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Decision

Matter of: DynCorp International, LLC

File: B-403065; B-403065.2

Date: September 17, 2010

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W. Jay DeVecchio, Esq., Kevin C. Dwyer, Esq., William R. Stoughton, Esq., Kathy C. Weinberg, Esq., Daniel E. Chudd, Esq., Edward Jackson, Esq., and James C. Cox, Esq., Jenner & Block, for L-3 Communications Systems, Systems Field Support, an intervenor.
Tina M. Pixler, Esq., and Patrick G. Nelson, Esq., Department of the Army, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency evaluation of offeror's final proposal revision (FPR) improperly failed to consider offeror's responses to agency errors, omissions and clarifications (EOC) notices and items for negotiation (IFN) notices is denied where offerors were repeatedly instructed by agency to incorporate in FPRs all changes to the proposal made by responses to EOCs and IFNs.

DECISION

DynCorp International, LLC, of Fort Worth, Texas, protests the award of a contract to L-3 Communications Systems, Systems Field Support-Vertex, of Rockwall, Texas, under Department of the Army, Army Materiel Command, request for proposals (RFP) No. W58RGZ-09-R-0001, for life cycle support for C-12, RC-12, and UC-35 aircraft. DynCorp challenges the conduct of discussions and evaluation of proposals.

We deny the protest.

BACKGROUND

The RFP contemplated the award of a primarily fixed-price contract, with a base year and 4 option years, for life cycle contract support (LCCS)--including maintenance, repair, servicing, modification, parts, material, tooling, equipment and management--for 113 C-12, 49 RC-12 and 28 UC-35 aircraft. Award was to be made to the offeror that met the entry gate criterion of possession of, or an acceptable plan to obtain, requisite Federal Aviation Administration (FAA) Repair Station Certificates, and whose proposal represented the "best value" considering four evaluation factors: (1) technical-LCCS (with subfactors for technical approach, depot/propulsion/"over & above" work,¹ engineering approach, business relationships/certifications, and transition); (2) past performance; (3) management; and (4) price. Prices were to be evaluated to determine if they were "fair reasonable and complete"; "demonstrate that the offeror understands the Government's requirements"; were "realistic for the work to be performed"; and represented a "price risk to the Government." RFP § M-1, Price. The technical-LCCS factor was more important than past performance, which was slightly more important than management; the non-price factors combined were significantly more important than price.

Five proposals were received. Two proposals were subsequently withdrawn. Based on the initial proposals, and the offerors' responses to agency errors, omissions and clarifications (EOC) notices to offerors, the Army excluded one of the proposals from the competitive range. The Army then conducted discussions with the remaining offerors--DynCorp (the incumbent contractor) and L-3--culminating in a request for final proposal revisions (FPR). The FPRs were evaluated as follows:

¹ "Over and above" maintenance is work not included in the firm, fixed-price contract line item numbers (CLIN). RFP CLIN X004.

	DynCorp	L-3
Technical-LCCS Factor Overall	Acceptable/ Moderate Risk	Good/ Low Risk
Technical Approach	Acceptable/ Moderate Risk	Acceptable/ Moderate Risk
Depot, Propulsion, Over & Above	Acceptable/ Moderate Risk	Good/ Low Risk
Engineering Approach	Good/ Low Risk	Good/ Low Risk
Business Relationships/Certifications	Acceptable/ Moderate Risk	Good/ Low Risk
Transition	Acceptable/ Moderate Risk	Good/ Low Risk
Past Performance	Good/ Low Risk	Good/ Low Risk
Management	Good/ Low Risk	Good/ Low Risk
Price	\$412,152,301	\$441,301,131

Source Selection Decision (SSD) at 7.

L-3's proposal, with an overall technical-LCCS rating of Good/Low Risk, was determined to be technically superior to DynCorp's, with an overall technical-LCCS rating of Acceptable/Moderate Risk. In this regard, the source selection authority (SSA) identified five "technical advantages" of L-3's proposal, which he determined were "particularly valuable to the Government": (1) L-3's technical licensing agreement with the aircraft original equipment manufacturer (OEM) (for most of the aircraft)--providing for unlimited access to and use of proprietary data, specifications and manufacturing drawings--was expected to ensure quick access to technical assistance and engineering support from the OEM, and reduce delays and cost to the government; (2) annual "electro Static Discharge" aircraft familiarization and maintenance training, including provision of a qualified instructor to each base to provide formal training to all technicians; (3) L-3's contract with an FAA Designated Engineering Representative (DER), under which the FAA DER would provide "Priority Support" to L-3, thereby ensuring priority for L-3 projects over those of other customers; (4) availability of an FAA Designated Airworthiness Representative on staff (as the manager of technical support services) at one of L-3's FAA-approved repair stations; and (5) L-3's Combat Redeployment Center (CRC) Support Detachment, where contractor personnel scheduled for deployment outside the continental U.S. are pre-screened and given an orientation prior to processing at the Army's CRC, thereby enabling the contractor to address and/or correct potential problems that might arise during the subsequent Army screening process. SSD at 39.

Although DynCorp's evaluated price was approximately 6.6% lower than L-3's, the agency evaluators reported to the SSA that they were unable to determine whether DynCorp's price was fair, reasonable, complete, or realistic for the work to be performed as a result of uncertainties arising from: (1) a greater-than-expected reduction—approximately 15% rather than the expected 9%—in DynCorp's FPR price relative to its initial price; (2) the fact that DynCorp's pricing spreadsheets included "circular errors,"² even after the agency's concern in this regard was raised during discussions; and (3) a Defense Contract Audit Agency (DCAA) report identifying material weaknesses in DynCorp's estimating system. SSD at 17-23. However, while the SSA acknowledged the "evaluated potential risk to the Government" from the uncertainties associated with DynCorp's price, he explained in the SSD that he nevertheless considered DynCorp's price as follows:

However, as the price did not require an adjectival rating, I considered the price for evaluation purposes as L-3's price being 6.6% greater than the price proposed by DynCorp. Having given consideration to this price difference it is my opinion that the technical advantages proposed by L-3 provide the Government the greatest value.

SSD at 40. Following notice of award to L-3, and an agency debriefing, DynCorp filed this protest with our Office.

Where a protest challenges an agency's evaluation of proposals, we will review the evaluation record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. W. Gohman Constr. Co., B-401877, Dec. 2, 2009, 2010 CPD ¶ 11 at 3. We have reviewed DynCorp's arguments and find that none furnishes a basis for questioning the award to L-3. We discuss the most significant arguments below.

TECHNICAL-LCCS FACTOR

DynCorp challenges the evaluation of its FPR on the basis that several of the assessed disadvantages with respect to its technical-LCCS proposal resulted from the agency's failure to take into account information that DynCorp furnished in responses to agency clarification or discussion requests, but did not include in its FPR. More specifically, DynCorp timely challenges 2 of 10 assessed disadvantages under the technical approach subfactor, 2 of 5 disadvantages under the depot/propulsion/ over & above subfactor, and the 1 disadvantage under the business relationships/ certifications subfactor. The Army has conceded that one of the two disputed disadvantages under the depot/propulsion/over & above subfactor was in error. Contracting Officer's Statement at 8. We find that DynCorp's challenges do

² Circular errors occur when a formula refers to itself to determine the answer.

not provide a basis to question the agency's overall technical-LCCS evaluation finding of L-3's superiority.

Government Approval

For example, under the technical approach subfactor, the Army questioned DynCorp's proposed approach to assuming responsibility for maintenance consistent with the requirements of the solicitation. In this regard, the solicitation performance work statement (PWS) directed the contractor to "perform all required basic inspection, pre/post flight inspection, and maintenance actions," and to "maintain each aircraft at a Mission Capable (MC) rate" of either 80% or 85%. PWS §§ 3.0, 3.4.1. In addition, the RFP required the offeror to "describe the approach for performing mission support operations required to meet the MC rate and other requirements of the PWS and solicitation." RFP § L-14, ¶ A1.3.

DynCorp's initial technical proposal stated that: "Upon Government approval of the maintenance plan, the Site Supervisor/Lead Mechanic takes the actions necessary to arrange and provide facilities, tools, test equipment, parts/material and other support, as required, to execute the maintenance plan." DynCorp Initial Technical-LCCS Proposal, § 1.1.3 (emphasis added). Since the solicitation did not provide for government approval of the maintenance plan, the Army viewed DynCorp's approach as inconsistent with the contractor's responsibility for the development and implementation of maintenance approaches for each aircraft. Agency Report, Contracting Officer's Statement, at 10; Legal Memorandum at 4. In response to the agency's request that DynCorp clarify its intent with respect to the above language, DynCorp responded that its "intent is to ensure that the Government/COR is fully informed about the facilities, tools, test equipment, parts/material, and other support required for the upcoming scheduled and unscheduled maintenance tasks." EOC C-1146-EOC and Response. The Army determined that DynCorp's EOC response answered the question, so long as the change was included in its FPR. DynCorp EOC Evaluation at 411. However, DynCorp's EOC response indicated "Change Pages(s): None," and its subsequent FPR left unchanged the language calling for government approval of the maintenance plan that the Army had found to be problematic. The agency concluded that, since DynCorp's response to its concern was not incorporated into the firm's proposal, it was not sufficient to address its concern, and assessing a disadvantage was appropriate.

DynCorp asserts that the Army unreasonably failed to consider its EOC response in the evaluation. This argument is without merit. The agency specifically instructed offerors, when it first issued items for negotiation [IFN] at the commencement of discussions, that "[i]t is imperative that your FPR incorporate all changes to the proposal made by responses to the EOCs and these IFNs." Army Letter to DynCorp, Jan. 28, 2010. Likewise, when the agency requested FPRs at the conclusion of discussions, it again instructed offerors that "[r]evisions to your proposal as a result of these discussions, and any EOCs or IFNs, shall be clearly marked in . . . changed pages It is imperative that your FPR incorporate all changes to the proposal

made by responses to the EOCs and these IFNs.” Army Letter to DynCorp, Feb. 26, 2010. Contrary to these explicit instructions, DynCorp failed to incorporate its EOC response into its FPR, with the result that its FPR included its proposal for government approval of the maintenance plan. The Army reasonably determined that this proposal was inconsistent with the PWS.

DynCorp asserts that, since its EOC response indicated “Change Pages(s): None,” the agency was required to issue an IFN if it disagreed with DynCorp’s position that no change page was required. However, having led DynCorp into the area of its concern, the agency was not obligated to afford DynCorp any further opportunity to comply with the general requirement for any changes (here, a correction of a proposed approach inconsistent with the PWS) to be included in its FPR. ITT Indus. Space Sys., LLC, B-309964, Nov. 9, 2007, 2007 CPD ¶ 217 at 15; Ideamatics, Inc., B-297791.2, May 26, 2006, 2006 CPD ¶ 87 at 3 n.5.

Annual Reviews

As another example, DynCorp questions the assessment of a disadvantage under the technical approach subfactor regarding its proposed approach to meeting the PWS requirement for annual reviews of aircraft weight and balance records. In this regard, the PWS provided that “[t]he Contractor shall perform aircraft weighing and balancing IAW [in accordance with] OEM manuals, Technical Manual TM 55-1500-342-23 and AR [Army Regulation] 95-1.” PWS § 3.2.4.5. AR 95-1, Flight Regulations, provides as follows:

all weight and balance records will, as a minimum, be reviewed every 12 months. . . . This review must include a weight and balance inventory of the aircraft and the following statement entered on the DD Form 365-3: “Calculated weight and moment per inventory completed at.” The date and adjusted basic weight and moment will accompany this entry.

AR 95-1, § 7-6(b), Nov. 12, 2008. The Army maintains that the “Calculated Weight and Moment per inventory completed at date & time . . .” entry serves as a binding certification by the weight and balance technician that he not only performed the inventory, but that he also completed a calculation of the aircraft’s weight and center of gravity moment and, based on that inventory, that the aircraft is within the allowable limits for flight. In other words, the entry becomes a written certification to the pilot by the technician that the aircraft is safe for flight. Agency Comments, Sept. 10, 2010.

DynCorp’s initial proposal—section 1.1.1, A1.1 Maintenance Operations, and section 1.1.3, A1.3 Mission Support Operations Approach—described the annual review of weight and balance records as follows:

This review includes a weight and balance inventory (Chart A) and the following statement is entered on the DD 365-3 (Chart C) and in AWBS: "Annual review and inventory completed." The annual review is also entered in DynMRO as a maintenance requirement and is recorded on the applicable DD 2408 series maintenance record form IAW DA PAM 738-751.

DynCorp Initial Technical-LCCS Proposal, §§ 1.1.1, 1.1.3, at A1-44, A1-144. In clarification request C-1172-EOC, the Army asked DynCorp to explain how its approach with respect to the weight and balance inventory review "meets the requirements of PWS PARA 3.2.4.5 and AR 95-1." The agency found DynCorp's response inadequate, and issued an IFN to DynCorp advising that its EOC response "does not meet AR 95-1 for the statement to be entered onto the Chart C" during the annual weight and balance review. IFN C-2738-IFN. In addition, in clarification request C-1032-EOC, the Army questioned both sections of the proposal with respect to the weight and balance inventory review, and requested that DynCorp clarify its approach.

In its responses to C-2738-IFN and C-1032-EOC, DynCorp stated that it would revise its proposal to indicate that the annual weight and balance records review would be performed in accordance with AR 95-1, as required by the PWS. DynCorp proceeded to revise section 1.1.3 of its FPR (in response to C-1172-EOC and C-2738-IFN) to indicate that it would enter the following statement as part of its annual review of weight and balance records: "Calculated weight and moment per inventory completed at, the date and adjusted basic weight and moment will accompany this entry." DynCorp FPR Technical-LCCS Proposal, § 1.1.3, at A1-153. However, DynCorp did not revise section 1.1.1 of its FPR, and instead left that section as providing that the contractor would enter on Chart C only the statement: "Annual review and inventory completed." As a result, DynCorp did not commit to meet the AR 95-1 requirement for a binding certification by the weight and balance technician that he had completed a calculation of the aircraft weight and center of gravity moment.

DynCorp asserts that the Army's evaluation of its FPR unreasonably failed to consider the prior IFN response to C-2738-IFN and the response to C-1032-EOC, wherein DynCorp stated that it would revise its proposal to indicate that the annual weight and balance records review would be performed in accordance with AR 95-1, as required by the PWS.

This argument is without merit for the same reason as discussed above. That is, the Army repeatedly, explicitly instructed offerors that "[i]t is imperative that your FPR incorporate all changes to the proposal made by responses to the EOCs and these IFNs." Army Letter to DynCorp, Jan. 28, 2010; Army Letter to DynCorp, Feb. 26, 2010. Although DynCorp did change section 1.1.3 of its FPR as proposed, it did not incorporate the proposed change to section 1.1.1 into its FPR. This failure created an inconsistency in the FPR as to DynCorp's intention to comply with AR 95-1. In

light of this inconsistency, the agency reasonably determined that DynCorp had not unequivocally committed itself to meet the AR 95-1 binding certification requirement, and reasonably downgraded the proposal on this basis. See SeaSpace Corp.--Recon., B-252476, B-252476.3, Oct. 27, 1993, 93-2 CPD ¶ 251 at 6-7.

Based upon our review of all of DynCorp's timely challenges evaluation, we find no basis for questioning the evaluated superiority of L-3's proposal under the (most important) technical-LCCS factor.

PAST PERFORMANCE

DynCorp challenges the overall evaluation of L-3's past performance as good/low risk.³ In this regard, the RFP required offerors to furnish the following:

[a] description of all relevant Government and/or commercial contracts including prime contracts and major subcontracts received or performed during the past five years, for same or similar Fixed Wing aircraft and effort (Maintenance, Logistics and Engineering Services) required by this PWS and solicitation.

RFP § L.14, Vol. IV, Past Performance. Offerors also were required to provide past performance questionnaires (PPQ) to references for the identified contracts. The RFP provided that the agency would "focus its inquiries on the offeror's and any major subcontractor's records of performance as it relates to the solicitation requirements," including past and current performance records concerning aircraft maintenance and parts supply; compliance with FAA regulations, and safety and airworthiness requirements; ability to perform/develop FAA Supplemental Type Certificates; ability to select, retain, train, support and replace key personnel; timeliness of performance; quality of results; and customer satisfaction, cooperative behavior and Government interface. RFP § M-1, Past Performance.

L-3's proposal identified three relevant L-3 Vertex contracts, for all of which references provided PPQs. Only one of the three contracts was viewed as indicating a moderate (rather than very low) level of performance risk. SSD at 30-31; L-3 Past

³ Although DynCorp was informed during its June 8 debriefing of its and L-3's overall good/low risk past performance ratings, and of more specific evaluation conclusions regarding DynCorp's own past performance, DynCorp did not challenge the agency's past performance ratings in its June 11 protest. DynCorp first questioned the past performance ratings in its July 22 supplemental protest. Since DynCorp's challenge to the evaluation of its own past performance rating--asserting that the agency gave insufficient weight to its incumbent contract and overall past performance--was filed more than 10 days after its debriefing, during which it was advised of its rating, this aspect of its protest is untimely. 4 C.F.R. § 21.2(a)(2) (2010).

Performance Evaluation at 3. In this regard, the past performance information received by the Army indicated that a subcontractor under L-3's contract with U.S. Customs & Border Protection (CBP) for maintenance, logistics management and engineering support for 17 different aircraft types (contract No. HSBP1005C00770), used an inexperienced workforce, resulting in delivery delays, unavailable P-3 aircraft, and cost overruns. However, while L-3 was faulted for its oversight of the subcontractor, and a telephone inquiry by the Army confirmed dissatisfaction with contractor performance, both PPQs received for the contract rated overall quality of performance and schedule performance good, performance management satisfactory, and management of key personnel good (one PPQ) or satisfactory (second PPQ). L-3 Past Performance Evaluation at 12-15. Further, the subcontractor employed by L-3 under that contract was not proposed for the current effort. Contracting Officer's Supplemental Statement, Aug. 25, 2010, at 3.

In addition, the agency received reports of exceptional/excellent or good performance under L-3's two other relevant contracts. In this regard, for L-3's contract to furnish maintenance and logistics support for Air Force C-12 aircraft stationed worldwide (contract No. F34601-00-C-0111), the Department of Defense Past Performance Information Retrieval System (PPIRS) and one of the two PPQs received rated L-3's quality of performance exceptional/excellent, while the other PPQ rated it good. L-3 Past Performance Evaluation at 6-9. Likewise, for L-3's contract to furnish logistics support for Navy C-12 aircraft (contract No. N00019-00-D-0272), the PPIRS report indicated very good quality, schedule, cost control and management, while the PPQ received indicated excellent quality and schedule performance. L-3 Past Performance Evaluation at 9-12. Agency evaluators further noted that the PPQs or PPIRS data for the contracts of the two subcontractors (L-3 Link Simulations & Training and M1 Support Services) proposed by L-3 to perform 30% of the current effort indicated high levels of customer satisfaction. L-3 Past Performance Evaluation at 3, 19-23.

While, as noted by DynCorp, the poor performance of L-3's subcontractor and poor supervision by L-3 under its CBP contract resulted in a moderate performance risk assessment for that contract, that rating did not preclude the agency from finding that the totality of L-3's past performance warranted a good/low risk rating. Rather, the agency determined that several considerations--L-3's exceptional/excellent or good performance on two other relevant contracts; and reported high levels of customer satisfaction with the performance of L-3's proposed subcontractors (who were different than the subcontractor with the poor performance under the CBP contract)--offset the problem under the CBP contract. We find nothing unreasonable in the agency's evaluation conclusions.

PRICE

DynCorp asserts that the evaluators' inability to determine whether DynCorp's price was fair, reasonable, complete or realistic--due to uncertainties arising from a greater-than-expected price reduction in DynCorp's FPR, "circular errors" in

DynCorp's pricing spreadsheets, and a DCAA report identifying material weaknesses in DynCorp's estimating system--was unreasonable. As noted, however, while the SSA acknowledged in the SSD the potential risk to the government from the identified uncertainties, he nevertheless "considered the price for evaluation purposes as L-3's price being 6.6% greater than the price proposed by DynCorp." SSD at 40. Thus, DynCorp was credited with the amount by which its price was lower than L-3's. In fact, the SSA ultimately concluded that "[h]aving given consideration to this price difference it is my opinion that the technical advantages proposed by L-3 provide the Government the greatest value." Id. Thus, the evaluators' concerns had no effect on the best value determination.⁴

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁴ This conclusion is further confirmed by the SSA's testimony given during a telephone hearing conducted by our Office in this matter. In this regard, the SSA credibly testified that he "gave DynCorp [the] benefit of the doubt and assumed that their numbers were reliable." Hearing Transcript (Tr.) at 33. According to the SSA, "we actually gave the advantage to DynCorp for the price. However, the technical advantages of L-3 were worth the 6.6[%] delta in price to the government." Tr. at 47.