

## DynCorp Loses Protest Over \$2.2B Air Force Support Deal

By **Daniel Wilson**

*Law360 (September 6, 2018, 9:08 PM EDT)* -- The U.S. Air Force reasonably awarded JPATS Logistics Services an up-to \$2.2 billion training aircraft support services deal, the Court of Federal Claims ruled in a decision made public Thursday, denying DynCorp's protest that claimed bidders for the deal were unevenly assessed.

DynCorp International LLC had failed to show that the Air Force had unfairly harshly assessed its bid, or had given an unfairly easy ride to the offer made by winning bidder JPATS Logistics Services LLC, or JLS, Judge Loren A. Smith ruled in his Aug. 9 decision, originally filed under seal before being made public Thursday, with redactions.

"Given the deference courts generally afford to agencies, the reasonableness of the [contracting officer's] actions, and the prerogative of the agency, this court can only determine that plaintiff has failed to show 'clear and prejudicial error' in the Air Force's Past Performance evaluation," the judge said.

The disputed deal, the Contractor Operated and Maintained Base Supply, or COMBS, III contract, is an indefinite-delivery, indefinite-quantity contract to provide maintenance and other support services for the Air Force's fleet of more than 740 T-6 Texan II training aircraft.

When soliciting bids for the deal, the Air Force said it would award the contract on a best value basis, based on technical factors — with firms required to meet a certain minimum standard — and then on past performance and price, with past performance to be weighted much higher than price.

DynCorp had been the incumbent on the predecessor COMBS II deal, but in late December 2017 was told it had been passed over for the third iteration of the contract in favor of JLS. Both were determined by the Air Force to provide "satisfactory confidence" of their ability to perform, but DynCorp's offer was evaluated at around \$2.04 billion, while JLS' bid was assessed at around \$1.76 billion.

That prompted DynCorp to protest to the U.S. Government Accountability Office early in January, and when that was unsuccessful, it took the dispute to the claims court, filing a complaint in April.

In his ruling, Judge Smith first declined to toss DynCorp's challenge on jurisdictional grounds, despite the government arguing that the company was behind not only JLS but two other bidders in line for the deal.

But given that one of DynCorp's arguments was that it would have received the highest past performance rating absent alleged evaluation errors by the Air Force, DynCorp had shown that it had standing for its suit, the judge found.

DynCorp, however, failed to prove that its bid or JLS' bid were unfairly rated, that the Air Force had unreasonably ignored alleged financial problems at JLS, or that JLS' bid was too low to support the basic inventory levels needed to successfully perform the required work, according to the opinion.

DynCorp argued that its own "exceptional" performance on COMBS II was undervalued and a minor mistake on another Air Force contract was treated too harshly, while JLS's past performance — on contracts "small, simple, and dissimilar [to the COMBS deal]" — was overvalued, among other arbitrary assessments made by the Air Force.

But such ratings are, by their nature, subjective and are also entitled to deference, and the Air Force's choices of what were relevant to a past performance rating were reasonable, as were the ratings it gave to bidders, given the subfactors that went into those ratings, Judge Smith found.

"DynCorp seeks to have the Air Force penalize JLS and [another bidder, L-3 Communications Vertex Aerospace] for their prior problems, while overlooking plaintiff's own past challenges," the judge said.

And the relevant Air Force contracting officer had taken appropriate steps to determine JLS' financial responsibility, including its relationship with another company, IAP Worldwide Services — one of the two joint venture partners in JLS, alongside Kellstrom Defense Aerospace — according to the opinion.

DynCorp had argued that a debt restructuring at IAP had resulted in financial instability for JLS, but Judge Smith noted that "refinancing does not necessarily impair a company's financial position, but rather, it can improve it," and said the Air Force had considered the issue in its assessment.

Further, DynCorp had failed to show that JLS' alleged "dramatically low" price proposal failed to meet the requirements of the solicitation, Judge Smith found, backing the Air Force's best value determination.

"Even if this court disagreed with the agency's decision to award the COMBS III contract to JLS, there is still a rational basis for the Air Force's award," he said. "It appears to the court that the Air Force's choice of JLS was reasonable, based upon a record of proper evidentiary evaluations."

DynCorp spokesperson Mary Lawrence said in a statement provided to Law360 Friday that despite the ruling, it believed its proposal for COMBS III "offered the best value for the U.S. Air Force and the U.S. taxpayer."

"Though we are disappointed with the court's ruling, we are honored to have supported the Air Force for the past six years on this program, and are proud of our performance history," she said.

A representative for JLS didn't immediately respond to a request for comment Thursday.

DynCorp is represented by David M. Nadler of Blank Rome LLP.

The government is represented by Eric J. Singley of the U.S. Department of Justice. JPATS, as an

intervenor, is represented by J. Alex Ward of Morrison & Foerster LLP.

The case is DynCorp International LLC v. U.S., case number 1:18-cv-00557, in the U.S. Court of Federal Claims.

--Editing by Connor Relyea.

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