



Comptroller General
of the United States

Washington, D.C. 20548

145522

Decision

Matter of: DynCorp
File: B-245289; B-245289.2
Date: December 23, 1991

Ruth Yudenfriend Morrel, Esq., DynCorp, and Paul Shnitzer, Esq., Crowell & Moring, for the protester.
William A. Roberts III, Esq., Lee Curtis, Esq., and Anne H. Warner, Esq., Howrey & Simon, for Lear Siegler Management Services Corporation, an interested party.
Gregory H. Petkoff, Esq., and Lt. Col. Robert A. Tepfer, 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. Award to a lower-rated, lower-priced offeror in a negotiated, best value procurement for aircraft operation and maintenance services, in which technical considerations were stated to be more important than cost, was not reasonable where the protester's admitted technical superiority was based upon its offer of greater manpower and where the source selection authority, in performing a cost/technical tradeoff, did not consider where the differences in the offerors' manpower arose to determine that the protester's technical superiority was not worth the associated cost premium.
2. Protest that protester did not receive meaningful discussions concerning its offer of greater manpower relative to the awardee's offered manpower is denied where the protester's proposal, which was rated technically superior, was found to contain no deficiencies or uncertainties.
3. Protest that awardee, in a procurement for a fixed-price incentive with award fee contract, offered less than the stated minimum target and award fees since the awardee removed general and administrative (G&A) costs from its

proposed target cost before calculating its target and award fees is denied where the solicitation indicates that offerors' target costs need not necessarily include G&A costs for the purpose of calculating target and award fees.

DECISION

DynCorp protests the award of a contract to Lear Siegler Management Services Corporation under request for proposals (RFP) No. F41689-91-R-0015, issued by the Department of the Air Force for aircraft operation and maintenance services for the 80th Flying Training Wing at Sheppard Air Force Base (AFB), Texas. DynCorp contends that the selection of Lear Siegler's lower-priced, lower-rated proposal was not in accordance with the stated evaluation factors, which provided that technical factors were more important than cost; that the government failed to conduct meaningful discussions with DynCorp concerning its proposed manning levels; and that Lear Siegler's proposal, which offered less than the stated minimum target and award fees, was unacceptable.

We sustain the protests in part and deny them in part.

The RFP contemplated the award of a fixed-price incentive (firm target) with award fee contract¹ for various operation and maintenance services, including maintenance of T-37/T-38 jet aircraft, engines, associated support equipment, fuels, and instrument flight trainer (IFT) maintenance and instruction, for a base and 4 option years.² The solicitation set forth detailed work specifications, including Air Training Command (ATC) standards and estimated flying hours per aircraft.³ In pricing proposals, offerors were required to provide their target cost (which is the contractor's best estimate of the anticipated total cost of performance); target fee (which the RFP stated should be no less than 2 percent of the target cost); the target price (which is the sum of the

¹A fixed-price incentive (firm target) contract specifies a previously negotiated target cost, target profit, price ceiling (but not a profit ceiling or floor), and profit adjustment formula. See Federal Acquisition Regulation (FAR) § 16.403-1(a).

²Operation and maintenance of IFTs is a firm requirement in the base year only; the Air Force contemplates procuring this requirement under a separate logistics support contract after the base year.

³The RFP required contractors to meet or exceed the ATC standards.

target cost and target fee); ceiling price; the sharing formula by which the government and contractor would share responsibility for cost overruns or underruns; and award fee (which was stated to be 6 percent of the target cost).

The RFP provided that evaluation of proposals would be conducted under the streamlined source selection procedures of Air Force Regulation (AFR) 70-30, and that award would be made "on the basis of a combination of the technical excellence and total price to [the] responsible offeror," whose offer was most advantageous to the government in accordance with the stated evaluation criteria. Technical capability was stated to be more important than cost/price, which, while not color rated, would be evaluated as to completeness, realism, reasonableness and risk.

The RFP, as amended, provided that proposals would be evaluated in the following functional areas, stated in descending order of importance: (1) aircraft maintenance; (2) IFT; and (3) fuels and transportation. The aircraft maintenance area was stated to be significantly more important than any of the other functional areas.⁴ Offerors were also informed that each of the three functional areas would be evaluated under the following evaluation criteria:⁵

- Manpower and organization
- Understanding the mission
- Mobilization plan
- Past experience

The RFP provided that manpower was significantly more important than any other criterion and warned offerors that proposals offering less than adequate levels of manning may be rated as unacceptable.

The Air Force received 10 proposals, including offers from DynCorp and Lear Siegler. The proposals were evaluated by the source selection evaluation team (SSET) in accordance with the color/adjectival rating and risk assessment scheme stated in AFR 70-30.⁶ All 10 proposals were found to be in

⁴The bulk of the contract work is aircraft maintenance.

⁵Subcriteria were stated for each of the four evaluation criteria.

⁶Proposals were evaluated as being either "blue/exceptional," which was defined as exceeding the specified performance or capability in a beneficial way with high probability of success and no significant weaknesses; "green/acceptable," which was defined as meeting the specified performance standards with good probability of

the competitive range. The Air Force conducted several rounds of discussions with all offerors and ultimately requested three best and final offers (BAFO). After evaluation of the final BAFOs, DynCorp and Lear Siegler were rated first and second respectively, as follows:

	<u>DynCorp Rating/Risk</u>	<u>Lear Siegler Rating/Risk</u>
Aircraft Maintenance	Blue/Low	Green(-)/Low
IFT	Blue(-)/Low	Green/Low
Fuels	Green(+)/Low	Green(-)/Moderate
OVERALL	BLUE(-)/LOW	GREEN(-)/LOW
PRICE ⁷	\$107,648,976	\$98,156,681

The proposal of DynCorp, the incumbent contractor, was evaluated as being exceptional under 23 of 37 evaluated areas, factors, and subfactors, including the most critical aircraft maintenance manpower factor. Only DynCorp's proposal was evaluated as containing no marginal or unacceptable ratings.

Lear Siegler's proposal, on the other hand, was evaluated as minimally satisfactory overall with low risk. Of the 37 evaluated items, Lear Siegler received 3 exceptional, 28 satisfactory, and 6 marginal ratings, and was rated minimally acceptable for the most important aircraft maintenance manpower criterion.

success and any weaknesses can be readily corrected; "yellow/marginal," which was defined as failing to meet the performance standards with low probability of satisfying the requirement but with deficiencies that were correctable; or "red/unacceptable," which was defined as where a proposal failed to meet a minimum requirement and where correction of the deficiencies would require a major rewrite. Proposal risk assessments were defined according to the potential risk of disruption of schedule, increase in cost, or degradation of performance. "High" risk was defined as being "likely" to cause "significant serious risk." "Moderate" risk was defined as "potentially" causing "some" risk. "Low" risk was defined as having "little potential" for causing risk.

⁷The total proposed price is the sum of the target price, fixed-price items, and award fee for the base and option years. Both DynCorp's and Lear Siegler's prices were found to be complete, realistic, and reasonable.

The SSET concluded that while all the proposals in the competitive range were adequate, DynCorp's proposal was "superior overall, especially in terms of total manning (the highest), cost per man-year (ranked fifth), potential for performing within the target price (and, hence, the lowest potential for cost overrun), and it has the least risk." The SSET recommended award to DynCorp as the offeror offering the best overall value to the government.

The SSA was briefed by the SSET on the evaluation results⁸ and reviewed, after the briefing, the proposal analysis report (PAR) prepared by the SSET and the contracting office.⁹ On the basis of the briefing and the PAR, the SSA determined that Lear Siegler's proposal offered the best overall value to the government based on technical and price considerations. Specifically, the SSA stated:

"The Lear Siegler proposal is clearly technically acceptable when measured against the [RFP] criteria. While not having the highest technical rating, it offers sufficient manning overall with sound organizational structure, supervision and effective cross utilization of employees. It also documents acceptable understanding of mission, a strong recruiting plan and ample experience in maintenance of T37/T38 aircraft."

Award was made to Lear Siegler on August 12, 1991, and DynCorp protested to our Office on August 19.¹⁰

DynCorp first protests that the agency's selection of Lear Siegler's lower-rated, lower-priced proposal was unreasonable and inconsistent with the stated evaluation scheme that provided that technical considerations were more important than cost/price. DynCorp argues that the SSA's cost/technical tradeoff and resulting selection decision are not

⁸The SSA was not provided with any evaluation documentation or results prior to the briefing.

⁹The PAR contains a comparative analysis of proposals, summarizing proposal strengths, weaknesses and risks, and contains the SSET's selection recommendation.

¹⁰Portions of the protest record are subject to a General Accounting Office protective order to which counsel for DynCorp and Lear Siegler have been admitted. Our decision, which is based upon protected, confidential information, is necessarily general.

adequately justified in light of the RFP evaluation scheme.¹¹

The Air Force contends that proposals were evaluated in accordance with the stated evaluation scheme--that is, technical considerations were accorded more weight than price. In this regard, the SSA determined that DynCorp's higher rating reflected actual technical superiority. (Transcript (Tr.) of SSA's Hearing at 16).¹² Nevertheless, the agency argues that the SSA reasonably determined that the technical superiority offered by DynCorp was not worth the cost premium of nearly 10 percent.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. However, they do not have the discretion to announce in the solicitation that they will use one evaluation plan and then follow another; once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria in making its award decision or inform all offerors of any significant changes made in the evaluation scheme. Greenbaum and Rose Assocs., B-227807, Aug. 31, 1987, 87-2 CPD ¶ 212. Under this standard, it is improper to induce an offeror to prepare and submit a proposal emphasizing technical excellence, and then reject it in favor of a materially inferior offer solely on the basis of cost or price. See Hattal & Assocs., B-243357; B-243357.2, July 25, 1991, 70 Comp. Gen. ___, 91-2 CPD ¶ 90.

Of course, agencies may make cost/technical tradeoffs in deciding between competing proposals; the propriety of such a tradeoff turns not on the difference in technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of that difference was reasonable and adequately justified in light of the RFP evaluation scheme. Wyle Laboratories, Inc.; Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107. Accordingly, where, as here, cost is secondary to technical

¹¹DynCorp acknowledges that the SSA was not bound by the SSET's ratings and award recommendation. See Oklahoma Aerotronics, Inc.--Recon., B-237705.2, Mar. 28, 1990, 90-1 CPD ¶ 337.

¹²Testimony of the SSA and of the technical evaluation team (TET) Chief, who conducted the source selection briefing, was elicited in hearings pursuant to our Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to codified at 4 C.F.R. § 21.5).

considerations, selection of a lower-priced, lower-rated proposal over a higher-rated proposal requires an adequate justification, i.e., one showing that the agency reasonably concluded that the higher technical score did not reflect actual technical superiority, see Dayton T. Brown, Inc., B-239664, Mar. 30, 1988, 88-1 CPD ¶ 321, or that the agency reasonably concluded that higher-rated proposal's technical superiority was not worth the cost premium. See Wyle Laboratories, Inc.; Latecoere Int'l, Inc., supra.

The SSA's source selection statement provided no support nor any justification for the SSA's decision that DynCorp's technical superiority was not worth the associated cost premium. This statement was simply the form selection decision document contained in AFR 70-30 which the agency completed for this procurement. A detailed account of the factors that the SSA considered in making his selection decision was provided to our Office for the first time in an affidavit filed in response to the protester's comments on the agency's report.¹³ The late filing of this affidavit necessitated hearings to obtain oral testimony of the SSA and the TET Chief.

We have reviewed the SSA's hearing testimony and his affidavit and find that the SSA adequately supported his conclusion that Lear Siegler was capable of successfully performing the contract work. (SSA Tr. at 16-17). The SSA also states that while he accepted the SSET's superior ratings for DynCorp, he concluded that DynCorp's technical superiority represented only a marginal value in comparison to the \$10 million cost premium. (SSA Tr. at 13-14). Specifically, the SSA states that he reviewed the quality of the firms' proposed aircraft maintenance manning and determined that for flight line¹⁴ and scheduled¹⁵

¹³While we consider the entire record, including statements and arguments made in response to a protest, in determining whether an agency's selection decision is supportable, see Burnside-Ott Aviation Training Center, Inc.; Reflectone Training Sys., Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158, we accord greater weight to contemporaneous source selection materials rather than documents, such as the SSA's late affidavit, which were prepared in response to protest contentions.

¹⁴The flight line is where aircraft are parked and launched, and flight line maintenance involves aircraft servicing and some repair work. (TET Chief Tr. at 10:52).

¹⁵"Scheduled maintenance" is maintenance performed at regular intervals based upon flying hours, similar to the periodic maintenance performed on automobiles at regular

maintenance, DynCorp's and Lear Siegler's proposed manning was comparable (SSA Tr. at 20-21), and, on this basis, he determined that DynCorp's superior rating for aircraft maintenance was not worth the cost premium.¹⁶

The bulk of the contract work is aircraft maintenance; aircraft maintenance manning comprises about 90 percent of DynCorp's and Lear Siegler's overall proposed contract manpower. The record shows that DynCorp's superior rating for aircraft maintenance was based upon its far greater proposed manning. In contrast, Lear Siegler proposed significantly less aircraft maintenance manning and was rated only minimally acceptable.¹⁷

The SSA states that he did not find DynCorp's greater aircraft maintenance manning alone to be significant but was more concerned with where the offered manpower was allocated. (SSA Tr. at 20). In this regard, as noted above, the SSA found the firms' proposed manning for the flight line and scheduled maintenance to be comparable. DynCorp's and Lear Siegler's proposed flight line and scheduled maintenance manning represent only about 36 percent of the firms' overall proposed aircraft maintenance manning, however. Since the manning levels in these areas were comparable, the significant difference in manning levels had to be for other aircraft maintenance work.

mileage intervals. (SSA Tr. at 17). The TET Chief testified that he did not believe that he had discussed scheduled maintenance with the SSA at the source selection briefing. (TET Chief Tr. at 11:11).

¹⁶The record supports the SSA's conclusion that the firms' proposed manning for the flight line and scheduled maintenance was comparable, although DynCorp offered slightly more manning for flight line maintenance than Lear Siegler. DynCorp argues, in its post-hearing comments, that the SSA did not have accurate flight line manning figures for Lear Siegler and DynCorp. From our review of the record, we find a discrepancy in the flight line manning figure relied upon by the SSA for Lear Siegler but do not find the discrepancy to be as great as contended by DynCorp. It does not appear that this discrepancy should reasonably affect the award decision.

¹⁷The TET Chief testified that, in his opinion, Lear Siegler's proposed aircraft maintenance manning needed to be increased to a level close to DynCorp's proposed manning in order to increase Lear Siegler's minimally acceptable rating to a solid acceptable rating. (TET Chief Tr. at 10:33-:34).

The record shows that while the SSA was aware of this significant overall manning differential between DynCorp and Lear Siegler, he could not recall where the differences in manning were allocated, although he testified that he believed that he had reviewed these differences during his study of the PAR. (SSA Tr. at 22). The PAR and the other source selection briefing documents reviewed by the SSA do not contain a numerical breakdown of offerors' proposed aircraft maintenance manning, other than for the flight line.¹⁸ Thus, the record fairly indicates that the SSA never considered the manning differences between DynCorp's and Lear Siegler's proposed aircraft maintenance or where the bulk of DynCorp's additional aircraft maintenance personnel was allocated. Indeed, neither the selection statement nor the SSA's affidavit responding to DynCorp's protest and agency report comments (both of which focus on the offerors' manning differences) specifically addresses the effect of these manning differences on the source selection.

This failure is particularly troubling since the PAR indicates that Lear Siegler's proposal was undermanned for aircraft maintenance in the areas of material control, corrosion control, painting, and plans/scheduling and documentation. These areas were considered necessary to the successful performance of the contract. (TET Chief Tr. at 10:11-12, 10:55; SSA Tr. at 22-23).¹⁹ In fact, the SSA noted that the "aging" nature of the T-37/T-38 jet aircraft flown at Sheppard AFB would affect the RFP work in the areas of material control, corrosion control, sheet metal, and painting. (SSA Tr. at 22-23). The cost differential and relative technical rating between DynCorp and Lear Siegler are substantially related to the firms' relative manning levels in these areas.²⁰

¹⁸In this regard, the TET Chief, who had briefed the SSA, also did not know where DynCorp's greater aircraft maintenance manning was allocated. (TET Chief Tr. at 10:24).

¹⁹The SSA did not consider flight line maintenance to be more important than this "back shop" maintenance. (SSA Tr. at 20).

²⁰In this regard, we note that the record indicates that DynCorp's overall cost per man-year was less than Lear Siegler's.

While the SSA testified that he looked at everything and made an integrated assessment, the record establishes that he did not assess these major technical and cost discriminators that relate to the manning differences between DynCorp's and Lear Siegler's proposals.²¹ In our view, the record establishes that the SSA never weighed the extent of Lear Siegler's undermanning for these areas or the extent to which DynCorp had proposed greater manning. Consequently, the SSA did not consider the costs associated with DynCorp's greater manning or Lear Siegler's undermanning in these areas. Given the stated critical importance of aircraft maintenance manning to the Air Force and the direct effect this manning had on the offerors' relative technical rating and costs, we find the SSA did not have an adequate basis to determine that DynCorp's technical superiority was not worth the associated cost premium. That is, without knowing where the manning/cost difference existed between the proposals, the SSA could not make a rational determination concerning DynCorp's technical superiority and the associated cost premium vis-a-vis Lear Siegler's acceptable, lower-priced proposal.

Instead of making a rational cost/technical tradeoff, the SSA primarily focused on Lear Siegler's capabilities to perform rather than DynCorp's admitted superiority. While the SSA adequately determined that Lear Siegler could satisfactorily perform the contract, this does not demonstrate that DynCorp's superiority was not worth the associated cost premium. Rather, the record indicates that the SSA, in effect, made award based upon price, and not in accordance with an RFP evaluation scheme that emphasized technical excellence or superiority over price. See Hattal & Assocs., supra. Indeed, the SSA's original source selection decision document clearly indicated that Lear Siegler was selected on the basis of its technical acceptability and low cost. Since the Air Force did not show that its selection of Lear Siegler was in accordance with the RFP evaluation criteria--i.e., that DynCorp's technical superiority was not worth the cost premium--DynCorp's protest on this ground is sustained.

DynCorp also protests that the Air Force failed to conduct meaningful discussions with DynCorp concerning the firm's offer of greater maintenance manning than the Air Force was willing to accept from Lear Siegler. We disagree. Where a

²¹For example, as discussed earlier, the SSA could not state where the difference in DynCorp's and Lear Siegler's overall maintenance manning arose, and there is no contemporaneous evidence that he had assessed this key difference. (SSA Tr. at 21-22, 23, and 40).

proposal contains no deficiencies or uncertainties, a request for BAFOs constitutes meaningful discussions. Weeks Marine, Inc./Bean Dredging Corp., a Joint Venture, 69 Comp. Gen. 108 (1989), 89-2 CPD ¶ 505. Here, DynCorp's final BAFO was found to contain no deficiencies or uncertainties. In fact, as noted above, DynCorp's proposal was rated technically superior to all other offerors. Therefore, the agency was not required to apprise DynCorp that its manning was high relative to Lear Siegler's manning. Indeed, discussions with DynCorp concerning its manning or price--which were found to be reasonable--relative to Lear Siegler's manning levels or price would not have been proper. See FAR §§ 15.610(d), (e); Warren Elec. Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34.

DynCorp also protests that Lear Siegler's proposal offered less than the stated minimum target and award fees and was thus unacceptable. Specifically, the RFP stated minimum percentages of proposed target cost, under which offerors should not propose in calculating their proposed target profit and award fee. DynCorp contends that Lear Siegler removed general and administrative (G&A) costs from its proposed target cost and, in effect, reduced its target profit and award fee percentages below the stated minimums.

The record confirms that Lear Siegler did not include G&A expenses in its proposed target cost for the purpose of calculating its target profit and award fee. We do not find, however, that the RFP required these expenses to be included in the target cost for the purpose of this calculation. Rather, the RFP provided under section H, "Special Contracting Requirements," that G&A costs would be computed against the target cost. We think that this indicates that target cost would not include these expenses.²²

The protests are sustained in part and denied in part.

We recommend that the agency either make award to DynCorp as the technically superior offeror with a reasonable price or document a cost/technical tradeoff that, considering the extent of DynCorp's technical superiority, determines that DynCorp's superiority is not worth the cost premium presented. If the agency determines that award to DynCorp is appropriate, then Lear Siegler's contract should be terminated for the convenience of the government and award made to DynCorp. In addition, DynCorp is entitled to

²²In any event, the dollar amount of including G&A expenses in Lear Siegler's target cost for the purposes of calculating target price and award fee would increase Lear Siegler's total price by no more than two-tenths of 1 percent.

recover its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1991). DynCorp should submit its certified claim for its protests cost directly to the agency within 60 working days of receipt of this decision. 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(f)(1)).

Milton J. Aroskar

Acting Comptroller General
of the United States