

**DECISION**

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

61537

FILE: B-185027

DATE: September 22, 1976

MATTER OF: Dynalectron Corporation

97986

**DIGEST:**

1. Reduction in evaluation of proposal which relied on employment and education histories to satisfy character requirement of RFP was reasonable since RFP contained explicit requirements for evidence of character.
2. Proposal which listed only 5 of 14 temporary hires required by RFP was reasonably evaluated where credit was given only for five hires listed in spite of protester's allegation that there was no doubt of its ability to furnish manpower.
3. Although decision to include only one proposer within competitive range is subject to close scrutiny, agency determination will be upheld where it involves neither close question of proposal acceptability, likelihood of significant cost savings nor easily corrected deficiencies.
4. Technically unacceptable offer may be rejected even though that proposal offers lower cost than technically acceptable offer chosen for award.

Dynalectron Corporation (Dynalectron) protests the award of a cost-plus-fixed-fee contract to Serv-Air, Inc. under the U.S. Customs Service (Customs) Request for Proposals (RFP) BC-76-1. The RFP solicited offers from potential contractors for flight-line and depot level maintenance for Customs aircraft located at seven primary maintenance sites throughout the United States. Dynalectron alleges that the Government failed to evaluate its proposal in accordance with the provisions of the RFP and acted in an arbitrary and capricious manner in conducting that evaluation. The protester also implies that the evaluation process was improper since only one proposer was determined to be within the competitive range and that Dynalectron should have been considered for award since its proposed cost-plus-fixed-fee was lower than Serv-Air's.

Customs had previously solicited offers for similar aircraft maintenance services earlier in 1975 under RFP BC-75-B. The award to Kay & Associates under that solicitation was protested by Dynalectron. Customs terminated the contract for the convenience of the Government and instituted the present procurement.

Dynalectron's objections to specific features of the evaluation process center on the downgrading of its proposal for failing to include character references and for naming only 5 of an estimated 14 temporary hires. Dynalectron feels that a resume which shows personal history, a progression in education, and experience indicates character to a sufficient degree to satisfy the RFP requirement since the RFP does not specifically request character references. In addition, the protester feels that even though Dynalectron listed only 5 of 14 possible temporary hires there is no question as to the availability of such manpower.

The RFP required proposals to include the following material concerning personnel committed to performance of the proposed contract:

"A complete and concise statement of the education, personal history and experience of proposer's manager and the personnel listed below by site. Personal history of personnel listed shall be in such detail as to clearly reflect character, ability, the minimum special skills as listed below, and the minimum level of experience \* \* \*"

Customs contends that "character" is distinct from the categories of ability, special skills and experience. Character is said to be an essential evaluation requirement for personnel committed to this contract because of the law enforcement mission of the aircraft to be serviced. Although the possibility is remote, Customs maintains that an unscrupulous individual could profit from a knowledge of flight times and the areas of search. Some evidence concerning the character of individuals who would perform the maintenance of the aircraft was felt a necessary precaution. Dynalectron, in Customs' view, did not furnish the requisite evidence. Customs maintains that Dynalectron should not have assumed that the review board would have interpreted past education and employment as satisfying the requirement for evidence of good character. Consequently, the downgrading of Dynalectron's proposal for not specifically including character references was proper in Customs' view.

Our review of the Dynalectron proposal indicates that, in fact, no references as to the character of the potential employees are included. The successful offeror, Serv-Air, did provide the requisite character references. We feel that Dynalectron's reliance on employment and educational histories to satisfy the character requirement of the RFP was a risk assumed by that

offeror, and we cannot conclude that the downgrading of the Dynalectron proposal in this regard was either unreasonable, arbitrary or capricious.

With regard to the second area of Dynalectron's concern, the availability of manpower to meet the temporary hire personnel requirements, the RFP required an offeror to:

"Furnish evidence of availability of manpower to meet the proposed requirements, such as temporary hire personnel, as well as AI inspectors for annual inspections."  
(Emphasis added)

In response to this RFP requirement, Dynalectron submitted the following language:

"Dynalectron would expect to utilize the same temporary help at the respective sites. We have resumes and conditional employment agreements for temporary help personnel at some sites."

Dynalectron then listed the personnel from whom it apparently had definite conditional employment agreements. The review board gave Dynalectron full credit for the five temporary hires listed but downgraded its proposal for failure to list the remaining manpower commitments. Dynalectron argues that "there is no question as to the Company's availability of such manpower." The RFP, however, warned offerors that only material contained in the proposal would be evaluated. A deduction for information not supplied is clearly reasonable. Accordingly, we conclude that the review board acted properly in evaluating the Dynalectron proposal with respect to the two areas pinpointed by the protester. Phelps Protection Systems, Inc., B-181148, November 7, 1974, 74-2 CPD 244.

Dynalectron also complains that the deficiencies which led to the downgrading of its proposal were such that they could have been corrected with little difficulty during negotiations. In this light, Dynalectron also argues that it was improper to award to Serv-Air without discussions with Dynalectron since its projected cost-plus-fixed-fee was lower than Serv-Air's. Further, Dynalectron feels that in view of the price difference it was improperly excluded from the competitive range.

Customs reports that this RFP was the second attempt to procure these services. An earlier contract was terminated for the convenience of the Government. After that award, however,

each competing firm was given a technical debriefing and was made aware of the weaknesses or deficiencies in the proposal submitted under the first RFP. Accordingly, the second RFP was drafted with the admonitions that award might be made on the basis of the initial offers without further discussion and that discussions might only be conducted with an offeror who submitted a "clearly and substantially more advantageous" proposal. In the opinion of the contracting officer the Serv-Air proposal was clearly and substantially superior to the others. Furthermore, the contracting officer was also concerned that discussions with any of the other offerors would have promoted a leveling of proposals. The contracting officer stated:

"It should be noted that there were 23.1 points separating high scorer and 2nd high scorer--which, based on technical information presented to the Contracting Officer, is virtually impossible to improve upon."

The contracting officer determined that, except for Serv-Air, none of the offers was either technically acceptable or capable of being made acceptable through negotiations.

Although the protester points out deficiencies in its proposal which simply involved information relating to character references and temporary hires, the Dynalectron proposal was determined to be outside the competitive range for four additional reasons. The Dynalectron proposal was determined to be deficient because it superimposed an unrealistic 100 hour inspection of all aircraft, failed to offer qualified personnel at one site, proposed a vague inventory procedure and showed that Dynalectron unrealistically intended to take the inventory after contract award. In the contracting officer's opinion, only a major revision of the Dynalectron proposal would have cured these deficiencies. Based on his analysis the contracting officer determined:


"Taking into account the high level of technical and managerial services required and the range of uncertainty which exists in estimating for multi-year cost reimbursement type contracts, it is the opinion of the Contracting Officer that the significant technical advantage of Serv-Air's proposal outweighs the slight (less than 3% before negotiations) possible cost advantage of the next lower scoring offer."

We have held that a proposal must be considered to be within the competitive range so as to require discussions unless it is so technically inferior as to preclude meaningful discussions. 48 Comp. Gen. 314 (1968). The determination of whether a proposal is within the competitive range, particularly with respect to technical considerations, is primarily a matter of administrative discretion which will not be disturbed by our Office absent a clear showing that the determination lacked a reasonable basis. Donald N. Humphries & Associates et al., 55 Comp. Gen. 432 (1975), 75-2 CPD 275. The decision by Customs to include only Serv-Air in the competitive range must be closely scrutinized by our Office. We stated in Comten-Comress, B-183379, June 30, 1975, 75-1 CPD 400:

"Determinations by contracting agencies that leave only one proposal within the competitive range are closely scrutinized by our Office. If there is a close question of acceptability; if there is an opportunity for significant cost savings; if the inadequacies of the solicitation contributed to the technical deficiency of the proposal; if the informational deficiency could be reasonably corrected by relatively limited discussions, then inclusion of the proposal in the competitive range and discussions are in order."

We are unable to conclude from our review, however, that any of these conditions existed so as to vitiate the contracting officer's determination. Our review of the record of the evaluation shows that there was a considerable disparity between the Serv-Air proposal and the second ranked proposal of Dynalectron. As the contracting officer notes, the potential cost savings were not substantial (under 3 percent before negotiation). In any case, costs projected by an offeror for a cost-plus-fixed-fee contract do not bind the offeror on contract award and a technically unacceptable or inferior offer may be rejected notwithstanding the rejected offeror's proposed lower costs. See, e.g., Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61 and Decision Sciences Corporation, B-182558, March 24, 1975, 75-1 CPD 175.

The protest of Dynalectron Corporation is denied. In view of our conclusion, we need not consider Dynalectron's claim for proposal preparation costs.

Acting    
Comptroller General  
of the United States