

14340 Evans



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** D.K. Dixon & Co., Inc.; Mirage Systems

**File:** B-242502; B-242502.2

**Date:** April 19, 1991

Dennis K. Dixon for D.K. Dixon & Co., Inc., and Kenneth L. Ford for Mirage Systems, the protesters, Lawrence S. Kasevich for Dynamic Controls Corporation, an interested party, David R. Francis, Esq., and Millard F. Pippin, Department of the Air Force, for the agency. Catherine M. Evans and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protests that awardee did not meet solicitation requirement to provide tailored version of Department of Defense standard for software development with its proposal are denied where only reasonable reading of solicitation shows that tailored version was not required to be submitted until after award and, in any case, awardee submitted tailored version prior to submission of best and final offer.
2. Protests that agency failed to consider awardee's past and current performance on government contracts in evaluation process is without merit where record shows evaluators noted past performance problems, but also found awardee had corrected the problems so that there was no basis for downgrading proposal.

### DECISION

D.K. Dixon & Co., Inc. and Mirage Systems protest the award of a contract to Dynamic Control Corporation (DCC) under request for proposals (RFP) No. F33657-90-R-2047, issued by the Department of the Air Force for development and production of the Harpoon Interface Adapter Kit (HIAK), an interface unit permitting use of AGM-84 Harpoon missiles by F-16 aircraft. Dixon and Mirage contend that award to DCC was improper because its proposal failed to provide a tailored software development plan allegedly required by the RFP, and because the Air Force failed properly to consider DCC's past performance in the evaluation.

We deny the protests.

The RFP contemplated award of a firm, fixed-price contract for the engineering, fabrication, and qualification of six preproduction HIAKs and subsequent delivery of 108 production units, with an option for delivery of engineering drawings and data. One of the requirements of the statement of work was that the contractor "develop the HIAK software and firmware using a tailored version of DOD-STD-2167A," and to "document his software/firmware development process IAW his tailored version of DOD-STD-2167A," a standard used by the Department of Defense to establish uniform requirements for software development. In this connection, section L of the RFP instructed each offeror to "provide sufficient information to convey his ability to develop HIAK software in accordance with his tailored version of DOD-STD-2167A," and section M provided for evaluation of the offeror's ability to tailor DOD-STD-2167A.

Upon learning of the November 21, 1990, award to DCC, Dixon requested a copy of DCC's preaward survey from the agency under the Freedom of Information Act. The survey, performed by the Defense Contract Management Area Office (DCMAO), Hartford, Connecticut, recommended against award to DCC based on DCC's "inability to provide a tailored version of DOD-STD-2167A and 2168 at the time of the preaward survey." The survey also noted that DCC has been operating under "method C" corrective status since August 1989, but has made substantial progress and is in the process of resolving remaining problems.<sup>1/</sup> After receiving a copy of the survey, Dixon filed its protest. Mirage learned of DCC's negative preaward survey from Dixon, and filed a similar protest.<sup>2/</sup>

Dixon and Mirage assert that the RFP required offerors to provide a tailored version of DOD-STD-2167A in their proposals and that the Air Force improperly made award to an offeror that did not meet this requirement. The protesters appear to

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<sup>1/</sup> Under Department of Defense procedures, a contractor may be placed in "method C" corrective status due to contract performance problems. The method C procedure includes a written request to the contractor for a corrective action plan and a projected "get well" date, and government monitoring of the contractor's progress.

<sup>2/</sup> Although documents in the record indicate that the Air Force may have considered Mirage's proposal technically unacceptable, the record is not clear on this issue, and the Air Force does not argue that Mirage lacks standing to protest the award. For this reason, and because the protests raise identical issues, we consider both protests.

argue that the section L requirement for information in the proposal regarding the offeror's ability to develop software in accordance with "his" tailored version of DOD-STD-2167A implied that the offeror was required to submit "his" tailored version with the proposal. The protesters also note that DCMAO apparently interpreted the requirement the same way.

The Air Force responds that the RFP did not require a tailored version of DOD-STD-2157A as part of the offeror's technical proposal. The Air Force notes that section L of the RFP required offerors to convey in their proposals the ability to develop HIAK software in accordance with the offeror's tailored version of DOD-STD-2167A, and asserts that this requirement did not subsume a requirement to provide the tailored version of DOD-STD-2167A in the technical proposal. Similarly, the Air Force explains, section M provides for evaluation of the offeror's ability to tailor DOD-STD-2167A, not for evaluation of the tailored version.

When a dispute exists as to the actual meaning of a solicitation provision, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, an interpretation must be consistent with such a reading. Accudyne Corp., 69 Comp. Gen. 380 (1990), 90-1 CPD ¶ 356.

We think the protesters' interpretation of the tailoring requirement is inconsistent with the plain language of the RFP provisions. As discussed, the statement of work required the contractor to develop the HIAK software and firmware, and to document the development process, using a tailored version of DOD-STD-2167A. The RFP provided that the documentation--in the form of a software development plan--was to be submitted 30 days after contract award. Section L of the RFP required the offeror to demonstrate in its proposal its ability to develop HIAK software in accordance with its tailored version of DOD-STD-2167A, and section M provided for evaluation of this demonstrated ability. The RFP simply did not require that the offeror submit a tailored version of DOD-STD-2167A with its proposal, and did not provide for evaluation of the tailored version.

Dixon contends that DOD-STD-2167A itself requires offerors to submit tailored versions with their proposals. However, this argument is inconsistent with the standard's stated purpose, and is refuted by its express language. The foreword to DOD-STD-2167A provides in part:

"1. This standard establishes uniform requirements for software development that are applicable throughout the system life cycle. The requirements of this standard provide the basis for Government

insight into a contractor's software development, testing and evaluation efforts."

"5. Per DODD 5000.43, Acquisition Streamlining, this standard must be appropriately tailored by the program manager to ensure that only cost-effective requirements are cited in defense solicitations and contracts."

Further, section 1.1.3 of the standard, entitled "Tailoring of This Standard," provides:

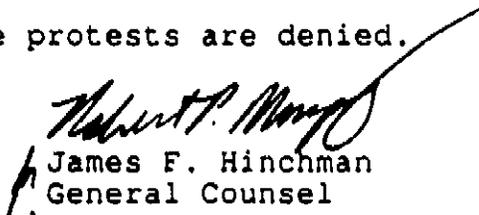
"This standard contains a set of requirements designed to be tailored for each contract by the contracting agency. The tailoring process intended for this standard is the deletion of non-applicable requirements." (Emphasis added.)

It is clear from this language that the standard is intended to require contracting agencies to delete non-applicable requirements from solicitations; it does not require offerors to submit tailored versions of the standard with their proposals, and does not require agencies to solicit for and evaluate offerors' tailored versions of the standard prior to contract award.

The fact that DCMAO also apparently assumed that a tailored version was required to be submitted with proposals does not change our conclusion; it remains that such an interpretation was not warranted by the language of the RFP. We note that, according to the record, neither of the protesters submitted tailored versions with their initial proposals. In any case, after completion of the preaward survey but prior to the Air Force's request for best and final offers (BAFO), DCC submitted a tailored version of DOD-STD-2167A to the agency.

Dixon and Mirage also maintain that the Air Force improperly failed to consider in the evaluation the fact that DCC is operating under "method C" corrective status. The record shows, however, that the Air Force specifically considered DCC's "method C" status in the performance risk assessment and determined that it would not affect DCC's performance under this contract.

The protests are denied.

  
James F. Hinchman  
General Counsel