

Mr. Boyle PLI

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest of Air Force Contract Award]

FILE: B-199024

DATE: August 21, 1980

MATTER OF: Honeywell Inc.

CP 600308

DIGEST:

1. Where protest is filed within 10 working days of date that protester first learned that agency may be interpreting specifications in inconsistent manner, protest that either (1) specifications are ambiguous or (2) discussions were not meaningful is timely under 4 C.F.R. § 20.2(b)(2) (1980) and will be considered on merits. Agency is requested to provide documented report on merits of these bases of protest.

2. Where protester states date, place, and circumstances surrounding disclosure by key official of competitor, protest based on that information and other established facts does not support view that basis of protest is speculative. Further, although agency has not made award, since competitor's acceptable technical proposal, if any, is final and allegedly violative of mandatory RFP requirement, protest is not premature. Agency is requested to provide documented report on merits of this basis of protest.

Honeywell Inc. protests any award under requests for proposals (RFP) Nos. F04606-80-R-0209 and F04606-80-R-0073 issued by the Air Force for 7,500 fixed station teletypewriters for the Department of Defense. *AGC00035*

This protest concerns a two-step negotiated procurement which included these events: issuance of the first-step request for technical proposals on November 1, 1979; a preproposal conference on December 4, 1979; the closing date for receipt of initial technical proposals on January 14, 1980; issuance of the step-two RFP to firms which submitted acceptable technical proposals on March 13, 1980, the closing date for receipt

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of those proposals on April 16, 1980, submission of best and final offers (following discussions) on May 12, 1980.

Honeywell contends--in its protest filed here on July 10, 1980--that (1) the specifications were unclear and ambiguous, (2) the Air Force failed to conduct meaningful discussions, and (3) the evaluation of another competitor's (Tracor, Inc.) technical proposal was incorrect.

Honeywell states that it became aware of the facts upon which its first two grounds of protest are based on June 27, 1980, when it received and reviewed the protest (B-199024.2) filed by Dataproducts New England, Inc. (DNE), concerning this procurement. Honeywell explains that it learned that DNE interpreted certain mandatory specifications in a different manner than Honeywell did, resulting in dramatic cost impact. Honeywell contends that at least four requirements in the specifications must be ambiguous if it and DNE could reach opposite conclusions on their meaning. [Alternatively, Honeywell contends that, because of the above, its technical proposal must have been deficient--since DNE's divergent approach was technically acceptable--and the Air Force failed to advise Honeywell during discussions that its proposal contained these deficiencies. Honeywell concludes that the Air Force's failure to advise Honeywell of its misinterpretation of the RFP's requirements destroyed the competitive nature of the procurement.] Finally, Honeywell notes that on June 26, 1980, it learned that Tracor proposed a component, which--based on Tracor's literature--does not satisfy a mandatory RFP requirement (printhead speed). Thus, Honeywell argues that either Tracor's proposal was unacceptable or the Air Force changed requirements without advising other offerors.

The Air Force reports that insofar as Honeywell's protest addresses alleged ambiguities in the specifications, it is untimely under 4 C.F.R. § 20.2(b)(1) (1980) since these alleged improprieties were not protested prior to the closing dates for receipt of initial technical proposals, January 14 or April 16, 1980, at the latest. The Air Force contends that the lack of meaningful discussions aspect of Honeywell's protest is also

untimely under 4 C.F.R. § 20.2(b)(2) (1980) since it was not raised within 10 working days of submission of its best and final offer at the latest. Further, the Air Force contends that Honeywell's assertions regarding Tracor's proposal are speculative and that since the procurement is still in process, this aspect of Honeywell's protest is premature.

The Air Force recommends that we dismiss Honeywell's protest and has declined to provide a report to us on the merits of that protest, believing that it is untimely.

△ We believe that the first and second aspects of Honeywell's protest are essentially that the Air Force is not interpreting the RFP provisions uniformly for all offerors. Honeywell apparently had no reason to question the Air Force's treatment of its proposal until it learned that DNE received inconsistent treatment resulting in different interpretations of what appeared to be unambiguous requirements. Since the Air Force has not rebutted Honeywell's version as to how or when these protest bases were discovered and Honeywell protested here within 10 working days of the time that it discovered these bases of protest, we must conclude that this portion of Honeywell's protest is timely under 4 C.F.R. § 20.2(b)(2) (1980) and we will consider the merits of it.

We also believe that Honeywell's remaining protest basis is not purely speculative since Honeywell mentions the date, place, and circumstances surrounding its discovery from a "key Tracor official" of which model Tracor proposed. Although we recognize that no award has been made, since it appears that Tracor's proposal, if any, has been finalized and the Air Force would know what model was proposed, we believe that Honeywell's protest is not premature.

We think that Honeywell's protest permits the Air Force to review the clarity of its specifications, the consistency of interpretation given to those specifications, the impact of any ambiguity on proposed costs, and the technical acceptability of the proposals at a time when changes, if necessary, can be made with the

least impact on the procurement schedule and ultimate cost to the Government.

Accordingly, we request that the Air Force submit as expeditiously as possible a documented report on the merits of Honeywell's protest.

for Harry R. Van Cleave
for Milton J. Socolar
General Counsel