



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 International LLC

File: B-407762.3

Date: June 7, 2013

Richard J. Vacura, Esq., Tina D. Reynolds, Esq., and K. Alyse Latour, Esq., Morrison & Foerster LLP, for the protester.

W. Jay DeVecchio, Esq., Kevin C. Dwyer, Esq., Ethan E. Marsh, Esq., and Charles L. Capito, Esq., Jenner & Block LLP, for L-3 Communications Vertex Aerospace, LLC, an intervenor.

Colonel Barbara Shestko, Major Ryan Lambrecht, Michael G. McCormack, Esq., and Lieutenant Colonel Heidi L. Osterhout, Department of the Air Force, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of past performance is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.
 2. Protest that agency failed to perform price realism evaluation is denied where solicitation neither expressly required the conduct of a price realism evaluation nor included language that contemplated the conduct of a price realism evaluation.
 3. Protest that agency engaged in misleading discussions with protester that led it to propose excessive staffing is denied where record does not show that agency downgraded or criticized protester's proposal for offering excessive staffing.
-

DECISION

DynCorp International LLC, of Fort Worth, Texas, protests the award of a contract to L-3 Communications Vertex Aerospace LLC, of Madison, Mississippi, under request for proposals (RFP) No. FA3002-11-R-0007, issued by the Department of the Air Force to acquire aircraft maintenance services at Columbus Air Force Base (AFB), Mississippi. DynCorp primarily argues that the agency miscalculated proposals and engaged in misleading discussions.

We deny the protest.

BACKGROUND

The RFP contemplates the award, on a “best value” basis, of a fixed-price contract to perform aircraft maintenance services at Columbus AFB for an 11-month base period and up to six 1-year option periods. The services to be provided are in support of various pilot training programs of the 14th flying training wing.

The RFP stated that proposals first were to be evaluated for technical acceptability or unacceptability using two factors, technical and small business management. RFP at 121. The technical factor was comprised of four equally-weighted subfactors: integration and changeover (mobilization) plan; management approach; technical approach; and staffing and workforce plan. Id. at 123-127. Proposals had to be rated at least acceptable under each technical subfactor (as well as under the small business management factor) to be considered technically acceptable overall. Id. at 121, 123. With respect to price, the RFP advised that the agency was to evaluate prices for reasonableness using one or more of the price evaluation techniques outlined in Federal Acquisition Regulation (FAR) § 15.404. Id. at 122.

The RFP provided that the agency was to make its selection for award from among the technically acceptable proposals, considering past performance and price, with those two considerations being approximately equal in weight. Id. at 121.

The Air Force received three proposals in response to the solicitation, including those of DynCorp and L-3. The agency evaluated the proposals and determined that none were technically acceptable under the technical evaluation factor, and that one proposal was also unacceptable under the small business management factor. Agency Report (AR), exh. 14, Competitive Range Briefing, at 32. Based on its initial evaluation, the agency included all three proposals in the competitive range. Id. at 129. The agency then engaged in three rounds of discussions and solicited, obtained, and evaluated final proposal revisions. The agency assigned the following ratings to the proposals:

Offeror	Total Evaluated Price	Price Reasonableness Assessment	Technical Rating	Performance Confidence Rating	Small Business Management Plan
L-3	\$281,037,190	Reasonable	Acceptable	Satisfactory Confidence	Acceptable
DynCorp	\$304,945,474	Reasonable	Acceptable	Satisfactory Confidence	Acceptable
Offeror A	\$288,146,508	Reasonable	Acceptable	Satisfactory Confidence	Acceptable

AR, exh. 38, Source Selection Decision Document (SSDD), at 3.

On the basis of these evaluation results, the agency made award to L-3, finding that its proposal represented the best value to the government. After being advised of the agency's selection decision, and after requesting and receiving a debriefing, DynCorp filed this protest. The firm primarily argues that the agency improperly evaluated proposals under the past performance factor, failed to conduct a price realism evaluation, and engaged in misleading discussions.

DISCUSSION

Past Performance

DynCorp challenges the agency's evaluation of its past performance, as well as that of L-3. We point out at the outset that, where an agency has considered reasonably available and relevant past performance information, its judgments regarding the relative merits of competing offerors' past performance are primarily matters within the contracting agency's discretion, and the protester's mere disagreement with such judgments does not establish a basis for our Office to sustain a protest. Palmetto GBA, LLC; CGS Administrators, LLC, B-407668 et al., Jan. 18, 2013, 2013 CPD ¶ 53 at 8. We have considered all of DynCorp's protest allegations relating to the agency's evaluation of past performance and find that none of them has merit. We discuss DynCorp's principal contentions below.

The RFP stated that the agency was to perform an integrated assessment of past performance, considering the recency, relevance and performance quality of an offeror's past performance examples. Recent contracts were defined as contracts performed within the last five years that included at least six months of performance prior to the date the solicitation was issued. RFP at 127. The RFP provided for the assignment of relevancy ratings of very relevant, relevant, somewhat relevant or not relevant, based on the scope, magnitude and complexity of the contract being considered. Id. at 128. The RFP also stated that the agency was to assign performance ratings of exceptional, very good, satisfactory, marginal, unsatisfactory or not applicable. Id. at 128-29. Finally, the RFP provided for the assignment of an

integrated past performance confidence rating of substantial confidence, satisfactory confidence, limited confidence, or no confidence. Id. at 129.

With respect to the evaluation of its own past performance, DynCorp argues that the agency gave undue weight to certain negative past performance information related to one of six contracts considered by the agency. In this regard, the record shows that the agency considered DynCorp's performance of a contract for aircraft maintenance at Sheppard Air Force Base (AFB), determined that this contract was very relevant (because it involved essentially the same services to be performed at Columbus AFB), and assigned it a marginal rating. AR, exh. 37, Proposal Analysis Report Addendum, at 14-17. Based on this rating and the related findings regarding its other past performance examples, the agency ultimately assigned DynCorp an overall satisfactory confidence rating for its past performance. Id.

DynCorp argues that, in assigning its overall rating, the Air Force gave undue weight to this negative past performance information relating to its performance of the Sheppard AFB contract, especially in view of the fact that it is the incumbent contractor for the Columbus AFB contract (for which it was assigned very good/exceptional ratings), and in view of the fact that its other contracts all were rated either very good or very good/exceptional. DynCorp also contends that the marginal rating for the Sheppard AFB contract stemmed from its having to manage difficult labor relations during the early stages of that contract, and that, after its initial difficulties, it substantially improved its performance. DynCorp concludes that, notwithstanding the marginal rating assigned to it, it should have been assigned an overall past performance rating of substantial confidence rather than satisfactory confidence.

We have no basis to object to the agency's assignment of a satisfactory confidence rating for DynCorp's past performance based on the performance difficulties it experienced on the Sheppard AFB contract. First, the record shows that the agency gave careful consideration to the circumstances surrounding DynCorp's performance of that contract (with due regard to the explanations offered by DynCorp for its inadequate performance) and reasonably assigned it a marginal rating for that contract. Specifically, the evaluators found that, for a sustained period of performance of almost three years, DynCorp consistently received marginal ratings on both its contractor performance assessment report system (CPARS) reports, as well as the past performance questionnaires (PPQ) that were returned for it on the Sheppard AFB contract. AR, exh. 37, Proposal Analysis Report Addendum, at 16.

The record also shows that the agency's evaluators spoke with the cognizant Sheppard AFB personnel about DynCorp's performance, and were advised that, while DynCorp had made significant progress in management-labor relations, there were ongoing problems with DynCorp's performance under the contract, including the fact that the agency's personnel had identified twice the number of

discrepancies as DynCorp's own quality control personnel; that DynCorp had two unresolved letters of concern relating to inadequate maintenance practices; and that the government was performing monthly--rather than quarterly--surveillance of DynCorp's performance. Id. These same personnel characterized DynCorp's recent performance as essentially the same as it had been in the prior, marginally-rated, years. Id. The evaluators noted as well that, although some of DynCorp's CPARS ratings had improved from marginal to satisfactory, its ratings for quality of product/service and schedule remained marginal. Id. On this record, we conclude that the agency reasonably assigned DynCorp a marginal past performance rating for the Sheppard AFB contract.

The record also shows that, in assigning its overall rating, the Air Force factored in DynCorp's good performance for its other two very relevant contracts (its incumbent contract at Columbus AFB, and another contract at Andrews AFB), and gave added weight to DynCorp's performance of the Columbus AFB contract. In the final analysis, however, the agency concluded that DynCorp's persistent marginal performance under the Sheppard AFB contract was of particular concern; those shortcomings led the evaluators to assign a satisfactory confidence rating to DynCorp's past performance overall. The evaluators concluded their analysis as follows:

Of the three Very Relevant contracts, the [past performance evaluation team (PPET)] gave greater consideration to the performance at Columbus than the other two Very Relevant contracts due to Columbus being the incumbent contract. However, although [DynCorp] received mostly Excellent and Very Good performance scores on the Columbus contract's CPARS and PPQs, the PPET could not disregard three consecutive years of just Marginal and Satisfactory performance ratings in Sheppard's CPARS and PPQs, when the work at Sheppard is essentially identical to the work at Columbus. When looking at [DynCorp's] past performance as a whole, the PPET had a reasonable expectation that [DynCorp] could successfully perform the required effort and was in consensus in assigning [DynCorp] a Past Performance Confidence Rating of Satisfactory Confidence.

AR, exh. 37, Proposal Analysis Report Addendum, at 17.

We find that the agency's evaluation was reasonable and consistent with the terms of the RFP. Simply stated, the record shows that the evaluators were appropriately concerned with both the nature and persistence of the performance problems DynCorp was having on its Sheppard AFB contract; that the agency considered--but was not persuaded by--the explanations offered by the firm for its marginal performance of that contract; and these concerns reasonably led the agency to assign DynCorp an overall satisfactory confidence rating for past performance,

notwithstanding its other, higher-rated past performance examples. DynCorp's protest essentially amounts to no more than disagreement with the agency's findings, which does not provide a basis for our Office to object to the evaluation.

DynCorp next challenges the agency's evaluation of L-3's past performance. First, the protester argues that the agency could not reasonably have assigned both firms' past performance the same overall satisfactory confidence rating because L-3 did not have as many very relevant contracts as did DynCorp. The record shows that L-3 had only one very relevant contract, five relevant contracts, and one somewhat relevant contract, whereas DynCorp had three very relevant contracts, two relevant contracts and one somewhat relevant contract. AR, exh. 37, Proposal Analysis Report Addendum, at 11, 15. According to DynCorp, the RFP required the agency to give greater weight to its more relevant contracts.

We find no merit to this aspect of DynCorp's protest. As discussed above, the principal reason underlying the assignment of an overall satisfactory (as opposed to substantial) confidence rating to DynCorp's past performance was the pervasive performance problems experienced by the firm on its Sheppard AFB contract, one of its three very relevant contracts. Although DynCorp is correct that, in the aggregate, the contracts reviewed by the agency in evaluating L-3's past performance were not deemed as relevant as the contracts reviewed for DynCorp, the record shows that the ratings assigned to the L-3 contracts were largely comparable to the ratings assigned to the DynCorp contracts. Both firms received very good to exceptional ratings for all their respective contracts except one¹; in the case of DynCorp, the contract receiving lower ratings was its very relevant Sheppard AFB contract. *Id.* at 11, 15. In effect, the agency took into consideration the fact that L-3's contracts were deemed less relevant by assigning L-3 an overall confidence rating of satisfactory rather than substantial confidence, notwithstanding its consistently assigned very good to exceptional ratings.

DynCorp also argues that the agency unreasonably failed to consider L-3's performance of a subcontract for aircraft maintenance of a fleet of airplanes provided to the Afghanistan Air Force (referred to in the record as the G222/C-27 contract).² According to DynCorp, L-3's performance of that contract was rated marginal, and the agency erred in not considering this in its evaluation.

¹ We discuss below the L-3 contract that did not receive very good to exceptional ratings.

² DynCorp also contends that the agency failed to take into consideration several remarks made by evaluating officials in PPQs submitted in connection with L-3's performance of another contract at Moody AFB. The record shows, however, that these same officials assigned adjectival ratings in those PPQs ranging from satisfactory to exceptional, with the majority of ratings being either very good or
(continued...)

We find no merit to this aspect of DynCorp's protest. The record shows that the agency did not factor this contract into its evaluation of L-3's past performance because of uncertainty surrounding the information available to the agency. Specifically, although there were three CPARS reports in connection with this contract, those reports dealt with the prime contractor's performance, and did not include information regarding L-3's performance as a subcontractor. AR, exh. 35, Past Performance Evaluation Report, at 20. Given the lack of information about L-3 in the CPARS reports (and an absence of PPQs relating to L-3's performance of this contract), the agency contacted the cognizant administrative contracting officer (ACO). Based on that communication, the evaluators found that it would be inappropriate to consider L-3's performance on that contract because of numerous variables that precluded a fair or consistent rating of the firm. Id. at 21. Specifically, the evaluators found:

The ACO indicated that, in his opinion, L-3's performance was less than satisfactory. However, he also stated that there were multiple factors that contributed to L-3's subpar performance in Afghanistan. He stated that he believed it was due to [a] combination of maintenance challenges and supply challenges: 1) L-3 lacked G222 experience and skilled aircraft maintenance personnel (however, he caveated that no one else had G222 experience since it is a retired Italian made aircraft); 2) the Government failed to provide the needed spares in timely manner, thus, contributed to L-3 not being able to keep airplanes flying; 3) L-3 requested the prime contractor to provide the follow-on training in accordance with the contract between them; however, L-3's request was denied by Alenia [the prime contractor]; and 4) the prime contractor failed to provide timely payments to L-3.

Id. at 20-21.

We find that the agency acted reasonably in not factoring this contract into its evaluation of L-3's past performance. Based on the ACO's description of the circumstances surrounding L-3's performance of the contract, there was a reasonable basis for the agency to find that there were too many variables that were not within L-3's control in performance of this subcontract effort to warrant factoring it in to the overall evaluation. As with its allegation relating to the evaluation of its own past performance, DynCorp's protest allegation regarding the agency's evaluation of L-3's past performance essentially amounts to no more than

(...continued)

exceptional, and that these officials rated L-3's performance overall as either very good or exceptional. AR, exh. 9b, Combined PPQs, at 6-10, 16-21.

disagreement with the agency's judgment, and does not provide our Office with a basis to object to the agency's evaluation of L-3's past performance.³

Price Evaluation

DynCorp argues that the agency improperly failed to perform a price realism evaluation of the proposals. According to DynCorp, the RFP required the conduct of a price realism evaluation, and the agency's failure to conduct such an analysis resulted in the agency failing to observe a variety of alleged deficiencies in L-3's price proposal.⁴ In support of its position, DynCorp directs our attention to two decisions of our Office, Science Applications Int'l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310, and Flight Safety Servs., Corp., B-403831, B-403831.2, Dec. 9, 2010, 2010 CPD ¶ 294. According to Dyncorp, these cases stand for the proposition that an agency is required to conduct a price realism evaluation, even where the RFP does not per se call for such an evaluation, where the RFP contemplates that price proposals will be evaluated for understanding of the requirements.

We find no merit to this aspect of DynCorp's protest. As a general matter, when awarding a fixed price contract, an agency is only required to determine whether the offered prices are fair and reasonable. FAR § 15.402(a). An agency's concern in making a price reasonableness determination focuses on whether the offered prices are too high, rather than too low. Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6. Where there is no evaluation factor providing for consideration of price realism, a determination that an offeror's price is too low generally concerns the offeror's responsibility. PAE Gov't Servs., Inc., B-407818, Mar. 5, 2013, 2013

³ DynCorp also maintains that the agency engaged in disparate treatment of the offerors because, although it did not evaluate L-3's performance as a subcontractor on the G222/C-27 contract, it evaluated a subcontract for offeror A. Even if DynCorp were correct, we fail to understand how this might have prejudiced DynCorp, since it does not involve the evaluation of its proposal. Since prejudice is an essential element of every viable protest, Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3, and since DynCorp has not explained or demonstrated how it might have been prejudiced by this alleged disparate treatment, we deny this aspect of DynCorp's protest.

⁴ For example, DynCorp alleges that the agency's failure to perform a price realism evaluation resulted in the agency failing to observe that L-3's profit margin was low; that L-3 proposed an inadequate level of effort because of its use of a "lapse," or vacancy, rate in calculating its prices; that the agency failed to consider the realism of L-3's proposed prices in connection with some of its proposed "flying hour" band prices; and that the agency failed to assess the risk associated with L-3's allegedly low proposed prices.

CPD ¶ 91 at 6. While an agency may conduct a price realism analysis in awarding a fixed-price contract for the limited purposes of assessing whether an offeror's low price reflects a lack of technical understanding or risk, see FAR § 15.404-1(d)(3), offerors must be advised that the agency will conduct such an analysis. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. Id.

As a threshold matter, the RFP's price evaluation factor here makes no mention of a price realism evaluation. The sole RFP provision relating to the agency's evaluation of price provides as follows: "a. Price Reasonableness. The Government will evaluate the price information submitted per Section L in Volume I, Price Proposal, using one or more of the techniques defined in FAR 15.404 in order to determine if it is reasonable." RFP at 122. The price evaluation factor goes on to describe how the agency will calculate total evaluated price, but there is no mention of the agency performing a price realism evaluation. Id. at 122-23. Thus, on its face, the RFP contemplates the evaluation of price proposals strictly for reasonableness, and not for realism.

The protester is correct that, in certain limited circumstances, we have recognized that a solicitation that does not expressly call for a price realism evaluation may nonetheless require such an evaluation. For example, in Flight Safety Servs., Corp., supra. at 5, we found that, although the solicitation did not expressly call for a price realism evaluation, it effectively contemplated one because it advised offerors that the agency could reject a proposal if the offeror's low price reflected an inherent lack of competence or failure to comprehend the complexities and risks of the requirements being solicited. We explained that the crux of a price realism evaluation is the consideration of whether an offeror's price is so low that it reflects a misunderstanding of the RFP's requirements, such that the proposal should be rejected. See also Science Applications Int'l Corp., supra. at 10. Thus, in the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where (1) the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) the RFP states that a proposal can be rejected for offering low prices.

Here, nothing in the RFP states that the agency planned to evaluate proposed prices to determine whether they were so low that they reflected a lack of technical understanding, and nothing in the RFP states that the agency could reject a proposal for offering unrealistically low prices. It follows that the RFP did not contemplate that the agency would perform a price realism evaluation. Consequently, DynCorp's protest bases relating to the agency's alleged failure to conduct a price realism evaluation fail to state a valid basis for protest. Vital Link, Inc., supra. at 6.

Misleading Discussions

DynCorp finally contends that the agency engaged in misleading discussions with the firm. According to DynCorp, the agency posed discussion questions that led it to increase its proposed staffing. The protester asserts that, ultimately, it was led to propose more staffing than was necessary to perform the contract, and that it was thereby prejudiced by the agency's actions. In support of this assertion, DynCorp points to an observation allegedly made by the contracting officer during one of DynCorp's debriefings to the effect that the evaluators thought DynCorp may have included requirements or processes relating to performance of the predecessor contract that were not required by the current solicitation.

However, the evaluation record, not the agency's alleged statements during a debriefing, provide the basis for our review. Our concern is with the manner in which the evaluation was conducted, not the protester's understanding of the agency's subsequent explanation of how it conducted its evaluation, and a debriefing is only an explanation of the agency's evaluation and source selection, not the evaluation or decision itself. Keystone Sealift Servs., Inc., B-401526.3, Apr. 13, 2010, 2010 CPD ¶ 95 at 5.

The record here does not show that DynCorp's proposal was downgraded or otherwise less favorably evaluated based on its alleged offer of excess staffing, and DynCorp has not directed our attention to anything in the evaluation record to support its argument. Since DynCorp's allegation relating to misleading discussions would necessarily have to be predicated on a finding by the agency that its proposed staffing was excessive, and since the record does not reflect such a finding, it follows that the agency did not mislead DynCorp during discussions into proposing excessive staffing.⁵ We therefore deny this aspect of DynCorp's protest.

The protest is denied.

Susan A. Poling
General Counsel

⁵ We also note that both DynCorp and L-3 were given extensive discussions in the area of proposed staffing, and both firms ultimately proposed largely comparable levels of effort. DynCorp increased its proposed staffing during negotiations from [deleted] full time equivalents (FTEs) to [deleted] FTEs. L-3, by comparison, increased its proposed staffing from [deleted] FTEs to [deleted] FTEs. Contracting Officer's Statement at 40. Neither firm was criticized during the final evaluation for its proposed level of effort.