



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Geo-Centers, Inc.

File: B-276033

Date: May 5, 1997

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GAO, participated in the preparation of the decision.

DIGEST

1. Agency contention that protest should be dismissed as untimely when filed nearly 3 months after contract award, and nearly 2 months after debriefing, is denied where the record shows that: (1) the protester sought a debriefing within 10 days of contract award; (2) the debriefing was delayed because of the unavailability of agency technical personnel; (3) the information which forms the basis for protest was withheld from the protester at the debriefing, even though the protester requested the information; and (4) the information was later provided to the protester in response to a Freedom of Information Act request filed immediately after the debriefing.
2. Contention that agency unreasonably evaluated technical proposals by awarding both proposals the maximum number of available points is denied because the record shows that the evaluation was reasonable and in accordance with the stated evaluation criteria, and because there is nothing *per se* improper about an evaluation which results in the award of the maximum score to more than one offeror.
3. Protester's contention that the cost evaluation improperly relied on a flawed government cost estimate is denied where the agency recognized that its estimate of costs was low and other steps were available to the agency to permit an assessment of proposed costs.
4. Challenge to agency's evaluation of sample task costs is sustained where the record shows that the agency failed to evaluate sample task cost proposals in

accordance with the solicitation evaluation criteria, and did not reasonably consider the impact that widely divergent sample task costs might have on the determination of which proposal is most advantageous to the government.

DECISION

Geo-Centers, Inc. protests the award of a contract to Dynamac Corporation, pursuant to request for proposals (RFP) No. DAAD05-95-R-0794, issued by the Department of the Army for scientific and technical support services related to the Health Effects Research Program of the Army's Center for Health Promotion and Preventative Medicine at Aberdeen Proving Ground, Maryland. Geo-Centers argues that the agency improperly awarded maximum technical scores to each offeror's proposal and performed an unreasonable cost realism evaluation.

We sustain the protest.

The RFP anticipated award of a cost-plus-fixed-fee task order-type contract for a base year and 2 option years to the offeror whose proposal offered the best value to the government. Section M of the RFP set forth five evaluation factors: technical merit, management merit, performance risk, cost, and subcontracting plan. The RFP advised that the technical and management factors would be combined and numerically scored (on a 1,000-point scale); the performance risk and cost factors would be evaluated on a narrative basis; and the subcontracting plan would be evaluated on a go/no-go basis. Potential offerors were also advised that the technical/management area would be significantly more important than cost, which would be slightly more important than performance risk. In addition, the RFP explained that if the proposals were relatively equal in the technical/management area, cost would assume greater importance. Finally, the RFP identified the required labor categories--i.e., chemist, biologist, statistician, etc.--and the estimated hours for each category.

The RFP contained three sample tasks to which offerors were to submit a technical response and sample task cost proposals. (The sample task cost proposals were in addition to the main cost proposal required by the RFP.) The RFP stated that the sample task cost proposals would be evaluated for price reasonableness (section L at 7), and for cost realism (section M at 2). The RFP set forth different definitions for price reasonableness and cost realism.¹

¹Cost realism was defined as "whether or not the offeror has proposed sufficient resources to successfully perform the contract and sample task work. Resources include materials, labor, facilities, equipment, travel and other elements of cost (direct and indirect) necessary" to perform the effort. RFP, § M at 2. Price reasonableness is defined as "a matter of the competitiveness of the offeror's proposal, considering the price and the merit factors area." RFP, § M at 3.

The Army received two proposals--one from Dynamac, one from Geo-Centers, the incumbent contractor providing many of the services here. The Army found both proposals acceptable,² and conducted discussions with both offerors. After the conclusion of negotiations, both offerors submitted revised proposals that were evaluated prior to the request for best and final offers (BAFO). Upon receipt of BAFOs, proposals were evaluated for a third time. The results of the technical evaluations are set forth below:

OFFEROR	INITIAL PROPOSAL SCORE	POST-DISCUSSIONS SCORE	BAFO SCORE
Geo-Centers	930	998	1,000
Dynamac	680	775	1,000

After concluding that the BAFOs were technically equal, the Army made its selection decision on the basis of cost--there being no significant discriminator under the performance risk or subcontracting plan evaluation factors. Since the RFP specified the applicable labor categories and labor hours under each category, and since the contract was to involve task orders, the review of the overall cost proposals focused on the direct and indirect rates applied. The proposed costs offered initially, and at BAFO, are set forth below:

	<u>Initial Costs</u>	<u>BAFO Costs</u>
Geo-Centers	[deleted]	[deleted]
Dynamac	[deleted]	\$3.3 mil.

Using proposed costs, together with an assessment from the pricing review team that the proposed costs were reasonable, the Army awarded the contract to Dynamac on October 30, 1996. Geo-Centers filed its protest with our Office on January 24, 1997.

The decision below sustains Geo-Centers's complaint that the agency unreasonably evaluated its sample task cost proposals--one of three challenges to the Army's cost evaluation. Before reaching this issue, however, the decision considers and denies the other cost realism challenges, as well as Geo-Centers's arguments that the

²In its letter to Geo-Centers opening discussions, the Army described the proposal as "unacceptable but capable of being made acceptable." However, the contracting officer explains that the statement in the letter was incorrect and that Geo-Center's initial proposal was acceptable. Contracting Officer's Statement at 2.

evaluation of technical proposals was unreasonable. In addition, the decision considers the threshold issue of whether this protest was filed on a timely basis.

PROCEDURAL ISSUES

The Army argues that Geo-Centers's protest is untimely because Geo-Centers did not file here until 3 months after contract award, and almost 2 months after its debriefing. For the reasons set forth below, we conclude that the protest is timely.

The record in this case shows that Geo-Centers became aware of the October 30 contract award to Dynamac on November 1. Although the record reflects disputes about when the debriefing was requested, it shows that on November 7 the contracting officer scheduled a November 12 debriefing for Geo-Centers.³ Because the Army was unable to make available any of the technical personnel involved in the evaluation on November 12, the debriefing was rescheduled to--and held on--November 26.

During the course of the debriefing, Army officials disclosed to Geo-Centers that there were no weaknesses or deficiencies in either proposal and that the proposals were relatively equal to one another in the area of technical and management merit. Geo-Centers was also advised that the agency conducted a cost realism review of the proposals that was generally limited to verifying the offerors' labor, overhead, and general and administrative (G&A) rates with the Defense Contract Audit Agency (DCAA). In response to questions seeking the point scores assigned to the proposals, and the independent government cost estimate (IGCE) used for evaluation, the agency officials explained that they were not sure such information could be released.

By letter dated December 5, Geo-Centers requested the point scores and the IGCE from the Army under the Freedom of Information Act (FOIA). By letter dated January 10, 1997--and received by Geo-Centers on January 16--the Army released both items. Thus, on January 16, Geo-Centers learned for the first time that both offerors received the maximum possible point score--1,000 points--and that the agency IGCE was erroneously calculated. Specifically, the materials provided by the Army showed that the agency failed to include in its IGCE 22,500 hours of engineering technician time added by amendment No. 0003 to the RFP, and failed to include the costs associated with the second of the three sample tasks identified in the solicitation. Thus, in its protest filed on January 24--8 days after receipt of the

³We need not resolve the dispute about when the debriefing was requested since Geo-Centers did not file a protest within 5 days of the debriefing seeking a stay of this procurement until resolution of its protest. Accordingly, Geo-Centers does not claim that the debriefing was a "required debriefing," as that term is used in 31 U.S.C. § 3553(d)(4) (1994).

Army's January 10 letter--the protester argues that the evaluation was unreasonable since both offerors received the highest possible scores, and that the conclusion that the awardee's costs were reasonable was based on a comparison with a flawed IGCE.

The Army is correct in its claim that Geo-Centers was generally required to challenge any of the particulars regarding its evaluation, and the selection decision here, within 10 days of the November 26 debriefing. 4 C.F.R. § 21.2(a)(2) (1997); GBF Medical Group/Safety Prod. Mktg., Inc.--Recon., B-250923.2, Nov. 24, 1992, 92-2 CPD ¶ 378 at 2-3. Nonetheless, receipt of a debriefing does not preclude an offeror from filing a later protest on an issue about which it was not advised by the agency during the debriefing. See Hughes Space and Communications Co.; Lockheed Missiles & Space Co., Inc., B-266225.6 et al., Apr. 15, 1996, 96-1 CPD ¶ 199 at 23.

Here, where the record shows that the protester clearly sought a debriefing within 10 days of learning of the award, and diligently sought more information at each step in the process--at no point allowing more than 10 days to pass before making its next request--we will not conclude that Geo-Centers has failed to diligently pursue its interests with respect to this procurement. Thus, we conclude that Geo-Centers can raise a timely challenge based on the information received in the Army's FOIA response--i.e., the awarding of maximum scores to both offerors, and the agency's reliance on a flawed IGCE--but cannot raise issues based on information provided at the November 26 debriefing.⁴

TECHNICAL EVALUATION

With respect to the contention that the evaluation was unreasonable because both offers received the highest possible technical score, Geo-Centers argues that the scoring system was flawed as it did not discriminate between exemplary and acceptable proposals, and because proposals were scored by way of deductions from the maximum possible score, rather than beginning with a score of zero and awarding points. In addition, Geo-Centers argues that the evaluation was arbitrary in that the evaluators did not understand, and as a result, misused several important terms of art. Finally, it argues that the high score awarded to Dynamac's proposal was improperly achieved after the agency spoon-fed the awardee during discussions by revealing every weakness in the proposal perceived by agency evaluators.

In considering a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and

⁴For example, the protester cannot now argue that the agency unreasonably determined the Dynamac proposal to have the same level of merit as Geo-Centers's proposal, as it was on notice of this from the debriefing. Id.

regulations. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450 at 7. In this regard, we note at the outset that there is nothing per se improper about an evaluation which results in the award of the maximum possible score to more than one offer, and nothing about this result automatically requires a finding that an agency was seeking only minimally acceptable proposals.⁵ Alcoa Marine Corp., B-196721, May 9, 1980, 80-1 CPD ¶ 335 at 4.

With respect to Geo-Centers's first contention, our review of the record finds no support for its claim that the agency's evaluation approach did not discriminate between meritorious proposals and those that are minimally acceptable.⁶ The three assessments performed here resulted in scores consistent with the evaluators' narrative views of the relative merits of the two proposals. For example, at the conclusion of the first two assessments of these proposals, the record clearly reflects the evaluators' views that the Geo-Centers proposal is strong and the Dynamac proposal is significantly weaker. These narrative assessments are consistent with the differences in the point scores. In the final evaluation, when the scores of both offers are at the highest possible level, the record shows that both proposals are considered superior for the reasons explained in the narrative evaluation materials--reasons not challenged by Geo-Centers. Thus, there is no basis to conclude that the agency used a scoring device that equates minimally acceptable proposals with superior ones. Id.

With respect to the protester's second claim--that the evaluation was arbitrary because the record shows the agency evaluators misunderstood or misused several terms of art--we again see nothing in the record that would invalidate this evaluation. In this regard, while the protester is correct that the agency evaluators referred to deficiencies when they meant weaknesses, mislabeled an acceptable proposal unacceptable in certain documents, and generally created a sloppy record, our review of these errors does not lead us to conclude that the evaluation was arbitrary. Two examples of the protester's arguments are set forth below.

⁵Likewise, there is nothing per se improper about an evaluation approach based on the deduction of points from a stated maximum, as opposed to the awarding of points from a starting point of zero. See NITCO, B-246185.3, Sept. 17, 1992, 92-2 CPD ¶ 183 at 3, 5-6 (evaluation process of assigning maximum number of available points for prior production of solicited item and deducting from the maximum for less experience in producing the item held reasonable method of assessing relative merits of different offerors).

⁶For the record, our review is based on evaluations themselves, and on compliance by the evaluators with the requirements set forth in the RFP--not on agency rating plans. Agency rating plans are internal agency instructions and, as such, do not give outside parties any rights. Ralph G. Moore & Assocs., B-270686; B-270686.2, Feb. 28, 1996, 96-1 CPD ¶ 118 at 4.

Geo-Centers points out that despite its proposal's initial technical score of 930, the letter it received from the agency inviting Geo-Centers to participate in discussions stated that the proposal was "unacceptable." Geo-Centers argues it was unreasonable to consider its highly rated initial proposal unacceptable, and then conclude that the Dynamac proposal was acceptable after discussions, when that proposal had a revised score of 775, significantly lower than the score first awarded to Geo-Centers. However, Geo-Centers fails to acknowledge that the agency report here explained that the labeling of Geo-Centers's initial proposal as "unacceptable" was an error. Thus, there is no evidence of unequal treatment vis-a-vis the two offerors in this regard.

Geo-Centers also points out that in at least two instances the cost evaluation materials include incorrect technical scores for the Dynamac proposal. Specifically, the initial review of costs and the final review of costs both state that Dynamac's technical/management score is 937, when the scores should have been reflected as 680 and 775, respectively. Likewise, our review shows that Geo-Centers's score is incorrectly displayed in these documents as 959, when the scores should have been reflected as 930 and 998, respectively. Nonetheless, there was no reason to set out the results of the technical evaluation in the cost evaluation materials. While the protester is correct in its claim that the numbers are wrong, there is nothing about this error that invalidates either of the cost reviews.

Finally, Geo-Centers complains that the agency engaged in technical leveling during discussions by "spoon-feeding" to Dynamac every perceived weakness in its proposal.

Technical leveling occurs where an agency, through successive rounds of discussions, helps to bring a proposal up to the level of another proposal by pointing out weaknesses that remain in a proposal due to an offeror's lack of diligence, competence, or inventiveness after having been given an opportunity to correct them. Federal Acquisition Regulation (FAR) § 15.610(d); Battelle Memorial Inst., B-259571.3, Dec. 8, 1995, 95-2 CPD ¶ 284 at 5. In this regard, our Office has recognized the tension between the requirement for meaningful discussions with all responsible sources whose proposals are within the competitive range, and the admonitions in the FAR against technical leveling, technical transfusion, and auctions. Matrix Int'l Logistics, Inc., B-249285.2, Dec. 30, 1992, 92-2 CPD ¶ 452 at 5. We have held that this is an area where contracting officers necessarily have considerable discretion. Id.

Our review of the pleadings and the record as a whole leads us to conclude that the Army has not acted improperly in this regard, and instead, has held detailed and thorough negotiations consistent with its obligation to conduct meaningful discussions. FAR § 15.610(c). As an initial matter, we note that despite the protester's claim that it "strongly believe[s] that a second and perhaps third round of oral discussion[s] occurred between the Army and Dynamac," there is no

evidence of a second round of discussions in this record. Without a second round of discussions, the protester cannot show the successive efforts necessary to demonstrate that the Army engaged in technical leveling to help Dynamac improve its proposal. FAR § 15.610(d); Battelle Memorial Institute, *supra*. Alternatively, the protester argues that the Army engaged in spoon-feeding during discussions, and points to the fairly straightforward correlation between the weaknesses identified in the initial technical evaluation and the weaknesses pointed out to Dynamac during discussions. In our view, while we agree that the discussions here were thorough, the record shows that both offerors were treated equally in that Geo-Centers, too, was given thorough discussions. In short, the record shows that the Army diligently pointed out Dynamac's weaknesses in order to give the company an opportunity to improve its proposal, and we have no basis to conclude that the Army's contracting officials abused their wide discretion in this area. FAR § 15.610(c).

Finally, in possible explanation for the increase in Dynamac's BAFO score, we note that the record shows that even the contracting officer expressed curiosity about the sudden significant improvement in Dynamac's BAFO. She reflected in her best value analysis that she asked the evaluators about the improvement and was advised "that Dynamac engaged a professional consultant to prepare its BAFO. The consultant was well-versed in this particular type [of] research project and was able to produce the proposal that the evaluators wanted to see." Best Value Analysis at 3.

While Geo-Centers suggests there was something untoward about this turn of events, we do not agree. The record here shows that Geo-Centers was the incumbent on parts of this effort, and may have enjoyed a competitive advantage in its familiarity with the effort, and its familiarity with "a majority of the technical review team prior to the solicitation issuance." *Id.* If Dynamac was able to improve its proposal with outside, and presumably more sophisticated, assistance, we see nothing improper about its use of that assistance to offset the competitive advantage enjoyed by Geo-Centers.

COST EVALUATION

In its initial protest filing, Geo-Centers argues that the Army conducted an unreasonable cost evaluation of the proposals because the IGCE used for comparison with the offerors' proposed costs failed to include certain categories of costs. In its comments on the agency report, Geo-Centers supplemented its challenge to the cost evaluation with arguments that the Army improperly permitted Dynamac to introduce significant changes to its overhead rates without independent verification of the rates by the agency, and that the Army did not evaluate the sample task cost proposals reasonably, or in a manner consistent with the RFP.

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive, because

regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR § 15.605(c). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.-Fed., 64 Comp. Gen. 71, 75 (1984), 84-2 CPD ¶ 542 at 5. Contracting officers are required to document this evaluation, FAR § 15.608(a)(1), and, when properly documented, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279, 282 (1991), 91-1 CPD ¶183 at 5, *aff'd*, American Management Sys., Inc.; Department. of the Army--Recon., 70 Comp. Gen. 510, 515 (1991), 91-1 CPD ¶ 492 at 7-8; Grey Advertising, Inc., 55 Comp. Gen. 1111, 1133 (1976), 76-1 CPD ¶ 325 at 27-28.

Inaccuracies in the Government's Cost Estimate

With respect to Geo-Centers's first challenge--that the Army's IGCE omitted costs associated with 22,500 hours of engineering time added by amendment No. 0003, and contained mathematical errors as well--there is no dispute in the record. The Army acknowledges that these errors were made and that its overall IGCE should have been \$5,389,578, rather than the \$4,236,727 estimate the Army used. Thus, Geo-Centers argues that the agency's flawed IGCE was responsible for its failure to conclude that Dynamac's \$3.3 million BAFO cost was unreasonably low.

As with Geo-Center's challenge to the award of maximum technical scores, we note initially that an offeror's proposed costs are not unreasonable per se because they are lower than the government's cost estimate. Sterling Servs., Inc.; Trim-Flite, Inc., B-229926.5; B-229926.6, Oct. 3, 1988, 88-2 CPD ¶ 306 at 4. Here, the evaluation record shows that upon receipt of the initial proposals--wherein Geo-Centers's proposed costs were \$4.7 million and Dynamac's were \$4.2 million--the evaluators recognized that the government estimate was low and recommended that the estimate be recalculated. Pricing Review of Proposals, June 10, 1996, at 3. In addition, while the Army concedes that it failed to add the cost of the additional 22,500 engineering hours to its estimate, the relevant hours were properly included on the table of labor categories and estimated hours used to evaluate proposals. The Army explains it verified the rates proposed for this position--as well as for the other positions--as part of its cost review, thus resulting in less emphasis on the actual estimate itself.

The Army also explains that Dynamac's BAFO, lowering its proposed costs to \$3.3 million, explained each change from its earlier proposal, allowing review by the evaluators. One of the these changes, a significant reduction in Dynamac's overhead rate, is challenged by Geo-Centers and discussed below. It is these specific changes and whether they are reasonable that we consider important in this case, and not the variance between the offerors' proposed costs and the

government's estimate--especially given the recognition by the evaluators that the estimate was flawed. See Porter/Novelli, B-258831, Feb. 21, 1995, 95-1 CPD ¶ 101 at 7.

Changes in Dynamac's BAFO Overhead Rates

Dynamac's initial cost proposal included several labor overhead rates spread over different [deleted]. In its BAFO, Dynamac shifted the majority of its labor expenses to [deleted] cost center with an overhead rate significantly lower than the rates used in its earlier proposals. These lower rates for Dynamac's [deleted] cost center had been approved by DCAA in a letter dated June 29, 1996. According to Geo-Centers, the Army's acceptance of these rates was unreasonable given that in other instances the Army questioned the findings in the June 29 DCAA letter, and given that the approval of the rates for the [deleted] cost center was made prior to the time Dynamac shifted its billing approach and may not have considered the use of this cost center for the majority of Dynamac's billings.

We see nothing unreasonable about the Army's acceptance of Dynamac's [deleted] labor overhead rates. As stated above, and as Geo-Centers notes, Dynamac presented these rates for approval by the DCAA and received authorization to use them in DCAA's letter. In fact, the second page of DCAA's letter directs the use of these rates in all contracts with Dynamac. Although Geo-Centers complains that on another issue--the appropriate G&A rate for use with a different cost center--the Army's price analyst expressed concern in an earlier pricing review that the rate might be overly optimistic, that concern does not preclude the Army from accepting other DCAA findings in this letter about Dynamac's costs. In addition, we are aware of no reason why the Army should have rejected Dynamac's use of the [deleted] cost center rate approved by DCAA for personnel appropriately assigned to that cost center, as there is no requirement that an agency independently verify each and every item in conducting a cost realism analysis. Intermetrics, Inc., B-259254.2, Apr. 3, 1995, 95-1 CPD ¶ 215 at 7. In short, without evidence that DCAA erred in its review, see American Management Sys., Inc.; Dept. of the Army--Recon., 70 Comp. Gen. 510, 514-515 (1991), 91-1 CPD ¶ 492 at 7-8, and without evidence that the assignment of more personnel to this cost center might change DCAA's conclusion, we conclude that the Army reasonably accepted Dynamac's change in its overhead rates. Intermetrics, Inc., *supra*.

Evaluation of Sample Task Costs

Geo-Centers also alleges that the Army failed to evaluate the sample task cost proposals associated with Dynamac's BAFO and failed to follow the evaluation criteria set forth in the RFP for these materials. In the protester's view, if the sample task costs had been evaluated for both cost realism and price reasonableness, the high costs associated with Dynamac's sample tasks--approximately [deleted] hours and [deleted] costs proposed by Geo-Centers for the

same tasks--would have led to a conclusion that Geo-Center's proposal offered the best value to the government.

As stated above, the RFP required separate cost proposals for each of three sample tasks. RFP, § L at 7. The RFP stated that these sample task cost proposals would be "used for a price reasonableness determination," *id.*, and would be "evaluated for cost realism." RFP, § M at 2. Price reasonableness was defined as "a matter of the competitiveness of the offeror's proposal, considering the price and the merit factors area." RFP, § M at 3. Cost realism was defined as "a matter of whether or not the offeror has proposed sufficient resources to successfully perform the contract and sample task work." RFP, § M at 2.

Geo-Centers's argument hinges on the fact that Dynamac [deleted] the labor hours and costs for its sample tasks in its revised proposal and BAFO, and, at the same time, lowered its overall proposed costs by nearly 25 percent. (In addition, as stated above, the labor hours and costs for these sample tasks are more [deleted] amount proposed by Geo-Centers.) Given this BAFO increase in Dynamac's labor hours and costs for its sample tasks, Geo-Centers argues that it was unreasonable for the evaluators not to reevaluate the sample task costs for price reasonableness and cost realism. In response to this protest issue, the Army states that "[t]he pricing in the sample task was not intended as a tool for establishing a basis for price reasonableness." Contracting Officer's statement at 5.⁷ Rather, the contracting officer explains, the sample task responses "were carefully analyzed to ensure both contractors had a clear understanding of the effort involved." *Id.*

In using a task order requirements contract, an agency is acknowledging that it cannot determine the precise quantity of services and materials needed during the contract period. *See* FAR §§ 16.501-1, 15.503(b). In this environment, the cost of performance to the government will vary depending on the actual task orders issued and, in large measure, with a given contractor's efficiency in performing the resulting tasks. *Group Technologies Corp.*, B-240736, Dec. 19, 1990, 90-2 CPD ¶ 502 at 9. As we explained in *Group Technologies*, the use of sample tasks permits agencies to review the approaches and efficiencies of different contractors under simulated contract conditions which require the submission of detailed cost proposals. *Id.* Thus, in a situation like the one here--where the RFP expressly advised that sample task costs would be evaluated for both cost realism and price reasonableness--agencies must use the evaluation tools identified in the evaluation

⁷This approach is also reflected in the Prenegotiation Objective Memorandum (at the eighth unnumbered page) which states under a heading entitled "Cost Realism": "[t]he sample tasks are not used to determine the total contract price but were included merely as a way to gauge how well the contractor understands the contract requirements as well as a way to evaluate the offeror's ability to price a task."

scheme to ensure that the government obtains the lowest overall cost of performance. Id.; Research Management Corp., 69 Comp. Gen. 368, 371-372 (1990), 90-1 CPD ¶ 352 at 5-6.

The record here contains no evidence of any review of the cost realism or price reasonableness of Dynamac's BAFO sample task costs. With respect to cost realism, a failure to analyze the realism of the proposed costs leaves the agency open to the possibility that the proposal did not accurately account for all of the costs that will be incurred during performance. Failure to complete this review violates the FAR's requirement that agencies ensure that the contractor "can perform the contract in a manner most advantageous to the [g]overnment." FAR § 15.605(c).

With respect to a review of price reasonableness, the record shows that the Army at no point in this procurement made an assessment of reasonableness, despite the requirement in the RFP. Instead, the contracting officer's statement and other evaluation materials clearly indicate that the sample task costs were not used to assess the reasonableness of offeror's proposed costs here, but were used only to ensure a clear understanding of the sample task effort, and verify that the offeror understood how to write a sample task cost proposal. In our view, these factors offer no insight into the relative efficiency of competing sample proposals. As we stated in Group Technologies, "a proposal with an excellent but time-consuming (and therefore, expensive) approach which was accurately reflected in its cost proposal would presumably, under the method of cost analysis employed by the Army, be seen in the exact same light as a technically excellent competing proposal which was less time-consuming and therefore reflective of a lesser cost of contracting to the government." Group Technologies Corp., supra.

As in Group Technologies, we think the RFP here did not permit the Army to ignore a significant difference in an offeror's proposed sample task costs simply because the costs were consistent with that offeror's approach. Instead, we think the Army was required to consider the disparity in the proposed sample task costs in the selection decision. Nonetheless, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, No. 96-1148, slip op. ___ (Fed. Cir. Dec. 19, 1996). Since the Army did not consider the reasonableness of the sample task costs in its selection decision, and since Geo-Centers's proposal had the highest possible technical score with sample task hours and costs [deleted] those of the awardee, we cannot conclude that the protester would not have had a substantial chance of award had the agency properly reviewed this issue. Therefore, since we cannot conclude that the Army had a reasonable basis for selecting between these offerors, and did not follow the

stated RFP evaluation criteria, we sustain the protest. Group Technologies Corp., supra.

RECOMMENDATION

For the reasons stated above, we recommend that the Army reevaluate the BAFOs submitted by these offerors to determine the cost realism and price reasonableness of each offeror's proposed sample task costs, consistent with this decision and with the terms of the solicitation. Upon completion of this determination, we recommend that the Army reconsider its award decision. While we do not suggest how much weight should be given to sample task costs in evaluating overall costs, the method chosen by the Army should consider the relative impact that varying contractor efficiencies may have in the overall cost to the government for these services. If, at the conclusion of the agency's reevaluation, the revised best value determination shows that Geo-Centers's proposal, and not Dynamac's, represents the best value to the government, the agency should terminate the contract awarded to Dynamac for the convenience of the government. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (1997). In accordance with 4 C.F.R. § 21.8(f)(1), Geo-Centers's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States