

Ahearn



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Maytag Aircraft Corporation

**File:** B-237068.3

**Date:** April 26, 1990

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Ronald H. Uscher, Esq., Dempsey, Bastianelli, Brown, & Touhey, for the protester.  
James K. McMillan, Jr., K & M Maintenance Services, Inc., an interested party.  
James C. Dever, III, Esq., Office of the General Counsel, Department of the Air Force, for the agency.  
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Selection of the awardee on the basis of its overall technical superiority, notwithstanding its 3.8 percent higher price, is unobjectionable where agency reasonably determined awardee's higher-priced proposal was worth the additional cost, and cost/technical tradeoff was consistent with the evaluation scheme.
2. Discussions were adequate where agency led protester to areas where its offer was rated less than acceptable and the firm supplied responses in its best and final offer that resulted in a rating of acceptable in all areas; agency was not required to help the firm bring its proposal up to the level of the awardee's higher-ranked proposal.

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## DECISION

Maytag Aircraft Corporation protests the award of a contract to K & M Maintenance Services, Inc., under Department of the Air Force request for proposals (RFP) No. F-33601-89-R-9002B, for aircraft refueling services. Maytag contends that the Air Force improperly evaluated the proposals, failed to justify award to a higher-priced offeror, and failed to conduct meaningful discussions.

We deny the protest.

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The RFP provided that proposals would be evaluated under streamlined source selection procedures, i.e., Air Force Regulation (AF Reg.) 70-30 and Air Force Logistics Command Federal Acquisition Regulation (FAR) Supplement § 15.612-91, and that award would be based on an integrated assessment of an offeror's ability to satisfy the RFP requirements. The integrated assessment would include evaluation under both general criteria--past performance, proposed contractual terms and conditions, and results of a preaward survey--and specific criteria listed in descending order of importance--compliance with requirements, managerial/personnel qualifications, and price. The RFP also listed various subfactors under the nonprice criteria. Additionally, the RFP advised that the government reserved the right to make award to other than the lowest-priced offeror.

The Air Force received 11 proposals and evaluated technical proposals according to color-coded ratings on the nonprice evaluation factors: blue (exceptional), green (acceptable), yellow (marginal), and red (unacceptable); the agency also assigned proposals an overall color rating. After initial evaluation, all proposals received were included in the competitive range. K & M received an overall initial rating of blue, while Maytag received an overall initial rating of yellow. The Air Force then held both written and oral discussions and requested best and final offers (BAFOs). Following evaluation of the BAFOs, the evaluation panel ranked them (without point scoring) based on the relative quality of the color ratings received on the nonprice evaluation factors. K & M's proposal was ranked first among the 11 offers received, with 9 blue ratings (i.e., 1 blue rating for each of the criteria and subfactors). Although Maytag's BAFO responded to the deficiencies in its proposal raised during discussions, the firm's overall rating was raised only to green, and was ranked seventh, with 9 green ratings. K & M's proposed final price (\$6,275,271) was third low and Maytag's (\$6,047,397) was second low.

After the technical evaluation, the evaluation panel made an integrated assessment, taking into consideration both technical and price rankings, which resulted in K & M being ranked first overall, and two offerors other than Maytag ranked second and third. Even though Maytag's price was second low, it was not among the three top-ranked offerors. K & M's price was low among the top three offerors. After the completion of this stage of the evaluation, the panel considered the performance history of the top three offerors and, finding all to be excellent, recommended award to K & M. The source selection authority agreed that K & M's proposal demonstrated the best overall capability to

satisfy the agency's needs considering technical and price factors, and thus awarded a contract to K & M. The Air Force reports that in its determination of the best interests of the government, the agency has not suspended performance of the contract pending this protest. See 31 U.S.C. § 3553(d)(2)(A) (Supp. V 1987).

#### EVALUATION

Maytag first argues that the agency improperly evaluated proposals by applying factors other than those specified in the RFP; it maintains that the source selection authority's written award decision shows that he gave improper consideration to the additional factors of past performance and available resources. Maytag complains that it was not provided an opportunity to furnish information in these areas, nor were any of its current or past contract locations contacted, although it has extensive experience in refueling and fuels management. The protester complains that the evaluation of K & M's past performance was particularly unfair because the firm had the advantage of incumbency.

We will examine an evaluation only to insure that it was reasonable and consistent with the stated evaluation criteria. Fairfield Machine Co., Inc., B-228015, B-228015.2, Dec. 7, 1987, 87-2 CPD ¶ 562. The protester has the burden of affirmatively proving its case and mere disagreement with an evaluation does not satisfy this requirement. Structural Analysis Technologies, Inc., B-228020, Nov. 9, 1987, 87-2 CPD ¶ 466.

We find that the evaluation was proper. First, past performance and available resources of every offeror were evaluated under the technical evaluation to the extent that they impacted upon specific evaluation criteria. For example, under the criterion managerial/personnel qualifications, offerors were required to show experience in fuels management and the ability to properly staff the various functions as required. Second, the RFP provided for further consideration of past performance and proposed terms and conditions (which could include available resources) in a responsibility context. See AF Reg. 70-30 § C ¶ 28. While the Air Force did not evaluate Maytag in these areas at this stage, there was no reason to consider Maytag's responsibility since Maytag was not one of the firm's that appeared to be in line for award. Even had Maytag's references been considered and its past performance

determined to be excellent, the award decision would not have been changed, because the top three offerors still would have surpassed Maytag in the final ratings.

As for K & M's alleged incumbency advantage, an agency is not required to attempt to eliminate a competitive advantage that an offeror might have by virtue of its present or past incumbency, unless that advantage resulted from preferential or unfair action by the government. Wilkinson Mfg. Co., B-225280, Mar. 13, 1987, 87-1 CPD ¶ 284. There is no allegation or evidence of any such preference or unfair agency action here.

#### COST/TECHNICAL TRADEOFF

Maytag alleges that the agency failed to make a specific determination that the technical superiority of the higher priced offeror warranted the additional cost.

Cost/technical tradeoffs may be made in selecting an awardee subject only to the test of rationality and consistency with the established evaluation factors. Litton Indus., Inc., B-236720, Dec. 26, 1989, 89-2 CPD ¶ 595. Even where a source selection official does not specifically discuss the technical/price tradeoff in the selection decision document, we will not object to the tradeoff if supported by the record. Id.

The record supports the Air Force's cost/technical tradeoff here. The RFP provided that the technical factors were more important than price, K & M's technical proposal was rated exceptional in all areas, and Maytag's proposal was rated only acceptable in all areas. The evaluation documents show that the costs of the proposals similarly were considered and ranked, and that both the evaluation panel and source selection official essentially found in their integrated assessments that the substantial technical superiority of K & M's proposal offset the firm's 3.8 percent higher cost. The cost/technical tradeoff therefore was unobjectionable.<sup>1/</sup>

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<sup>1/</sup> The situation here is distinguishable from that in System Dev. Corp., B-213726, June 6, 1984, 84-1 CPD ¶ 605, a case cited by the protester. There, the agency made award without any consideration of cost, and there was no apparent justification for paying \$4 million more for a proposal only slightly better than the protester's technically acceptable proposal. Here, the Air Force considered cost and the price difference between proposals was minimal, while the technical difference was great.

## DISCUSSIONS

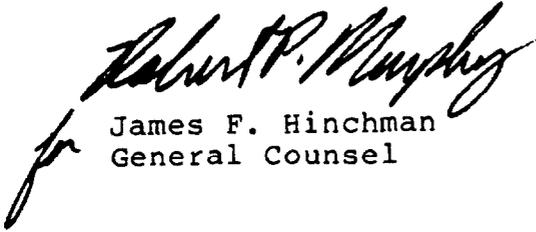
Finally, Maytag contends that discussions were not meaningful because not all of the evaluated deficiencies in its proposal were brought to its attention.

Discussions in a negotiated procurement must be meaningful, and contracting agencies satisfy this requirement by advising offerors in the competitive range of deficiencies in their proposals and affording them the opportunity to correct the deficiencies by submitting revised proposals. Federal Acquisition Regulation (FAR) §§ 15.610(c)(2) and (5); Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407. However, agencies need not afford offerors all-encompassing discussions, or discuss every element of a technically acceptable proposal that received less than the maximum possible rating; rather, agencies need only lead offerors into the areas of their proposal which require amplification. S.T. Research Corp., B-233115, Feb. 15, 1989, 89-1 CPD ¶ 159.

The Air Force met this standard in its discussions with Maytag. It held extensive discussions, both oral and written, with Maytag, such that the firm was able to submit a BAFO increasing its less than acceptable (yellow) ratings to acceptable (green) ratings. Specifically, the agency enumerated in writing eight deficiencies in Maytag's initial proposal, including the two deficiencies the protester complains were inadequately discussed, *i.e.*, proposed method of inventory and manning matrix. Further oral discussions were held during which Maytag submitted additional information. In the agency's written request for BAFOs, it again raised the two deficiencies of concern to Maytag and, again, Maytag responded with a BAFO that improved its rating. The Air Force was not required to advise the protester how it could bring its proposal up to the level of K & M's. See Fairchild Weston Sys., Inc., B-229843.2, B-229843.3, June 3, 1988, 88-1 CPD ¶ 525; Structural Analysis Technologies, Inc., B-228020, *supra*. Such coaching would amount to technical leveling, which is prohibited. See FAR § 15.610(d)(1). The items to be discussed during negotiations are those weaknesses in an offeror's own proposal relative to the solicitation requirements, not the merits of a competitor's offer or how to help the offeror bring its proposal up to the level of other proposals. Martin Advertising Agency, Inc., B-225347, Mar. 13, 1987, 87-1 CPD ¶ 285.

We conclude that the evaluation was consistent with the evaluation criteria; the Air Force performed a proper cost/technical tradeoff in deciding to make award to K & M; and the Air Force conducted meaningful discussions with Maytag.

The protest is denied.

A handwritten signature in black ink, appearing to read "Robert P. Murphy". The signature is written in a cursive style and is positioned above the typed name and title.

for James F. Hinchman  
General Counsel