

**DECISION**



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

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**FILE:** B-213949

**DATE:** September 10, 1984

**MATTER OF:** Stewart & Stevenson Services, Inc.

**DIGEST:**

1. GAO's Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), require that alleged solicitation improprieties which do not exist in the initial solicitation, but which are subsequently incorporated therein, must be protested no later than the next closing date for receipt of proposals. GAO finds that protester's contention that solicitation's award basis should have changed to cost only when the solicitation was amended to change procurement process from four-step method to conventional negotiating process is untimely because this contention was raised after award.
2. While an agency's competitive range discussions with an offeror must be meaningful, the agency is not obligated to afford all-encompassing negotiations with the offeror. The content and extent of meaningful discussions in a given procurement are matters primarily for determination by the agency and this determination is not subject to question unless it is clearly without a reasonable basis. GAO finds that the content and extent of discussions with the protester were reasonable.
3. In negotiated procurements, the agency has broad discretion in determining the manner and extent to which it will make use of the technical and cost evaluation results and award need not be made to the offeror who proposes the lowest costs. GAO finds that in view of the solicitation's award criteria which made technical considerations more important than cost, the agency reasonably concluded that protester's lower proposed cost did not outweigh the

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high performance risks associated with the protester's technical proposals.

5. The agency need not have considered the supporting technical data furnished after award by the manufacturer of the protester's proposed equipment since the RFP specifically cautioned offerors that all statements made in their proposals had to be substantiated. Proposals basically must be evaluated on the basis of the information furnished with them.

Stewart & Stevenson Services, Inc. (S&S), protests the award of contracts to Ingersoll-Rand Company (Ingersoll) and Teledyne Continental Motors (Teledyne) under request for proposals (RFP) No. F33657-83-R0012 issued by the Air Force. The RFP was for the development of a new ground power generator system that would provide the necessary electrical power, air start capability, and air-conditioning for the servicing and maintenance of tactical aircraft.

S&S contends that the Air Force failed to provide the company with a reasonable opportunity to correct or explain the deficiencies allegedly found with regard to the performance of S&S's proposed Detroit Diesel Allison engine. S&S further contends that the significantly lower costs that it proposed should have overridden any "obscure" technical deficiencies and performance risks that the Air Force found in S&S's technical approach. Finally, S&S contends that in changing from a four-step source selection procedure to a conventional negotiating process during the course of the procurement, the Air Force should also have made cost the ultimate award selection criteria.

For the reasons set forth below, we dismiss in part and deny in part S&S's protest.

#### Background

The RFP was issued on November 30, 1982. The RFP specified that the new ground power generator system to be developed was to consist of a ground power cart and a ground air-conditioning system. The RFP further specified that the purchase of the required system was to be accomplished in two phases. Phase I called for the competition of two contractors through the parallel research, design, development and testing of their respective system designs. The Air Force would then select one of the competing designs for the phase II production of an estimated quantity of generator

carts and air-conditioner carts. The RFP was for the phase I development effort only.

Technical proposals were received by the Air Force on February 23, 1983. Price proposals were received on April 28, 1983. S&S provided two separate technical proposals and three price proposals. One of S&S's technical proposals covered a system design configuration using a diesel engine and the other covered a system design configuration using a turbine engine. Written inquiries and deficiency reports were furnished to S&S concerning various aspects of the company's technical proposals. In addition, oral discussions were conducted with S&S on August 29 and 30, 1983. On October 28, 1983, S&S submitted its best and final offer to the Air Force.

Following the evaluation of all the best and final offers submitted, the Air Force determined that Ingersoll and Teledyne had the best offers, price and other factors considered. Awards for the phase I work were made to those two firms on December 9, 1983, and on December 16, 1983, S&S protested the awards to our Office.

#### Timeliness

The Air Force argues that S&S's challenge to the award evaluation the Air Force made under the conventional negotiation process is untimely. The Air Force states that the RFP as originally issued advised that a four-step source selection procedure as referenced in Defense Acquisition Regulation, § 4-107, reprinted in 32 C.F.R. pts. 1-39 (1983), would be used. The Air Force further states that it changed the selection procedure to a conventional negotiation process because of the number of deficiencies and their potential cost impact found in all the submitted proposals. The Air Force points out that the amendment which changed the selection process was issued on May 25, 1983. Therefore, the Air Force takes the position that in failing to object to the change until well after awards were made, S&S's protest is untimely.

S&S argues that the May 25, 1983, amendment to the RFP only advised that there was a change from the four-step procedure to a conventional procedure and the reason therefor. According to S&S, there was no basis for protest at that time because "there was no known violation of procedures." S&S asserts that it was not until awards to Ingersoll and Teledyne were announced on December 9, 1983, that the

company knew that the Air Force must have made awards to higher priced offerors based solely upon technical superiority with no regard to cost. Thus, S&S contends that its December 16, 1983, protest was timely on this issue.

We find that S&S's protest against the award selection under the changed procurement process is untimely. In its protest, S&S emphasizes that the RFP's evaluation scheme remained the same despite the change in the procurement process. Further, S&S suggests that we should question the Air Force as to why the evaluation scheme remained unchanged when the process was changed so "drastically." Thus, we find that S&S is clearly protesting the selection criteria for award not changing concurrently with the change to the conventional negotiation process. In this regard, the RFP provided that the primary evaluation elements were technical, management, integrated logistics support, and cost to the government. Of the four elements, the RFP specified that technical would be of greater importance than the other three. Also, the RFP stated that the government reserved the right to award to other than the low offeror.

Under our Bid Protest Procedures, alleged solicitation improprieties in negotiated procurements which do not exist in the initial solicitation, but which are subsequently incorporated therein, must be protested not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(b)(1) (1984). Here, the next closing date would have been the time set for the submission of best and final offers. S&S, however, did not protest the RFP's unchanged evaluation scheme until well after it had submitted its best and final offer on October 28, 1983.

#### Discussions

S&S contends that the Air Force improperly failed to conduct discussions or advise S&S of deficiencies in the performance of the Detroit Diesel Allison engine proposed by S&S. S&S alleges that Air Forces's decision to award contracts to the higher priced proposals of Ingersoll and Teledyne rather than S&S's proposals was bottomed solely on the alleged inadequacy of this engine. S&S argues that because its diesel and turbine engine proposals were within the competitive range on May 25, 1983, when the RFP was amended to permit discussions, the company could not be properly excluded from award consideration without having the opportunity to submit revisions and clarifications up to the date fixed for receipt of best and final offers.

In addition, S&S alleges that in response to Air Force concerns over the "derated performance" of S&S's proposed diesel engine, the company furnished the Air Force a derating curve for "worst case" performance following oral discussions on August 29 and 30, 1983. S&S argues that even assuming the accuracy of the Air Force's determination regarding the performance of its diesel engine, no opportunity was given to S&S after oral discussions and before best and final offers to clarify the engine's performance capability. According to S&S, any questions concerning the derating curve could have been explained to the satisfaction of the Air Force's technical evaluators. In S&S's view, the Air Force's evaluators would have recommended award to S&S at significant savings of defense dollars had the evaluators allowed themselves the reasonable opportunity to have S&S provide its experience and expertise to explain the engine's performance.

When an agency conducts competitive range discussions, it must make those discussions meaningful. Raytheon Company, 54 Comp. Gen. 169 (1974), 74-2 C.P.D. ¶ 137. However, we have specifically rejected the notion that agencies are obligated to afford offerors all-encompassing negotiations. All-encompassing negotiations may unfairly prejudice the rights of other competing offerors. In particular, deficiencies or weaknesses in a proposal need not be pointed out when to do so could result in technical "transfusion" (disclosure of one offeror's innovative solution to a problem) or technical "leveling" (helping one offeror bring his original inadequate proposal up to the level of other adequate proposals by pointing out weaknesses resulting from lack of diligence or incompetence). 52 Comp. Gen. 870 (1973); 51 Comp. Gen. 621 (1972).

Further, the content and extent of meaningful discussions in a given case are matters of judgment primarily for determination by the agency involved and that determination is not subject to question by our Office unless it is clearly without a reasonable basis. Washington School of Psychiatry, B-189702, Mar. 7, 1978, 78-1 C.P.D. ¶ 176; Systems Engineering Associates Corporation, B-187601, Feb. 24, 1977, 77-1 C.P.D. ¶ 137. Such matters are not subject to any fixed, inflexible rule. 53 Comp. Gen. 240, 247 (1973). In general, government negotiators should be as specific as practical considerations will permit in advising offerors of the corrections required in their proposals. 52 Comp. Gen. 466, 468 (1973).

It is clear from the record that the Air Force did conduct detailed discussions with S&S concerning many aspects of the company's proposals. Once the Air Force changed the procurement from a four-step process to a conventional negotiating process, all the deficiency reports were issued to S&S and the other offerors at the same time. The record shows that S&S's initial proposals contained numerous generalized statements of compliance with the RFP requirements and that a lack of supporting data existed in many key technical areas. The record further reveals that this lack of data still persisted even after S&S was notified of their existence through the deficiency reports. For example, the record shows that S&S did not demonstrate, despite being notified in a deficiency report, how it intended to comply with the RFP requirements for system shock and vibration. As another example, S&S did not provide any description of the configuration, function, and design of its intermediate gearbox even though the Air Force specifically requested S&S to provide as much information as possible on the gearboxes that S&S proposed. Finally, a general lack of data persisted in the following areas even after S&S had responded to the deficiency reports covering them: (1) overall structural design, (2) air conditioner performance, (3) control system development, and (4) mobility of the cart transporting the air conditioner.

As to S&S's allegation that no discussions were conducted regarding the performance of its proposed diesel engine, the record shows that a deficiency report was issued on this engine. The deficiency report informed S&S that (1) derated power curves were not shown for all operating conditions, (2) the origin of the basic engine performance curves were not explained, and (3) the engine horsepower output ratings identified in the proposal were not substantiated by the engine manufacturer's published data that was made available to the Air Force's technical evaluators. S&S responded to the deficiency report by providing the Air Force with several engine performance derating curves.

In our view, S&S seems to be objecting to the fact that after receiving S&S's response, the Air Force did not continue to raise any problems that it had with the performance of S&S's engine, especially during subsequent oral discussions. We have held that an agency is not required to help an offeror along through a series of negotiations so as to improve its technical rating until it equals the other offerors. Decilog, Inc., B-206901, Apr. 5, 1983, 83-1 C.P.D. ¶ 356; Trellclean, U.S.A., Inc., B-213227.2,

June 25, 1984, 84-1 C.P.D. ¶ 661. Moreover, the record indicates that the problems that the Air Force continued to have with diesel engines stemmed not from the adequacy of the engine performance derating curves that S&S submitted, but from the fact that S&S failed to address the agency's concerns with the engine horsepower rating in S&S's proposal not being substantiated by the engine manufacturer's data. Thus, we find that the content and extent of discussions by the Air Force concerning the performance of S&S's diesel engine were reasonable.

#### Award at a Higher Price

S&S contends that the awards to Ingersoll and Teledyne were improper because the Air Force selected marginal producers at much higher costs to the disadvantage of the competitive acquisition system. According to S&S, the awards to these two companies denied the Air Force the benefits of an S&S commercially based product at very substantial life-cycle cost savings due to increased fuel efficiency. S&S emphasizes that it is a leading producer of commercial aircraft ground support equipment and that the equipment proposed by it was a refinement of its time-tested commercial equipment used by United States and foreign air carriers. S&S further emphasizes that it deliberately structured its proposal to meet the RFP's guidelines which made cost the ultimate objective in the acquisition of the developed ground power generator equipment.

The Air Force states that the RFP specifically provided that technical was of greater importance than cost. The Air Force further states that its technical evaluation was based on an integrated assessment of the overall value of each proposed system consistent with the terms and conditions of the RFP. The Air Force also states that based upon its evaluations, Ingersoll and Teledyne were found to have offered the best proposals with technical, price and other factors considered. With respect to S&S's proposals, the Air Force points out that although S&S was not eliminated from the competitive range prior to or after the receipt of best and final offers, there was some doubt as to whether the company was technically in the competitive range in view of numerous informational inadequacies in the proposals. In the judgment of the Air Force, the lower costs proposed by S&S did not override the company's technical deficiencies or the program risks associated with the company's proposals.

In a negotiated procurement, the agency's selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325. Thus, we have upheld awards to higher rated offerors with significantly higher proposed costs because it was determined that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposals. Riggins & Williamson Machine Company, Incorporated, et al., 54 Comp. Gen. 783 (1975), 75-1 C.P.D. ¶ 783. On the other hand, we have upheld awards to lower priced, lower evaluated offerors where it was determined that the cost premium involved in making an award to a higher rated, higher priced offeror was not justified in light of the acceptable level of technical competence available at the lower cost. Grey Advertising, Inc., supra.

As indicated in Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 C.P.D. ¶ 365, where the agency has made a cost/technical tradeoff, the question is whether the determination to make an award to a particular contractor was reasonable in light of the RFP's evaluation scheme.

As noted above, the RFP's primary evaluation elements were technical, management, integrated logistics support, and cost to the government, with technical being of greater importance than the other three elements. The RFP also provided that the selection of contractors would be made on the basis of an "integrated assessment" of the submitted proposals involving a determination by the government of the overall value of each proposed system in terms of capability versus research and development costs. Finally, the RFP specified that the government reserved the right to award to other than the low offeror.

The record shows that the selection of Ingersoll and Teledyne over S&S was primarily based on the determination that the overall technical risks associated with those two companies' proposals were low while the overall technical risks associated with S&S's proposal were quite high. In general, the Air Force found that Ingersoll and Teledyne had furnished adequate technical proposals with no significant weaknesses. On the other hand, the Air Force found that S&S's technical approach was very sketchy and left the agency with no confidence that S&S understood the RFP's



requirements. More specifically, the Air Force recognized that S&S showed commercial experience in the manufacturing of compressed air start and generator carts, but nevertheless felt that S&S's pattern of repeatedly providing vague and/or incomplete responses to deficiency reports and other factfinding inquiries may carry over into the development program if a contract were to be awarded S&S. In view of the foregoing, we find that the Air Force was reasonable in concluding that the lower costs proposed by S&S from increased fuel consumption efficiency did not override the technical deficiencies found in the company's proposal, or the program performance risks associated with its technical approaches.

Furthermore, the record shows that the data supporting S&S's claim of lower fuel consumption costs is somewhat questionable. Specifically, the record reveals that the Air Force determined that there was a moderate risk associated with S&S meeting its proposed fuel consumption values because the Air Force did not know, despite requests for the information, S&S's horsepower estimates for the six operating conditions for which required fuel consumption was specified by the RFP. In the Air Force's opinion, S&S's empirical method of ascertaining fuel consumption contained errors and omissions that could ultimately result in increased fuel consumption. In this regard, the record shows that S&S's analysis did not take into account the efficiencies of S&S's proposed gearboxes which increase the required engine horsepower and, thus, fuel consumption.

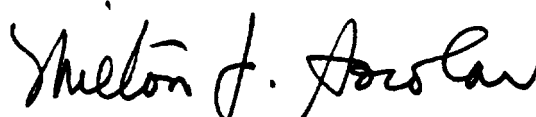
Finally, we note that S&S emphasizes that the manufacturer of the Detroit Diesel Allison engine was contacted by the Air Force on January 5, 1984, concerning whether the engine would meet the RFP's performance requirements. According to S&S, the data which the manufacturer furnished the Air Force on January 13, 1984, if evaluated, would demonstrate that the Detroit Diesel Allison engine fully met the RFP's requirements.

Proposals basically must be evaluated on the basis of information furnished with them. Ensign-Bickford Company, B-211790, Apr. 18, 1984, 84-1 C.P.D. ¶ 439. No matter how capable an offeror may be, it cannot expect to be considered for award if it does not submit an adequately written proposal. Informatics, Inc., B-194926, July 2, 1980, 80-2 C.P.D. ¶ 8. Here, the RFP specifically cautioned offerors that all statements made in their proposals had to be substantiated and that unqualified statements in the proposals would not be considered to be valid. Consequently, we find that S&S was put on notice to provide information to support

statements of compliance with the detailed requirements of the RFP or risk rejection if it failed to provide such information. S&S should not be permitted to have the Air Force consider information after award that S&S should have submitted with its proposals.

Conclusion

Accordingly, we dismiss S&S's protest in part and deny it in part.

A handwritten signature in black ink, reading "Milton J. Rowland". The signature is written in a cursive, flowing style.

Comptroller General  
of the United States