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## Decision

**Matter of:** Sabreliner Corporation

**File:** B-284240.2; B-284240.6

**Date:** March 22, 2000

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### DIGEST

1. Where protester's proposed price was approximately 25 percent lower than that of the next low offeror, and was based on performing the basic contract requirements using approximately [deleted] labor hours that the government estimated would be required, the agency reasonably determined that protester's proposed price was unrealistic and that award could not be made on the basis of protester's initial proposal.
2. Agency is not required to conduct discussions with offerors where solicitation advised offerors that the agency intended to award a contract on the basis of initial proposals.
3. Agency's intent to obtain required Defense Security Cooperation Agency's (DSCA) determination prior to issuing task orders for foreign military sales customers, rather than prior to award of requirements contract, does not provide a basis to sustain protest, where agency's approach is consistent with the advice and direction of DSCA.

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## **DECISION**

Sabreliner Corporation protests the Department of the Navy's award of a contract to Canadian Commercial Corporation (CCC) on behalf of IMP Group Limited<sup>1</sup> under request for proposals No. N00019-98-R-0011 to provide depot level maintenance services for various Navy and foreign military sales (FMS) customers' helicopters. Sabreliner protests various aspects of the procurement, focusing primarily on the Navy's determination that Sabreliner's proposed price was unrealistic.

We deny the protest.

## **BACKGROUND**

The solicitation, issued on April 22, 1999, sought depot level inspection and maintenance services for U.S. Navy H-3 helicopters and FMS customers' AS-61, MK-1, MK-2 and H-3 helicopters for a 1-year base period with four 1-year option periods. The RFP advised offerors that proposals would be evaluated on the basis of technical capability, past performance and price, with technical capability and past performance "significantly more important than [p]rice," RFP § M-2, and that the Navy intended to award a contract on the basis of initial proposals without conducting discussions. RFP § L-12(f)(4), at 88.

Regarding price, the RFP contemplated award of a fixed-price requirements type contract with certain cost reimbursement provisions. Under contract line item (CLIN) 0X01 in RFP § B,<sup>2</sup> offerors were required to propose fixed prices for performing "standard depot level maintenance" (SDLM), which consisted of the basic work generally required for all helicopters.<sup>3</sup> Offerors were also required to propose fixed hourly labor rates to perform work that was considered to be "over

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<sup>1</sup> Pursuant to the Defense Federal Acquisition Regulation Supplement (DFARS), § 225.870-3 (DAC 91-3), contracts with Canadian firms generally are to be made with the CCC, which then subcontracts performance of the contract to a specific firm. In this case, CCC's proposed subcontractor is IMP Group Limited.

<sup>2</sup> The RFP explained that "use of an 'X' in the second position [of a CLIN] . . . signifies that CLIN for all years of the contract (base and options)." RFP § B, at 17.

<sup>3</sup> SDLM essentially included all "unconditional" requirements to be performed on each aircraft. The RFP provided detailed guidance regarding the costs and activities covered by SDLM, stating: "The offeror shall include all labor, burdens, profit, COM and indirect material in the fixed-unit price for the inspection and unconditional depot maintenance (see Attachment (1) SOW for definition of 'unconditional') requirements to be performed under this CLIN." RFP § B, at 16.

and above” the SDLM requirements, and which varied depending on the condition of each helicopter. RFP § B, CLIN 0X04. For evaluation purposes, the RFP published estimated quantities for various types of “over and above” labor, which were multiplied by each offeror’s proposed labor rates.<sup>4</sup>

Regarding the evaluation of price proposals, the RFP stated:

Price proposals will be evaluated for price realism. This evaluation may include a comparison of the proposed prices to those paid under [the] same or similar DoD contracts. A price proposal which is determined to be unrealistic will be assessed as having high proposal risk.

RFP § M-2(a).

Regarding technical capability, the RFP listed eight equally weighted evaluation subfactors.<sup>5</sup> Offerors were advised that, in evaluating technical capability, the agency would assign both a qualitative rating and a proposal risk rating.<sup>6</sup> With regard to past performance, the RFP stated that the agency would evaluate offerors’ experience in reworking “the same or similar rotary wing aircraft” and would assign a performance risk rating based on that experience. Id.

Proposals were received by the July 9 due date from five offerors, including Sabreliner and CCC/IMP. Oral presentations and facility visits were conducted between July 29 and August 11. Thereafter the offerors’ proposals were evaluated

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<sup>4</sup> For example, the RFP estimated 30,000 hours of on-site labor, per contract period, for “over and above” work on Navy helicopters, and 72,000 hours of on-site labor, per contract period, for “over and above” work on FMS customers’ helicopters. RFP § B, at 3, 6, 9, 12, 15.

<sup>5</sup> The subfactors were: understanding of the work to be performed; proposed facilities and equipment; qualifications of the personnel; ability to meet the 40-day requirement for a complete teardown, inspection, evaluation, and estimation of the required “over-and-aboves”; reporting requirements; facility certification requirements; contractual delivery requirements; and response to sample task. RFP § M-2, at 96.

<sup>6</sup> The RFP also advised that assessment of offerors’ technical capabilities would be based on the offerors’ oral presentations and facility visits. RFP §§ L-13(c)(2), M-2. More specifically, the RFP provided that each offeror would have 3 hours and 45 minutes for its oral presentation, an additional 15 minutes for providing a solution to a sample task, 1 hour for agency questions and answers, and 3 hours for a facility visit. RFP amend. 8, at 2.

by a technical evaluation team (TET), a past performance evaluation team (PPET) and a price evaluation team (PET).<sup>7</sup> The evaluation by the individual teams resulted in the following ratings for the offerors:

<b>Offeror</b>	<b>Technical Capability</b>		<b>Past Performance Risk</b>	<b>Total Evaluated Price</b>
	<b>Qualitative Rating</b>	<b>Proposal Risk</b>		
CCC/IMP	Highly Satisfactory	Low	Very Low	\$52,323,253
Offeror A	Highly Satisfactory	Low	Very Low	\$52,563,458
Offeror B	Highly Satisfactory	Medium	Low	\$53,725,147
Sabreliner	Satisfactory	Medium	Unknown	\$40,254,330
Offeror C	Unsatisfactory	High	Very High	\$53,303,191

Agency Report at 6.

On November 9, the agency’s competitive award panel (CAP) convened, reviewed the reports submitted by the individual evaluation teams, and discussed each offeror’s proposal.

The CAP noted that Sabreliner’s price of \$40,254,330 was substantially lower than the government’s estimate of \$47,739,210, and approximately 25 percent lower than all of the other offerors’ proposed prices--which were within 3 percent of each other. In reviewing Sabreliner’s proposal, the CAP found that Sabreliner intended to perform the CLIN 0X01 SDLM requirements with only [deleted] labor hours per aircraft for domestic aircraft, and only [deleted] labor hours per aircraft for FMS aircraft. Agency Report at 6. The agency had estimated that the CLIN 0X01 SDLM requirements would require more than 3,200 hours per aircraft for domestic aircraft, and more than 3,500 hours per aircraft for FMS aircraft.<sup>8</sup> Id.

Based on all of the information presented, the CAP concluded that “award could not be made to Sabreliner without [conducting] discussions because of its unrealistic

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<sup>7</sup> The TET and PPET did not have access to the offerors’ price proposals. Agency Report at 4.

<sup>8</sup> Sabreliner’s proposal also showed that it had [deleted] and, therefore was assigned a past performance risk rating of “unknown.”

price.” Agency Report, Tab 17B, Memorandum from CAP Chair to Source Selection Authority 8 (Nov. 10, 1999).

In contrast, the CAP made the following determinations regarding CCC/IMP’s proposal:

IMP’s technical proposal was rated Highly Satisfactory overall with a Low proposal risk. The HS rating was assigned as a result of several noted strengths: IMP has extensive experience on the H-3 [deleted]; IMP has superior crew spaces; [deleted]; IMP has extensive experience in developing repair estimates, historical database for the H-3 [deleted]; IMP can draw upon a very large artisan/engineering base, if needed; IMP has extensive rotary wing engineering and artisan experience [deleted]. IMP’s response to the sample task was considered to be a strength as it showed how it is able to apply its existing experience in performing upgrades [deleted].

. . . . .

IMP was assigned a Very Low performance risk rating. This was due to their extensive and successful depot level experience with Canadian H-3’s and with reworking components. IMP has delivered numerous aircraft and thousands of components on time, within cost, and with excellent quality. The few problems encountered on the various programs were quickly resolved and systemic improvements put into place to prevent future occurrences. Essentially no doubt exists that IMP will successfully perform.

Id. at 3, 5.

After considering the above information, the CAP determined that award could be made to CCC/IMP without discussions, and that “IMP’s price is the lowest realistic offer.” Id. at 7. Further, based on all of the information presented by the evaluation teams, the CAP concluded that “IMP’s proposal represents the best value to the Government and recommends that award of the H-3 SDLM contract be made to IMP upon the basis of its initial offer.” Id. at 8.

Based on the CAP's recommendation, the source selection authority selected CCC/IMP for contract award on November 15 without conducting discussions. This protest followed.

## DISCUSSION

Sabreliner primarily challenges the agency's determination that Sabreliner's price was unrealistic. Sabreliner first complains that, to the extent the agency's evaluation considered Sabreliner's price for CLIN 0X01 to be low, the evaluation was unreasonable because Sabreliner's price for that CLIN was higher than the price charged for a line item in the predecessor contract which, Sabreliner believes, reflects the "same work" covered by CLIN 0X01. Protest at 12. Sabreliner is factually mistaken.

The agency report shows that the work required under the line item of the predecessor contract on which Sabreliner relies did not encompass certain tasks required under CLIN 0X01. Specifically, the agency explains that CLIN 0X01 of the protested contract "includes aircraft stripping and painting, rigging of engines and flight controls, calibrating equipment, and increased inspection requirements"—activities that were either not performed under the predecessor contract or performed under line items other than the line item on which Sabreliner relies. Agency Report at 9-10.<sup>9</sup>

Sabreliner next complains that the agency "did not analyze what Sabreliner's costs would be" and "did not assess whether Sabreliner could perform the work at the prices proposed." Protester's Comments, January 24, 2000, at 4. We find these complaints without merit.

Although price realism is not ordinarily considered in the evaluation of proposals for the award of a fixed-price contract, an agency may provide, as here, for the use of a price realism analysis in a solicitation for the award of a fixed-price contract for the purpose of assessing the risk inherent in an offeror's proposal. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. The risk of poor performance when a contractor is forced to provide services with an inadequate or undercompensated workforce is a legitimate concern in the evaluation of proposals. Trauma Serv. Group, B-242902.2, June 17, 1991, 91-1 CPD ¶ 573 at 4. We will review an agency's price evaluation to determine whether it was reasonable, consistent with the RFP evaluation criteria, and compliant with the Federal Acquisition Regulation (FAR). Id.

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<sup>9</sup> Sabreliner's comments on the agency report do not respond to the agency's explanation regarding Sabreliner's mistaken interpretation of the predecessor contract.

Here, as discussed above, the record shows that the agency did consider whether Sabreliner’s proposal demonstrated that it could perform the work at the prices it had proposed. The agency compared Sabreliner’s price of \$40,254,330 to the government estimate of \$47,739,210 and to the prices offered by other offerors-- prices which ranged from \$52,323,253 to \$53,725,147, a spread of less than 3 percent. The agency then reviewed the underlying bases for Sabreliner’s substantially lower price, and ascertained that Sabreliner expected to perform the basic SDLM contract requirements for each domestic aircraft with only [deleted] labor hours and for each FMS aircraft with only [deleted] labor hours--while the government’s estimate for performing these requirements was more than 3,200 hours each for domestic aircraft and more than 3,500 hours each for FMS aircraft.<sup>10</sup>

Finally, the agency noted that another of the offerors had proposed as much as 4,101 hours to perform SDLM on domestic aircraft and 4,369 hours to perform SDLM on FMS aircraft, and that Sabreliner had no experience in performing depot level maintenance on rotary wing aircraft. Based on all of this information, we find nothing unreasonable in the agency’s determination that Sabreliner’s price was unrealistic.<sup>11</sup>

Sabreliner also asserts that the agency’s price realism analysis “deviated from the evaluation criteria.” Protest at 12. Although Sabreliner acknowledges that section M of the RFP stated: “Price proposals will be evaluated for price realism” and that “This evaluation may include a comparison of the proposed prices to those paid

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<sup>10</sup> The record shows that the agency created its estimate for the basic SDLM requirements by beginning with the number of hours required to perform some of the similar work performed under the predecessor contract--that is, the line item on which Sabreliner erroneously relied for its comparison--then added additional hours for the additional tasks contemplated under CLIN 0X01. Specifically the Navy’s estimate for domestic aircraft was as follows:

<u>Work</u>	<u>Manhours Per AirCRAFT</u>
CLIN 401 of prior contract	2,119
Aircraft stripping	180
Aircraft painting	416
Rigging engine and flight controls	120
Calibrating equipment	250
Increased inspection requirements	<u>120</u>
Total hours for CLIN 0X01	3,205

Agency Report, Tab 6, Basis for Cost Estimate.

<sup>11</sup> As noted above, the arguments presented by Sabreliner in pursuing this protest indicate that it did not fully understand the basic tasking requirements.

under [the] same or similar DoD contracts,” RFP § M-2, Sabreliner, nonetheless complains:

Instead of comparing proposed prices to historical costs, the Navy’s price realism analysis was “performed by comparing each offeror’s total evaluated price to one another and by comparing them to the Government estimate.” Exhibit 5, at 3. Had the Navy compared Sabreliner’[s] price to historical data from “under [the] same contract,” as required by section M-2, the Navy would not have found Sabreliner’s price to be unrealistic.

Protest at 12-13.

As discussed above, the agency did, in fact, consider historical costs of the predecessor contract as part of its price realism determination--and the record shows that Sabreliner, not the agency, erred in interpreting those costs. In any event, Sabreliner’s argument fails to recognize that the solicitation provides that the price realism evaluation “may” include a comparison of historical costs, and that this provision neither mandates such a comparison, nor precludes consideration of additional information—including consideration of other offerors’ prices and the agency’s estimate regarding levels of effort required. In this regard, the FAR specifically provides that, in evaluating proposed prices, an agency may use various techniques, including: “[c]omparison of proposed prices received,” and “[c]omparison of proposed prices with independent Government cost estimates.” FAR § 15.404-1(b)(2)(i), (v).

In sum, the agency’s price realism determination was reasonable, consistent with the RFP’s evaluation factors, and compliant with the FAR, and provided a reasonable basis for the agency’s conclusion that Sabreliner’s initial proposal presented an unacceptable level of risk. Accordingly, there is no basis to question the agency’s determination that Sabreliner’s price was unrealistic and that award could not be made on the basis of Sabreliner’s initial proposal.<sup>12</sup> Further, where, as here, an

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<sup>12</sup> Sabreliner also complains that the agency’s price realism determination “[did] not address whether Sabreliner has sufficient assets to perform the contract at a loss.” Protester’s Comments, Jan. 24, 2000, at 8. Sabreliner’s criticism of the agency evaluation in this regard suggests that Sabreliner submitted its proposal intending to perform the contract at a loss; however nothing in its proposal addressed this proposed approach in any way. Since the solicitation advised offerors that the agency intended to make award without discussions, Sabreliner could not presume that it would be given an opportunity during discussion to explain its approach to below-cost performance. The burden was on Sabreliner to present sufficient information in its initial proposal regarding this approach--if, indeed, that was its intent. See Kahn Instruments, Inc., B-277973, Dec. 15, 1997, 98-1 CPD ¶ 11 at 8.



agency states its intention to award on the basis of initial proposals, there is no requirement to conduct discussions in order to remedy defects in an otherwise unacceptable proposal. FAR § 15.306(a); Kahn Instruments, Inc., supra.

Sabreliner also objects that the agency has failed to comply with certain provisions of the Arms Export Control Act (AECA).<sup>13</sup> Specifically, Sabreliner references a portion of the AECA which provides that “[f]unds made available under this Chapter may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base.”<sup>14</sup> 22 U.S.C. § 2791(c). Sabreliner complains that the determination is required prior to the agency’s award to a Canadian company, but has not yet been made.

The agency responds that Sabreliner’s protest on this issue is misplaced, because the determination required by the AECA need only be made prior to issuance of task orders for FMS work.<sup>15</sup> The agency states that, consistent with the directions of the DSCA, the Navy “fully intends to comply with [the AECA] in connection with any task orders issued against the contract using AECA funds,” and will obtain the required determinations prior to issuing any FMS task orders. Agency Memorandum in Support of Request for Partial Summary Dismissal, Jan. 5, 2000, at 2.

The Navy’s position on the required timing of the determination is supported by the DSCA. In a letter provided by the Navy as part of the protest record, DSCA directly addresses the issue, stating:

In the case of the requirements contract to Canadian Commercial Corporation of Ottawa, Ontario, Canada for H-3 helicopter depot level inspection and maintenance services for the U.S. Navy and other FMS customers, including the Government of Egypt, the waiver must be in

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<sup>13</sup> The AECA authorizes the President to sell defense articles and defense services to eligible foreign countries. 22 U.S.C. § 2761 (1994).

<sup>14</sup> The parties agree that the authority to make the required determination has been delegated to the Director of the Defense Security Cooperation Agency (DSCA).

<sup>15</sup> The agency further explains that determination of the type of funding that will be used for FMS task orders--which triggers the statutory requirement--was not established at the time the contract was awarded. Agency Memorandum in Support of Request for Partial Summary Dismissal, Jan. 5, 2000, at 2 n.8.

place before FMF funds may be obligated for task orders under the contract. In the case of a requirements contract, however, the waiver does not have to be obtained prior to the award of the contract.

Letter from DSCA General Counsel to Department of the Navy (Dec. 29, 1999).

Based on the statutory language regarding the DSCA determination, along with DSCA's own unambiguous statement regarding the point in time at which DSCA's determination must be obtained, Sabreliner's assertion that the Navy was required to obtain the DSCA determination prior to awarding CCC/IMP the requirements contract provides no basis for sustaining the protest. Cf. Matter of Accounting for Reports of Discrepancy under Foreign Military Sales Program, B-222666, Jan. 11, 1988.

Finally, in a supplemental protest following Sabreliner's receipt of the agency report, Sabreliner argues that the agency improperly assigned technical strengths to other offerors' technical proposals and/or failed to properly accord certain strengths to Sabreliner's technical proposal.<sup>16</sup>

In light of our determination that the agency reasonably determined that Sabreliner's unrealistic price precluded award to Sabreliner on the basis of its initial proposal, there is no potential prejudice to Sabreliner flowing from its allegations regarding the agency's evaluation of technical strengths. Specifically, even if Sabreliner's proposal should have been rated as offering various technical strengths and/or other offerors' proposals should not have been rated as offering such strengths, additional strengths attributed to Sabreliner's proposal could not have made it eligible for award, and elimination of technical strengths from the evaluated rating of CCC/IMP's proposal could not have rendered it ineligible for award. Prejudice is an essential element of every viable protest and our Office will not sustain a protest if there is no reasonable possibility that the protester was prejudiced by the agency's actions. 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 protest is denied.

Comptroller General  
of the United States

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<sup>16</sup> The TET defined a technical strength as "an enhancing feature that benefits the Government or a proposed feature that exceeds the requirements of the RFP." Agency Report, Tab 17C, Memorandum from the TET Chair to the CAP Chair (Nov. 9, 1999).