



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Avacelle, Inc.  
**File:** B-258651  
**Date:** January 24, 1995

Kenneth F. Nye, Esq., Madden and Nye, for the protester.  
Gregory H. Petkoff, Esq., and Janice C. Beckett, Esq.,  
Department of the Air Force, for the agency.  
Daniel I. Gordon, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Proposal was reasonably downgraded where it failed to commit to meet performance requirement and the agency's concern about this issue was repeatedly brought to the offeror's attention during discussions.

### DECISION

Avacelle, Inc. protests the award of a contract to Quiet Nacelle Corporation (QNC) under request for proposals (RFP) No. F33657-94-R-0015, issued by the Department of the Air Force for aircraft noise abatement equipment. Avacelle contends that its proposal was not evaluated fairly.

We deny the protest.

The RFP, issued on March 31, 1994, was for "hush kits," which are noise abatement equipment mounted on aircraft. The RFP anticipated a fixed-price contract for this procurement, which was set aside for exclusive small business participation. Section M of the RFP stated that the evaluation criteria, in descending order of importance, were technical factors, probable cost, and management resources.

Three offerors submitted proposals by the May 13 due date. One proposal was eliminated from the competitive range, leaving only Avacelle's and QNC's proposals in the competition. Discussions were conducted through the issuance, on June 21, of clarification requests and deficiency reports. Best and final offers (BAFO) were requested on August 9.

QNC's BAFO price was \$14,214,546; the protester's was \$26,862,194. In addition to its substantially lower price, QNC's proposal was also rated as technically superior to the protester's. Accordingly, the agency selected QNC's proposal for award, which was made on August 22.

The protester contends that the agency improperly downgraded Avacelle's proposal on the basis of an unreasonable assumption that the firm was proposing to reduce the maximum takeoff weight.<sup>1</sup> Our Office will not question an agency's evaluation of proposals unless the agency deviated from the solicitation evaluation criteria or the evaluation was otherwise unreasonable. Payco Am. Corp., B-253668, Oct. 8, 1993, 93-2 CPD ¶ 214. Here, we find no basis to challenge the Air Force's evaluation of Avacelle's proposal.

Avacelle does not deny that the RFP required that the maximum gross takeoff weight not be reduced through installation of the hush kit; there is also no dispute that the current maximum takeoff gross weight is 299,000 pounds. The Air Force's concern about the impact of Avacelle's proposed design on the aircraft's maximum gross takeoff weight was raised repeatedly during discussions. At one point, Avacelle proposed to reduce that weight by 3,500 pounds. The Air Force's written response was: "This is unacceptable. [The] firm requirement . . . is to maintain the current . . . max[imum] takeoff gross [weight] which is 299,000 lb." Notwithstanding these discussions, Avacelle's BAFO stated that the ultimate maximum takeoff gross weight would be determined during the flight test program but that it would not be less than 285,000 pounds. The agency viewed this statement as not committing to maintaining the required current maximum takeoff gross weight.

In its comments, Avacelle argues that it "never proposed to reduce the maximum takeoff weight. Rather, it honestly stated that a reduction, if at all, could not be determined until [Federal Aviation Administration] Certification." In the protester's view, "Avacelle's assertion that the maximum takeoff weight would be no less than 285,000 pounds is materially different from the assertion that the maximum takeoff weight would be decreased." In terms of the evaluation here, we view the claimed distinction as meaningless. Avacelle concedes that it committed only to 285,000 pound of maximum gross takeoff weight, while it was

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<sup>1</sup>In initial protest, Avacelle asserted additional grounds of protest, to which the agency responded in its report to our Office. Because Avacelle did not address those issues in its comments on the agency report, we treat them as abandoned. See Hampton Rds. Leasing, Inc., 71 Comp. Gen. 90 (1991), 91-2 CPD ¶ 490.

aware that the RFP required at least 299,000 pounds.<sup>2</sup> Accordingly, the agency reasonably downgraded the protester's proposal in this regard.

Avacelle contends, however, that the two competing proposals were not treated equally in this regard because QNC's design must, in Avacelle's view, "require either a reduction in the maximum gross weight or some other reduction in performance." The Air Force responds that QNC's proposal concedes that its approach will cause some reduction in performance, but that the reduction will not be in the area of maximum gross takeoff weight and will not lead to a failure to satisfy any required performance standards. Avacelle has not specifically addressed this point, and merely points out that no downgrading or deficiency was noted for QNC's proposal. In view of the protester's failure to identify any area where the awardee's proposal would fail to satisfy an RFP standard, such as the maximum gross takeoff weight standard that Avacelle's proposal did not commit to meet, we see no evidence of unequal treatment.

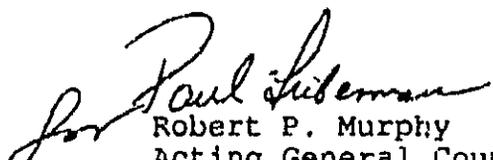
The protester also contends that "[t]he file is peppered with references to Avacelle's failure to provide data that was not requested or required to be produced." Essentially, Avacelle is arguing that it was not advised during discussions of the agency's concern that the protester had not furnished adequate supporting data. Based on a review of the entire record, we find that any failure by Avacelle to produce supporting data was not determinative in the source selection decision. Instead, as the source selection document states, Avacelle's technical proposal was rated lower than QNC's because Avacelle's "was found to be highly complex" and to pose "numerous" risks since its "design was untried within commercial aviation, imposed a heavy penalty to both the empty weight and the maximum takeoff gross weight of the aircraft, imposed configuration changes on the existing engine, impacted the ground operational envelope of the aircraft and doesn't allow maintenance idle engine operation with the Hush Kit installed and propped open." These weaknesses, which are not disputed by Avacelle in this protest, do not appear to be grounded on a finding that Avacelle failed to provide supporting data.

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<sup>2</sup>Avacelle suggests in its protest that the 299,000-pound requirement may be unnecessary, that is, the requirement may exceed the agency's legitimate needs. Such a suggestion amounts to a challenge to the RFP specification which, to be timely, had to be raised in a protest filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1994).

Further, these weaknesses were brought to Avacelle's attention during discussions, thus both alerting the protester to the agency's concern and providing Avacelle with the stimulus to furnish further data to support its design and the opportunity to do so in its BAFO. To the extent that Avacelle is contending that the agency failed to advise the protester of the need for further data to support performance claims in the technical proposal, we find that the discussions did alert Avacelle to the agency's concern, and there was no need for explicit requests for further data. Discussions need not be exhaustive to be meaningful; instead, it is enough that the agency lead the offeror into the areas of its proposal which require amplification or correction. See, e.g., Cubic Communications, Inc.--Recon., B-254860.3, Aug. 11, 1994, 94-2 CPD ¶ 69. Accordingly, we deny this ground of protest.<sup>3</sup>

The protest is denied.

  
Robert P. Murphy  
Acting General Counsel

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<sup>3</sup>Avacelle also alleges that its proposal was unreasonably downgraded for failing to provide test data, where that information was not requested. The agency pointed out in its report to our Office that the agency evaluators found that a risk did arise from the lack of supportable flight test data, but that this was true for all offerors, since no proven design exists; the only particular concern regarding Avacelle's test data related to the firm's reliance on 20-year-old data whose continuing relevance had not been demonstrated. Avacelle has not shown that this aspect of the evaluation was unreasonable.