computers in maintenance shops, real-time engineering support for maintenance, and "very good" management team. SEB Final Report, Attach. 11, at 5-17. DynCorp's major strength was associated with its highly effective integrated team management philosophy, including various employee incentives. The detailed narrative underlying the description of each major and minor strength shows that the SEB found qualitative differences between the proposals which

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source selection plan do not provide a valid basis for protest. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 4 n.2.

apparently indicate that the JCWS proposal was viewed as superior. For example, the SEB's commentary about JCWS's major strength for its "very good" management team includes very positive comments about seven specific members of that team and concludes that the overall quality of the team was "highly satisfactory to outstanding." Id. at 14-16. In contrast, the SEB's commentary about DynCorp's minor strength for its "strong" key personnel includes very positive comments about just one specific member of the team and states that, other than a "notable omission" of information regarding a qualified individual for one position, the DynCorp management team had a high probability of success to consistently perform at or above the "good" range. SEB Final Report, Attach. 13, at 13.

Under the technical performance subfactor, the SEB evaluated JCWS's proposal as having two major strengths and six minor strengths, while DynCorp's proposal was evaluated as having no major strengths and five minor strengths. JCWS's major strengths were associated with its use of hand-held field unit data recorders and the versatility of its web-based work management system. Again, the detailed narrative underlying the description of each major and minor strength appears to show that the SEB viewed JCWS's proposal as superior to DynCorp's proposal. For example, the SEB evaluated JCWS's proposal as having a major strength for the versatility of its web-based work management system but evaluated DynCorp's proposal as having a minor strength for its web-based work management system, indicating some measure of superior quality in the JCWS proposal.

Despite the existence of the SEB's detailed evaluation findings showing apparently superior features in the JCWS proposal, the SSA's discussion of these two subfactors is collapsed and conclusory.

The SSA first states that the proposals of JCWS and Offerors A and B contained similar major strengths for customer-friendly, on-line work management systems with capabilities that greatly exceeded the work management requirements in the RFP. He states that he questioned whether the comparable DynCorp work management system would get the job done and was told that the SEB found DynCorp's work management system to be more than adequate, "allowing web-based capabilities far beyond the simple RFP requirements." Addendum at 6. The SSA added, "In fact, Dyncorp was assigned a minor strength in this area by the SEB." Id. The SSA next states that JCWS received a major strength for the use of hand-held data recorders to electronically transfer work status information, a major strength for its use of personal computers in maintenance shops, and a major strength for its approach to providing real-time engineering support for maintenance. He said that the SEB found these features could improve the overall efficiencies of work crews and quality of work, but that he found the potential for increased efficiency was not supported by JCWS's cost/price proposal. Finally, the SSA stated that all offerors received major strengths for "across-the-board" aspects of their management approach, such as very good personnel and an excellent quality control approach for JCWS, and employee motivation incentives for DynCorp. Id.

First, with respect to the offerors' on-line work management systems, the SSA's summary conclusion that DynCorp's work management system was "more than adequate" does not constitute a comparative analysis of proposals. While the SSA correctly notes that DynCorp's proposal was assigned a minor strength in this area and allowed "web-based capabilities far beyond the simple RFP requirements," SEB Final Report, Attach. 13, at 23, he ignores the fact that JCWS's proposal also allowed "web-based capabilities far beyond the simple RFP requirement," SEB Final Report, Attach. 11, at 22, but was assigned a major strength in this same area. The SEB clearly found qualitative differences between the two systems which are unaddressed by the SSA. Moreover, the question before the SSA was not whether DynCorp's work management system was "more than adequate," but whether JCWS's higher-rated system was worth its higher price. Second, the SSA's aggregation of several JCWS strengths and his cryptic statement that the efficiencies found by the SEB are not supported by the JCWS cost/price proposal cannot serve as a substitute for an analysis of any underlying qualitative differences between the two offers, and fails to address several other major strengths identified in the JCWS proposal. In this regard, the SSA's statement that all offerors received major strengths for "across-the-board aspects of their management approach" such as very good personnel and an excellent quality control approach for JCWS, and employee motivation incentives for DynCorp, lumps all of these major strengths together as if they were equivalent when they are not apparently so, and discards any underlying qualitative value that they might represent with no supporting justification. In the presence of significant qualitative differences between the two proposals, the SSA's conclusory statements fall short of the requirement to justify his cost/technical tradeoff decision. TRW, Inc., supra.

The SSA takes this same conclusory approach in discussing the remaining mission suitability subfactors. Under the plan for small business subcontracting goals subfactor, JCWS's proposal was evaluated as having a major strength for exceeding the subcontract goals, as compared to DynCorp's minor strength because its proposal "somewhat exceeded" the subcontract goals and clearly defined certain responsibilities. SEB Final Report, Attach. 13, at 3. The SSA's mere statement that all offerors proposed to exceed the goals fails to address the SEB's finding of a qualitative difference between the two proposals. Under the safety and health plan subfactor, JCWS's proposal was evaluated as having three major strengths--associated with its internal incentive for employees to maintain safety, its proposal for personal protective equipment needs and remedies, and its unified safety and health plan--as compared to no major strengths for the DynCorp proposal. Both offerors had various minor strengths. Despite the presence of these apparent qualitative differences, the SSA's addendum merely states that he considered that JCWS had two major strengths related to safety and health and a major strength for employee personnel protection, and that DynCorp had minor strengths under these subfactors. It is not enough to "consider" that offerors were evaluated as having

certain strengths; the SSA was required to conduct a comparative analysis of these strengths to justify his cost/technical tradeoff decision. TRW, Inc., supra.

An agency is not required to give credit for specific features where it reasonably determines that such features will not contribute in a meaningful manner to better satisfying the agency's needs. See Tecom, Inc., B-275518.2, May 21, 1997, 97-1 CPD ¶ 221 at 7. Similarly, an agency may reasonably determine that the benefit of proposed specific features is not worth any additional cost associated with the proposal. Consolidated Eng'g Servs., Inc., B-279565.2, B-279565.3, June 26, 1998, 99-1 CPD ¶ 75 at 5. Here, however, the record, including the post-protest addendum, fails to show that NASA made any determination that numerous features identified by the SEB in the JCWS proposal will not provide a meaningful benefit to the government. As a result, we cannot conclude that the SSA reasonably concluded that the value of JCWS's technical benefits did not offset the cost advantage of the DynCorp proposal.

We turn next to the SSA's findings regarding the past performance evaluation factor. The SSA's conclusion that the proposals of JCWS and DynCorp were essentially equal under the past performance evaluation factor was premised on two bases. First, the SSA stated that DynCorp received a significantly higher number of "outstanding" and "highly successful" ratings than did JCWS in the past performance questionnaires, and that DynCorp's ratio of "outstanding" to "highly successful" ratings was also greater than that of JCWS. Addendum at 5. Second, the SSA stated that he considered DynCorp's "exemplary performance" as the Johnson Space Center's aircraft operations contractor for the past 8 years. The SSA stated that a significant number of important aspects of performance under this contract were directly relevant to the COSS work, and that he was reminded of DynCorp's "overarching reputation for safe, innovative, and effective operations under this . . . contract. This was significant to [him] because of the critical human space flight mission operations support required of the selected COSS contractor." Id. at 5, 7. In making his best value determination, the SSA stated that he could identify no technical, schedule, or cost risk in awarding to DynCorp. Id. at 7. We agree with JCWS that the post-protest addendum does not establish that NASA properly evaluated the relative merits of JCWS's and DynCorp's past performance proposals.

First, the SSA's reliance upon the mere numbers of "outstanding" and "highly satisfactory" ratings reflected in each offeror's past performance questionnaires as a point of comparison was improper. Each questionnaire also asked for the identification of the contractor's top three management and technical strengths and weaknesses, and the record shows significant differences between these contracts in terms of their type, nature, and value. Given these wide variances, it was irrational to focus only on the number of "outstanding" and "highly satisfactory" ratings without examining the circumstances and other data in the agency's possession to reach a considered judgment regarding the quality of an offeror's performance and to make comparisons between offerors' performance. OSI Collection Servs., Inc.,

B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18 at 10. There is no evidence in the record that the SSA considered the ratings in any meaningful context.

Second, the addendum makes no reference to the apparent qualitative differences reflected in the evaluation record as between each offerors' overall team past performance.

The SEB evaluated JCWS's past performance proposal as having a major strength for its "very good" team past performance. The extensive narrative supporting this finding contains detailed and very positive comments about JCWS, the prime contractor, and each proposed subcontractor. In addition to acknowledging its extensive track record in performing contracts the size and complexity of the COSS contract and numerous other strengths, the SEB noted that JCWS had been able to provide good cost control, which was an area of particular interest for this hybrid contract, and that its major focus on measurement of critical areas could greatly benefit NASA. Each of the three proposed subcontractors had outstanding overall performance ratings, and specific qualities of one subcontractor were considered to be an asset. The SEB concluded that the overall capabilities and past performance of the JCWS team was in the "very good" to "low excellent" range. SEB Final Report, Attach. 11, at 22-23.

In contrast, the SEB evaluated DynCorp's past performance proposal as having only a minor strength for its "strong" team past performance. The narrative supporting this finding cites several strengths for DynCorp, the prime contractor, but also cites a concern regarding a lack of follow-up and verification of information provided by DynCorp's mid-level and subordinate managers. SEB Final Report, Attach. 13, at 24. Only one of DynCorp's three proposed subcontractors received positive reviews from the SEB. The second subcontractor merely met requirements, and the SEB stated that the third subcontractor had weaknesses for not providing proposed system maintenance engineers, which was attributed to its underestimating of the job by not accurately evaluating requirements and affected its ability to fulfill contract obligations. Id. The SEB concluded that the DynCorp team's safety record, retention of highly skilled personnel, emphasis on strong management involvement and customer satisfaction outweighed its weaknesses, but stated that the third subcontractor posed a "potentially high contract risk should [it] have maintenance/engineering responsibilities" at certain buildings. Id. The SEB concluded that, overall, the DynCorp team should be fully capable of meeting or exceeding performance in the "good" range. Id.

There is no evidence that the SSA considered these apparent differences in finding JCWS and DynCorp essentially equivalent under the past performance evaluation factor. While his comments regarding DynCorp's current Johnson Space Center contract may have some reference to the major strength found in DynCorp's proposal regarding its excellent safety past performance, it is unclear whether the SSA actually compared this aspect of DynCorp's proposal to any aspect of the JCWS

proposal.⁷ Moreover, the SSA's statement that he could identify no technical, schedule, or cost risk in awarding to DynCorp contradicts, without explanation, the SEB's finding regarding one of DynCorp's subcontractors.

Where, as here, the evaluation record evidences relative differences in proposal merit, general statements of equivalency are inadequate to show equivalency; the agency must compare the relative merits of the proposals in a manner that reasonably supports a determination of equivalency. Chemical Demilitarization Assocs., B-277700, Nov. 13, 1997, 98-1 CPD ¶ 171 at 7; see also Matrix Int'l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 9-10. In view of the SSA's reliance on an overly mechanistic methodology to compare the past performance of these two offerors, his failure to consider the qualitative differences between these two offerors, and his failure to explain why he found no risk in awarding to DynCorp in spite of the SEB's finding of risk with respect to one of the firm's subcontractors, we cannot find his conclusion of equivalence to be reasonable.⁸

Our Office will not sustain a protest unless there is a reasonable possibility of prejudice, that is, but for the agency's actions, the protester would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). The solicitation provided that the mission suitability and past performance evaluation factors, when combined, were approximately equal to the cost/price evaluation factor. While the record shows that the DynCorp proposal has a documented advantage with respect to the cost/price evaluation factor, the record also shows that the JCWS proposal has a documented advantage with respect to the mission suitability and past performance evaluation factors, and neither the contemporaneous source selection statement nor the post-protest addendum to that statement contains sufficient comparative analysis to justify the SSA's cost/technical tradeoff decision. Under the circumstances, we conclude that JCWS was prejudiced by the agency's defective source selection decision.

We recommend that NASA make a new source selection decision containing a sufficient and documented comparative analysis of the proposals and the rationale for any cost/technical tradeoffs. If the new source selection decision determines that an offeror other than DynCorp offers the best value to the government, NASA should terminate DynCorp's contract for the convenience of the government and make award to the successful offeror. We also recommend that JCWS be reimbursed its

⁷ The remaining three minor strengths for DynCorp appear to be analogous to the three remaining minor strengths for JCWS.

⁸ In view of the broad definitions of the adjectival ratings, our review of the record does not support JCWS's allegation that it should have received a higher adjectival rating than DynCorp under the past performance evaluation factor.

costs of filing and pursuing the protests, including reasonable attorneys' fees.
4 C.F.R. § 21.8(d)(1). JCWS should submit its certified claim for costs, detailing the
time expended and costs incurred, directly to the contracting agency within 60 days
after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel