



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Sytel, Inc.

File: B-277849.2; B-277849.3

Date: January 8, 1998

Keith L. Baker, Esq., Jeffrey E. Weinstein, Esq., and Timi E. Nickerson, Esq., Eckert Seamans Cherin & Mellott, LLC; and Eric J. Marcotte, Esq., Winston & Strawn, for the protester.

Lindsay Ball for Dynacs Engineering Co., Inc., the intervenor.

Bernard J. Roan, Esq., and Rami S. Hanash, Esq., National Aeronautics & Space Administration, for the agency.

Christine Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably credited one proposal based on favorable impressions of key personnel during discussions and downgraded another proposal for the apparent lack of teamwork of key personnel during discussions where solicitation indicated agency could consider such information.
2. Agency reasonably determined that the awardee's award fee approach provided sufficient performance incentives, notwithstanding that the awardee proposed no additional fee in the event the agency exercised an option to acquire additional labor hours during the contract performance period.
3. Agency reasonably evaluated the protester's and awardee's Total Compensation Plans as comparable where the overall cost difference between the two plans, considering all wages and fringe benefits, was negligible.
4. Agency properly conducted discussions expressing concern regarding the protester's labor rates where they were less than those paid by the incumbent and the protester's proposal did not adequately justify such lower rates.
5. Protester's post-protest statement that, but for the agency's alleged improper and misleading discussions, it would have reduced the labor rates in its best and final offer in an amount sufficient to negate the awardee's cost advantage does not establish a reasonable possibility of prejudice, where there is no credible evidence supporting this statement.

6. Agency's inadvertent release of the protester's discussion letter to the awardee provides no basis to disturb the award where the record evidences that it was not read by the awardee and that the awardee received no competitive advantage.

DECISION

Sytel, Inc. protests the award of a contract to Dynacs Engineering Co., Inc. under request for proposals (RFP) No. 10-97-0001, issued by the National Aeronautics and Space Administration (NASA), for engineering development services at Kennedy Space Center, Florida.

We deny the protest.

The RFP contemplated the award of a cost-plus-award-fee, level-of-effort contract for a base year with 4 option years. The RFP required an estimated 387,115 "basic labor hours" per year, which could be increased by up to an additional 1,935,575 "option hours" over the 5-year contract period.

The RFP provided for a best value award based upon the following factors and subfactors:

1. Mission Suitability (1,000 points)
 - a. Key Personnel (300 points)
 - b. Management Approach and Resource Application (300 points)
 - c. Technical Approach (225 points)
 - d. Skill Mix/Staffing Plan (175 points)
2. Cost
3. Relevant Experience and Past Performance

Mission Suitability and Cost were equally important; Relevant Experience and Past Performance was somewhat less important than either Mission Suitability or Cost; and Cost was significantly less important than Mission Suitability and Relevant Experience and Past Performance, combined.

The RFP provided for an evaluation of several features of the offerors' proposals under the Management Approach and Resource Application subfactor, including, as relevant here, the offeror's understanding of the award fee process and its application as an effective management tool, and the offeror's ability to recruit and retain a highly competent work force based upon its proposed Total Compensation Plan of salaries and fringe benefits.

For the award fee evaluation, offerors were to describe their award fee management approach and rationale, discussing how the proposed fee structure, plus other motivational methods, would be applied as incentives in motivating the offeror's

work force. The amount of the proposed award fee was stated as a consideration in the evaluation of offerors' cost proposals.

In their Total Compensation Plans, offerors were to include the salaries/wages, fringe benefits, and leave programs proposed for the six RFP labor categories, which were Management/Administrative, Clerical, Scientist/Engineer, Engineering Technician, Technician, and Documentation Personnel. The RFP stated that proposals "envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high quality work, and availability of required competent professional service employees." The RFP cautioned that "lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement."

The agency received 13 proposals and established a competitive range of 3 proposals, Dynacs's, Sytel's, and Offeror C's. Offeror C submitted the low cost proposal (\$155.8 million), followed by Sytel (\$161.4 million), and Dynacs (\$167.1 million). Offeror C's and Dynacs's proposals tied for the highest Mission Suitability score of 879 points, while Sytel's proposal's Mission Suitability score was 844 points.

Sytel's lower Mission Suitability score primarily resulted from the evaluation of its Total Compensation Plan under the Management Approach and Resource Application subfactor. In evaluating offerors' Total Compensation Plans, NASA considered whether the proposed wages and fringe benefits were generally comparable with the wages and fringe benefits offered by the incumbent contractor. Sytel's proposal, which was based upon an [deleted] percent incumbent employee hire rate for the basic work force, included rates that were, in some instances, significantly less than the average incumbent rates; the proposal did not acknowledge or explain the lower rates, other than to cite the market surveys Sytel consulted. Sytel's lower wages, combined with other perceived informational and substantive weaknesses in its Total Compensation Plan, caused NASA to question the protester's ability to recruit and retain a competent work force, and to assess one major and two minor weaknesses against its proposal under the subfactor. Sytel's score under the subfactor, considering the weaknesses in its Total Compensation Plan, as well as two, unrelated major strengths and a minor strength for its proposed award fee approach, was 222 points, compared to Offeror C's score of 261 points and Dynacs's score of 267 points.

NASA conducted written discussions with the three offerors on June 18, 1997. At 5:45 p.m. on June 18, NASA inadvertently transmitted Sytel's discussion letter to Dynacs via facsimile. At 6:26 p.m., after discovering the error, the contracting officer spoke to a Dynacs administrative assistant and told her to destroy the Sytel letter. This employee subsequently affirmed in an affidavit to NASA that neither she nor any other Dynacs employee had photocopied or read the letter before she

destroyed the document at 6:30 p.m. On July 17, based upon the information contained in the affidavit and NASA's assurance that it would scrutinize Dynacs's best and final offer (BAFO) for any Sytel proposal information, Sytel consented to the continuation of the procurement.

Sytel's discussion letter informed it of the deficiencies found in its Total Compensation Plan. Question No. DR-2 identified various perceived informational deficiencies in Sytel's discussion of its fringe benefits plan, especially its health benefits discussion, and also advised Sytel that the incumbent offered superior benefits in certain respects. In Question No. DR-3, NASA identified four separate deficiencies in Sytel's proposed wages and fringe benefits, which caused NASA to question Sytel's ability to recruit and retain a qualified work force. The cited deficiencies were: (1) [deleted]; (2) [deleted]; (3) Sytel's average labor rate for the option hours was \$[deleted], which was "significantly less" than the incumbent average rate of \$22.87; and (4) Sytel offered lower rates than the incumbent's rates for the basic hours as follows:

Your proposed year 1 average S/T [straight /time] labor rate of \$[deleted] for the basic workforce is \$[deleted] below the current incumbent average S/T labor rate [of \$23.32]. In the Scientist/Engineer category your year 1 average S/T labor rate of \$[deleted] is \$[deleted] lower [than the incumbent rate of \$26.96].¹

In responding to the last stated concern, Sytel advised NASA on July 21 that its BAFO would include a \$[deleted] average S/T labor rate, a \$[deleted] Scientist/Engineer labor rate, and a \$[deleted] average technical labor rate² to "more accurately reflect the base wages of the incumbent workforce." The revised rates were lower than the average incumbent rates identified in its discussion letter, which Sytel attributed without elaboration to its "optimized skill mix." The contracting officer advised Sytel in a July 23 letter that the new labor rate information had improved, but not resolved, the deficiency, particularly since Sytel had apparently achieved the increase in the Scientist/Engineer rate and overall average rate by reducing the rates in the other five labor categories, without identifying those rates. The protester responded that it would "[c]ontinue to work to reconcile the differences between proposed rates and data provided by NASA" and that the "[r]esult of that effort will be shown in the BAFO."

¹The Scientist/Engineer category accounted for half of the basic hours proposed by Sytel.

²The technical labor rate excludes the average rates for the clerical and management/administrative labor categories.

Sytel received oral discussions on July 30, and the contracting officer repeated that Sytel had not resolved the deficiency with respect to its rates for the basic hours. According to an affidavit submitted by the protester's proposed project manager, Sytel advised NASA that it was preparing an average overall labor rate of \$[deleted] for the basic and option hour work force, which was lower than the average incumbent rate because it reflected Sytel's intention to hire non-incumbent labor at reduced wages, to which NASA responded that Sytel "must correct its average labor rate, justify it, or be determined to have a deficient proposal."³

After oral discussions, Sytel's pricing director (who did not attend the discussions) had a telephone conversation with the chairman of the source evaluation board's (SEB) Business Committee to discuss Sytel's rates for the basic hours. After that conversation, Sytel proposed an average rate of \$[deleted] for the basic hours, based upon revised rates for the six labor categories. NASA advised Sytel that the revised rates appeared reasonable, and Sytel included them in its BAFO.

The agency received BAFOs on August 11, which were rated as follows:

	Offeror C	Dynacs	Sytel
Key Personnel	291	297	291
Management Approach and Resource Application	285	285	288
Technical Approach	218	221	223
Skill Mix/Staffing Plan	112	112	105
Total Mission Suitability	906	915	907
Cost ⁴	\$160.6 million	\$163.7 million	\$170.5 million
Relevant Experience and Past Performance	Highly Satisfactory	Highly Satisfactory	Highly Satisfactory

Sytel's Management Approach and Resource Application score rose from 222 to 288 points during the BAFO evaluation, based upon NASA's finding that Sytel had

³According to NASA's meeting minutes, NASA advised Sytel that the \$[deleted] rate for the option hours work force appeared reasonable. Because non-incumbent labor was expected for the option hours work force, NASA assumed that offerors might successfully recruit and retain a minimally competent option hours work force based upon rates approximately 10 percent lower than the incumbent's.

⁴NASA did not consider it necessary to make probable cost adjustments to any of the three proposals.

resolved the evaluated deficiencies in its Total Compensation Plan. Sytel's Total Compensation Plan was viewed as technically acceptable and essentially equal to Dynacs's (and Offeror C's) plans.

Sytel lost the cost advantage it enjoyed following the initial evaluation, with its BAFO costs increasing by \$9.1 million from its initial offer. The increase primarily resulted from Sytel's decision to [deleted]. Sytel's BAFO costs for the basic hours did not change appreciably from its initial proposal because, while Sytel increased its labor rates after discussions, it concomitantly reduced its proposed level-of-effort, overtime costs and labor burdens.

Sytel's BAFO cost proposal was \$6.8 million more than Dynacs's. The differences between the proposed costs are primarily derived from Sytel's higher direct costs (\$[deleted] more than Dynacs's), general and administrative costs (\$[deleted] more than Dynacs's), fringe benefits costs (\$[deleted] more than Dynacs's) and maximum award fee (\$[deleted] million more than Dynacs's for the basic and option hours, combined). Sytel's award fee was higher than that proposed by the other offerors largely because the protester did not discount its fee for the option hours, proposing a 6 percent fee for both the basic and option hours. In contrast, Offeror C proposed a 6 percent fee for the basic hours and a 1 percent fee for the option hours, while Dynacs proposed a 4 percent fee for the basic hours and no additional fee for the option hours.⁵

On September 22, the Source Selection Authority (SSA) selected Dynacs for award. The SSA reasoned that Sytel's and Offeror C's proposals were "virtually tied" in their overall Mission Suitability score and that Sytel had a significant cost disadvantage not offset by any technical advantage. The SSA then performed a cost/technical tradeoff between Offeror C's low-cost proposal and Dynacs's highest-rated technical proposal. The SSA considered the fact that Dynacs proposed the highest-rated Key Personnel team, with each of the five proposed individuals garnering the highest ("Outstanding") rating. The SSA also considered the fact that Dynacs possessed a "significant advantage" in the Relevant Experience and Past Performance factor, notwithstanding that it earned the same "Highly Satisfactory" rating as Offeror C and Sytel, because only Dynacs's experience was closely aligned with the type of work required by the instant contract. The SSA concluded that "Dynacs' advantages in Key Personnel and Relevant Experience outbalance any evaluated [Offeror C] cost benefit, and therefore, the Dynacs proposal is most advantageous to the Government." This protest followed.

⁵Sytel, Dynacs and Offeror C all proposed to share their award fee with their employees to varying degrees. In the technical evaluation, Sytel earned a minor strength and additional points for its award fee sharing approach, which dedicated a greater percentage of the maximum fee to employees than proposed by Dynacs or Offeror C.

The Mission Suitability Evaluation

Sytel takes issue with several aspects of the technical evaluation of its own and Dynacs's proposals under the Mission Suitability factor. The evaluation of proposals is a matter within the discretion of the contracting agency. Our Office will question the agency's evaluation only where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. SC&A, Inc., B-270160.2, April 10, 1996, 96-1 CPD ¶ 197 at 7. Here, as described below, we find no basis for concluding that the evaluation was unreasonable.

First, Sytel claims that NASA misevaluated proposals under the Key Personnel factor. During oral discussions, both offerors introduced their key personnel, and NASA was more favorably impressed with the performance and cohesiveness of the awardee's team than the protester's team. Section M of the RFP authorized NASA to consider information from "the Offerors themselves during discussions" in proposal evaluation. Thus, the SEB's Final Scoring Worksheets reflect that Sytel's Key Personnel score decreased "due to the apparent lack of teamwork" during oral discussions, while the awardee's score increased because its proposed Information Technology Manager proved himself a major strength to the key personnel team during discussions. In terms of points, NASA increased Dynacs's BAFO score by 6 points (from 291 to 297 points) and decreased Sytel's score by 3 points (from 294 to 291 points). The SEB presented viewgraphs to the SSA documenting these findings, which were reflected in the source selection statement. While the protester maintains that its proposed key personnel team is superior to the awardee's, the protester has not provided any support for its opinion. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. AAC Assocs., Inc., B-274928, Jan. 13, 1997, 97-1 CPD ¶ 55 at 3.

Sytel also protests that NASA should have considered Dynacs's proposed award fee a major or minor weakness in its Mission Suitability proposal. Sytel claims that Dynacs's proposal of a 4 percent fee for the basic hours and no additional fee for the option hours does not provide sufficient incentives for excellent performance.

Federal Acquisition Regulation (FAR) § 16.305 requires that the amount of any award fee proposed must be sufficient to provide motivation for excellence in contract performance "based upon a judgmental evaluation by the Government."⁶ Here, NASA determined that Dynacs's proposed fee approach provided sufficient performance incentives and was acceptable. NASA reasoned that, because cost risk was absent in the context of this cost reimbursement, level-of-effort contract, a

⁶We note that FAR § 16.305 does not prohibit an offeror from proposing no award fee for part of its level of effort, as suggested by the protester, but merely requires the government to determine whether the amount of the proposed fee provides sufficient motivation for excellent performance.

contractor could reasonably accept a lower profit margin, like Dynacs's, without fear of suffering a loss.

Contrary to the protester's contention, NASA also considered Dynacs's failure to propose an additional fee for the option hours. NASA noted that, among the three offerors, only Sytel failed to offer a discounted fee during the option hours. While NASA recognized that the use of a discounted fee exposed the offeror to some risk of performing the option hours with a reduction in its overall award fee percentage, the agency also considered the fact that it has historically exercised only a fraction of the option hours. For example, NASA advises that it exercised only 316,027 of the maximum 1.9 million option hours during the previous 5-year contract for these services. Consequently, NASA decided that the awardee's proposed fee did not entail undue risk or undermine sufficient performance incentives.

Sytel argues that NASA's rationale ignores the fact that Dynacs's fee did not approximate the incumbent's fee or the government estimate, as did Sytel's proposed fee, and that Dynacs's employees will receive, on average, \$[deleted] less per year than Sytel's employees under the competing fee arrangements. Contrary to the protester's argument, NASA was aware that Sytel's proposed fee approach created stronger performance incentives than Dynacs's, and it rewarded this feature of Sytel's proposal by assigning it a minor strength in the technical evaluation, which Dynacs's proposal did not receive. While Sytel asserts that Dynacs's proposed fee approach deserved to be further downgraded, this constitutes mere disagreement with NASA's judgment. Accordingly, we find no error with respect to the evaluation of Dynacs's proposed award fee.⁷

Sytel also protests the evaluation of its and Dynacs's Total Compensation Plans. The protester argues that Dynacs proposed lower fringe benefits than Sytel or the incumbent in certain respects, a fact that NASA allegedly overlooked in finding Dynacs's compensation plan acceptable and essentially equal to Sytel's plan. The protester asserts that, had NASA properly evaluated each offeror's Total Compensation Plan, Sytel, not Dynacs, would have earned the better Mission Suitability score.

⁷Sytel also argues that NASA should have excluded its proposed fee for the option hours from its proposal's evaluated cost. However, the RFP provided that the cost and fee of all options would be added to the cost and fee of the basic contract performance period for evaluation purposes. In any event, Sytel would not have overcome Dynacs's \$6.8 million cost advantage regardless of whether NASA excluded the \$[deleted] million option hours portion of its award fee from its evaluated cost, even accounting for the potential prejudicial impact of the alleged improper discussions, as discussed below.

The record reflects that the overall wages and fringe benefits proposed in the protester's and awardee's BAFOs were within a very narrow cost range, with Dynacs proposing slightly higher compensation levels than Sytel during the option hours and slightly lower compensation levels [deleted] during the basic hours.⁸ The compensation difference between the proposals for the basic hours basically resulted from the fact that Dynacs's health benefits plan required employees to share insurance premium costs, while Sytel's did not.⁹ In its proposal, the awardee explained that the employee cost-sharing feature was designed to discourage employees with an alternate source of health insurance from enrolling simply because enrollment was free. The agency decided that Dynacs's cost-sharing approach (which was adopted by 10 other offerors in this procurement, including Offeror C) was reasonable and would not detract from the awardee's ability to attract and retain a competent work force. In view of the overall narrow cost difference between the two compensation plans, NASA concluded that they were essentially comparable and acceptable overall.

In its report comments, Sytel did not rebut the agency's explanation that the overall cost difference between the two compensation plans was inconsequential or that Dynacs proposed an adequate health insurance plan. Instead, Sytel seized upon certain details of Dynacs's fringe benefits plan that did not equal the incumbent's or Sytel's proposed benefits. For example, the protester noted that Dynacs, unlike Sytel and the incumbent, did not offer life insurance coverage for dependents or free coverage for long term disability insurance, but instead required its employees to pay a biweekly premium of, on average, \$[deleted].

The protester's arguments are without merit. The RFP did not require offerors to propose a compensation plan identical to the incumbent's, but merely cautioned that "lowered compensation . . . may indicate lack of sound management judgment and lack of understanding of the requirement."¹⁰ Moreover, we have reviewed the

⁸NASA compared compensation levels without regard to the average amount of employee award fee sharing distributions. This aspect of the proposals was considered during the award fee evaluation, where Sytel's proposal was rewarded with a minor strength and a higher Management Approach and Resource Application score than Dynacs's. NASA's evaluation methodology was consistent with the RFP, which provided for separate evaluation of offerors' Total Compensation Plans and award fees.

⁹[deleted].

¹⁰The record also contradicts Sytel's assertion that NASA downgraded its initial proposal whenever an isolated fringe benefit failed to match the incumbent's. Instead, the evaluation documentation shows that NASA downgraded Sytel's initial
(continued...)

respective benefits packages and find no basis to object to NASA's conclusions that the awardee's and protester's overall compensation plans were comparable, and that the isolated differences identified by the protester were not meaningful discriminators.

In sum, we find NASA's evaluation of the Mission Suitability factor reasonable.

Alleged Improper and Misleading Discussions

The protester alleges that NASA improperly induced Sytel during discussions to raise its rates to a level at least equal to the average incumbent rate of \$23.32 for the basic hours, instead of accepting the lower rates contained in Sytel's initial proposal. Sytel argues that it justified the lower rates in its initial proposal and during discussions, and that NASA did not consider the fact that Sytel proposed [deleted] percent non-incumbent personnel, who were to receive lower wages than their incumbent counterparts, or that Sytel had offset its lower wages with better fringe benefits than the incumbent's. Sytel thus argues that discussions were improper and misleading.

We disagree. At the outset, we find that NASA reasonably determined that Sytel did not adequately justify the use of lower labor rates in its proposal. In so doing, NASA was properly cognizant both of Sytel's proposed use of [deleted] percent lower-paid, non-incumbent personnel and Sytel's fringe benefits package, which, as indicated, NASA rated only acceptable.¹¹

Here, Sytel's initial proposal did not acknowledge or explain the use of lower labor rates, apart from identifying the market surveys consulted by Sytel in developing the

¹⁰(...continued)

proposal because "[o]verall fringe benefits are less than those offered by the incumbent, and the details of coverage are vague." (Emphasis supplied.) Numerous, uncontested weaknesses in Sytel's initial proposal contributed to this finding, which was based upon a comprehensive review of Sytel's fringe benefits plan.

¹¹We disagree with the protester's contention that NASA should have lowered the incumbent labor rate in evaluating and discussing Sytel's proposal to reflect Sytel's [deleted] percent non-incumbent labor base or its supposedly superior fringe benefits. Nothing in the RFP required NASA to adjust the incumbent rate in the manner suggested by the protester. Rather, the RFP stated that NASA would scrutinize proposals "envisioning compensation levels lower than those of predecessor contractors for the same work," as did Sytel's.

rates. When confronted by the disparity between its and the incumbent's rates during written discussions, Sytel raised its average rates, but did not meet the incumbent rates or justify its failure to do so, other than by a reference to its "optimized skill mix." While Sytel explained during oral discussions that it intended to pay non-incumbent labor less than incumbent labor, the protester never presented a breakdown of its rates for the two groups so that NASA could judge whether compensation levels were reasonable. Thus, NASA properly raised its concerns regarding Sytel's labor rates with that firm during discussions.

Sytel nevertheless contends that the SEB's Business Committee chairman told Sytel's pricing director in a telephone conversation after oral discussions that NASA would deem Sytel's proposal deficient unless it proposed an average rate of \$23.32, which improperly precluded Sytel from justifying its initial proposal rates. The chairman disputed this assertion in an affidavit, and we find that the credibility of the protester's assertion is diminished by the fact that it did not appear in the pricing director's original affidavit, but in a supplemental affidavit filed after Sytel's proposed project manager admitted that NASA invited the protester during oral discussions to justify its labor rates, which comports with NASA's advice during written discussions.

In any event, even assuming that NASA directed Sytel's pricing director to raise its rates to the incumbent's, which did not allow Sytel to justify its proposed rates, the protester has not made a credible showing of competitive prejudice. Competitive prejudice is an essential element of every viable protest. Lithos Restoration Ltd., 71 Comp. Gen. 367, 371 (1992), 92-1 CPD ¶ 379 at 5. Where the record does not demonstrate that, but for the agency's actions, the protester would have had a reasonable chance of receiving the award, our Office will not sustain a protest, even if a deficiency in the procurement is found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

As noted above, Sytel lost the cost advantage it enjoyed following the initial proposal evaluation because it [deleted], a matter unrelated to this protest. To overcome the \$6.8 million cost disadvantage created by the reconfiguration of its option hours work force, Sytel would have been required to lower its BAFO rates considerably from its initial proposal rates, and the record did not evidence that Sytel intended to do so.

During the course of this protest, protester's counsel submitted comments in response to an observation made during a telephone conference that the prejudicial effect of the alleged misleading discussions appeared to be inconsequential. In those comments, counsel for the first time asserted that, but for the alleged improper and misleading discussions, the protester would have lowered its BAFO rates to achieve an \$[deleted] million cost reduction so as to vitiate Dynacs's cost

advantage. We decline to credit counsel's assertion that Sytel would have lowered its BAFO costs by such a large amount.

There is no documentation, contemporaneous or otherwise, supporting this very high figure. While Sytel's pricing director stated in her affidavit that [deleted], her affidavit was silent regarding Sytel's intentions in this procurement, and she did not accompany her affidavit with contemporaneous worksheets documenting, for example, alternate rates that were under consideration during this procurement, particularly any rates that would have achieved anything close to an \$[deleted] million reduction in Sytel's BAFO costs.

Moreover, because of its likely impact on the technical evaluation, such a large reduction in its BAFO costs would not have created a reasonable possibility of Sytel's winning the competition. The protester has not persuasively explained how it could have avoided a deficiency in its Mission Suitability rating if it had reduced its rates to achieve the claimed \$[deleted] million decrease. Such rates would have been lower than the initial proposal rates, which, as discussed above, NASA reasonably viewed as deficient because they were less than those paid by the incumbent, and which the protester did not persuasively justify. Furthermore, in response to the earlier discussions, where Sytel was provided the option of justifying its rates, Sytel instead raised its average hourly labor rate (to \$[deleted]). The protester states that, during subsequent oral discussions it advised NASA that it intended to lower the average rate in its BAFO to \$[deleted] (after which it allegedly received the direction by NASA to raise its rates to the \$23.32 level of the incumbent). Even if Sytel in its BAFO had maintained its initial proposal rate of \$[deleted] or lowered it to \$[deleted], the record indicates that this would only have reduced Sytel's BAFO costs by approximately \$[deleted] million, which would not offset Dynacs's \$6.8 million cost advantage.

We therefore conclude that, even if the protester's version of the conversation with the SEB's Business Committee Chairman is assumed, arguendo, to be true, no reasonable possibility of prejudice is evident, and we therefore deny this basis of protest.

Improper Release of Sytel's Proposal Information

Sytel protests NASA's inadvertent release of its June 18 discussions letter to Dynacs.¹² During the procurement and this protest, Dynacs denied reading Sytel's

¹²NASA asserts that this protest contention is untimely because Sytel was advised of the inadvertent release at the time and did not protest the continuance of the procurement. However, Sytel asserts that it learned during its debriefing that NASA had not implemented the remedial action promised during the procurement, namely, (continued...)

letter and also stated that it had no reason to "lift anything from a competitor's proposal which could be a worse proposal." The protester, disputing this, argues that the awardee read its discussion letter and used Sytel's proposal information to its competitive advantage, which mandates the rejection of Dynacs's BAFO.

Sytel's and Dynacs's June 18 discussion letters advised both offerors that their proposed average labor rates for the basic hours were lower than the incumbent's. The incumbent rates cited in the two letters were different because they were calculated based upon each proposal's unique labor mix for the six labor categories. In the protester's letter, NASA identified \$23.32 as the incumbent rate; in the awardee's letter, NASA identified \$23.17 as the incumbent rate; the discussion letters did not disclose either offeror's labor mix information. In its BAFO, the awardee raised its average rate to \$[deleted]. Assuming, arguendo, that the \$23.32 incumbent rate was "Sytel's proposal information," we are unpersuaded that this evidences that [deleted], inasmuch as the two offerors' labor mix and rates for the underlying six labor categories were different and Dynacs's [deleted] inured to its clear competitive disadvantage by increasing its BAFO cost. Since there is no evidence that Dynacs received any competitive advantage from its receipt of Sytel's discussion letter, we find no basis to disturb the award.

The protest is denied.

Comptroller General
of the United States

¹²(...continued)

that it would review Dynacs's BAFO to ensure that the awardee had not made use of any Sytel proposal information. Sytel protested NASA's alleged failure to implement its promised remedial action within 10 days of its debriefing, which renders the allegation timely. See 4 C.F.R. § 21.2(a)(2)(1997); compare SRS Techs., B-277366, July 30, 1997, 97-2 CPD ¶ 42.