



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Dynamic Science, Inc.  
**File:** B-244368  
**Date:** October 11, 1991

Ralph A. Rockow and Bryan S. Krecsy for the protester.  
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the General Counsel, GAO, participated in the preparation of  
the decision.

## DIGEST

Allegation that agency improperly evaluated proposal is denied where protester's proposal was reasonably determined unacceptable because it took express exception to operating hours required by the solicitation.

## DECISION

Dynamic Science, Inc. (DSI) protests the award of a contract to Doss Aviation, Inc. under request for proposals (RFP) No. DAAD05-90-R-0231, issued by the U.S. Army Test and Evaluation Command, Aberdeen Proving Ground, Maryland, for the operation and maintenance of aircraft at Phillips Army Airfield (PAAF). DSI, the incumbent contractor, contends that the agency improperly evaluated the proposals and did not conduct meaningful discussions.

We deny the protest.

The RFP, issued on November 26, 1990, was for a fixed-price requirements contract under which the contractor was to operate PAAF by providing, among other things, maintenance services for aircraft and related support equipment, air traffic control (ATC), supply support, alert/security support, flight operation, ATC equipment maintenance, aviation life

support equipment maintenance, and refueling and defueling services. The RFP advised that award would be made to the offeror presenting the "best overall value to the [g]overnment" and listed the following technical evaluation factors and subfactors:

"(a) Management

1. Personnel (qualifications and experience)
2. Past Performance (and corporate capabilities)
3. Project Management

(b) Technical

1. Understanding of Work to be Accomplished
2. Soundness of Technical Approach
3. Responsiveness to Terms, Conditions and Time of Performance
4. Completeness of Proposal

(c) Price"

Price was less important than the management and technical factors, which were of equal importance, but price would become more significant as merit scores tended to equalize.

Paragraph C.1.2. of the RFP specified required hours of operation for the various duties, including, for example, flight operation, air traffic control, dispatch, and maintenance. Amendment No. 1, issued on December 18, added required operating hours for Air Traffic Control/Avionics Maintenance "from 6:00 AM through 8:00 PM. (14 hours per day), Monday through Friday, excluding Federal Holidays."

Five firms submitted offers by the January 10, 1991, closing date. Offerors were evaluated by a five-member Proposal Evaluation Board (PEB). The five PEB members individually scored each offeror's proposal for each technical and management factor and provided written narratives explaining and supporting their individual judgments concerning the proposals, after which a final overall consensus score was determined. Initially, Doss received the highest technical score of 75 out of 80 possible points. DSI received 73 points. Although a third firm received a significantly lower consensus score than either Doss or DSI, it, along with Doss and DSI were determined to be capable of being made acceptable and discussions were held with all three offerors.

After discussions, only DSI and Doss were determined to be technically acceptable and both firms submitted best and final offers (BAFOs). While Doss reduced its price in its BAFO, it made no technical changes and its technical score was

unchanged. In DSI's BAFO, in a section titled "Reduction in Proposed Workforce" DSI reduced the hours of operation for avionics maintenance. DSI stated that as the incumbent contractor, it "is in a position to determine the actual quantity of staff required to efficiently operate the Phillips Army Airfield," and that it had re-evaluated its initial proposed staff and "reduced the staff level by three (3) persons." Specifically, DSI deleted one ATC Maintenance/Avionics Technician position and proposed:

"to have its remaining ATC Maintenance/Avionics Technician continue to work on a 8:00 a.m. to 4:30 p.m. (8 hour per day), Monday through Friday, excluding federal holidays schedule and remain on call by telephone paging system as specified in the contract proposal."

The PEB deducted three points from DSI's initial technical score for this reduction in the hours of operation, so that the firm's final technical score was 70. Because Doss had the higher technical score and the lower price, Doss was awarded the contract on May 31. DSI protested to our Office on June 6.

DSI contends that the Army failed to conduct meaningful discussions with it, and that its proposal should have received a higher technical score which, despite its higher price, would presumably have led the agency to find that DSI's proposal actually presented the overall best value to the government.<sup>1/</sup> Based upon the technical evaluation findings it obtained from the agency report, DSI alleges that two weaknesses in its proposal were never discussed.

DSI also challenges the deduction of seven points from its technical evaluation. Basically, DSI seems to challenge the agency's technical evaluation as inconsistent since, for example, DSI's proposal received 19 of the maximum 20 points under the personnel category yet the agency's narrative concerning DSI's personnel was that "all personnel were qualified." Similarly, two points were deducted under past performance yet the protester claims that it has never

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<sup>1/</sup> In its initial protest, DSI also challenged the technical evaluation of the awardee's managerial and technical capability and its personnel, and argued that Doss's proposal costs did not represent Doss's actual costs. The agency fully responded to these issues in its agency report. Since DSI failed to respond to the agency's submission on these points, we will not consider these issues. Visucom Prods., Inc., B-240847, Dec. 17, 1990, 90-2 CPD ¶ 494.

received any complaints concerning its performance from the agency.

Finally, DSI argues that nothing in its BAFO says that it will not provide the 14 hours per day avionics maintenance and that it should not have been penalized on this issue. DSI contends that it has been operating with only one ATC Maintenance/Avionics Technician, either on site or on call, as proposed in its BAFO, with the approval of the agency and, therefore, believed that this was an acceptable course of action. DSI argues that three additional points were deducted from its BAFO because "low cost became the driving factor" for award and technical scoring was adjusted to support that decision.

In its report on the protest, the agency states that the PEB treated DSI's reduction of hours of ATC Maintenance/Avionics Technician as a weakness in DSI's BAFO and downgraded its evaluation, and concluded that this reduction in hours conflicted with a material requirement under the statement of work and made the DSI proposal technically unacceptable. According to the agency, the PEB would have recommended rejection of DSI's BAFO as technically unacceptable had the PEB realized that an offer could be rejected as technically unacceptable after receipt of BAFOs. The agency argues that because DSI's proposal was technically unacceptable, DSI properly could not be considered for award.

In view of the above finding we need not address DSI's other allegations since, if the agency properly determined that DSI's BAFO is technically unacceptable, this determination is dispositive. Based on our review of the record, the agency reasonably concluded that the protester was, in fact, technically unacceptable. In its BAFO, DSI took exception to the RFP requirement for 14 hours of daily ATC/Avionics Maintenance. Instead, DSI offered 8 hours of daily ATC/Avionics service with additional service "on call by telephone paging system." We do not agree with DSI that being on duty for 8 hours and being "on call" by telephone pager for 6 hours satisfies the 14 daily "operating hours" required by the solicitation. DSI relies on what it describes as its current operating procedures to support its interpretation of this requirement. However, there is nothing in the solicitation to support DSI's interpretation that the agency would accept "on call" staffing as part of its normal operations. DSI properly may not assume that its current operating procedures, which conflict with this solicitation's requirements, would be acceptable. Further, contrary to the protester's assertion, DSI's initial proposal does not suggest that the staffing of required duty hours will be met by using telephone pagers. DSI's initial proposal indicates only that telephone pagers will be "for notice 24 hours a day, 7 days a week," but does not indicate that this paging system is in lieu of

required personnel duty. Since DSI's proposal failed to conform to a material term of the solicitation, it could not receive the award because it was technically unacceptable. Essex Electro Eng'rs, Inc., B-229491, Feb. 29, 1988, 88-1 CPD ¶ 215; Conrac Corp., SCD Div., 66 Comp. Gen. 444 (1987), 87-1 CPD ¶ 497.

The protest is denied.

  
for James F. Hinchman  
General Counsel