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DECISION

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

FILE: B-203597 DATE: December 24, 1981

MATTER OF: Cubic Defense Systems, division of Cubic Corporation

DIGEST:

1. Protester has not shown that technical evaluation, ranking proposals as essentially equal, was without a reasonable basis. Protester's arguments mostly concern past performance and current state of its and proposed awardee's technology, which protester claims agency ignored or was unaware of. Source selection documents show that past performance was but one of four evaluation criteria, and that agency consideration of it was adequate.

2. Agency performed cost realism analysis in accordance with solicitation requirements. Additionally, agency's analysis of estimated 10-year operations and support costs for system was performed as set forth in solicitation. Several factors that protester argues should have been considered were not required to be considered in RFP. In any event, protester argues that if analysis is done correctly, its costs should be less and that was, in fact, the result.

3. Protester's request that GAO interview all evaluators involved in source selection in order to independently verify integrity of official written documentation of source selection is denied where GAO has all relevant documentation and evidence submitted by protester in support of request for investigation does not show that documentation is not accurate reflection of events of source selection process.

4. Argument that system does not reflect agency's minimum needs was not raised before closing date for receipt of proposals and, therefore, is untimely. Issue does not fall within

"significant issue" exception of timeliness rules. Additionally, arguments that protester was not permitted to offer cost-effective alternative to use of Government-furnished equipment and that reduction in RFP hardware requirement favored proposed awardee were not raised within 10 working days of protester's knowledge of them and are also untimely.

5. Protester has provided no evidence to support speculation that proposed awardee and agency engaged in discussions after best and final offers were submitted.

6. Argument that contract will be funded from improper appropriation if proposed awardee receives contract has no relevance to propriety of source selection and will not be considered.

7. Agency refusal to reopen discussions in order to permit protester to take advantage of developments in Navy contract it was performing was not unreasonable where benefit to Government was not clear.

Cubic Defense Systems (Cubic), a division of Cubic Corporation, protests the proposed award to General Dynamics Corporation, Electronics Division (General Dynamics), of a contract for an upgraded air combat training system at Hill Air Force Base, Utah, by the Department of the Air Force. The system is called the High Accuracy Multiple Object Tracking System (HAMOTS) Upgrade System or HUS.

Cubic has raised numerous bases of protest in connection with the proposed award. Cubic, in the main, argues that the technical evaluation, which found the competing proposals to be essentially equal, was arbitrary and capricious and that the cost evaluation was flawed. Additionally, Cubic contends the procurement does not represent the Government's minimum needs and that it will be funded by an incorrect appropriation in the event of an award to General Dynamics. Further, Cubic alleges that the Air Force improperly held discussions with General Dynamics after the submission of best and final offers and refused to reopen discussions with Cubic in order to take advantage of cost savings which were available because of changes in a Department of the Navy contract being performed by Cubic. Finally, Cubic states it was denied the opportunity to propose a cost-effective alternate approach to using Government-furnished equipment.

The protest is dismissed in part and denied in part.

In resolving this protest, we have had the benefit of examining all of the documentation relevant to Cubic's protest, some of which was not available to the parties, since the material is not publicly releasable. Therefore, our discussion of its content must necessarily be in general terms. In addition, our audit staff provided assistance in our review of the technical and cost evaluations.

Technical Evaluation

The solicitation provides that the technical area is the most important in determining the successful offer, price/cost is next most important, and the management area is least important. Here, the Air Force found that both technical proposals were essentially equal in quality and level of risk. General Dynamics was selected for award because its overall price was lower.

Cubic argues that the ranking of the two proposals as technically equal is arbitrary and capricious. Since Cubic has not seen the evaluations, nor General Dynamics' proposal, its arguments are based almost entirely on the past performance of General Dynamics' and Cubic's respective systems and on its assessment of the state of each company's current technology.

In resolving cases in which a protester, as here, challenges the validity of a technical evaluation, it is not the function of our Office to evaluate proposals in order to determine which should have been selected for award or to rescore the proposals. The determination of the relative merits of proposals is the responsibility of the procuring agency, since it must bear the burden of any difficulties incurred by reason of a defective evaluation. In light of this, we have held that procuring officials enjoy great discretion in the evaluation of proposals and such discretion must not be disturbed unless shown to be arbitrary or in violation of procurement statutes and regulations. Industrial Technology Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47. Thus, our Office will not substitute its judgment for that of the procuring agency by making an independent determination. John M. Cockerham & Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180.

For the following reasons we cannot conclude that the Air Force ranking of the two proposals as essentially equal technically is without a reasonable basis.

As we stated above, most of Cubic's arguments concern past performance or perceived present capabilities. In assessing the importance of the points made by Cubic concerning relative past performance, it is essential to understand that past performance is only one of four equally important evaluation criteria that must be applied to the technical proposals. Cubic also attacks the Air Force's responses to its protest as showing that certain facts or arguments were either deliberately or inadvertently ignored in the evaluation. While the portion of the responses released to Cubic does not always reveal the degree to which such facts were actually considered in the source selection, we have been able to ascertain that by examination of the nonreleasable source selection documents.

Cubic's basic argument is that its most advanced presently operational Air Combat Maneuvering Instrumentation (ACMI) systems are very close to meeting the important functional requirements for the HUS, while General Dynamics' presently operational Range Measurement Systems (RMS) are nowhere near meeting HUS functional requirements. Therefore, it is argued that General Dynamics' proposal must be based on mere speculation and cannot be considered equal to Cubic's proposal, which relies on the proven ACMI technology.

Cubic claims that the RMS was not designed to track high dynamic targets in position, velocity and attitude (the orientation of an aircraft in space) and to communicate aircraft weapon system information to the ground, as the HUS requires and and ACMI currently does. The protester states, in that regard, that "Cubic does not contend that GDE is incapable of designing such a system, but believes strongly that the basic RMS architecture

proposed for the GDE HUS is not suited for the air combat training application." In support of this, Cubic cites problems encountered with General Dynamics' RMS/SCORE system during an Air Force exercise designated TASVAL. One problem encountered was a high variability in the accuracy of attitude information transmitted from pods (hardware carried by the aircraft) to the ground. Another problem was that the pod "would not remain in a state of initialization high enough to determine attitude * * * at various times during a trial." According to Cubic, the contracting officer was either unaware of this record or has chosen to ignore it.

The Air Force response to this line of argument is generally that comparisons of present RMS's and ACMI systems are only marginally relevant; the technical evaluation is based on the merits of the proposals, not the current systems. Additionally, the Air Force claims to have been well aware of the information pointed to by Cubic detailing the RMS limitations, as well as of limitations in the ACMI systems. The Air Force provided us with specific information concerning its awareness of historical data, which was not furnished to the parties.

General Dynamics disputes Cubic's assertion that the RMS cannot monitor attitude. According to General Dynamics, while the initial RMS did not have that capability, the RMS/SCORE does have it. General Dynamics also characterizes Cubic's portrayal of the RMS/SCORE performance on TASVAL as misleading. General Dynamics asserts that RMS/SCORE provided attitude data 86 percent of the time and tracking data 99.6 percent of the time during the test. Also, General Dynamics argues that the problems pointed to by Cubic were caused partially by the nature of TASVAL. For example, TASVAL scenarios required tracking aircraft flying within 100 feet of the ground (HUS requires tracking no lower than 5,000 feet). This can cause loss of initialization because line of sight between the aircraft and tracking stations is often obscured for extended periods. According to General Dynamics, other factors beyond its control that may have contributed

to the problems were; flights outside the range area, the less than recommended number of airborne stations used, and fluctuations in aircraft voltage delivered to the pod. In summary, General Dynamics asserts that the RMS/SCORE performance under extremely severe conditions is to be commended rather than criticized.

Cubic also provides a chart comparing HUS requirements with current General Dynamics RMS and Cubic ACMI capabilities. General Dynamics has provided comments on the chart, disagreeing with each entry and arguing that it compares Cubic's most advanced ACMI with General Dynamics' basic RMS. For example, Cubic points out that the HUS requires 16 pods for use on tactical fighters, and that while Cubic has 200 pods in operation and 110 in production, General Dynamics has no qualified RMS pods. On the other hand, General Dynamics claims that the P-3 and P-4 pods in operation do not meet HUS operational or reliability requirements in that they cannot track 16 high activity aircraft and cannot transmit data signals simultaneously at a 10 millisecond sampling interval. Also, General Dynamics points out that its RMS Concept and RMS/SCORE pods, which are more advanced than its basic RMS pods, were not mentioned by Cubic. Another chart example compares the HUS requirements for mean time between failures (MTBF) and mean time to repair (MTTR) (200-600 hrs./60 min. max.) to Cubic's ACMI (238 hrs./30 min. demonstrated) and General Dynamics' RMS (none specified or demonstrated). General Dynamics rebuts this comparison by producing a recent study which concludes that the P-4 pod has a "projected operational reliability range" of from 157.9 to 185.7 hours MTBF. General Dynamics notes that one of the least reliable modules of the P-4, the transponder, will be replaced by General Dynamics' more reliable transponder in General Dynamics' proposed HUS pod. These examples of Cubic's comparisons and General Dynamics' rebuttals are typical of the 13 total entries.

Another area of dispute concerning current systems is the relevance and state of development of an air combat training system purchased by Israel from General Dynamics. General Dynamics contends that the system is nearly identical to the HUS and is nearing acceptance testing. General Dynamics also contends that the Israelis chose General Dynamics' system over Cubic's ACMI in a head-to-head competition. This, asserts General Dynamics, is evidence of the superiority of its current technology. Cubic argues that the Israeli purchase of the General Dynamics system was a purely political decision motivated by Israel's desire to purchase F-16's from General Dynamics and, therefore, shows nothing about the comparative technological merits of the systems. Cubic also characterizes the Israeli-purchased system as "not close to being operational" and states that GAO should seriously question the Air Force's reliance on the Israeli-purchased system as evidence of General Dynamics' technical proficiency.

Cubic also disputes the number of RMS's General Dynamics has in operation. The Air Force initially used the figure seven in its report. Cubic disputed that figure, claiming that General Dynamics has only five RMS's in operation. The Air Force and General Dynamics appear to have acquiesced on this point. Cubic contends that this error is significant because it shows the Air Force's anti-Cubic bias and shows that the source selection authority may not have been aware of the true extent of General Dynamics' past experience. General Dynamics dismisses the error as inadvertent and insignificant.

The Air Force also stated in its report that operational ACMI's do not yet simulate eight simultaneous missile firings (HUS requirement). Cubic disputed this, pointing out that three Cubic ACMI's have had the capability for 2 years. The Air Force response was that it was referring to Cubic's baseline system, which does not simulate eight missiles. Additionally, Cubic claims that the Air Force report implies that substantial development will be required for Cubic's system to track 16 aircraft (HUS requirement). Cubic claims that the high risk portion of such

development has already been completed on another contract.

Finally, in response to a section of the solicitation that required offerors to list relevant past contracts and submit information concerning their performance, General Dynamics listed a Navy contract known as CTS. The Air Force apparently determined that the contract was for a system more complex than HUS with different requirements and, therefore, was not relevant for consideration. Cubic argues that it is particularly relevant since it was an attempt to upgrade the RMS technology, as HUS is, and it failed. Cubic argues that the Air Force decision to ignore this contract lacks a rational basis.

After careful examination of the source selection documents, in light of the above arguments, we reach these conclusions. Contrary to Cubic's assertions and its reading of the report, the technical team, the source selection evaluation committee, and the source selection authority were well aware of the differences between the current Cubic ACMI technology and the General Dynamics RMS technology. However, the evaluators found that General Dynamics' proposal adequately explained how it would overcome limitations in its currently operational technology. We cannot say that position lacks a reasonable basis. The source selection documents reveal that both proposals were scrutinized carefully, that deficiencies were found in both, and that those deficiencies were resolved to the satisfaction of the evaluators during discussions. The record also discloses that the Air Force was aware of the specific past performance history of the offerors' systems in most respects, and that the past performance was verified by contacting the appropriate commands.

However, it does appear that the Air Force's statements concerning the number of RMS's currently operational and Cubic's ability to simulate eight missile firings are not accurate. Our review of the source selection documents does not reveal whether the information was presented to the source selection authority, although the

technical evaluation team was aware of the information. Even if the source selection authority was unaware of the information, we doubt that the number of operational RMS's is relevant, and while Cubic's ability to simulate eight missile firings is relevant, we cannot say that it would have a significant effect on the source selection authority's decision in light of the overall equal ranking of the proposals.

We also think that the Air Force was remiss in not considering General Dynamics' CTS contract. While perhaps not directly comparable, the contract seems to us to fall within the solicitation's definition of relevance. However, this is a relatively minor matter in the overall evaluation, and not a serious defect.

In summary, the record shows that the evaluators had the relevant information concerning the proposals before them, and evaluated the proposals in accordance with the stated evaluation criteria. The record shows that while General Dynamics' proposal was not initially rated as equal to Cubic's, it was not at that time considered seriously deficient, as Cubic alleges. The record also shows that through discussions, General Dynamics was able to bring its proposal up to a level of rough equality with Cubic's. In short, we cannot conclude that the evaluation was without a rational basis.

Price/Cost Evaluation

Price/cost was second to technical evaluation in importance, but was not to be rated or scored. The price/cost evaluation criteria for award of the contract were to be applied in the following manner. Offerors were to submit firm-fixed prices for the basic system. This figure was termed the instant contract price. Cost data for the components of this price were to be analyzed for realism, continuity, completeness, reasonableness, and relevant past performance. Additionally, offerors were to provide firm-fixed prices for two optional line items, one of which was 1 year of contractor maintenance for the HUS. The cost breakdowns of the

options were also to be examined in the same way as other cost elements. For purposes of evaluation for award, the option prices were to be added to the instant contract price.

The solicitation also provided that offerors were to propose projected operations and support costs for a 10-year period. The solicitation does not specify exactly how these costs would be factored into the evaluation, other than that they were not as important as instant contract price. A general guideline for preparation of the estimate, a work breakdown structure and general definitions are also included in the solicitation. There is no stipulation as to the cost model to be used by the offerors, or as to the type of input data required. The solicitation stated that the cost team would prepare a Government estimate of operations and support cost for each offeror based on its proposed concept or design. That estimate was to be the baseline for determining the reasonableness of contractor estimates of operations and support costs.

Cubic has raised three issues concerning the price/cost evaluation. First, Cubic contends generally that while General Dynamics' price may be lower than Cubic's, that difference must be tempered by the results of the cost realism evaluation. Second, Cubic contends that General Dynamics' 10-year operations and support costs must be higher than Cubic's. If not, the evaluation is defective. In that regard, Cubic contends that one of the major elements of the operations and support cost, spare parts availability, must favor Cubic because 80 percent of Cubic's parts are already available through the Air Force Logistics Command inventory, while General Dynamics' parts are not. Also, Cubic argues that if General Dynamics' proposed costs are lower, that is a result of overly optimistic engineering projections. Cubic's costs, on the other hand, are based on operational data, which are more realistic. Cubic contends that a failure to take this into account would render the evaluation defective.

Finally, Cubic argues that the Air Force has not considered cost savings to be gained from standardization and interoperability of the HUS and other systems.

Concerning the cost realism evaluation of General Dynamics' instant contract price, Cubic has not raised any alleged defect, but merely stated that cost realism must be evaluated. The source selection documents show that such an analysis was performed, which on its face appears reasonable.

In regard to the argument about the spare parts integration into the Air Force Logistics Command inventory, the Air Force stated that this system's spare parts will not be provisioned under the AFLC, but will be command supported, and the solicitation did not provide otherwise.

Concerning Cubic's argument about the potential cost savings of interoperability and standardization, there is nothing in the solicitation requiring or even permitting the Air Force to consider such a factor. To the degree that Cubic is arguing that such a factor should have been included, its argument should have been raised prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(b)(1) (1981). That analysis is equally applicable to Cubic's concerns about using engineering estimates versus historical operational data for input into the cost proposal and evaluation. No preference for either was expressed--only that the input data be supportable. We are unable to say that the General Dynamics input data were unsupported.

In examining the 10-year operations and support costs, we noticed that the Air Force did not specify that the offerors use a particular life cycle costing model in preparing their estimates, nor did the Air Force disclose the model that it would use in preparing its independent estimate. While that did not render the life cycle cost analysis defective, it did make a meaningful comparison of the various estimates difficult. The Air Force should consider providing that information in future solicitations which involve the evaluation of life cycle costs.

In any event, Cubic's evaluated 10-year operations and support costs were in fact lower than General Dynamics' as Cubic argues they should be. That fact was considered in the source selection decision in accordance with the guidance provided in the solicitation.

Request for Investigation

Regarding the evaluation of the proposals, one other matter requires discussion.

After the Air Force responded to Cubic's protest in a report of July 23, 1981, GAO received letters from three Government employees--one technical evaluator and one management evaluator on the procurement, and a contracting officer from previous contracts with both offerors. The employees disagreed with various statements and conclusions in the Air Force report. Cubic, relying on those letters and alleged inconsistencies in the Air Force report, requested that we interview the approximately 50 evaluators individually and in private. Cubic stated that:

> "This situation is unprecedented. Three government employees have come forward to indicate that the official Air Force position is incorrect and is premised on inaccurate data. It is rare for one government employee to publicly state that an official position is wrong; it is mind-boggling for three government employees to do so by writing letters to the GAO."

According to Cubic, it is necessary that GAO go beyond its usual and longstanding policy of relying on the written record in deciding whether technical evaluations are reasonable, because Cubic speculates that the written documentation of the source selection may not represent what actually occurred and demands that we conduct an investigation to ascertain whether it does or does not. It is, of course, possible that the written record of any complex, negotiated procurement does not accurately reflect what actually occurred, and protesters often ask us to conduct independent investigation. Yet, GAO does not, and

realistically cannot, conduct such investigations except in extraordinary circumstances. It is incumbent on the protester to make a strong showing that there is reason to doubt the integrity of the written record. It is our opinion that Cubic has not successfully carried that burden.

This is not a case where the written documentation is sketchy or incomplete. In addition to the parties' arguments, voluminous documentation has been provided to us for in camera review. The documents include the complete proposals of both offerors, the complete record of discussions with the offerors, a complete record of the presentations made by the various evaluation teams to the source selection authority over the course of the procurement, the final reports of the evaluation teams, and the report of the source selection evaluation committee to the source selection authority. We have carefully scrutinized this material, in light of the three letters and the factual inaccuracies alleged by Cubic, and have concluded that the evidence before us is not sufficient to cast doubt on the integrity and accuracy of the material.

Concerning the letters, it is not unusual for some evaluators in any large group to disagree with the final choice of a contractor or to feel that their opinions were not adequately reflected in the selection. That is almost inevitable, given the inherent nature of the reports and decisions that are based on a synthesized "consensus" of individual opinions and it is our opinion that they do not cast doubt on the accuracy of the written record.

The letter from the member of the technical evaluation team expresses disagreement with the assessment that the proposals were essentially equal based on her own evaluation and what she knew of others' evaluations. However, as the Air Force points out, the evaluator was one of 10 members of the technical evaluation team and had primary responsibility for three of nine factors in one of three areas of technical evaluation. Additionally, the evaluator departed after the initial technical evaluation and, therefore, was not involved in discussions with offerors and subsequent proposal revisions.

Our examination of the briefings and reports presented to the source selection authority reveals that the evaluator's comments and rating of the proposals (which we were provided) were fairly reflected in the initial prediscussion presentation to the source selection authority. The deficiencies in General Dynamics' proposal noted by the evaluator were, in fact, the subject of discussions and were subsequently resolved by General Dynamics to the satisfaction of the Air Force. This possibility was anticipated by the evaluator, who stated in her letter that "[s]ubsequent events may have provided good reason to change the evaluation." In short, the written documentation that we have is consistent with the statements of the evaluator.

The letter from the management evaluator has nothing to do with the technical evaluation, but rather disputes a statement in the Air Force report comparing the 10-year estimated cost of spare parts support of current Cubic and General Dynamics systems. The letter goes on to argue that it would be more expensive to support a General Dynamics system because most of Cubic's spare parts are already included in the Air Force's Integrated Logistics System, while none of General Dynamics' parts are. As noted above, the parts will not be integrated into the system and, therefore, this argument is irrelevant.

Finally, the third letter is from an employee of the Defense Logistics Agency who has been an administrative contracting officer on contracts for existing systems of both offerors and who concludes that the two proposals cannot be technically equal. This person has no involvement with the procurement and has not seen the proposals or the technical evaluations. The letter provides no reason to question the accuracy of the source selection documents as a record of the actual events, since it does not involve them or the events of the procurement.

Finally, Cubic cites nine "inaccuracies" in the Air Force responses to its protest. Cubic argues that since the same people who prepared these responses also were involved in the procurement, such inaccuracies were probably present in the source selection process.

Of the nine alleged inaccuracies cited by Cubic, only two can reasonably be classified as factual inaccuracies--the statements made by the Air Force concerning the number of operational RMS's and the ability of Cubic's ACMI to simulate eight simultaneous missle firings. Our assessment of the relevance and effect of those inaccuracies has been discussed in connection with the technical evaluation. The other statements characterized as inaccuracies are more on the order of arguments on the merits of the protest.

Timeliness

Cubic argues that the HUS does not represent the minimum needs of the Air Force because it is duplicative of present air combat training systems, yet not compatible with them. Cubic admits that this issue is untimely because it should have been raised prior to the deadline for submission of proposals. However, Cubic argues that the issue "is new and significant" and, therefore, should be considered under the significant issue exception of our Bid Protest Procedures, 4 C.F.R. § 21.2(c) (1981).

Cubic appears to be protesting the wisdom of the Air Force purchasing this particular system, rather than protesting that the specifications are in excess of minimum needs and, thus, are restrictive of competition. The first question is a matter of judgment for the Air Force to decide, while the second would be a question within our purview. Even if the protest can be characterized in the second way, it is clearly untimely and not a significant issue. The significant issue exception is to be used sparingly and generally involves issues that have not previously been decided by GAO. The issue termed significant by Cubic, stated requirements in excess of minimum needs, is one of the most commonly raised issues in bid protests before us.

Additionally, Cubic's complaint that it should have been permitted to propose a cost-effective alternative to modifying Government-furnished equipment should have been raised within 10 days of the Air Force's alleged statement that such an

alternative would not be considered. 4 C.F.R. § 21.2(b)(2) (1981). Cubic states that it was aware by the date due for best and final offers that it could not propose its alternative approach. The protest was filed more than 10 days after the date set for best and final offers, so the issue is untimely raised and will not be considered.

Cubic also complains that the number of pods (hardware carried by aircraft) was reduced from the 26 required in the RFP to 16, and that the reduction favors General Dynamics. This change was made on March 9, 1981. Cubic did not protest the change within 10 working days, and its complaint is untimely.

Post-Best-and-Final Discussions

Cubic contends that General Dynamics and the Air Force improperly engaged in discussions after best and final offers were received. However, the Air Force denied the charges and Cubic has provided no evidence to support its contention. In short, the protester has failed to carry its burden of proof. Reliable Maintenance Service, Inc.--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 377.

Contract Funding

Cubic argues that if General Dynamics is awarded the contract, substantial research and development will be required for General Dynamics to bridge the technological gap between its present RMS and the HUS requirements. Cubic alleges that the Air Force plans to fund the contract using funds from the "Other Procurement-Air Force" category (Fiscal year 1979 funds), which are not appropriated for research and development purposes.

The Air Force states, in its report, that since the current systems of both offerors were determined to be acceptable baselines for the HUS, no research and development would be required. Therefore, it argues, funding from the "Other Procurement-Air

Force" category is appropriate. However, we understand that the Air Force is reexamining the question since the fiscal year 1979 funds referred to by Cubic have expired and other funds will have to be used to fund the contract. Moreover, the question of contract funding is not relevant to the propriety of the source selection, which is the issue in this protest. Under the circumstances, we regard the issue of contract funding as a matter of contract administration which will not be considered in this protest. See, e.g., Connelly Containers, Inc., B-199180, June 19, 1981, 81-1 CPD 510.

Air Force Refusal to Reopen Discussions

Cubic was the sole offeror on a separate procurement for pods with a different contracting activity. Prior to best and final offers in the HUS procurement, the contracting activity in the pod procurement specified that 68 of the 110 pods were to be in the P4 mode. According to Cubic, P4 pods require significant modification with concomitant expense in order to be usable on HUS. Cubic based its best and final offer on the HUS procurement on modification of P4 pods. After the best and final offers on the HUS procurement were submitted, the contracting activity on the pod procurement specified that the remaining 42 pods were to be manufactured in the P4AX mode. Cubic contends that modification required of the P4AX in order that it be usable on HUS is less difficult and less expensive than modification of the P4 pods. Therefore, Cubic could have reduced its best and final offer on the HUS procurement.

Based on this information, Cubic requested that the contracting officer reopen negotiations and hold another round of best and final offers to permit Cubic to modify its proposal in light of the new information. The contracting officer refused the request.

Cubic cites Sycor, Inc., B-185566, April 27, 1976, 76-1 CPD 218, and 47 Comp. Gen. 279 (1967) in support of its contention that the Air Force should reopen discussions to take advantage of a potential cost savings.

The general rule is that once negotiations have been held and best and final offers received, negotiations should not be reopened unless it is clearly in the best interests of the Government to do so. ILC Dover, B-182104, November 29, 1974, 74-2 CPD 301. In Sycor, we found that the contracting officer was not barred from reopening discussions when a substantial time period had elapsed since best and final offers had been submitted and the prime interest rate had dropped substantially, because the contracting officer felt that the Government would be likely to receive unrealistic pricing. We did not find that reopening of discussions was required. In 47 Comp. Gen. 279, we did say that discussions should be held, based on a price reduction from one offeror. However, in that case, no discussions had been held. We recognized that distinction in ILC Dover.

Here, discussions were held. While Cubic contends that cost savings would accrue to the Government if Cubic is permitted to consider the P4AX pod in its proposal, the Air Force determined that the potential for such savings was insufficiently certain to permit reopening discussions. We see no reason to disagree. Consequently, we cannot say that the contracting officer should have reopened discussions.

The protest is dismissed in part and denied in part.

Harry R. Van Cleve
For Comptroller General
of the United States