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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

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## Decision

**Matter of:** Wyle Laboratories, Inc.

**File:** B-288892; B-288892.2

**Date:** December 19, 2001

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Richard B. Oliver, Esq., and Jance R. Hawkins, Esq., McKenna & Cuneo, for the protester.

Michael L. Sterling, Esq., Daniel R. Weckstein, Esq., and Walter T. Camp, Esq., Vandeventer Black, for the Bionetics Corporation, an intervenor.

Gregory Petkoff, Esq., and Paul S. Davison, Esq., Department of the Air Force, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Contracting agency reasonably determined that contractor's performance of both a contract for operation of the agency's highest echelon calibration laboratory and a contract for operation of lower echelon calibration laboratories did not pose an organizational conflict of interest where government personnel who are responsible for monitoring and measuring contractor performance under both contracts rely primarily on information other than feedback from other contractors in performing these functions.
2. Protest alleging that agency unreasonably failed to recognize several positive aspects of protester's proposal as strengths is denied where protester fails to demonstrate that agency's assessment of the significance of these aspects of its proposal was unreasonable.
3. Protest alleging that agency should have adjusted awardee's cost proposal upward to account for its offering of a lower fringe benefit rate than the rate paid by the incumbent contractor is denied where agency reasonably determined that the awardee's proposed fringe benefit rate, which was [deleted] the rate required in the Department of Labor wage determination included in the solicitation, was realistic.

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### DECISION

Wyle Laboratories, Inc. protests the Department of the Air Force's award of a contract to the Bionetics Corporation under request for proposals (RFP) No. F09650-01-R-0203, to operate the Air Force Primary Standards Laboratory (AFPSL) and to develop and distribute calibration technical orders for the Air Force Metrology Calibration Program. Wyle, who is the incumbent contractor, contends that the Air Force misevaluated both offerors' proposals and that Bionetics has a conflict of interest that should have precluded it from receiving the award.

We deny the protest.

## BACKGROUND

The AFPSL, located in Heath Ohio, is the Air Force's highest echelon metrology and calibration laboratory. As such, it provides a critical link between the National Institute of Standards and Technology (NIST) and base-level Precision Measurement Equipment Laboratories (PMEL). The AFPSL complex consists of laboratories with the rigid environmental controls necessary for precise measurements.

The RFP, which was issued on March 29, 2001, contemplated the award of a cost-type contract, with both cost-plus-award-fee and cost-reimbursement no-fee line items, for a base period of 3 years and up to 17 one-year options.<sup>1</sup> The solicitation provided for award to the offeror whose proposal represented the best value to the government. Four factors were to be considered in the determination of best value: mission capability (which encompassed five subfactors),<sup>2</sup> proposal risk (which was to be evaluated at the subfactor level), past performance, and cost. The first three factors were to be of equal importance in the evaluation, whereas cost was to be of lesser significance. The RFP provided that offerors' cost proposals would be evaluated to determine probable cost for the base and all 17 option periods, with the cost for option periods 8-17 (years 11-20) computed using the estimated cost of option period 7 (year 10) times an annual escalation rate of 3.4 percent. RFP at § M.3.4. The solicitation also provided for the evaluation of cost proposals to determine whether the proposed costs were realistic and reasonable. Id.

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<sup>1</sup> The RFP included line items for the base and seven option periods. In addition, it included a clause providing that the number of option years might be increased based on contractor performance up to a maximum of 17, which, when combined with the 3-year base period, would mean a maximum period of performance of 20 years. RFP at H-900 and I-195.

<sup>2</sup> The five mission capability subfactors, listed in descending order of importance, were performance plan, sustainment of capabilities, workload management, transition plan, and small business/small disadvantaged business participation.

Four offerors submitted proposals by the May 7 closing date. Three of the proposals were included in the competitive range, and discussions were held with, and final proposal revisions received from, each of the three offerors. A technical evaluation team rated the proposals under the mission capability factor; a Performance Risk Assessment Group (PRAG) evaluated offerors' past performance; and a cost team evaluated the probable cost of the proposals over a 20-year period of performance. The evaluators rated the proposals as follows:

	<b>Bionetics</b>	<b>Offeror A</b>	<b>Wyle</b>
<b>Mission Capability/ Proposal Risk Subfactors<sup>3</sup></b>			
Performance plan	Blue Low Risk	Blue Low Risk	Green Low Risk
Sustainment of capabilities	Blue Low Risk	Blue Low Risk	Green Low Risk
Workload Management	Blue Low Risk	Green Low Risk	Green Low Risk
Transition Plan	Green Low Risk	Blue Low Risk	Blue Low Risk
Small Business Strategy	Blue Low Risk	Green Low Risk	Green Low Risk
<b>Past Performance</b>	Exceptional/High Confidence	Exceptional/High Confidence	Exceptional/High Confidence
<b>Evaluated Cost</b>	\$186,100,667	[deleted]	[deleted]

Proposal Analysis Report, Aug. 29, 2001, at 28-29; PRAG Report at 17, 24-25, and 30.

After reviewing the findings of the technical, past performance, and cost teams, the source selection authority (SSA) determined that Bionetics' proposal was stronger than the other two under four of the five mission capability subfactors (performance plan, sustainment of capabilities, workload management, and small business/small disadvantaged business strategy),<sup>4</sup> and that overall it represented a technically superior proposal. The SSA also noted that he was confident of Bionetics' ability to

<sup>3</sup> The RFP provided for evaluation of each mission capability subfactor in accordance with Air Force Federal Acquisition Regulation Supplement (AFFARS) § 5315.305(a)(3)(i), which provides for the following color/adjectival ratings: blue--exceptional; green--acceptable; yellow--marginal; and red--unacceptable. RFP, § L.3.1.

<sup>4</sup> The SSA determined that Wyle's proposal was strongest under the fifth subfactor, transition plan.

perform based on its past performance record. He further observed that Bionetics' total evaluated price was lowest. Based on these factors, the SSA concluded that Bionetics' proposal represented the best value to the government. Source Selection Decision Document at 3-6. On September 5, the Air Force awarded a contract to Bionetics.

Wyle argues that the Air Force's evaluation of proposals under the mission capability factor was flawed and that the agency unreasonably evaluated Bionetics' proposal risk and past performance. The protester also argues that the Air Force failed to conduct a meaningful cost realism analysis and that it ignored an obvious conflict of interest on the part of Bionetics that should have precluded award to that offeror.

#### CONFLICT OF INTEREST

Wyle argues that the Air Force should have prohibited Bionetics, which operates 13 Air Force PMELs, from competing under this RFP because a single contractor's operation of both the AFPSL and a substantial number of PMELs gives rise to an organizational conflict of interest that cannot be mitigated. PMELs are Air Force laboratories lower in echelon to the AFPSL that use calibration equipment calibrated and monitored by the AFPSL. According to the protester, the 13 PMELs that Bionetics operates constitute approximately 40 percent of the contractor-operated Air Force PMELs and approximately 20 percent of all Air Force PMELs.

The protester contends that it would be a conflict of interest for Bionetics to operate both a number of PMELs and the AFPSL because in each role, it would be expected to provide feedback regarding the quality of its performance in the other role. That is, in its role as operator of the AFPSL, it would be expected to furnish feedback on the quality of its contract performance under the PMELs, while in its role as operator of the PMELs, it would be expected to provide feedback on the quality and timeliness of its performance in operating the AFPSL. Wyle contends that in each role, Bionetics would have an incentive to provide overly positive feedback regarding its contract performance in the other role.

Wyle argues that Bionetics' operation of both the AFPSL and 13 PMELs raises other potential conflict of interest issues as well. The protester maintains that if Bionetics operates both the AFPSL and some PMELs, it will have an incentive to give work from the PMELs that it operates priority over work from other PMELs. Wyle further argues that because the PMEL contracts are fixed-price contracts, while the AFPSL contract is a cost-reimbursement contract, Bionetics will have an incentive to shift work that should be performed in a PMEL to the AFPSL in order to obtain double payment. Wyle also argues that Bionetics, in its role as operator of the AFPSL, would have an incentive to modify technical documentation improperly to assist or ease the PMEL operator's contract performance.

An organizational conflict of interest occurs where, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. Federal Acquisition Regulation (FAR) § 9.501; Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., B-254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 12. Contracting officials are to avoid, neutralize, or mitigate potential conflicts of interest before contract award, so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505; Johnson Controls World Servs., Inc., B-286714.2, Feb. 13, 2001, 2001 CPD ¶ 20 at 3. The responsibility of determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., *supra*, at 12. We will not overturn the agency's determination except where it is shown to be unreasonable. *Id.*

Regarding the protester's first argument, the Air Force reports that well before the RFP was issued, the source selection evaluation team considered whether a potential conflict of interest problem existed, and determined that operation of the AFPSL and one or more PMELs by the same contractor would not constitute a conflict of interest because government personnel are responsible for monitoring and measuring contractor performance under both contracts and rely primarily on information other than feedback from other contractors in performing these functions. Contracting Officer's Statement of Facts and Findings, Oct. 11, 2001, at 51; Air Force Response to Protester's Comments at 6-7. We see nothing unreasonable in this determination. Moreover, Bionetics points out that, even assuming that its operation of both the AFPSL and several PMELs did pose a conflict of interest, the conflict would be short-lived because its contract for operation of the PMELs expires on September 30, 2002 (*i.e.*, less than 1 year into the 20-year period of performance), and a follow-on contract for nine of the laboratories has been issued to Yulista Management Services, Inc., a Native Alaskan Corporation, and a solicitation issued for the remaining four. Bionetics' Comments, Nov. 26, 2001, at 5-6.

The protester's next argument--that Bionetics will have an incentive to give work from the PMELs that it operates priority over work from other PMELs--provides no basis to conclude that Bionetics should be found ineligible for award. Specifically, the agency points out that it is immaterial if Bionetics performs work from its PMELs first, so long as it accomplishes work from other PMELs within the turnaround time specified in the contract's Service Delivery Schedule. The agency further notes that if Bionetics is late on work from other laboratories, it will be penalized in its award fee for not meeting the Service Delivery Schedule.

The protester's final two arguments are essentially allegations that Bionetics, as operator of both the AFPSL and several PMELs, will be in a position to defraud the government, and that it will therefore have an incentive to do so. Not only do we fail to see the link between Wyle's speculation and any of the definitions of organizational conflict of interest in the FAR, but we also fail to see how Bionetics' dual roles operating the AFPSL and a PMEL would increase the likelihood that Bionetics would attempt to defraud the government. As the agency points out, government oversight of the contract--and the penalty to the contractor if it is caught doing something illegal--should be sufficient to mitigate the risk of illicit activity by Bionetics or any other contractor.

#### MISSION CAPABILITY

The protester argues that in evaluating proposals under the performance plan and sustainment of capabilities subfactors of the mission capability factor, the Air Force overlooked weakness and risks in Bionetics' proposal and ignored strengths in Wyle's. Wyle maintains that had the agency correctly recognized the additional strengths of its proposal under the performance plan subfactor, its proposal would have received a rating of blue, rather than green, under that subfactor, and that had the Air Force correctly recognized the weaknesses in Bionetics' proposal under the performance plan and sustainment of capabilities subfactors, Bionetics' proposal would have received a rating no higher than green under either subfactor.

The evaluation of technical proposals is a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Hago-Cantu Joint Venture, B-279637.2, July 20, 1998, 98-2 CPD ¶ 99 at 11. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record to ensure that it was reasonable and in accordance with stated evaluation criteria. Id.

In evaluating offerors' proposals under the performance plan subfactor, the Air Force identified two 2-star and three 1-star strengths in Bionetics' proposal and three 1-star strengths in Wyle's.<sup>5</sup> Under the sustainment of capabilities subfactor, the agency identified three 2-star and two 1-star strengths in Bionetics' proposal and no strengths in Wyle's. Among the strengths attributed to Bionetics' proposal under the former subfactor were its hiring plan and its quality plan with respect to retention of

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<sup>5</sup> The evaluation team annotated mission capability subfactor strengths in accordance with the following definitions:

- \*\*\* Exceptional Aspect
- \*\* Outstanding Aspect
- \* Significant Aspect

technical (calibration) records and correction of records.<sup>6</sup> The strengths identified in Wyle's proposal were its commitment letters for over 95 percent of current staff; its quality plan, which showed a thorough understanding of the performance work statement requirements; and the offeror's familiarity with Joint Computer-Aided Acquisition Logistics Support (JCALS) and ways to work around JCALS shortfalls. Debriefing Notes at 10-11.

#### Evaluation of Wyle's proposal

Wyle argues that in addition to the foregoing strengths, the evaluators should have identified the following aspects of its proposal as strengths:

- The organization and comprehensiveness of its quality program records.
- Its record retention and correction program.
- Its plan to establish a [deleted].
- Its cross-training of its technical order technicians, which allows them to be used in the calibration laboratories to address surge requirements.
- Its proposed approach to notifying customers of overdue items for calibration.

#### Quality Program Records

Wyle argues that in evaluating its proposed quality program, the Air Force failed to consider an excerpt from a recent Air Force audit of its work on the predecessor contract. The excerpt, which the protester cited in its proposal, indicated that Wyle's quality program records were comprehensive and exceptionally well organized; that nonconformities identified during internal total quality plan reviews were well documented; and that effective process improvements had been initiated to eliminate deficiencies. Wyle Proposal at II-19.

The Air Force maintains that it did consider the excerpt, but that it determined that the findings, "when evaluated along with the overall Wyle proposed quality plan, did not constitute a strength for the proposed quality plan." Air Force Response to Protester's Comments at 1-2. In other words, while this aspect of Wyle's quality plan may have been strong, the Air Force concluded that the overall plan was not strong

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<sup>6</sup> Other strengths identified in Bionetics's proposal under the performance plan subfactor were the organization of its technical order department into three disciplines; its dedication of a quality assurance specialist for technical order products; and its organization charts. Strengths identified under the sustainment of capabilities subfactor were the content of its Measurement Area Capabilities Document; its funding for accreditation; the expertise of its Chief Scientific Advisor, its comprehensive training program; and its technician skills matrix.

enough to merit identification as a strength. The fact that the protester disagrees with the agency's judgment as to the significance of a positive aspect of its proposal does not demonstrate that the agency's judgment was unreasonable. Keco Indus., Inc., B-261159, Aug. 25, 1995, 95-2 CPD ¶ 85 at 4-5. In our view, given that record-keeping is only one of many aspects of an offeror's quality program, the agency reasonably determined that Wyle's strong approach to record-keeping, while a positive aspect of its proposal, was insufficient to render its quality program a strength.

#### Record Retention and Correction Program

Wyle also argues that it was inconsistent for the Air Force to cite Bionetics' quality plan with respect to the retention and correction of records as a strength, while failing to cite the similar approach to retaining and correcting records set out in its own proposed quality plan.

The Air Force acknowledges that the quality plans proposed by the two offerors contained virtually identical language regarding the correction of records, but maintains that the plans differed in their discussions of technical records management. Bionetics' plan cited Air Force regulations governing the management of records, while Wyle's proposal cited only its own internal standard operating procedures for records management, which were not furnished with the proposal. While the protester contends that the evaluators should have known that its standard operating procedures reflect Air Force requirements, the RFP in question explicitly advised the offerors here that they should assume "that the Government has no prior knowledge of their facilities and experience, and will base its evaluation on the information presented in the offeror's proposal." RFP, Amendment No. 0003, § L-900, ¶ 2.0(b). Because Wyle failed to furnish its standard operating procedures in its proposal, we think that the evaluators reasonably viewed the proposal as lacking the level of detail required to identify the proposed approach as a strength. In any event, the Air Force notes that even if Wyle had been assigned a 1-star strength for its quality plan with respect to the retention and correction of records, as was Bionetics, it would not have been enough to raise Wyle's rating under performance plan subfactor from Green to Blue. Air Force Response to Protester's Comments at 3.

#### [Deleted] Program

Next, Wyle argues that the agency unreasonably failed to recognize as a strength its plan to [deleted].

The agency responds that it did not view this aspect of the protester's proposal as rising to the level of a strength because the plan is still very much at the drawing board stage. For example, Wyle has not yet established [deleted]. Wyle Proposal at

II-10. Given the preliminary nature of the protester's plans [deleted], we think that the Air Force reasonably declined to cite this aspect of its proposal as a strength.

#### Surge Capacity

The protester also argues that the Air Force should have recognized as a strength its cross-training of its technical order personnel since this allows them to be used in the calibration laboratories to respond to surges in the workload.

While it is true that in the section of its proposal addressing the qualifications of its technical order personnel, Wyle states that their technical skills are maintained by frequent rotation into the labs to review procedures, work unscheduled requirements, or test new technical orders, *id.* at II-15, in the section of its proposal specifically addressing surge requirements, the protester makes no mention of cross-trained technical order personnel. We think that it was reasonable for the evaluators to have evaluated Wyle's approach to addressing surge requirements on the basis of information presented in that section of its proposal, without cross-referencing to the section of its proposal describing personnel qualifications. Moreover, the agency notes that cross-training of personnel is not an unusual way of dealing with surge requirements, and thus that Wyle's cross-training of its technical order personnel would not have been cited as a strength in any event.

#### Overdue Notices

Finally, the protester contends that the Air Force should have regarded its proposed approach to notifying customers of overdue items for calibration as a strength because it offered more than was requested by the RFP.

Paragraph 5.1.2.2.8.1 of the RFP's performance work statement requires the contractor to contact customers who fail to deliver Test, Measurement, and Diagnostic Equipment (TMDE) to the AFPSL within 10 working days after the scheduled due date. Such notice is to be furnished via telephone, e-mail, or fax not later than 15 calendar days from the due date. The contractor uses a government-furnished management information system to identify overdue items.

In its proposal, Wyle proposed to generate the list within 11 days after the due date and to notify the customers. The protester contends that its approach exceeded the minimum required in that notification will be made earlier than the 15<sup>th</sup> day. We do not agree that Wyle proposed a more prompt notification schedule than required by the PWS. The protester proposed to generate the list of overdue items on the 11<sup>th</sup> day and to notify the customer, but it did not specify that the two events would occur on the same day. Accordingly, we see no basis to conclude that Wyle proposed an approach that exceeded the government's requirements.

#### Evaluation of Bionetics' Proposal

In addition to arguing that the Air Force overlooked strengths in its own proposal, the protester maintains that the agency ignored weaknesses and risks in Bionetics' proposal. In particular, Wyle argues that Bionetics' hiring plan and its proposal [deleted] should have been regarded as weaknesses.

### Hiring Plan

The Air Force noted as one of the strengths in Bionetics' proposal its plan to target incumbent managers first in its hiring, and then to involve them in the process of staffing the organizations they would lead. Wyle asserts that rather than viewing this approach as a strength, the agency should have viewed it as a weakness, because there is a substantial risk that Bionetics will be unable to hire Wyle's incumbent managers at the compensation rates that it proposes. In this regard, Wyle notes that its Electronics Laboratory Department Manager is paid \$30.20 per hour, whereas Bionetics proposed to pay him [deleted] per hour; its Mechanical Laboratory Department Manager is paid \$32.61 per hour, whereas Bionetics proposed to pay him [deleted] per hour; and its Photonucleonics Department Manager is paid \$32.50 per hour, whereas Bionetics proposed to pay him [deleted] per hour. Protester's Comments, Oct. 29, 2001, at 8. Wyle further argues that Bionetics will be unable to hire the remainder of the incumbent work force, as it plans, at the wage rates that it proposes since these rates are lower than the rates at which these employees are currently compensated.

While Bionetics did propose lower wage rates for the three managers in question than Wyle currently pays them, it stated that it did not intend to cut the salaries of incumbent employees, Bionetics' Response to Evaluation Notice BIO-MC4-001, and included in its proposal [deleted] to be used to make up the difference between the rates it proposed and the rates at which incumbent employees are compensated. Bionetics also proposed, as a back-up strategy in the event that it is unable to hire laboratory managers from the incumbent workforce, [deleted]. Given that Bionetics does not intend to cut the salaries of incumbent managers, and that it has a back-up strategy if it is unable to hire them, we see no basis to conclude that it was unreasonable for the evaluators not to have regarded this aspect of Bionetics' hiring plan as risky.

Regarding the protester's argument that Bionetics will be unable to retain the incumbent workforce at the wage rates it proposes, again we note that Bionetics did not propose to cut salaries of incumbent employees; it proposed wage rates drawn from [deleted], which in many instances were lower than the wages currently paid by Wyle, but it also proposed to pay incumbent employees [deleted] to make up the difference between their current hourly rates and the proposed rates.

Regarding the protester's argument that [deleted] is not large enough to make up the difference in wage rates for all employees, the agency takes issue with the

protester's assumption that [deleted] will need to be spread across the entire workforce. In this regard, the Air Force notes that Bionetics proposed higher salaries for some of its employees (i.e., its quality manager and engineers) than the amounts currently paid their counterparts by Wyle; accordingly, payment of [deleted] to these employees to bring their salaries up to the level paid by the incumbent would not be required. The agency further notes that it has "no reason to believe that Bionetics or any other company would have problems hiring non-technical personnel (i.e., clerks, material handlers, etc.) from the local economy at [deleted]." Air Force Response to Protester's Comments at 3.

The Air Force saw no reason to question the sufficiency of Bionetics' [deleted], and the protester has not demonstrated that this was an unreasonable determination on the agency's part. There is no evidence in the record that Bionetics would not be able to retain the skilled employees that it wants to retain at their current salary levels through use of [deleted], and that it would be unable to hire new personnel at the rates that it proposed for the other positions.

[Deleted]

Wyle argues that the Air Force should have viewed Bionetics' proposal to obtain [deleted] as a weakness rather than a strength because it means that Bionetics will have to satisfy the requirements of both the [deleted] and the Air Force, which is risky because the two may be in conflict. Wyle further argues that the proposal to obtain [deleted] is a weakness because Bionetics has not accounted in its proposal for the costs of maintaining the [deleted].

The Air Force states that its engineers considered this issue and concluded that there is "absolutely no conflict in receiving" [deleted] and Air Force certification, and that "[a]ny minor conflicts, if encountered, could most certainly be resolved easily without sacrificing either the Air Force requirements or the [deleted] requirements." Contracting Officer's Statement of Facts and Findings, Oct. 11, 2001, at 25. The protester has not attempted to rebut the agency position.

Regarding the protester's assertion that Bionetics only offered to pay the initial costs of obtaining [deleted], and did not volunteer to cover the substantial costs of maintaining the [deleted], Protester's Comments, Nov. 26, 2001, at 27, the Air Force notes that since [deleted] compliance is a requirement of the solicitation, the cost of maintaining compliance is already built into the proposal. Air Force Response to Protester's Comments at 5.

## PAST PERFORMANCE

Wyle also takes issue with the agency's evaluation of Bionetics' past performance, arguing that the Air Force misunderstood the nature of Bionetics' performance under one significant contract and unreasonably ignored its performance problems under another. The protester also argues that the agency should have ignored the favorable ratings of Bionetics' performance furnished by one of its references because the reference was biased.

The RFP provided for the evaluation of past performance in accordance with AFFARS § 5315.305(a)(2), using the ratings defined therein. The section in question provides for the assignment of a confidence assessment rating to each proposal based on an assessment of performance risk, with the highest possible rating of exceptional/high confidence reflecting an assessment that, based on the offeror's performance, essentially no doubt exists that the offeror will successfully perform the required effort. The RFP further provided that more recent and relevant performance would have a greater impact on the performance confidence assessment than other performance and that the performance of critical subcontractors and key personnel would be taken into consideration.

The solicitation also explained in detail the factors that would be considered in determining whether a contract would be considered very relevant, relevant, semi-relevant, or not relevant. A relevant contract was defined as an effort including "most of what this solicitation requires, such as operation of primary echelon calibration laboratories (including calibration of transfer standards, primary standards, and test measurement and diagnostic equipment, in at least several measurement areas, [and] maintenance of measurement capabilities one step below the measurement standard of the National Institute of Standards and Technology) [and the] authoring/maintaining of commercial calibration technical data . . . ."

Bionetics submitted information regarding five contracts that it had performed itself and four contracts that its proposed subcontractor, Lockheed Martin, had performed.<sup>7</sup> The PRAG rated Bionetics' performance under contract LSOC-10900-000006 (Shuttle and Calibration Laboratory Support Services for NASA/Kennedy Space Center) as relevant and noted that the two references rated the contractor's performance as very good or excellent under each of the mission capability subfactors. The PRAG rated Bionetics' performance under contract F44650-97-D0005 for the operation of 13 Air Force PMELs as semi-relevant and noted that Bionetics had received overall performance ratings of excellent for performance

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<sup>7</sup> Although the RFP instructed offerors to submit only four contracts for consideration, RFP § L-900, 7.3, Bionetics requested—and was granted—permission to submit a fifth contract after it was informed during discussions that two of its first four had been rated as non-relevant.

plan and cost and of very good for sustainment of capabilities and workload management. The PRAG also rated a third Bionetics contract for metrology services and TMDE calibration and repair services for the Naval Warfare Center as semi-relevant.

The PRAG rated one of Lockheed Martin's contracts, for F-16 technical order maintenance, as very relevant and noted that it had received a positive Contractor Performance Assessment Report (CPAR) regarding its performance. The PRAG rated a second Lockheed Martin contract for operation of a primary standards laboratory as relevant and noted that the references had rated the contractor's performance as excellent or very good under all mission capability subfactors for which ratings were furnished and as satisfactory for cost. The PRAG rated the two other Lockheed Martin contracts as semi-relevant and noted that the references had rated the contractor's performance under both positively.

Based on the foregoing information, the PRAG assigned Bionetics a performance confidence rating of exceptional/high confidence. The PRAG also assigned both Wyle and Offeror A performance confidence ratings of exceptional/high confidence.

Wyle argues that the Air Force incorrectly rated Bionetics' contract furnishing Shuttle and Calibration Support Services for NASA/Kennedy Space Center as relevant based on the incorrect understanding that in its performance of that contract, Bionetics had operated the NASA Primary Standards Laboratory for 14 years through 1998. The protester asserts that Bionetics has not in fact operated the laboratory since 1983.

In support of its position, Wyle submitted three declarations from one of its employees, who has worked in the Kennedy Space Center calibration laboratories for the past 22 years. This individual states that EG&G took over operation of the NASA Primary Standards Laboratory from Bionetics in June of 1983 and that Bionetics has not operated the laboratory since then. Declaration of Wyle Manager, Nov. 5, 2001, at 1. The declarant further states that since at least 1993, Bionetics has not performed any work involving the calibration of primary standards at the laboratory. In this regard, she notes as follows:

Since about 1993, PFC began operating the NASA Primary Standards Laboratory. They continued to do so until Wyle took over operation of the NASA Primary Standards Laboratory in 1998. As one of the requirements of these contracts, PFC, and then Wyle, were required to provide traceability for reference standards, working standards and test equipment to the NIST for all KSC contractors. This task was accomplished by sending the Primary Standards owned by the PFC/Wyle Primary Standards Laboratory to the NIST for calibration/certification. The PFC/Wyle Primary Standards Laboratory then utilized these NIST calibrated reference standards to transfer

NIST traceable measurements to Working Standards used by lower level Calibration Laboratories, including hundreds of working standards for the laboratory operated by Bionetics. Thus, the traceability chain to the NIST for KSC was entirely derived through the PFC/Wyle Primary Standards Laboratory.

Id.

In response to our request for comment on the foregoing assertions, Bionetics submitted a declaration from a former employee, who served from 1976 until his retirement in 1997 as Chief Engineer (2 years) and Project Manager (19 years) for Bionetics' metrology operations at the Kennedy Space Center. He explained that in 1976, Bionetics became the prime (and sole) contractor to NASA for operation of Standards and Calibration Laboratories, including the Reference Standards and Calibration Laboratories, at the Kennedy Space Center. Bionetics' responsibilities under that contract included maintaining various primary (or reference) standards, which are standards directly traceable to NIST. In 1983, NASA divided the standards and calibration work into two contracts, one for base operations and the other for space shuttle operations. Bionetics became a subcontractor to EG&G under the base operations contract and the prime contractor on the space shuttle contract. After approximately 6 months, Bionetics' base operations subcontract was absorbed by the prime contractor, EG&G.

In 1984, Lockheed Space Operation Company (LSOC) was awarded the space shuttle operations contract and Bionetics' prime contract with NASA was converted to a subcontract with LSOC. The subcontract called for Bionetics to continue to perform essentially the same responsibilities contained in the prime contract. Bionetics continuously performed the same primary standard work under its space shuttle operations subcontract without interruption until completion of the subcontract in 1998. The subcontract was novated in 1996 to recognize that United Space Alliance had succeeded Lockheed as the primary contractor. Declaration of Bionetics' Project Manager, Dec. 6, 2001 at 1-3.

The above declarant's assertion that Bionetics continued to perform primary standards work for NASA in support of the shuttle program even after EG&G took over operation of the NASA Primary Standards Laboratory was confirmed by a statement from the Manager of NASA's Metrology and Calibration Program, who explained that:

Bionetics actually contracted directly to the Government prior to the Shuttle Processing Contract (SPC), providing standards laboratory and calibration laboratory operations. At the beginning of the SPC, the calibration effort was split and the standards laboratory operations became part of institutional support, where it remains. As a sub to Lockheed, NIST traceable standards were provided as a base support function by the institutional contractor.

However, in order to prevent costly duplication of some facilities, i.e., flow, Bionetics maintained NIST traceability on a few select disciplines. GAO Question and Air Force Responses, Dec. 6, 2001, at 3.

While it appears from the foregoing statements that the PRAG's characterization of Bionetics as the operator of the NASA Primary Standards and Calibration Laboratory for the past 14 years was in error, it also appears that Bionetics did in fact perform primary standards work in several disciplines in support of the space shuttle program up until 1998. In this regard, we consider the statement from the Manager of NASA's Metrology and Calibration Program confirming that Bionetics continued to maintain NIST traceability on a few select disciplines in support of the space shuttle program to be more authoritative than the statement from the Wyle employee (asserting that since 1993 the traceability chain to the NIST for the Kennedy Space Center has been entirely derived through the PFC/Wyle Primary Standards Laboratory) because the NASA Manager, who performs oversight of Kennedy Space Center contractors, is in a better position than the Wyle employee to know the scope of Bionetics' responsibilities under its space shuttle operations subcontract. In addition, the Air Force notes that one of the references whom it contacted regarding Bionetics' performance under the shuttle support contract indicated that Bionetics had provided technical order support involving the writing and maintaining of procedures, which provided another basis for determining the contract relevant. Id. at 2. Given that Bionetics' performance under the NASA contract involved primary standards work and the authoring and maintaining of relevant technical data, we think that the evaluators reasonably rated the contract as relevant in assessing the awardee's past performance.<sup>8</sup>

Wyle further argues that the Air Force unreasonably ignored Bionetics' past performance problems under its PMEL contract. The Air Force acknowledges that Bionetics experienced some performance problems at a few of the PMELs, but maintains that the contractor has taken effective corrective action and thus that there is no reason to anticipate a recurrence of difficulties. In this regard, the agency notes that Bionetics' performance was rated as exceptional or very good in all areas under the most recent CPAR, and that the assessing official stated that she would

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<sup>8</sup> In any event, the Air Force maintains that a change in its rating of the relevance of this contract (from relevant to semi-relevant) would not have affected its overall evaluation of Bionetics' past performance as exceptional/high confidence. In this regard, the Air Force notes that even if this contract had been rated as semi-relevant, rather than relevant, Bionetics/Lockheed would have had one very relevant, one relevant, and five semi-relevant contracts, almost all with excellent or very good ratings, which compares favorably with Wyle's one very relevant, one relevant, and two semi-relevant contracts, which earned it a performance confidence rating of exceptional/high confidence.

definitely award to the contractor again. Air Force Response to Protester's Comments, at 12.

The protester also argues that the Air Force should not have considered a reference regarding Bionetics' performance on the [deleted] contract because the individual who furnished the reference is an employee of [deleted], which is a "sister" firm to Bionetics' proposed subcontractor, Lockheed Martin. According to the protester, because award to Bionetics would be in Lockheed Martin's financial interest, the [deleted] employee had an incentive to furnish an overly favorable reference.

We see no reason that the Air Force should have disregarded the reference. There is no evidence in the record--and we see no reason to assume--that the employee in question was aware at the time he furnished his reference that Bionetics had proposed Lockheed as a subcontractor for this effort. In addition, given that, according to the protester, [deleted] is a joint venture of Lockheed and [deleted], which was also an offeror under this RFP, even had the employee been aware of which firms were involved in the competition at the time he was contacted for a reference, he would have had just as much of an incentive to submit an overly unfavorable evaluation of Bionetics' performance (which would favor [deleted]) as a favorable one (which would favor Lockheed.)

#### COST ANALYSIS

Finally, Wyle contends that the Air Force did not properly evaluate the probable cost of Bionetics' proposal. The protester maintains that the agency's cost evaluators failed to adjust the awardee's cost proposal to account for the disparity between Bionetics' proposed wage and fringe benefit rates and the substantially higher rates paid by Wyle under its incumbent contract. According to the protester, Bionetics' wage costs should have been adjusted upward approximately \$6 million and its fringe benefit costs adjusted upward approximately [deleted] to account for the disparity over the 20-year period of performance. The protester further argues that the agency failed to adjust Bionetics' cost proposal to normalize subcontract repair costs for foreign military sales (FMS) items (which, according to Wyle, would have required an upward adjustment of approximately \$2.2 million to Bionetics' proposed costs) and to account for the required calibration laboratory technician effort in addition to the "touch labor" listed in the RFP's technical exhibit 2a (which, according to the protester, would have required an upward adjustment of approximately \$17 million to the awardee's proposed costs).

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated costs of contract performance and proposed fees are not considered controlling, since the offeror's estimated costs may not provide valid indications of the final actual costs that the government is required, within certain limits, to pay. Advanced Communication Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. Accordingly, a cost realism analysis must be

performed when a cost-reimbursement contract is contemplated. FAR § 15.404-1(d)(2). A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's technical proposal. FAR § 15.404-1(d)(1). Because the contracting agency is in the best position to make this cost realism determination, our review is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 7.

We turn first to Wyle's contention that the Air Force should have adjusted Bionetics' cost proposal upward to account for the lower fringe benefit rate it proposed. The protester argues in essence that Bionetics' fringe benefit rate is unrealistically low because it is substantially lower than the fringe benefit rate that Wyle has been paying its employees, many of whom Bionetics hopes to retain, under the predecessor contract. In this regard, Wyle asserts that its employees receive [deleted] per hour in fringe benefits, whereas Bionetics has proposed a fringe benefit rate of only [deleted] per hour.

The RFP included a Department of Labor (DOL) wage determination, which required a minimum employer contribution of \$2.56 per hour for fringe benefits. [Deleted]. Since comparison to a DOL wage determination is a reasonable method of assessing the realism of an offeror's labor rates, Advanced Communication Sys., Inc., supra, at 8 n.9, we see no reason to object to the agency's conclusion that Bionetics' proposed fringe benefit rate, [deleted], was realistic. The fact that Wyle, the incumbent contractor, proposed a higher fringe benefit rate than Bionetics provides no basis to find that Bionetics' proposed rates are unrealistic. See Calspan Corp., B-255268, Feb. 22, 1994, 94-1 CPD ¶ 136 at 8, recon. denied, B-255268.2, July 5, 1994, 94-2 CPD ¶ 6. Accordingly, we deny the protester's argument that Bionetics' evaluated cost should have been adjusted upwards by [deleted] to account for the lower fringe benefit rates that it proposed.

Given our conclusion that no upward adjustment to the fringe benefit rate is required, we need not address Wyle's remaining challenges to the cost evaluation concerning Bionetics' wage rates, subcontractor repair costs for FMS items, and additional laboratory technician effort, since the upward adjustments Wyle contends are necessary in these areas would have no impact on the relative cost standing of the two offerors. In this regard, the protester estimates that these three items would require upward adjustments to Bionetics' evaluated cost of \$6 million, \$2.2 million, and \$17 million respectively, for a total upward adjustment of \$25.2 million, which is insufficient to overcome the disparity of approximately [deleted] between the probable costs of the two proposals as evaluated by the agency. Accordingly, given our conclusion that the technical evaluation of the two proposals was reasonable, Wyle would remain the higher-cost, lower-rated offeror, and thus would not be in

line for award even if we agreed that the remaining costs should be adjusted as Wyle contends. Competitive prejudice is an essential element of a viable protest; where, as here, the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect 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 (Fed. Cir. 1996).

Because Wyle has failed to demonstrate that the Air Force's evaluation of proposals was unreasonable or that Bionetics had a conflict of interest that would have precluded it from receiving the award, the protest is denied.

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General Counsel