



Comptroller General  
of the United States  
Washington, D.C. 20548

146267  
Hessoff

## Decision

**Matter of:** Continental RPVs  
**File:** B-246788  
**Date:** March 31, 1992

Gerald G. Leggitt for the protester,  
Douglas P. Larsen, Jr., Esq., and Melvin J. Sliwka, Esq.,  
Department of the Navy, for the agency.  
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

1. Conversations between protester and agency concerning minimum speed requirement for aerial targets did not operate to prospectively waive the requirement which was clearly stated in the solicitation issued after the conversations took place.
2. Protester's own study purporting to show that awardee's aerial target could not meet a mandatory speed requirement is insufficient to invalidate agency's certification that, based on flight tests, the target did meet the requirement.

### DECISION

Continental RPVs protests the award of a fixed-price contract to Meggitt USA, Inc. under request for proposals (RFP) No. N60530-91-R-0210, issued by the Department of the Navy for target drones used in air defense practice.<sup>1</sup> The protester--which submitted the low offer--admits that its target cannot meet a mandatory specification relating to operational airspeed; nonetheless, it argues that the award to Meggitt at a higher price was improper since, in the protester's view, the specification was, in essence, waived by the Navy and, in any event, it is impossible for the awardee's target to meet the same airspeed requirement.

We deny the protest.

<sup>1</sup>The RFP requires the provision of targets, support equipment and operational personnel.

The RFP was issued on June 19, 1991, and amended several times before closing on August 16. A specific prerequisite to award was certification by a government agency that an offeror's proposed target met the technical requirements set forth in the Statement of Work (SOW), including a sustained minimum operational speed range of 65 knots to 200 knots in straight and level flight at 500 feet above ground level with a full payload. BAFOs were requested by letters dated September 13; offerors were specifically advised at that time that a flight certification for the 200-knot speed requirement was a prerequisite to award. The protester's BAFO price was evaluated at \$1,832,080 while Meggitt's was evaluated at \$3,278,280. Meggitt proposed a modified Banshee 300 Series target manufactured by Target Technology Ltd. Continental proposed to team with Boeing Canada Technology Ltd. to provide a Vindicator II target.

The record reflects, and Continental concedes, that it was unable to obtain a flight certification for its Vindicator target because, among other things, the drone could not meet the speed range requirements set forth in the SOW. Meggitt, on the other hand, was issued a flight certification on July 9 by the Marine Corps following that agency's observation of the Banshee target in flight tests conducted between September 1990 and March 1991 and again in a demonstration conducted in April 1991. In conjunction with these tests, the Banshee was specifically found to comply with the speed range requirements set forth in the SOW. Continental was afforded one additional opportunity to obtain a flight certification at a location of its choice; however, its target was unable to obtain a maximum speed of 200 knots in the final test. Accordingly, Meggitt was awarded a contract as the only technically acceptable offeror.

In its protest against the award to Meggitt, Continental alleges that: (1) in April or May of 1991, the Navy orally waived the 200-knot speed requirement; and (2) based on an analysis of industry literature and a technical evaluation prepared by its teaming partner, Boeing of Canada, it is impossible for the awardee's target to have met the speed range requirements of the SOW.

#### ALLEGED WAIVER OF SPEED REQUIREMENT

Based on a November 21, 1991, "MEMORANDUM FOR RECORD" prepared by the protester concerning a series of conversations held in April and May of 1991 between Continental officials and the agency's senior test coordinator, the protester contends that the agency coordinator stated that the 200-knot speed requirement would not be the "sole disqualifying factor" in the evaluation of proposals. From this, the protester argues that the Navy in effect waived

the requirement for which its proposal was eventually rejected.

An affidavit submitted by the agency coordinator specifically states that he told the protester that speed would not be the sole disqualifying factor in the evaluation process, and that other requirements could also lead to the rejection of a proposal. In addition, he states that he repeatedly cautioned all offerors that the speed requirement would have to be met for a proposal to be acceptable. The Navy further points out that the protester's position regarding any purported waiver is untenable since the RFP and the letter requesting BAFOs both specifically emphasized the need to meet the 200-knot speed requirement and to have a flight certification prior to award. The agency further points out that the protester repeatedly attempted to obtain such a certification throughout the course of the procurement. Under the circumstances, there is simply no support for the protester's argument that the speed requirement was waived.

#### ALLEGED INABILITY OF MEGGITT TO MEET SPEED REQUIREMENT

In December 1990, Continental's teaming partner--Boeing of Canada--issued a report on the Banshee 300 target which concluded, based on wind tunnel tests, that, even under ideal operating conditions and with engine enhancements producing 42 horsepower, it is impossible for the target in question to exceed 191.5 knots. In light of this report, Continental states that the agency's observations during the flight testing of Meggitt's target which led to the issuance of a flight certification are not reliable.

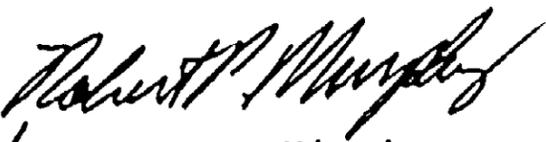
In response, the Navy reports that, although the protester and the awardee use the same engine to power their respective targets, the awardee makes extensive engine modifications including changes to the fuel injection and exhaust systems. The Navy further states that it witnessed the implementation of these modifications at the awardee's manufacturing facility and notes that they result in a configuration substantially different from the one tested by Boeing for its 1990 report. The agency emphasizes that it did not rely on engine changes alone as a basis for the issuance of a flight certification and reiterates that the targets passed the 200-knot speed in observed flight tests on several occasions.

It is not the function of this Office to evaluate proposals de novo. Rather, we will examine an agency's technical evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. The protester's disagreement with an agency's technical judgment does not

establish that an evaluation was unreasonable, Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115; Barrier-Wear, B-240563, Nov. 23, 1990, 90-2 CPD ¶ 421.

The bulk of Boeing's study is based on a target configuration with a lesser-powered engine than currently proposed by Meggitt. While it is true that the Boeing study extrapolates some of its findings to account for higher-powered engines, it is not clear that the study could possibly take into account all of the potential modifications that Meggitt could make to its engine. In our view, the study's conclusions basically amount to a technical disagreement with the agency. This is insufficient to invalidate the issuance of Meggitt's flight certification based on a number of observed flight tests in which that firm's target--as currently configured--met the speed range requirements of the SOW. Barrier-Wear, B-240563, supra. We simply do not agree with the protester's position that since it has not been able to meet the speed requirement, no one else can.

The protest is denied.

  
for James F. Hinchman  
General Counsel