

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

**FILE:** B-219749.2      **DATE:** April 2, 1986

**MATTER OF:** Pacific Sky Supply, Inc.--  
Reconsideration

**DIGEST:**

The General Accounting Office (GAO) sustains a protest on reconsideration where the agency failed to provide GAO with a copy of a memorandum, prepared while the protest was pending, that reversed its determination that the protester's proposal to provide an aircraft part could not be evaluated without a final assembly drawing used by the previous supplier. Since the memorandum establishes that the agency's initial rejection of the protester's proposal was unreasonable, GAO recommends resolicitation if delivery schedules permit.

Pacific Sky Supply, Inc. requests reconsideration of our decision denying its protest in Pacific Sky Supply, Inc., B-219749, Oct. 11, 1985, 85-2 CPD ¶ 406. Pacific Sky argues that the Department of the Air Force failed to provide our Office with a September 3, 1985 memorandum that the protester believes would have changed our decision.

We reconsider our prior decision and sustain the protest.

Our decision involved a purchase order issued to Hamilton Standard Division of United Technologies by the Air Force for 68 base assemblies, which provide support for C-130 aircraft electronic propeller control equipment. Pacific Sky submitted a proposal to provide the base assemblies after the agency announced the planned procurement in the Commerce Business Daily on March 8, 1985. The firm stated that it would purchase all components of the assemblies from suppliers to the previous producer, Hamilton Standard, and would assemble the components in accordance with a drawing in Hamilton Standard's illustrated parts catalog for the item.

034992

The Air Force rejected Pacific Sky's offer because it believed that neither the protester nor the Air Force had sufficient technical data to ensure proper manufacture and, on June 29, 1985, placed an order under a basic ordering agreement with Hamilton Standard. Pacific Sky protested to our Office, contending that since it was going to assemble components manufactured by Hamilton Standard's suppliers in accord with Hamilton Standard's own drawing, a requirement for further technical data was not reasonable. In this connection, the protester submitted a telex message it had sent to Hamilton Standard asking whether the base assembly constructed of components listed in Hamilton Standard's parts catalog "can be used without modification or selection of any kind as stated in Hamilton Standard publication P-5056-6 pages 6-1 thru 6-17." Hamilton Standard's reply, dated August 15, 1985, was as follows:

"CONFIRM P/N 526005 BASE ASSEMBLY ASSEMBLED  
IN ACCORDANCE WITH THE PARTS LIST ON PAGES  
6-15 IN MANUAL P5056-6 IS ACCEPTABLE FOR  
USE."

In its report on the protest, the Air Force stated that "critical tolerances" and the "essential function" of the base assembly mandated purchase only from Hamilton Standard in the absence of that firm's manufacturing data and assembly drawing. The agency's only specific concern, however, related to the location of certain receptacles on the base assembly. The Air Force believed that without the Hamilton Standard final assembly drawing, Pacific Sky could not ensure that receptacles in the base assembly were placed so that pins on equipment supported by the base (a synchrophaser), which are plugged into the receptacles, would not break and disable the equipment.<sup>1/</sup> Pacific Sky had stated in its proposal that it would use an FAA-certified synchrophaser to make sure that the receptacles were properly located. The Air Force contended that, because of the variety of equipment used by the Air Force, this procedure would be insufficient to establish that all synchrophasers would properly align with the base assembly receptacles.

In its response to the Air Force's report, Pacific Sky did not address or even acknowledge the Air Force's argument concerning potential alignment problems. Instead, it asserted that the issue was really one of responsibility,

---

<sup>1/</sup> The synchrophaser automatically controls propeller speed by varying the pitch and angle between the four propellers. Propeller speed may also be controlled manually.

and should be referred to the Small Business Administration under the certificate of competency program. We concluded that the issue was one of technical acceptability and not responsibility. Since Pacific Sky had failed to rebut the agency's technical position and thereby meet its obligation to prove that rejection of its proposal had been unreasonable, we denied the protest.

#### Additional Information

In reaching our decision, we considered the Hamilton Standard telex quoted above. We concluded that, in itself, the message did not refute the Air Force's concern that it could not determine whether the receptacles were properly located on the base assembly without the final assembly drawing.

Pacific Sky has now obtained a memorandum dated August 25, 1985, from the contracting office to the Air Force technical evaluators, requesting reconsideration of Pacific Sky as a qualified source for base assemblies based upon the exchange of telex messages with Hamilton Standard. The contracting office requested that the reevaluation be expedited because of the pending protest. In a memorandum dated September 3, i.e., 5 weeks before we issued our decision on October 11, the Air Force office that had previously found Pacific Sky not to be a qualified source, and whose views were responsible for rejection of the protester's proposal and the Air Force's position in the protest report, reversed its opinion. The memorandum stated that Hamilton Standard's August 15 telex had been evaluated and, in view of it, Pacific Sky was considered a potential source for the base assembly providing the parts were purchased from Hamilton Standard's suppliers and assembled in accord with Hamilton Standard's parts catalog. The technical office added that it would assign the base assembly "a competitive code."

Although the protest was still pending, the Air Force did not provide our Office with a copy of this memorandum. The Air Force notified us that Hamilton Standard had agreed to provide its base assembly drawing so that, whatever our decision on the protest, future procurements would be competitive. We were not told that the agency had already decided that the item could be competitively procured without the drawing.

The Competition in Contracting Act of 1984, 31 U.S.C.A. § 3553(b)(2) (West Supp. 1985), requires agencies to submit a "complete report (including all relevant documents)" within 25 working days from receipt of notice of a

protest to our Office. The act, 31 U.S.C.A. § 3553(f), and our implementing Bid Protest Regulations, 4 C.F.R. § 21.3(c) (1985), further require the report and all relevant documents to be provided to the protester, except for documents that would give the protester a competitive advantage or that the firm is not legally authorized to receive. While neither the act nor our regulations explicitly address documents created while a protest is pending, we believe that in this case the Air Force should have provided us with the September 3 memorandum. The document constitutes a reversal of the agency's technical evaluation upon which it based its position in the protest report. Moreover, as we discuss below, the technical reevaluation was clearly relevant to the reasonableness of the agency's initial determination to reject Pacific Sky's proposal.

The Air Force asserts that its technical reevaluation was based upon "data and information" unknown to the government at the time of the protested procurement actions, i.e., rejection of Pacific Sky's proposal and placement of the delivery order with Hamilton Standard. The agency argues that its original decision must be viewed in light of circumstances at the time, and that subsequent determinations based upon additional information should not be applied retroactively.

The base assembly consists of less than 25 parts bolted together. It has no moving parts and functions only as a platform upon which to mount a syncrophaser. The detailed drawing in Hamilton Standard's parts catalog shows how all the components of the base assembly are to be connected, and no additional assembly drawing appears clearly to be required. However, no dimensions are provided on the drawing, so in considering Pacific Sky's initial protest we accorded some weight to the Air Force's strongly stated concerns that it could not be assured that the electrical receptacles on the assembly would be properly located, even though the agency stated that any risk of syncrophaser pins breaking because of improperly located receptables was not a safety hazard. As discussed above, Pacific Sky did not offer any response to the Air Force's position.

We believe that the Air Force's reversal of its position that an additional assembly drawing is required to

locate the receptacles establishes that its initial position was unreasonable. The only new information apparently considered by the Air Force in its reevaluation was a one sentence telex to the protester from Hamilton Standard stating that a base assembly assembled in accordance with the firm's catalog drawing "is acceptable for use." Hamilton Standard did not indicate what it meant by "acceptable" or for what uses the assembly would be acceptable. The statement is clearly incomplete in its failure to address the location of the electrical receptacles. Pacific Sky acknowledges that the Hamilton Standard drawing is insufficient for this purpose and proposed to use an FAA-certified syncrophaser to place the receptacles. Yet, Hamilton Standard stated that the assembly would be "acceptable" without any reference to how the receptacles could be properly located using only the parts catalog drawing.

The brief telex message from Hamilton Standard to Pacific Sky could not reasonably support the complete alleviation of Air Force concerns about faulty alignment of syncrophaser pins and base assembly receptacles unless those concerns were not meaningful in the first instance. Consequently, on the record before us, we conclude that the Air Force's rejection of Pacific Sky's offer and its underlying technical judgment were unreasonable. Indeed, had the September 3 memorandum been included in the procurement record, we would have sustained the initial protest. Therefore, we reconsider our original decision and sustain the protest now.

#### Recommendation

The Air Force states that the lead time for manufacture of base assemblies is 21 months. The agency reports that it has a sufficient quantity on hand for only 14 months, so that a termination of Hamilton Standard's contract and reaward to Pacific Sky will "cause the grounding of C-130 aircraft and adversely affect the C-130 Programmed Depot Maintenance schedule."

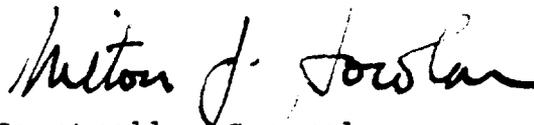
According to Pacific Sky, the Air Force has overestimated the lead time for this equipment. The protester has provided quotations from the component suppliers showing a maximum lead time of 4-1/2 months for components and states that it can deliver the items within 6 months following award.

Pacific Sky's offer was substantially below the price quoted by Hamilton Standard, and the protester is

apparently willing to enter a contract at its original price for delivery well within the 14 months required by the Air Force. The proposal was submitted in response to request for proposals (RFP) No. F09603-85-R-1050, which the Air Force provided to Hamilton Standard and to other firms responding to a Commerce Business Daily announcement. We believe that an award to Pacific Sky in response to its proposal would not comply with the requirement for full and open competition in government procurement, 10 U.S.C.A. § 2304(a) (West Supp. 1985), since other firms have not had an opportunity to submit offers on the basis of the Hamilton Standard drawing used by Pacific Sky. Consequently, we are recommending that the Air Force issue a new competitive solicitation and terminate Hamilton Standard's contract, if time permits. We note that since Hamilton Standard purchases components and merely assembles the equipment, termination costs should be relatively low.

If the agency has insufficient time to complete a competitive procurement, as is apparently the case from the Air Force's representations regarding necessary delivery schedules, the Air Force should negotiate a contract in response to Pacific Sky's original offer, assuming that it otherwise finds the firm responsible. Finally, if in negotiating with Pacific Sky, the Air Force is unable to obtain a satisfactory delivery schedule at the offered price, continuing Hamilton Standard's contract would be appropriate. In that case, Pacific Sky would be entitled to its proposal costs and expenses of pursuing the protest.

We reconsider our prior decision and sustain the protest.



Acting Comptroller General  
of the United States