



DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: DynCorp International LLC

File: B-415349

Date: January 3, 2018

David M. Nadler, Esq., Adam Proujansky, Esq., Justin A. Chiarodo, Esq., Stephanie M. Harden, Esq., Philip E. Beshara, Esq., and Ioana Cristei, Esq., Blank Rome LLP, for the protester.

Craig Smith, Esq., Richard B. O’Keeffe, Jr., Esq., Moshe B. Broder, Esq., and Colin J. Cloherty, Esq., Wiley Rein LLP, for M1 Support Services LP, the intervenor. Lieutenant Colonel Andrew J. Smith, Captain Douglas A. Reisinger, and Captain Harry M. Parent, Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency’s reliance on a calculation that quantified the benefits of offerors’ proposed enhancements to the solicitation requirements was reasonable and consistent with the terms of the solicitation.
 2. Protester’s challenge to the agency’s relevancy determinations regarding the size of offerors’ prior contracts that would be considered under the past performance factor is not timely filed, and the agency’s evaluation of the protester’s past performance record was reasonable and consistent with applicable statutes and regulations.
 3. Protester’s assertion that the awardee’s allegedly inadequate experience renders it incapable of performing the contract requirements constitutes a challenge to the agency’s affirmative responsibility determination and will not be considered.
-

DECISION

DynCorp International LLC, of Fort Worth, Texas, protests the Department of the Army’s award of a contract to M1 Support Services, of Denton, Texas, pursuant to request for proposals (RFP) No. W9124G-17-R-0002, to provide aircraft maintenance and support services at Fort Rucker, Alabama. DynCorp protests various aspects of the agency’s

source selection process, including challenges to the agency's evaluation of technical proposals, the agency's evaluation of past performance, and the agency's consideration of the awardee's experience.

We deny the protest.

BACKGROUND

On December 15, 2016, the agency issued RFP No. W9124G-17-R-0002, seeking proposals to provide aircraft maintenance and logistical services to support flight training activities at Fort Rucker for a 1-year base performance period and nine 1-year option periods. The contract seeks to ensure the availability of between 480 and 650 rotary wing aircraft¹ to support flight training requirements for Army and Air Force aviators.² AR, Tab 11, Acquisition Strategy, at 4. The estimated value of the contract over the 10-year period is approximately \$5 billion. Id. at 5.

The solicitation provided for a single contract award, made on a best-value tradeoff basis, and established the following evaluation factors: technical,³ cost/price,⁴ past performance,⁵ and small business participation. The solicitation provided that the technical factor was significantly more important than each of the other factors, which

¹ The aircraft include the Apache (AH-64D/E), Kiowa (OH-58A/C), Black Hawk (EH/UH-60A/L/M) Chinook (CH-47F), Creek (TH-67), Lakota (UH-72A), and Huey (TH-1H). Agency Report (AR), Tab 11, Acquisition Strategy, at 4.

² The agency states: "This maintenance effort supports initial entry flight school training for an estimated 900 to 1,200 new Army aviation student pilots, 2,000 to 3,000 advanced/graduate Army aviators, and 60 Air Force student pilots in FY18 [fiscal year 2018] with similar numbers projected for the future." AR, Tab 79, Source Selection Comparison Analysis, at 1.

³ With regard to evaluation under the technical factor, the solicitation encouraged offerors to propose "enhancements" that exceeded the solicitation requirements and/or lowered risk, noting that if such proposed enhancements were determined beneficial to the government, they would be incorporated into the contract. Protest, exh. 1, RFP at 338. Offerors were advised that examples of "exceeding specified performance" included increased "capacity, capability, and availability." See, e.g., AR, Tab 63.6, DynCorp Interim Evaluation, at 35.

⁴ The solicitation provided that the contract "will be a hybrid contract consisting of Firm Fixed Priced, Fixed Price Incentive (Firm Target), Cost Plus Fixed Fee, and Cost Reimbursable CLINs [contract line item numbers]." RFP at 337.

⁵ The solicitation provided that each prior contract submitted for evaluation would first be assessed for relevancy, taking into consideration the "similarity [to this solicitation's requirements] of service/support, complexity, dollar value, contract type, and degree of subcontract/teaming." RFP at 342. Based on these assessments, each contract was

(continued...)

were of equal importance, and that all of the non-cost/price evaluation factors combined were significantly more important than cost/price. RFP at 335.

In March 2017, proposals were submitted by four offerors, including DynCorp and M1. The offerors' proposals included aspects that the offerors considered to be enhancements to the solicitation's requirements, including several that increased aircraft availability and levels of available flight hours. In May, the agency established a competitive range consisting of all 4 offerors and, thereafter, conducted multiple rounds of discussions. As part of the discussions, the agency gave each offeror the agency's internal evaluation reports and provided evaluation notices (ENs) that identified the specific aspects of each offeror's proposal that should be addressed.

On May 11, during the first round of face-to-face discussions, the agency advised DynCorp that there were various weaknesses, deficiencies, and uncertainties in its initial proposal. AR, Tab 49, Memorandum of DynCorp Discussions, at 3-4; thereafter, the agency provided follow-on ENs to DynCorp. AR, Tabs 43, 44. In these ENs, the agency specifically advised DynCorp that, in proposing enhancements, DynCorp should: (1) identify implementation costs, (2) propose contractually binding changes to the solicitation's acceptable quality level (AQL) metrics;⁶ and (3) suggest a monetized value related to the enhancements where feasible. Id. The agency provided similar instructions during its discussions with M1. See AR, Tab 50, Memorandum of Discussions with M1.

On May 22, the agency conducted a second round of face-to-face discussions with DynCorp. During these discussions, the agency again reiterated the requirement that a proposed enhancement must include the offeror's suggested monetized benefit to the government and proposed contract language with measurable outcomes/AQLs. AR, Tab 51, Memorandum of Discussions with DynCorp.

On June 1, the agency conducted a third round of face-to-face discussions with DynCorp. During these discussions, the agency reviewed each EN response; reiterated that the agency was looking for innovation; and again advised DynCorp that a proposed

(...continued)

assigned a rating of relevant, somewhat relevant, or not relevant. After considering the relevance of each prior contract, the solicitation provided that the agency would assess the quality of an offeror's past performance record and assign a confidence rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 343-44.

⁶ The agency explains that "AQL or Acceptable Quality Levels are measurable outcomes that are included in the Performance Work Statement (PWS)," adding that "[r]evising an AQL to a more stringent level exceeds the basic requirement in the PWS." Contracting Officer's Statement, Oct. 25, 2017, at 9.

enhancement must provide a benefit to the government. AR, Tab 56, Memorandum of Discussions.

On June 13, the agency provided DynCorp with its interim evaluation report along with supporting evaluation documentation. See AR, Tab 63.6, DynCorp Interim Evaluation Report. In its report, the agency detailed its methodology for quantifying the benefit of additional flight hours by multiplying the Department of Defense (DOD) hourly reimbursement rates applicable to each aircraft⁷ by the number of additional flight hours reflected in DynCorp's proposal, and referred to that calculation as the "net monetized opportunity cost benefit value" (NMOCBV).⁸ Id. at 35-40, 68-74.

During the June 13 discussions, the agency also provided DynCorp with the agency's past performance evaluation report, which addressed each of the contracts DynCorp had submitted for evaluation. Among other things, this report advised DynCorp that two of its prior contracts with annual values of approximately \$40 million each, and one contract with an annual value of \$22.7 million, had been rated "relevant."⁹ Contracting Officer's Statement, Oct. 25, 2017, at 9; AR, Tab 63.6, Interim Evaluation, at 11-12, 16-18, 20-21. Finally, the evaluation report documented the fact that DynCorp had recently received unsatisfactory past performance ratings in three categories (quality, schedule, and management) under one of its prior contracts (referred to as the [redacted] contract). AR, Tab 63.6, Interim Evaluation, at 16-18.

On June 28, the agency issued its request for final proposal revisions (FPRs); DynCorp's and M1's FPRs were submitted on or before July 5. In its FPR, DynCorp applied the DOD reimbursement rates to the additional aircraft hours reflected in its proposal and repeatedly referred to this as the "Monetization of the Net Additional Flight Hours." AR, Tab 70.1, DynCorp FPR, at 7, 10, 12. For example, in referring to a particular set of enhancements, DynCorp stated: "These enhancements are a technical benefit of our proposal that appreciably exceed the Government's requirements . . . with a net monetized opportunity cost benefit value to the Government for all contract years of \$124,274,809." Id. at 16. Thereafter, the FPRs were evaluated as follows:

⁷ The DOD has established reimbursable flight-hour rates for each of the aircraft at issue here. These rates are applied when aircraft are used by other government agencies.

⁸ The offerors' proposed implementation costs for their proposed enhancements were also subtracted in order to calculate the NMOCBV.

⁹ The solicitation defined a "relevant" contract as one "involv[ing] similar scope and magnitude of effort and complexities [to what] this solicitation requires." RFP at 343.

	Technical	Past Performance	Small Business Participation	Evaluated Cost/Price
DynCorp	Outstanding	Satisfactory Confidence	Outstanding	\$4.95 Billion
M1	Outstanding	Satisfactory Confidence	Outstanding	\$5.04 Billion

AR, Tab 82, Source Selection Decision Document (SSDD), at 3.

Although DynCorp and M1 each received a rating of outstanding under the most important technical factor, the agency concluded that M1’s proposal under this most important factor was superior to that of DynCorp. Among other things, the source selection authority (SSA) noted that M1’s proposal offered 191,400 additional flight hours, with an associated NMOCBV of \$876.3 million, as compared to DynCorp’s proposal offering 156,700 additional flight hours, with an associated NMOCBV of \$328.7 million.¹⁰ SSDD at 14. Among other things, the SSA stated:

M1 provided innovative solutions to increase maintenance efficiency and effectiveness that included [redacted] to accomplish increased concurrency requirements without increasing risk. I concur with the Technical Team’s evaluation that the combined concurrency rate changes appreciably exceed performance requirements and provide the most flexibility to the Government to meet training requirements.¹¹ The Technical Team evaluated and analyzed the concurrency rate increases in relation to the projected flight hour bands and projected aircraft and determined that the benefit of concurrency rate increases provide the USAACE [U.S. Army Aviation Center of Excellence] the capability to request and receive increased aircraft to conduct all required ground and flight related training and provide a method to make up training shortfalls due to weather, aircraft maintenance issues (precautionary landings), and student throughput fluctuations. By expanding the increased AQLs for Concurrency, M1’s proposal provided a greater flexibility and overall capability of the Army flight training program for all primary training fleets, greatly impacting future Initial Entry Rotary Wing as well as Advanced/Graduate flight training.

¹⁰ In addition to proposing a higher number of additional flight hours overall, M1 proposed a higher number of additional flight hours for more sophisticated aircraft. The SSA noted that more sophisticated aircraft have higher reimbursement rates, which is consistent with the view that additional availability of more sophisticated aircraft is more valuable than additional availability of less sophisticated aircraft. SSDD at 4.

¹¹ The agency explains that “concurrency rate” is “[t]he percent of the available aircraft that can be in use at any one time for training.” Contracting Officer’s Statement, Oct. 25, 2017, at 9; see AR, Tab 54.22, Required Aircraft Table.

* * * * *

M1's strengths will enable the Government to capture more flight hours across our enduring fleets, thereby enabling the Government to better produce the Aviators needed to meet the Army's and Air Force's readiness needs. . . . In summary, based upon my integrated assessment of all proposals in accordance with the evaluation criteria stated in the Solicitation, the proposal submitted by M1 Support Services represents the best overall value to the Government and is worth paying the relatively small difference in cost/price. This assessment is based on the risk reduction afforded by the increased flexibility, capability, capacity/availability provided by M1's enhancements in the areas of [redacted]. Accordingly, I direct the Contracting Officer to award the contract to M1 Support Services.

Id. at 14-15, 24.

Thereafter, DynCorp was notified of the source selection decision. This protest followed.

DISCUSSION

DynCorp challenges various aspects of the agency's source selection process, including challenges to the agency's NMOCBV analysis; the agency's evaluation of past performance; and the agency's consideration of the awardee's experience. As discussed below, DynCorp's protest is without merit.¹²

Agency's NMOCBV Analysis

First, DynCorp challenges the agency's use of the NMOCBV analysis in evaluating and comparing the relative technical merit of the competing offerors' proposals, complaining that application of this analysis constituted an "unstated criterion for higher flight hour availability" that was "completely inconsistent with the solicitation."¹³ Protest at 12.

¹² In its various protest submissions, DynCorp raises arguments that are in addition to, or variations of, those discussed herein, including: challenges to the agency's assessment of strengths and significant strengths in its evaluation of the competing offerors' technical proposals; and challenges to the agency's best-value tradeoff. Several of these arguments essentially request that GAO substitute our judgment regarding the proposals' relative technical merits for the judgment of the procuring agency--something this Office declines to do. See, e.g., ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. We have reviewed all of DynCorp's various arguments and find no basis to sustain its protest.

¹³ DynCorp also asserts that the solicitation "did not advise the offerors" that increased aircraft availability would be "monetize[d]." Id. at 10.

Next, DynCorp complains that the agency's NMOCBV calculation failed to consider all of the "limiting factors" affecting aircraft use, such as "number of students" and "weather"; accordingly, DynCorp asserts that the agency's application of the NMOCBV analysis failed to properly consider whether the offerors' proposals for increased aircraft availability "actually meet the Army's needs." Id. at 13-14. Finally, DynCorp asserts that the agency's evaluation failed to recognize strengths in DynCorp's proposal that did not increase aircraft availability. Id. at 14.

The agency first responds that, although the solicitation did not specifically refer to the NMOCBV analysis, that analysis was clearly subsumed within the solicitation's stated evaluation factors, which advised offerors that the agency would evaluate proposed enhancements. The agency further points out that DynCorp was repeatedly advised of the agency's application of the NMOCBV and the manner in which it was calculated, and that DynCorp incorporated the agency's methodology into its proposal. Agency's Memorandum of Law, Oct. 25, 2017, at 16; see AR, Tab 63.6, DynCorp Interim Evaluation, at 35-40, 68-74; Tab 70, DynCorp FPR, at 7, 10, 12, 16. Next, with regard to DynCorp's assertion that the NMOCBV calculation failed to include all "limiting factors" that could affect aircraft use, the agency responds that the analysis was not a cost/price evaluation tool, but rather a quantification tool the agency employed in comparing the potential benefits offered by the competing technical approaches. Finally, the agency responds that DynCorp's proposed strengths that did not increase aircraft availability were, in fact, considered in the evaluation and source selection decision, pointing to specific recognition of such strengths in the evaluation record and the source selection decision. See, e.g., AR, Tab 82, SSDD, at 4, 5-6. In short, the agency maintains that its application of the NMOCBV was reasonable and consistent with the terms of the solicitation. We agree.

It is well-established that a procuring agency is in the best position to determine its own needs and the best method for accommodating them, and our Office will not question that determination absent clear evidence that it is unreasonable. See, e.g., Canaveral Maritime, Inc., B-238356.2, July 17, 1990, 90-2 CPD ¶ 41 at 5; New York Wire Co., B-235821, Sept. 19, 1989, 89-2 CPD ¶ 246 at 1. Further an agency may properly apply a particular evaluation methodology that is not specifically identified in a solicitation where the methodology is rational and consistent with the solicitation's stated evaluation criteria. See, e.g., Mission Essential Personnel, LLC, B-410431.9, B-410431.10, Mar. 18, 2015, 2015 CPD ¶ 109 at 9; Bonner Analytical Testing Co., B-409586.2, Aug. 7, 2014, 2014 CPD ¶ 258 at 4. Finally, an agency's evaluation of proposals competing to meet its needs is generally a matter within the agency's discretion, and our Office will not reevaluate proposals but rather, will examine the record to determine whether the agency's judgments were reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. See, e.g., Booz Allen Hamilton, Inc.; Leidos Inc., B-410032.4 et al., Mar. 16, 2015, 2015 CPD ¶ 108 at 5.

Here, the agency's application of the NMOCBV calculation was reasonably subsumed within the stated evaluation criteria. As noted above, the solicitation specifically advised offerors from the outset that the agency sought enhancements to the solicitation's

requirements. AR, Tab 13, RFP at 322. Further, during discussions, DynCorp was advised of the agency's application of this quantification tool and the manner in which it was being calculated, and DynCorp incorporated the agency's methodology into its own proposal. Further, where, as here, the agency was using the NMOCBV analysis to assist in assessing technical superiority, we find nothing unreasonable in the agency's consideration of the potential benefits associated with additional aircraft availability without also incorporating all of the variable and/or "limiting factors" that could potentially affect the proposed enhancement and/or the agency's use of the increased availability. Accordingly, DynCorp's assertions that the agency applied an unstated evaluation factor and that the agency's evaluation failed to reasonably consider whether increased availability "meet[s] the Army's needs" are without merit. Finally, DynCorp's assertion that the agency failed to recognize strengths in DynCorp's proposal that did not lead to increased aircraft availability is contrary to the evaluation record. For example, the agency specifically recognized that DynCorp's "Data Driven Decision Making" approach was a proposal strength, even though that approach did not yield any monetization, and the SSA stated: "not all strengths had a flight hour impact; nonetheless, the strengths were still considered in the trade-off analysis." AR, Tab 82, SSDD, at 4, 5-6. DynCorp's challenges to the agency's use of the NMOCBV analysis in evaluating technical proposals are denied.

Past Performance

Next, DynCorp challenges the agency's evaluation of past performance, asserting that it has "singular experience" and an "extensive record of stellar past performance," while M1 "has very little experience in this area" and "no experience on a program of this size." Protest at 1-2. In this context, DynCorp asserts that the agency "applied arbitrarily low dollar thresholds" in determining the relevancy of offerors' past performance. Id.

The agency responds that DynCorp's complaints regarding the magnitude of prior contracts that the agency considered to be relevant are not timely filed. As discussed above, DynCorp was advised during discussions that it had received "relevant" ratings for two prior contracts with annual values of approximately \$40 million and one contract with an annual value of \$22.7 million.¹⁴ AR, Tab 63.6, Interim Evaluation, at 11-12, 16-18, 20-21. Accordingly, the agency maintains that DynCorp was notified during discussions of the contract values the agency would consider relevant to this procurement. On this record, the agency maintains that DynCorp's challenge to the agency's relevancy determinations, and its arguments regarding the dollar value of prior contracts the agency considered to be relevant, are not timely filed.¹⁵

¹⁴ The record shows that M1's past performance record included contracts with average annual values of \$59.3 million and \$94 million that the agency considered relevant. AR, Tab 75, M1 Evaluation Summaries, at 80-82.

¹⁵ In light of the size of DynCorp's contracts that were considered relevant, the agency also maintains that DynCorp was not prejudiced by the allegedly "low dollar thresholds."

Under our Bid Protest Regulations, protests based upon alleged solicitation improprieties, or allegedly flawed ground rules under which a competition is conducted, must be filed prior to the next closing date after which the alleged flaws or improprieties become apparent. 4 C.F.R. § 21.2(a)(1); see Armorworks Enters. LLC, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 4-7 (post-award protest challenging agency's testing methodology is dismissed as untimely where the protester was aware of the alleged problems and failed to raise its concerns regarding the ground rules of the procurement prior to the time set for receipt of proposals). Specifically, a protester may not wait until after an award has been made to protest alleged flaws in a procurement's ground rules that are apparent prior to submitting its proposal or proposal revisions.

Here, DynCorp's protest concerning the allegedly "low dollar thresholds" of contracts the agency considered to be relevant constitutes a challenge to the procurement's ground rules. Further, the record establishes that DynCorp knew or should have known of the agency's "low dollar thresholds" based on the agency's disclosures to DynCorp during discussions. Accordingly, DynCorp's post-award challenge to the procurement's ground rules regarding the size of prior contracts the agency would consider relevant is not timely filed, and will not be considered.

Additionally, DynCorp complains that the agency "unreasonably failed to assign [DynCorp] the highest past performance rating [of substantial confidence]," complaining that the agency improperly "downgrade[d]" DynCorp's rating to satisfactory confidence due to the agency's improper consideration of a recent contract for which DynCorp's performance was rated unsatisfactory under three separate categories (quality, schedule, and management). Protest at 2-3, 24-27. DynCorp asserts that the agency's consideration of the unsatisfactory past performance ratings was improper because the adverse past performance "involved a subcontractor," and DynCorp "promptly and thoroughly addressed" the matter. Id. Thus, DynCorp maintains that the agency was required to give DynCorp a substantial confidence rating. We disagree.

The evaluation of past performance, including assessments of the relevance and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb absent clear evidence that the assessments are unreasonable. Yang Enters., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5-7; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5; TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 12. While an agency may properly consider past performance trends and corrective actions, an agency is not required to ignore instances of negative past performance. The Bionetics Corp., B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8; further, a prime contractor is generally responsible for the prior performance of its subcontractors. ViaSat, Inc., B-291152, B-291152.2, Nov. 26, 2002, 2002 CPD ¶ 211 at 8; Neal R. Gross & Co., Inc., B-275066, Jan. 17, 1997, 97-1 CPD ¶ 30 at 4.

Here, none of DynCorp's assertions regarding the agency's allegedly unreasonable consideration of DynCorp's unsatisfactory past performance establish, or even suggest,

that the ratings were improper. To the contrary, the face of DynCorp's protest establishes that the adverse past performance involved an "issue" that was investigated by the Air Force Office of Special Investigation, and that DynCorp paid a specified amount of money to settle the matter.¹⁶ Protest at 25. Accordingly, on the face of DynCorp's protest, we reject DynCorp's assertion that the agency "unreasonably failed to assign [DynCorp] the highest performance rating" and improperly rated its past performance as only satisfactory confidence.

Awardee's Experience/Responsibility

Finally, DynCorp complains that award to M1 was improper because of M1's "scant experience." Protest at 27. More specifically, DynCorp asserts that M1 "has little technical experience providing or managing rotary wing aircraft, and certainly not the extent of experience required on this contract." Id. Accordingly, DynCorp protests that the agency "failed to properly account for the significant risk M1 presents." Id. at 28.

The agency first notes that it did, in fact, evaluate risk for all of the offerors throughout its comprehensive evaluation. The agency further responds that DynCorp's allegations that M1 will be unable to successfully perform the contract due to M1's allegedly inadequate experience constitute a challenge to the agency's affirmative responsibility determination and/or involve matters of contract administration. We agree.

Our Bid Protest Regulations provide that we will not consider protests regarding matters of contract administration, 4 C.F.R. § 21.5(a), and will consider protests challenging an agency's affirmative responsibility determination only where there is evidence raising serious concerns that the contracting officer unreasonably failed to consider available information.¹⁷ 4 C.F.R. § 21.5(c); see, e.g., Brain X. Scott, B-298568, Oct. 26, 2006, 2006 CPD ¶ 156 at 7-8. That is, a protester's disagreement regarding a procuring agency's determination that an offeror is capable of performing the contract requirements, without more, does not provide a basis for protest. Id.

Here, the record comprehensively documents the agency's evaluation, including the agency's consideration of risks related to each offeror. In raising this issue, DynCorp has not suggested that there was any specific information, other than M1's allegedly inadequate experience, that the agency failed to consider. Accordingly, DynCorp's assertion that M1's allegedly inadequate experience will preclude it from successfully

¹⁶ DynCorp's protest quotes from a portion of the record that refers to a "settlement of [redacted]." Protest at 25.

¹⁷ We will also consider protests where the solicitation contains definitive responsibility criteria, which are not present here. 4 C.F.R. § 21.5(c).

performing the contract requirements reflects nothing more than DynCorp's disagreement with the agency's affirmative responsibility determination, which we will not further consider.

The protest is denied.

Thomas H. Armstrong
General Counsel