



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: DynCorp Technical Services LLC

File: B-284833.3; B-284833.4

Date: July 17, 2001

Carl J. Peckinpugh, Esq., and Charles S. McNeish, Esq., DynCorp Technical Services LLC, for the protester.

Sharon A. Jenks, Esq., Gregory H. Petkoff, Esq., and Maj. Deborah L. Collins, Department of the Air Force, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76 is sustained, where the agency did not consider the cost of government-furnished material as a common cost item, as it should have, but accepted the in-house cost estimate, which deducted the value of government-furnished material to be supplied to the winner of the competition, and did not adjust the protester's proposal for a cost-reimbursement contract, which did not deduct the value of the government-furnished material.

2. In a negotiated procurement conducted pursuant to Office of Management and Budget Circular No. A-76, in which the private-sector offer was to be selected on the basis of a cost/technical tradeoff, and where the solicitation encouraged offerors to exceed the solicitation's minimum performance schedule, the agency improperly failed to ensure that the in-house cost estimate and the protester's offer were based upon the same scope of work and performance standards, where the protester proposed an accelerated performance schedule, which exceeded the minimum requirements and contributed to the protester's selection as the offeror to compete against the agency's most efficient organization (MEO), and the MEO proposed to satisfy the minimum performance schedule requirements.

DECISION

DynCorp Technical Services LLC protests the decision of the Department of the Air Force under request for proposals (RFP) No. F41689-99-R-0025 to retain in-house (rather than contract-out) performance of base operation services at Maxwell Air Force Base and Gunter Annex in Alabama. The decision to retain the services in-house was as a result of a cost comparison pursuant to Office of Management and Budget (OMB) Circular No. A-76, which compared DynCorp's proposal to perform the work against the technical performance plan and management plan of the agency's Most Efficient Organization (MEO).¹

We sustain the protest.

The RFP provided for the award of a cost-plus-incentive-fee contract (with fixed overhead) for base operation services for a 2-month mobilization period, a 2-month basic period, and 5 option years.² RFP § B-1 at 3. Notwithstanding the initial 2-month period stated for mobilization of personnel, equipment and material, offerors were not required to fully assume responsibility for the contract work until 90 days after the commencement of the basic period—that is, 30 days into the first option period.³ RFP, attach. 9, Transition Plan for Maxwell Base Operating Support Functions, at 1. In addition, the RFP stated that it “encourage[d] innovation by potential service providers seeking ways to shorten the scheduled transition time and to minimize problems during the transition” and that “[i]t is the Government’s intention to withdraw its workforce as the service provider demonstrates the capability of assuming full responsibility in each service area.” Id.

Offerors were informed that the RFP was issued as part of a government cost comparison to determine whether accomplishing the specified work under contract or by government performance was more economical. If government performance was determined to be more economical, then no award under the RFP would be made and the solicitation would be canceled.⁴

¹ The MEO refers to the government’s in-house organization to perform a commercial activity and is the product of the management plan that details the changes that will be made to perform the commercial activity in-house and in accordance with the solicitation’s performance work statement. OMB Circular No. A-76 Revised Supplemental Handbook (RSH), app. 1, Definition of Terms, at 35.

² The mobilization period was to be proposed on a fixed-price basis.

³ The date of commencement of the basic period is called C-day by the Air Force.

⁴ The procedures for determining whether the government should perform an activity in-house, or have the activity performed by a contractor, are set forth in OMB

(continued...)

The services sought are in 18 areas: information technology, community services, custodial, emergency management, energy management, engineering services, environmental, transportation, site maintenance, housing, human resources, airfield support, supply, operations and maintenance, resource management, publications and forms management, space management, and marketing and publicity. RFP Performance Requirements Document (PRD).⁵ For these service areas, the PRD described performance requirements, workload estimates, and historical material consumption. The PRD also identified facilities, property, and material to be furnished by the government. Regarding government-furnished material, offerors were informed that:

[t]he contractor will be provided an initial inventory of supplies/materials at contract start as indicated in the [PRD]. Any additional supplies/materials for [base operation support] or authorized customers shall be provided by the contractor. The contractor shall bid those costs into either the target cost (CPIF CLIN) or the firm fixed-overhead CLIN.

RFP § H-908(b) at 33. With respect to material necessary to perform maintenance services, the estimated value of the material to be furnished the contractor was stated to be \$1,318,089. See PRD §§ 7 (energy management area), 8 (engineering services), 11 (site maintenance), and 16 (operations and maintenance).

(...continued)

Circular No. A-76 and the RSH, which have been made expressly applicable to the Department of Defense and its military departments and agencies. See 32 C.F.R. § 169a.15(d) (2000). The process set out in the Circular and the RSH broadly encompasses the following steps in the conduct of a public-private competition. First, after the performance work statement has been drafted, the agency ensures that the government's in-house plan has been prepared based on the performance work statement. RSH, part I, ch. 3, ¶ I. Second, there is a competition among private-sector offerors, which is conducted much as any competed federal procurement is conducted. Third, if that competition is done on the basis of a cost/technical tradeoff, the government's technical performance plan is compared with the winning private-sector offer to assess whether or not the same level of performance and performance quality will be achieved--and if it will not, to make all changes necessary to meet the performance standards of the private-sector proposal. Id., ¶¶ H.3.d, e. Finally, once the playing field is thus leveled, there is a cost comparison between the private-sector offer and the in-house cost estimate. Id., ¶¶ H, J.

⁵ The PRD is the solicitation's performance work statement.

Offerors were also informed that in selecting the offer that would compete against the MEO, the agency would evaluate offers under the following evaluation factors:

Past performance	
Mission capability	
	Performance management
	Program management
	Technical capability
	Mobilization and transition
Cost	
Proposal risk	

RFP § M at 68. The RFP provided that past performance, mission capability, and proposal risk were together significantly more important than cost. Id. A detailed description of each of the evaluation factors was provided that explained how proposals would be evaluated. Among other things, offerors were informed that the agency would adjectivally evaluate proposals as being either exceptional, acceptable, marginal, or unacceptable. An offeror’s proposal would receive an exceptional rating, if it “exceeds specified minimum performance or capability requirements in a way beneficial to the Air Force.” RFP § M-900 at 69.

Offerors were also informed that the agency would determine an offeror’s probable cost of performance, as follows:

[t]he probable cost to the Government will be based on the Government’s cost realism analysis. The cost realism analysis will be an independent Government review and evaluation of each offeror’s proposed cost estimate by the [contract line items] in Schedule B. The Government’s probable cost is determined by adjusting each offeror’s proposal to reflect any additions or reductions in cost elements to realistic levels based on the results of the Government’s cost realism analysis The Government’s probable cost may differ from the proposed cost and will reflect the Government’s best estimate of the cost of any contract that is most likely to result from the offeror’s proposal.

RFP § M-900 at 71-72.

The Air Force received eight offers in response to the RFP. Contracting Officer’s Statement at 2. Several rounds of discussions were conducted with the offerors, including DynCorp, and oral presentations and best and final offers were received. With respect to mobilization and transition, DynCorp offered an accelerated performance schedule under which DynCorp would be fully staffed as of C day (the first day of the basic period) and would incrementally have its personnel assume responsibility for the service areas with full assumption of all the work 60 days after

C day (or 30 days earlier than required by the PRD).⁶ See Statement of Contract Officer's Representative (June 18, 2001); DynCorp Technical Proposal, Revision No. 7, Figure 2.4-1 (July 14, 2001). DynCorp's cost proposal, which included the costs of all its proposed staff from C day, was consistent with this accelerated schedule. See Statement of Contract Specialist (June 18, 2001) at 1.

DynCorp's technical proposal was evaluated by the agency's evaluation team as follows:

Past performance	Exceptional
Mission capability	
Performance management	Exceptional/Low risk
Program management	Exceptional/Low risk
Technical capability	Acceptable/Low risk
Mobilization and transition	Exceptional/Low risk

Under the mobilization and transition subfactor, the evaluators favorably cited DynCorp's offered accelerated transition schedule as one of a number of strengths justifying DynCorp's overall exceptional rating. Agency Report, Tab 16, SSA Technical Leveling Briefing (Nov 1, 2000) at 23. With respect to the accelerated transition schedule, the evaluators noted that DynCorp offered "[r]ecruiting and employing experienced, trained, and qualified personnel available as of the first day of performance," an "aggressive mobilization period [that] provides for a convincing case that the offeror can complete the transition period in their proposed compressed schedule," and an "option for an accelerated 60 day schedule saving the government time and money." Hearing exh. No. 1, Evaluation Notices, at 4.⁷

As a result of cost discussions, DynCorp increased its estimated costs in a number of areas, including estimated material costs, in response to repeated agency queries requesting justification for material costs that were less than the historical consumption figures. Agency Report, Tab 11, Cost Evaluation Report (Aug. 11, 2000), at 28. After the final proposal revisions, the Air Force accepted DynCorp's proposed costs and made no probable cost adjustments to DynCorp's proposed costs. Agency Report, Tab 11, Cost Evaluation Report (Aug. 11, 2000) at 1. DynCorp's offer was selected to be compared to the in-house cost estimate. Agency Report, Tab 12, Source Selection Decision, at 3.

⁶ DynCorp's technical proposal referred to its accelerated transition schedule as an option, but DynCorp offered no other transition schedule.

⁷ A hearing was conducted to discuss the record and the parties' arguments with counsel. The hearing was recorded by videotape.

After selection of DynCorp's offer, the MEO's technical performance plan and management plan were opened and evaluated by the agency's evaluation team. Contracting Officer's Statement at 5. Discussions were conducted with the MEO, and revisions made to the technical performance plan/management plan. The MEO's technical performance plan received the identical evaluation ratings that DynCorp's offer had achieved under the mission capability factor. The source selection authority (SSA) was briefed as to the relative technical quality of DynCorp's and the MEO's proposals, and concluded that DynCorp and the MEO offered "the same level of performance and performance quality." Agency Report, Tab 16, SSA Decision to Proceed to Cost Comparison (Nov. 3, 2000), at 1.

With respect to the mobilization and transition subfactor, the SSA accepted the evaluators' conclusions that both DynCorp and the MEO offered exceptional recruiting and training plans and comprehensive transition plans. The evaluators noted that DynCorp offered "an optional 60 day phase-in schedule should the Government choose to accelerate the change-over." Agency Report, Tab 16, SSA Technical Leveling Briefing (Nov 1, 2000), at 23. The Air Force accepted the protester's 60-day transition schedule. Statement of the Administrative Appeal Process Review Team Chief (May 9, 2001) at 6-7. In contrast, the MEO proposed to meet the RFP's minimum phase-in schedule, which required full assumption of the contract work within 90 days of C day. See RFP, attach. 9, Transition Plan for Maxwell Base Operating Support Functions, at 1.

The SSA directed the agency to proceed to the cost comparison, and the in-house cost estimate was opened. As a result of the initial cost comparison, the Air Force found that performance by the MEO cost less than performance by DynCorp. Specifically, after adjustments, the agency concluded that the MEO's cost of performance would be \$182,497,773 as compared to DynCorp's costs of \$189,064,524, a difference of more than \$6.5 million. Agency Report, Tab 17, Cost Comparison Form (Nov. 27, 2000).

After receiving a debriefing, DynCorp appealed the agency's cost comparison decision to the administrative appeal process authority (AAPA). Agency Report, Tab 21, DynCorp Appeal (Dec. 26, 2000). DynCorp asserted 15 errors in the agency's cost comparison that would, if corrected, result in the selection of DynCorp's offer as being lower cost than the MEO. Among other things, DynCorp complained that it had offered an earlier performance schedule (that is, full performance from the first day of the basic period-C day) than that offered by the MEO. DynCorp also challenged the MEO's lower estimated material costs, and complained that the MEO took a credit against its estimated material costs for the value of the government-furnished material and did not propose to replenish the inventory, as did DynCorp.

The AAPA appointed a review team to aid him in reviewing the appeal. The AAPA reviewed the solicitation, the evaluation record and cost comparison documents, and the MEO's technical performance plan and management plan, and interviewed

technical evaluators, the independent review officer, and MEO preparation personnel. Statement of the Administrative Appeal Process Team Chief at 2-3. From this review, the AAPA prepared a draft decision, which was circulated to the MEO, an employees union, and DynCorp for comments. Subsequently, the AAPA issued a decision, which partially approved some of DynCorp’s appeal grounds. Agency Report, Tab 25, Appeal Decision (Mar. 29, 2001).

The AAPA denied DynCorp’s appeal concerning the government-furnished material, finding that the MEO properly estimated the amount of material necessary to perform the work and reduced its estimated material costs for the contract work by the amount of the government-furnished material. In this regard, the AAPA found that the government-furnished material was provided to “reduce the overall cost of contract performance.” Agency Report, Tab 25, Appeal Decision, at 22-25. The AAPA did not address the fact that the MEO deducted the value of the government-furnished material and that DynCorp’s proposal did not.⁸

The AAPA also denied DynCorp’s appeal that the MEO should be “leveled” to DynCorp’s offered accelerated performance schedule. The AAPA found that, although DynCorp offered to fully assume the contract work 30 days earlier than did the MEO, DynCorp and the MEO were both evaluated as being exceptional under the mobilization and transition subfactor and were therefore, in the AAPA’s and agency’s view, at equivalent levels of performance. *Id.* at 3-4.

The AAPA directed that a revised cost comparison be conducted in accordance with his decision. The agency determined that, even after the AAPA directed adjustments were made, performance in-house was \$1.1 million less costly than performance by DynCorp, as shown by the following table:

	MEO	DynCorp
Total proposed costs	\$197,935,127	\$183,791,276
Contract administration	0	5,724,210
One-time conversion costs	0	467,994
Federal income tax	0	<918,956>
Total adjusted costs	197,935,127	189,064,524
Minimum conversion differential	<10,000,000>	0
Final adjusted costs	\$187,935,127	\$189,064,524

⁸ The AAPA denied much of DynCorp’s asserted adjustments for the MEO’s estimated material costs, accepting the bulk of MEO’s claimed efficiencies as the basis for the MEO’s low estimated costs. See, e.g., Agency Report, Tab 25, Appeal Decision, at 9-11 (challenge to the MEO’s estimated material costs for the operations and maintenance function).

Agency Report, Tab 27, Revised Cost Comparison Form (Mar. 27, 2001).

Following notification of the results of the revised cost comparison, DynCorp protested to our Office. DynCorp challenges numerous aspects of the cost comparison, all of which were raised in its administrative appeal.

Where, as here, an agency has conducted a cost comparison under OMB Circular No. A-76, thus using the procurement system to determine whether to contract out or to perform work in-house, our Office will consider a protest alleging that the agency has not complied with the applicable procedures in its selection process or has conducted an evaluation that is inconsistent with the solicitation criteria or is otherwise unreasonable. See Trajen, Inc., B-284310, B-284310.2, Mar. 28, 2000, 2000 CPD ¶ 61 at 3. To succeed in its protest, the protester must demonstrate not only that the agency failed to follow established procedures, but also that its failure could have materially affected the outcome of the cost comparison. BAE Sys., B-287189, B-287189.2, May 14, 2001, 2001 CPD ¶ 86 at 19.

Here, DynCorp notes that, although the MEO deducted the value of the government-furnished material (\$1.3 million) as a credit against its total estimated material costs, DynCorp did not take or receive a similar credit for the value of the government-furnished material. Instead, DynCorp's cost proposal reflected the firm's estimate of all the anticipated material costs for contract performance, unreduced by the value of the government-furnished material.⁹ DynCorp asserts that the value of the government-furnished material is a common cost item that should be treated similarly in DynCorp's proposal and the in-house cost estimate. Protester's Comments at 18. DynCorp contends that if the \$1,318,089 of government-furnished material had been deducted from DynCorp's estimated costs, as was done with the in-house cost estimate, DynCorp would have been found to offer performance at a lower cost than the MEO.

The RSH and Air Force Instruction (AFI) 38-203 (Aug. 1, 2000) provide guidance for the preparation of the in-house cost estimate and conduct of the cost comparison between the private-sector offeror and the MEO. In developing the government's estimated cost of performance, the RSH provides that costs, which would be same for both in-house and contractor performance (that is, "common" or "wash" costs),

⁹ DynCorp's pricing covered all material costs for contract performance, without deducting the value of the government-furnished material, apparently because the firm assumed that at the end of the contract it would be required to have an ending inventory approximately equal to the value of the government-furnished material. Hearing Videotape (VT) at 10:11-12 (DynCorp Pricing Manager). The Air Force is not interested in receiving ending inventory, and the record indicates that the in-house cost estimate did not include the cost of an ending inventory. VT at 10:06, 10:08, 10:12.

should not be computed or entered into the cost comparison. RSH, part II, ch. 2, ¶ A.3. With respect to material costs, the RSH provides that:

[m]aterial costs are calculated only if the materials are used by the activity and will not be provided to the contractor or [interservice service agreement] provider by the Government

and directs the agency to:

[r]eview the [performance work statement] to determine the materials required for in-house performance that will not be furnished to the contractor or [interservice service agreement] provider.

RSH, part II, ch. 3, ¶¶ C.1, C.2. The Air Force's own instructions also provide that common or wash costs not be computed and identifies government-furnished equipment, facilities and materials as examples of such costs. AFI 38-203, ch. 12, ¶ 12.4.1.

The Air Force does not dispute that the in-house cost estimate deducted the value of the government-furnished material from its estimated material costs and that DynCorp's cost proposal does not expressly account for, or mention, the government-furnished material. The Air Force apparently believes, however, that it need not account for DynCorp's failure to address the government-furnished material in its proposal because this was DynCorp's approach to performing the contract. See Statement of Contract Specialist (June 7, 2001) at 2-3; VT at 10:08.

We do not believe that DynCorp's failure to account for the government-furnished material could be ignored by the agency, where the MEO took a credit for the government-furnished material. As indicated above, the RFP provided for the award of a cost reimbursement contract, which required the Air Force to evaluate offerors' probable costs of performance. Federal Acquisition Regulation § 15.305(a)(1); CACI, Inc.—Fed., B-216516, Nov. 19, 1984, 84-2 CPD ¶ 542 at 14 (evaluation of realistic costs of performance can include both upward and downward adjustments). As acknowledged by the AAPA in resolving DynCorp's challenge to the MEO handling of the costs of the government-furnished material, the government-furnished material would be provided to either DynCorp or the MEO "in order to reduce the overall cost of contract performance." Agency Report, Tab 25, Appeal Decision (Mar. 29, 2001), at 23; see also Statement of Administrative Appeal Process Team Chief (May 9, 2001) at 20 ("it would be imprudent for either the protester or the MEO to not consider the value of this Government-Furnished Material when calculating costs"). Although the MEO accounted for the government-furnished material, DynCorp did not, which

unrealistically increased DynCorp's probable costs of performance.¹⁰ As the Air Force acknowledges, during performance of a contract, DynCorp would receive the government-furnished material at no cost and be required to use it for the Air Force's benefit, reducing DynCorp's incurred material costs and thus its cost of performing the contract. VT at 10:07, 10:08-09.

In sum, we find that the value of the government-furnished material, which would be provided to either the successful private-sector offeror or the MEO, is a common cost item that should have been deducted from both sides' estimated material costs. DynCorp, however, did not reduce the value of its estimated material costs by the value of the government-furnished material,¹¹ and the Air Force did not make any adjustments to DynCorp's estimated material costs to account for the value of the government-furnished material. Deducting the value of the government-furnished material (\$1,318,089) from DynCorp's estimated material costs reduces DynCorp's

¹⁰ The solicitation's proposal preparation instructions and required format for the offerors' cost proposals did not provide for deducting the value of the government-furnished material, and we think that DynCorp could reasonably believe that the agency would account for this common cost in its cost evaluation.

¹¹ Subsequent to the submission of its report on the protest, the Air Force suggested that DynCorp might have taken a credit for the value of the government-furnished material, although there is no indication in DynCorp's proposal that such a credit was taken. VT at 10:01-02. We have reviewed DynCorp's technical proposal, cost proposal (including all revisions), and the firm's responses to the agency's various evaluation notices concerning DynCorp's estimated material costs. None of these documents indicate that DynCorp deducted the value of the government-furnished material from its proposed estimated material costs. As noted above, the Air Force was concerned that DynCorp's estimated material costs, which were below the historical consumption figures stated in the PRD, were too low and repeatedly asked DynCorp to explain its estimates. DynCorp increased its material cost estimates several times and explained how it estimated the amount of materials that would be required to perform the contract; DynCorp also explained its "business process engineering improvements," which DynCorp stated provided for efficiencies that would lower the firms' anticipated material costs. See, e.g., DynCorp's Response (Revision No. 6, May 18, 2000) to Evaluation Notice DYN-3-100P; see also DynCorp Cost Narrative (Revision No. 6, May 18, 2000), at 57-65. The record establishes that the Air Force accepted DynCorp's explanations and made no probable cost adjustments to DynCorp's final proposed cost estimates. There is nothing in the contemporaneous record to support the agency's post-protest speculation that DynCorp reduced its expected costs of performance by the value of the government-furnished material. In this regard, we note that the MEO's estimated material costs were below DynCorp's, even before the MEO reduced its material cost estimate by the value of the government-furnished material.

total adjusted costs to \$187,746,435, as compared to the MEO's total adjusted costs of \$187,935,127. Accordingly, performance by DynCorp is less costly than performance by the MEO.¹²

DynCorp also complains that the MEO did not offer the same level of performance and quality during the basic and first option period as that proposed by DynCorp. Specifically, DynCorp states that it offered to be fully staffed to perform the contract on C day (the first day of the basic period) and to fully assume responsibility for the contract work by 60 days after C day, which is 30 days quicker than was required by the PRD and than the schedule offered by the MEO. DynCorp argues that the Air Force evaluated DynCorp's mobilization and transition plans as being exceptional with low risk and selected DynCorp to compete against the MEO based upon its superior approach to mobilization and transition, including DynCorp's accelerated performance. In contrast, the in-house cost estimate was based upon the MEO fully assuming responsibility for performance of the service areas work only 90 days after C day, the minimum required by the PRD. DynCorp states that if the MEO were brought up to the same level of performance as that offered by DynCorp, that is, being fully staffed on C day, that this would increase the in-house cost estimate by more than \$2.4 million. Protest at 4-5. DynCorp also argues that if the Air Force did not view DynCorp's accelerated performance schedule as being of value to the agency, it should have reduced DynCorp's probable costs to reflect a non-accelerated performance schedule, which DynCorp estimates would be more than a \$2 million reduction in its proposal costs. Protester's Comments at 10-11; Protester's Supplemental Comments at 2.

¹² DynCorp also protested that the MEO's material cost estimates to perform the operations and maintenance and information technology/communications functions were significantly understated. The MEO's material cost estimates in these areas were below both the historical consumption figures stated in the PRD and DynCorp's proposal. DynCorp complains that during several rounds of discussions the Air Force challenged DynCorp's estimated material costs, which were also below the historical figures provided in the PRD and that, in response to these discussions, DynCorp increased its material costs estimates. We do not resolve this issue, but note that both DynCorp and the MEO supported their lower material cost estimates with fairly general, promised efficiencies. Although the AAPA reviewed this issue in response to DynCorp's appeal and somewhat increased the MEO's material cost estimate (although the MEO's estimated material costs remained significantly lower than DynCorp's), the AAPA's appeal decision and the team chief's statement in response to the protest are too conclusory to support the reasonableness of the MEO's asserted efficiencies and material cost estimates or explain their differences from DynCorp's proposed efficiencies and higher material cost estimates, especially in view of the Air Force's expressed concern, during discussions, about DynCorp's estimated material costs.

The Air Force argues that DynCorp and the MEO offered equivalent levels of performance with respect to mobilization and transition, because DynCorp's and the MEO's mobilization and transition plans were both assessed as being exceptional. Both were found to offer similar approaches to recruiting, training, qualifying, and certifying employees, and there was "no doubt that each of them could provide the right amount of qualified employees by the contract start date." Agency Legal Memorandum at 27. The Air Force states that DynCorp's accelerated performance schedule "was [but] one of several strengths that led to an overall exceptional rating" under the mobilization and transition factor. *Id.* The Air Force thus contends that the MEO should not be required to conform to DynCorp's accelerated performance schedule.

In an A-76 procurement where, as here, the private-sector competition is conducted on a best-value basis and an agency identifies areas in the proposal selected to compete against the in-house cost estimate that exceed the performance work statement requirements, the agency must assess whether or not the same level of performance and performance quality will be achieved by the MEO and ensure that the in-house cost estimate and private-sector offer are "based upon the same scope of work and performance standards." RSH, part I, ch. 3, ¶¶ H.3.d, e, J.3; Aberdeen Tech. Servs., B-283727.2, Feb. 22, 2000, 2000 CPD ¶ 46 at 13-15. This "leveling of the playing field" is necessary because a best-value solicitation invites submission of proposals that exceed the RFP requirements, together with the higher costs or prices that often accompany a technically superior approach. The Jones/Hill Joint Venture-Costs, B-286194.3, Mar. 27, 2001, 2001 CPD ¶ 62 at 10. Otherwise, the successful private-sector offeror may be at a disadvantage when compared to the in-house cost estimate, which must only satisfy the minimum performance work statement requirements and thus essentially offers a low cost solution.

Here, there is no dispute that DynCorp offered to exceed the minimum performance requirements for assuming responsibility for the contract work, that is, DynCorp offered to fully assume the contract work 60 days after C day or 30 days earlier than required by the PRD. This was noted as a strength that was specifically identified to the SSA. See Agency Report, Tab 16, SSA Technical Leveling Briefing (Nov. 1, 2000) at 23. The Air Force accepted DynCorp's offered accelerated performance.¹³

¹³ The Air Force appears to now assert that it did not accept DynCorp's offered accelerated performance, suggesting that this may not be actually determined until the time of contract performance. See Air Force Interrogatory Response (June 18, 2001) at 2. This, however, is inconsistent with the contemporaneous record, which indicates that the agency did accept DynCorp's offered accelerated schedule. Even assuming, arguendo, that the agency did not accept DynCorp's offered accelerated schedule, the record establishes that DynCorp was never apprised of this or given any opportunity to modify its proposal in this regard, despite numerous rounds of

(continued...)

Statement of the Administrative Appeal Process Review Team Chief (May 9, 2001) at 6-7. In contrast, the MEO only proposed to fully assume the performance of all the work 90 days after C day, the minimum PRD requirement, and thus DynCorp offered an earlier date for full performance of the contract.

We disagree with the Air Force that this performance difference is accounted for by determining that DynCorp and the MEO received equal adjectival ratings under the pertinent mobilization and transition subfactor. A generalized comparison of quality, as offered by the Air Force here, cannot substitute for the consideration—required both by the RSH and the need to protect the fairness of the cost comparison—of whether the in-house plan offers a level of performance comparable to that of the selected private-sector proposal.¹⁴ Here, DynCorp’s and the MEO’s proposed performances are based upon differing scopes of work. That is, DynCorp proposed, as encouraged by the RFP, to fully assume performance of all the required work 30 days prior to that required by the RFP and proposed by the MEO. This offer exceeded the performance work statement requirements and will presumably lead to savings for the Air Force, whose staff can be freed up earlier from the work assumed by DynCorp. Thus, the Air Force was required to either reasonably determine that this earlier assumption of work was of no value to the agency (and so advise offerors) or to ensure that the in-house cost estimate was based upon a comparable level of performance. See BAE Sys., supra, at 28. The Air Force did neither.¹⁵

The parties disagree as to the cost impact of requiring the MEO to satisfy the 60-day full performance standard offered by DynCorp. DynCorp states that the cost impact

(...continued)

discussions, nor was this accounted for in the probable cost analysis of DynCorp’s proposal.

¹⁴ Moreover, we note that, as we have long held in competitions where selection is based upon a cost/technical tradeoff, proposals with equal adjectival ratings are not necessarily of equal quality, and agencies should consider the specific advantages offered by one proposal over another in determining the relative quality of the proposals. See Oceaneering Int’l, Inc., B-287325, June 5, 2001, 2001 CPD ¶ 95 at 13.

¹⁵ In responding to the protest, the Air Force appears to argue that DynCorp’s accelerated performance schedule is not of great value to the agency, stating that “while accelerating the phase-in may offer some efficiency, it may also increase costs and create disruption in the work place due to the presence of two workforces.” Statement of the Administrative Appeal Process Team Chief (May 9, 2001) at 7. This “concern” is not stated anywhere in the contemporaneous record, including the appeal decision of the AAPA. Rather, as the administrative appeal process team chief himself notes, the accelerated schedule was accepted by the agency and was a contributing factor to DynCorp’s exceptional rating under the mobilization/transition subfactor. Id.

was nearly \$2.5 million.¹⁶ The Air Force calculates that bringing the MEO to the performance level offered by DynCorp would increase the MEO's total adjusted cost by approximately \$2.9 million. Air Force Interrogatory Response (June 18, 2001), exh. 2. Application of either amount in the cost comparison also indicates that performance by DynCorp is less costly than performance by the MEO. The Air Force argues, however, that given sufficient time and "opportunity to alter its staffing approach: the number of employees, the hiring lead-time, or the type of employees to be hired," the MEO could reduce the cost impact of meeting DynCorp's accelerated performance schedule. Air Force Interrogatory Response (June 18, 2001) at 1-2. Given that DynCorp's performance of the contract is less costly than the MEO's even without consideration of this issue (based upon our decision above concerning the value of the government-furnished material), we need not resolve this concern. Nevertheless, we note that the cost impact of satisfying the accelerated performance schedule, even if minimized, would likely be substantial.¹⁷

We sustain the protest.

Given that the record shows that performance by DynCorp would be less costly than performance by the MEO, we recommend that the agency award a contract to DynCorp under the RFP. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including reasonable attorneys'

¹⁶ DynCorp calculated the cost impact by requiring the MEO to price all its required staff by C day, as DynCorp had proposed to do. We agree with the Air Force that this is not required. DynCorp's approach to performing the accelerated performance schedule included having all its required staff available from the first day of the basic period. We do not think that the agency was required to follow this approach in meeting the accelerated performance schedule, but could devise its own approach, as long as the agency was also fully assuming the performance of the work on a schedule comparable to that offered by DynCorp.

¹⁷ The Air Force argues that DynCorp's accelerated performance schedule had no actual cost impact on DynCorp's proposed costs because DynCorp chose to price all of its staff from the first day of the basic period and it likely would have offered the same approach even if the firm's transition schedule was completed within 90 days, as required by the RFP. We are unwilling to speculate, however, what DynCorp's costs would have been had it not accelerated its performance. DynCorp claims, in this regard, that its proposed costs would have been reduced by more than \$2 million if it performed "in conformance with the minimum requirements of the Solicitation, as proposed by the MEO." Protester's Supplemental Comments at 2.

fees. 4 C.F.R. § 21.8(d)(1) (2001). The protester's certified claim for costs, detailing the time spent and costs incurred, must be submitted to the agency within 60 days of receiving this decision.

Anthony H. Gamboa
General Counsel