



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED DECISION

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Rockwell International Corporation

File: B-261953.2; B-261953.6

Date: November 22, 1995

Alan R. Yuspeh, Esq., David R. Francis, Esq., Jerone C. Cecelic, Esq., Natalie S. Manzo, Esq., and Michael W. Ambrose, Esq., Howrey & Simon, for the protester. Gerard F. Doyle, Esq., Ron R. Hutchinson, Esq., Scott A. Ford, Esq., Alexander T. Bakos, Esq., and Scott W. Woehr, Esq., Doyle & Bachman; and Steven A. Kaufman, Esq., Clayton S. Marsh, Esq., and James M. Lichtman, Esq., Ropes & Gray, for Beech Aircraft Corporation, the interested party.

Gregory H. Petkoff, Esq., Duncan Butts, Esq., Jeffrey Watson, Esq., Janice Beckett, Esq., Mark Otto, Esq., and Robert McGrath, Esq., for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that agency improperly evaluated proposals is denied where the record shows that the agency evaluated in accordance with the criteria announced in the solicitation, and the record reasonably supports the evaluators' conclusions.
2. Contracting agency reasonably evaluated protester's performance risk as "moderate" on several evaluation factors based upon unfavorable information in "contractor performance assessment reports" and in responses to questionnaires reflecting the protester's recent poor performance on other contracts.
3. Agency conducted meaningful discussions where the record shows that the agency held written and oral discussions based on items consistent with the weaknesses and deficiencies identified in the protester's proposal, and the protester was afforded several opportunities to address the specific areas of its proposal considered weak or deficient and requiring further explanation.
4. Award to offeror submitting a higher-rated, slightly higher-cost, low risk proposal is unobjectionable where the evaluation scheme announced in the solicitation gave more weight to the technical factors than to cost, and the agency reasonably found that the awardee's technical superiority and low risk were worth the higher cost.

DECISION

Rockwell International Corporation protests the proposed award of a contract to Beech Aircraft Corporation under request for proposals (RFP) No. F33657-94-R-0006, issued by the Department of the Air Force for a joint primary aircraft training system (JPATS). Rockwell challenges the proposed award on several grounds including that the agency's evaluation of proposals was flawed and that the agency failed to conduct meaningful discussions with Rockwell.

We deny the protests.

BACKGROUND

The objective of the JPATS procurement is to replace the Air Force's T-37B and the Navy's T-34C aircraft and associated ground based training systems (GBTS). The primary mission of the JPATS aircraft and GBTS is to train entry-level Air Force and Navy student pilots in primary flying and to prepare them to transition into advanced training tracks leading to qualification as a military pilot. The JPATS aircraft and GBTS will also provide entry-level officers with a basic understanding of airmanship prior to their designation as Naval Flight Officers or Air Force Navigators, as well as provide support and training for pilot instructors.

The RFP characterized the acquisition as a "fly-before-buy" procurement. That is, the RFP stated that as part of the evaluation process, the government would fly each offeror's proposed aircraft to assess its performance and flying qualities. Thus, in addition to written proposals, offerors were required to provide an evaluation aircraft with flying qualities which duplicated those of the proposed production aircraft.

The RFP stated that the flight evaluation would assess the capability of each aircraft to train an entry-level student pilot with no prior flying experience to the proficiency level required by the primary pilot training syllabus. Air Force and Navy test pilots and customer pilots would evaluate each aircraft. In addition, the Air Force's Operational Test and Evaluation Center (AFOTEC) would perform an early operational assessment of each aircraft during the flight evaluation. Offerors were also required to provide a mock-up of the proposed cockpit, which was to be evaluated for various characteristics (e.g., anthropometric range capability, lighting checks, and other engineering components).

The RFP, issued on May 18, 1994, contemplated the award of two contracts to one offeror--a fixed-price incentive contract with award fee and economic price adjustments for the manufacturing development of a primary training aircraft, with

options for varying quantities of production aircraft;¹ and a fixed-price contract for a base period with up to nine 1-year options for logistics support.

Section M of the RFP stated that in evaluating proposals, the agency would consider three types of criteria: (1) areas (related to important program characteristics); (2) assessment criteria (related to an offeror's proposal and ability to perform); and (3) cost/price and schedule. The RFP listed the following evaluation areas in descending order of importance (factors within each area are shown in parentheses): operational utility/technical (operational capability; crew accommodations; structural integrity; certification/qualification; aircraft missionization; and system safety); manufacturing and quality assurance (manufacturing; production control; and quality assurance); cost/price; logistics support (acquisition logistics; contractor logistics support (partial CLS); and total CLS for the Air Force and Navy);² management (aircraft management; and GBTS support and management); and schedule. The RFP stated that the manufacturing and quality assurance area was slightly more important than the cost/price area.³

The RFP further stated that, except for the cost/price and schedule areas, the agency would apply three "assessment criteria" of equal importance (soundness of approach, understanding the requirements, and compliance with requirements) to the evaluation areas. The RFP also identified "general considerations" (including, but not limited to, proposed contractual terms and conditions and the results of the early operational assessment of each offeror's evaluation aircraft). The agency would also assess proposal and performance risk. The RFP stated that the

¹The RFP was structured so as to permit the agency to acquire varying quantities of aircraft during several fiscal years depending on its needs. For instance, contract line item number (CLIN) 3001 stated that for fiscal year 1996, the contractor is to provide from 1 to 6 production aircraft, with a "target" quantity of 3 production aircraft. Similarly, for fiscal year 1997, CLIN 4001 called for the contractor to provide from 9 to 15 aircraft, with a target quantity of 12. For each CLIN, offerors were to submit unit prices per aircraft for the range of quantities under each CLIN.

²Offerors were required to submit proposals for supporting two approaches for CLS--(1) a combination of partial CLS for the Air Force and total CLS for the Navy, and (2) total CLS for the Air Force and the Navy. The RFP stated that although the Air Force would evaluate both approaches, only one would be included in the acquisition. The proposed award to Beech was based on the partial CLS approach.

³Within the "operational utility/technical" area, the "operational capability" and "crew accommodations" factors were of equal importance, with each one of those two factors being more important than the remaining factors within this area. The factors within each of the other areas were of equal importance.

integrated assessment of the results of the evaluation would favor proposals that offered the best value to the government considering development risk and total system life-cycle cost. The contracts were to be awarded to the offeror whose proposal was considered to be most advantageous to the government.

Seven offerors responded to the RFP by the time set on July 18 for receipt of initial proposals. Air Force and Navy pilots conducted flight evaluations and a source selection evaluation board (SSEB) evaluated written proposals. Based on the results of those evaluations, the agency eliminated one offeror's proposal from further consideration, and initiated discussions with the remaining six offerors. Following initial discussions, the agency issued amendments to the RFP; requested and evaluated revised proposals; held oral discussions; and requested best and final offers (BAFO).

The SSEB evaluated BAFOs by assigning color/adjectival and risk ratings⁴ to each factor announced in the RFP. Beech's proposal was rated "green" under all evaluation factors, with the exception of "crew accommodations" and "production control," where its proposal was rated "yellow" and "blue," respectively,⁵ with low proposal and performance risk.

Rockwell's proposal was rated "green" with low risk under all evaluation factors, with the exception of "operational capability" where Rockwell's proposal received a rating of "yellow" with "high" proposal risk and "moderate" performance risk; and "certification/qualification," "aircraft missionization" "manufacturing," and "GBTS support" where its proposal was downgraded under either proposal or performance risk to "moderate." The agency also developed a most probable life-cycle cost (MPLCC) of \$14.597 billion for Beech, and [DELETED] billion for Rockwell.⁶

⁴The color/adjectival ratings are blue (exceptional); green (acceptable); yellow (marginal) and red (unacceptable). Risk ratings were high, moderate, or low.

⁵Beech's proposal received a proposal risk rating of "moderate" under the "crew accommodations" factor.

⁶In its agency report to our Office, the Air Force states that it discovered mathematical errors in the MPLCC figures developed for Beech and Rockwell that were presented in the final briefing to the source selection authority (SSA). These errors apparently occurred in transferring figures from spreadsheets to briefing charts, and omitting some items that should have been included. The agency states that the correct figures further widen the difference between Beech's and Rockwell's MPLCC by \$59 million.

A source selection advisory council (SSAC) reviewed the results of the SSEB's final evaluation and presented its findings to the SSA.⁷ Based on the SSAC's report, the SSA selected Beech for award. These protests followed.⁸

PROTESTER'S CONTENTIONS

Rockwell challenges the proposed award on several grounds. Rockwell argues that the agency unreasonably evaluated its proposed corrective actions to deficiencies the Air Force identified in its evaluation aircraft, and improperly introduced an unannounced evaluation criterion into the process. The protester further maintains that the agency did not treat Rockwell's and Beech's proposals equally in the evaluation and improperly evaluated Rockwell's proposal and performance risk. The protester also contends that the Air Force's discussions with Rockwell were not meaningful, and that the agency's approach to discussions gave Beech an unfair advantage. Finally, the protester challenges the agency's cost/technical tradeoff decision, arguing that had the agency conducted a proper evaluation, the SSA would have selected Rockwell for award.

EVALUATION OF PROPOSALS

Evaluation of Rockwell's Proposed Corrective Actions

A team of Air Force and Navy instructor and test pilots evaluated Rockwell's aircraft as part of the flight evaluation under the "operational capability" factor. Section M of the RFP explained the purpose of the evaluation under this factor as follows:

"Operational capability. Evaluates the performance, flying qualities, and training mission accomplishment of the proposed production aircraft. The evaluation will integrate the results of the [f]light [e]valuation with the results of the evaluation of the written proposal for the production aircraft. The operational capability assessment will be a quantitative and qualitative evaluation conducted by [g]overnment personnel to assess the offeror's aircraft's suitability to perform a 65-sortie, 89-flying hour primary training syllabus given an entry level student pilot with no previous flying experience."

⁷The Secretary of the Air Force was the SSA for this procurement.

⁸The Cessna Aircraft Company, another unsuccessful offeror, has also filed protests (B-261953.3; B-261953.4; and B-261953.5) challenging the proposed award to Beech. The issues raised in Cessna's protests will be addressed in a separate decision.

The flight evaluation team flew 13 "sorties" of Rockwell's aircraft totaling almost 24 flight hours. The team identified several weaknesses and deficiencies in Rockwell's aircraft, resulting in a rating of "yellow" (marginal) with a "moderate" proposal risk under this factor, and issued to Rockwell four clarification requests (CR) and five deficiency reports (DR). Rockwell responded to each of the CRs and DRs, and the agency evaluated those responses. With the exception of the three DRs at issue here, the evaluators concluded that Rockwell had resolved their concerns with respect to the remaining six items.

The three DRs at issue concerned deficiencies with flying qualities of Rockwell's aircraft. [DELETED]

In its responses to those DRs, Rockwell proposed either aerodynamic changes to the external configuration of its aircraft or modifications to the aircraft's flight control system. For example, in response to DR [DELETED]

On January 24, 1995, the Air Force issued amendment No. 0002 to the RFP. As relevant to this aspect of the protest, the contracting officer's cover letter to the amendment stated in part:

"Amendment 0002 provides a number of changes to the solicitation. Offerors are reminded, however, that additional aircraft [f]light [e]valuations will not be conducted. Proposed changes by [o]fferors that may affect the flying qualities of their proposed production aircraft (e.g., responses to [DRs], responses to solicitation amendments, [BAFOs] etc.) will not change the results of the [g]overnment's [f]light [e]valuation. However, any proposed changes that may affect flying qualities may affect the [g]overnment's integrated evaluation. The [g]overnment will assess the potential of proposed changes to either enhance or degrade aircraft performance or flying qualities. . . ."

Subsequently, the agency issued amendment No. 0003. Although the protester submitted a revised proposal in response to these amendments, Rockwell did not revise the aircraft modifications it had proposed in response to DRs [DELETED]. The evaluators found that the issues raised in those [DELETED] DRs remained unresolved, and concluded that each of the proposed solutions constituted extensive changes that placed at risk, without another flight evaluation, nearly all of the flying qualities/performance aspects of the evaluation aircraft. As a result, the initial rating of "yellow" assigned Rockwell's proposal under the "operational capability" factor remained unchanged, and Rockwell's proposal risk rating under this factor was downgraded to "high."

Rockwell argues that the agency either did not consider its solutions, or failed to give due credit to its proposed corrective actions. Rockwell also maintains that the Air Force's approach to evaluating its responses to DRs [DELETED] introduced an unannounced evaluation criterion into the process. In this connection, Rockwell points to labels in the SSAC's briefing charts which indicated to the SSA whether its proposed corrections affected the aircraft's flying qualities.

In reviewing a protest challenging an agency's technical evaluation, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Based on our review of the record here, we find no basis to question the agency's evaluation of Rockwell's proposed corrective actions.

The record shows that the SSEB reviewed Rockwell's proposed changes and concluded that the solutions affected the aerodynamic performance of the aircraft. For instance, with respect to Rockwell's proposed solution to the [DELETED] DR, the evaluators found that while the proposed changes appeared to improve the [DELETED], the aircraft would have to be reflown to verify correction of the deficiency.

[DELETED] In addition, as already noted, the evaluators found that in order to verify whether the proposed solutions corrected the deficiencies, the aircraft would have to be reflown. As a result of the deficiencies that remained unresolved, the initial rating of "yellow" (marginal) assigned to Rockwell's proposal under the "operational capability" factor remained unchanged, and the proposal risk rating was downgraded to "high."

The record does not support Rockwell's position that the Air Force failed to adequately consider its proposed solutions to the noted deficiencies. What the record does show is that Rockwell provided either insufficient data or limited analyses to convince the evaluators that the noted deficiency was corrected. With the exception of the corrections in response to DR [DELETED], it appears that Rockwell's solutions [DELETED]. With respect to DR [DELETED], the record shows that the SSEB carefully considered Rockwell's proposed solution, and concluded that the aircraft would have to be reflown to verify whether the proposed [DELETED] cured the deficiency. The fact that the ratings the SSEB assigned Rockwell's proposal under the "operational capability" factor did not improve following discussions does not mean that the evaluators failed to consider Rockwell's responses. Rather, the final ratings of "yellow" (marginal) and "high" proposal risk reflect the evaluators' reasonable conclusions based on their assessment of Rockwell's responses to the DRs that some of the deficiencies remained unresolved.

Unequal Evaluation

The protester also argues that the Air Force evaluated Rockwell's and Beech's corrective actions in response to the DRs in a disparate manner. For instance, Rockwell asserts that Beech's initial rating under the "operational capability" factor improved from "yellow" to "green" following discussions based on Beech's proposed solutions, while Rockwell's rating did not improve under the same factor even though the protester provided similar data. Rockwell also argues that the SSEB rated Beech's proposal "blue" under the "production control and quality assurance" factor for achieving some of the RFP's "desired" characteristics, but failed to assign a similar rating to Rockwell's proposal under the "crew accommodations" factor even though Rockwell's proposal met or exceeded the RFP's "desired" characteristics in that area.

In this regard, Beech's initial proposal was downgraded under the "operational capability" factor because the flight evaluation team was unable to assess the aircraft's [DELETED]. [DELETED]. The agency issued DRs to Beech identifying these deficiencies and Beech responded to the DRs.

In response to the [DELETED] DR, Beech proposed a different [DELETED]. The agency evaluated Beech's responses and concluded that Beech's solution to [DELETED]. The agency also found that the change to performance or flying qualities was minimal, with a high probability that the proposed solution would correct the problem. The record further shows that the additional data Beech provided concerning [DELETED] satisfied the evaluators' concerns in this regard. Beech's proposed solution to the [DELETED] DR was a relatively simple design change considered to have minimal impact on the performance or flying qualities of the aircraft, and Beech's supplemental flight test data submissions were evaluated and found to satisfy the evaluators' concerns.⁹ Accordingly, we think that the improved rating assigned to Beech's proposal under the "operational capability" factor reasonably reflects the SSEB's conclusion.

The fact that Rockwell's rating under the "operational capability" factor did not change following discussions does not show that the agency treated offerors differently, or that the agency's evaluation was unreasonable. Rather, the final ratings reflect the fact that several of Rockwell's responses did not reasonably convince the evaluators that the proposed fixes would not place at risk other flying qualities of the aircraft.

Rockwell also challenges the evaluation of its proposal under several other factors, including "crew accommodations," "structural integrity," and "aircraft management."

⁹In addition to quantitative flight test data concerning [DELETED].

We have reviewed the record, including Rockwell's proposal, the agency's evaluation materials, and the protester's submissions. Based on our review, we find no basis for concluding that the evaluation of Rockwell's proposal under those factors was unreasonable, or that Beech was accorded preferential treatment in the evaluation as Rockwell contends. Rockwell's mere disagreement with the agency evaluators does not itself render the evaluation unreasonable. Allied-Signal Aerospace Co., B-250822; B-250822.2, Feb. 19, 1993, 93-1 CPD ¶ 201.¹⁰ To illustrate, we discuss the evaluation of the protester's proposal under the "crew accommodations" factor, where Rockwell argues that given the several features of its cockpit considered as strengths by the evaluators, its proposal should have received a rating of "blue" (rather than "green") under this factor.¹¹

The final evaluation results show that while the SSEB noted several strengths in Rockwell's proposal under the "crew accommodations" factor, none of the strengths distinguished Rockwell's proposal from the rest under this factor. For instance, the record shows that all offerors proposed to accommodate the desired pilot population sizes (of both men and women) and that this feature was listed as a strength in Rockwell's proposal as well. Other features of Rockwell's cockpit mock-up also shared several strengths with other offerors' proposals. While the evaluators considered these features strengths in Rockwell's proposal, the evaluators considered Rockwell's [DELETED] to be a weakness. In addition, the evaluation documents show that Rockwell proposed the minimum required [DELETED]. Based on these results, we have no basis to conclude that the rating of Rockwell's proposal under the "crew accommodations" factor was unreasonable.

¹⁰Rockwell also suggests that the SSEB was biased in its evaluation of proposals. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inferences, and suppositions as advanced by Rockwell. See Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229. Nothing in the record indicates bias or bad faith on the part of the evaluators.

¹¹Rockwell claims that in light of the number, size, and sophistication of the offerors, the paucity of "blue" ratings shows that the agency's evaluation was unreasonable. Except for its general contention, however, the protester has not presented any evidence showing that the agency's approach to evaluating proposals was unreasonable. Moreover, to the extent that Rockwell is challenging the specific lower ratings assigned to other unsuccessful offerors' proposals, Rockwell is not an interested party to raise this allegation. See 4 C.F.R. § 21.0(a) (1995). The proper parties to raise this allegation are the other unsuccessful offerors, each of whom has a more direct interest in the outcome of such a challenge. See, e.g., Integrated Sys. Group, Inc., B-246446, Feb. 21, 1992, 92-1 CPD ¶ 213.

Unannounced Evaluation Criterion

In the briefing charts to the SSAC and SSA, the SSEB used labels to indicate whether the offerors' proposed solutions to deficiencies identified during discussions had either "significant" (S) or "no significant" (NS) impact on the aircraft's flying qualities. As already explained, since the evaluators were concerned over the impact Rockwell's proposed changes could have on the aircraft's flying qualities, the SSEB's briefing charts summarizing the evaluation of Rockwell's proposal show the letter "S" under the "operational capability" factor, reflecting the evaluators' concerns. Rockwell maintains that by including that label in the briefing charts, the agency improperly introduced an unannounced criterion into the evaluation process.

We do not view the labels used by the SSEB in its briefing charts as separate ratings that constitute an unannounced evaluation criterion. Rather the "S/NS" labels the Air Force used in the final evaluation briefing charts simply reflected the evaluators' concerns--made known to Rockwell throughout discussions--regarding the extent to which the proposed corrections affected or placed at risk other flying qualities of Rockwell's aircraft. In view of the RFP's requirement that the evaluation aircraft possess flying qualities that duplicated those of the proposed production aircraft, we see nothing objectionable in the agency's approach of indicating to the SSA the evaluators' conclusions regarding the degree to which Rockwell's proposed corrections placed at risk other aspects of the aircraft's flying qualities.

PERFORMANCE AND PROPOSAL RISK EVALUATION

The Air Force rated Rockwell's performance risk as "moderate" under three factors--"operational capability," "aircraft missionization," and "GBTS support and GBTS management"--primarily due to Rockwell's poor performance under another Air Force contract (the AC-130U Gunship Replacement Program, referred to in the record as the "Gunship" contract). The agency also downgraded Rockwell's proposal risk ratings to "moderate" under the "certification/qualification" and "manufacturing" factors. Rockwell argues that these ratings were unwarranted because the Gunship contract is "irrelevant" to the JPATS procurement. In this connection, Rockwell asserts that the Gunship contract was a developmental contract,¹² while the JPATS RFP contemplates a production contract. Rockwell also maintains that some of the features of the Gunship contract are different from or more complex than the requirements under the JPATS RFP.

¹²The Gunship contract was a fixed-price contract to design, develop, test, and produce 13 side-firing AC-130U Gunship aircraft utilizing C-130H airframes.

In evaluating Rockwell's performance risk, the Air Force's performance risk assessment group (PRAG) considered unfavorable information contained in 34 contractor performance assessment reports (CPAR) and in responses to questionnaires covering Rockwell's recent performance on several projects, including the Gunship contract. For example, the PRAG found that Rockwell's aircraft under the Gunship contract failed to meet [DELETED]. Recognizing that Rockwell could not meet contract requirements, the Air Force restructured that program, thereby essentially relaxing some of the requirements. Rockwell's performance rating under that contract subsequently improved from "yellow" (marginal) to "green" (acceptable) in its most recent CPAR. The PRAG also found that Rockwell's [DELETED] were weak on both the Gunship contract and on another project, referred to in the record as the B-1B contract. In addition, the PRAG found that there were numerous [DELETED] and that Rockwell had failed to respond to Air Force concerns on the Gunship contract.

In response to the agency's CR item on the Gunship and B-1B contracts, Rockwell argued, as it does in this protest, that the Gunship contract was not relevant to the JPATs procurement, and pointed out several steps it had taken to improve the problems encountered under both contracts. Rockwell also argued that the Air Force had caused some of the problems. The PRAG concluded, however, that [DELETED].

Although Rockwell offers various explanations that provide a more favorable view of Rockwell's performance, there was sufficient evidence in the record for the Air Force to conclude that the firm had performance problems relevant to the factors at issue. An agency's evaluation of past performance may be based on the procuring agency's reasonable perception of inadequate prior performance, even where the contractor disputes the agency's interpretation of the facts. See Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333. Based on our review of the record, we think that the "moderate" risk rating assigned Rockwell's proposal under these factors is consistent with the PRAG's conclusions based on the unfavorable information contained in the CPARs.¹³

¹³Rockwell asserts that the CPARs were biased due to pending litigation. In this connection, Rockwell states that at the time the CPARs were prepared, the firm had several claims pending against the Air Force under the Gunship contract. Rockwell contends that the unfavorable information in the CPARs was a deliberate attempt by the agency to buttress its defense to the pending claims. This argument is speculative at best. In any case, Rockwell does not deny that there were performance problems under the Gunship contract. Rather, Rockwell insists that any performance problems on that project were attributable to the type of contract involved and to government action. [DELETED].

Rockwell's contention that the Gunship contract is irrelevant to the JPATS procurement is without merit. In our view, Rockwell's failure to [DELETED] for instance, were aspects of Rockwell's performance relevant to the PRAG's assessment. The fact that specific features of the Gunship contract may be different from requirements under the JPATS RFP does not render Rockwell's poor performance under that contract "irrelevant" to the PRAG's assessment.

DISCUSSIONS

Rockwell argues that the agency's discussions with the firm were flawed in several respects. For instance, the protester argues that the Air Force should have informed Rockwell in the request for BAFOs that the evaluators' concerns regarding the aircraft's [DELETED] had not been resolved. The protester also maintains that the agency improperly failed to inform Rockwell that the evaluators considered a [DELETED] Rockwell imposed on its evaluation aircraft to be a deficiency. The protester also contends that the agency did not treat Beech and Rockwell equally during discussions.¹⁴

The requirement for meaningful discussions with offerors is satisfied by advising them of deficiencies in their proposals and affording them the opportunity to satisfy the government's requirements through the submission of revised proposals. Federal Acquisition Regulation § 15.610(c)(2) and (5); TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. Here, based on our review of the record, we conclude that the agency's discussions with Rockwell were meaningful.

As discussed earlier, the agency issued several CRs and DRs specifically identifying those areas of Rockwell's evaluation aircraft found deficient or requiring further explanation. Specifically, DRs [DELETED] pointed out deficiencies with respect to the aircraft's [DELETED]. In addition, the oral questions the Air Force prepared for Rockwell addressed each one of the issues remaining unresolved.¹⁵ The record shows that the Air Force issued to Rockwell detailed items for the oral discussions, tailored for the particular deficiencies noted in the DRs. The record is thus clear

¹⁴In its protest, Rockwell also argued that the Air Force had failed to raise during discussions that the AFOTEC evaluation had detected difficulties regarding [DELETED]. The agency responded to this allegation in its report, and the protester does not take issue with the agency's position in this regard. Accordingly, we consider the issue abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

¹⁵For instance, the agency's discussion item addressing the [DELETED].

that the agency pointed out to Rockwell during both written and oral discussions those areas of its proposal found weak or deficient and requiring further clarification or correction.

Rockwell's allegation that the agency failed to inform it that its proposed corrective actions were outside an acceptable range of solutions is simply without merit. As described above, after evaluating its responses to the DRs, the Air Force issued to Rockwell questions for oral discussions. The record shows that those questions clearly placed Rockwell on notice that based on their evaluation of Rockwell's proposed solutions, the evaluators remained concerned over the impact those corrective actions could have on the flying qualities and performance characteristics of the production aircraft. The record shows that the agency specifically informed Rockwell throughout the discussions that the evaluators believed that the design changes Rockwell proposed in response to DRs [DELETED] significantly affected the flying qualities of its aircraft; that the proposed modifications placed at risk, without another flight evaluation, nearly all of the flying qualities evaluated during the initial flight evaluation; and that the agency would not conduct another flight evaluation. Thus, Rockwell was made aware of the agency's concerns and was given ample opportunity to submit other solutions to the deficiencies that would not impact on the flying qualities of the evaluation aircraft, and chose not to do so.

Contrary to Rockwell's assertions, there is no support in the record that the agency considered its proposed corrective actions to be outside a predetermined range of acceptability. Rather, the record clearly shows that the agency considered Rockwell's responses to the CRs and DRs, and specifically informed the protester during written and oral discussions of its concerns over the impact the corrective actions had on the aircraft's flying qualities. Further, to the extent that Rockwell argues that the Air Force should have informed it in its request for BAFOs of weaknesses or deficiencies remaining in its proposal, agencies are not required to notify offerors of deficiencies remaining in their proposals or to conduct successive rounds of discussions until such deficiencies are removed. See Hughes Training, Inc., B-256426.4, Jan. 26, 1995, 95-1 CPD ¶ 154. In our view, the Air Force's approach to discussions was reasonable.¹⁶

¹⁶Rockwell argues that the RFP stated that the procurement would be conducted in accordance with Air Force Federal Acquisition Regulation Supplement Appendix AA, "Formal Source Selection for Major Acquisitions." According to Rockwell, that regulation required that the Air Force inform it in the request for BAFOs of any deficiencies remaining in its proposal. As already explained, we think that the agency's approach to discussions was reasonable. In any case, such regulations are internal instructions to aid agency personnel and do not provide outside parties with any legal rights. See Sabreliner Corp., B-242023; B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326, n. 16.

With respect to the [DELETED] Rockwell's proposal stated that its aircraft's test [DELETED]. As a result of that [DELETED] the evaluators were unable to fully assess certain aspects of the evaluation aircraft such as [DELETED] performance and [DELETED] characteristics. Rockwell maintains that had the agency raised its concerns [DELETED] during discussions, it could have provided additional data to satisfy the agency's concerns.

As already explained, the RFP required offerors to provide an evaluation aircraft capable of performing maneuvers in accordance with an established syllabus, and that possessed flying qualities (e.g., aerodynamics, controls, and center of gravity, etc.) which duplicated those of the proposed production aircraft. Clearly, by placing a [DELETED] the protester either knew or should have known that the evaluators' ability to fully assess the flying qualities and performance characteristics of the aircraft would be seriously limited. Rockwell, aware of that [DELETED] was obligated to submit sufficient [DELETED] flight data with its proposal to demonstrate that, without the [DELETED] its production aircraft would meet the RFP's minimum performance requirements.¹⁷ See Cyber Digital, Inc., B-255225, Feb. 18, 1994, 94-1 CPD ¶ 123. Given the RFP's requirement and given that Rockwell was well aware of the effect that the [DELETED] would have on its evaluation aircraft, we think that the agency was not required to remind the protester during discussions that its aircraft could not be fully evaluated as a result of the [DELETED].

Rockwell also contends that the agency conducted unequal discussions because the Air Force allegedly provided Beech with opportunities to present more information during oral discussions than Rockwell was permitted to provide. In this regard, offerors were limited to only one "viewgraph" for each oral question the Air Force issued.¹⁸ Rockwell complains that the Air Force asked Beech 28 questions regarding a particular issue, thereby allowing Beech to prepare 28 viewgraphs in response to that item, and that Rockwell was not asked a similar number of questions regarding any of its remaining deficiencies.

¹⁷In any event, the [DELETED] DR, placed Rockwell on notice that the evaluators were concerned with difficulties related to the aircraft's [DELETED] characteristics. Rockwell had ample opportunity to provide additional [DELETED] data in response to this DR, and failed to do so.

¹⁸To the extent that Rockwell challenges the agency's approach of limiting offerors to one viewgraph per discussion item, this allegation is untimely. See 4 C.F.R. § 21.2(a)(2). If Rockwell objected to the agency's one viewgraph per item rule, it was required to raise its objections within 10 days of learning of the agency's approach, or by April 10. Entwistle Co., B-248464.2, Nov. 2, 1992, 92-2 CPD ¶ 296. Since Rockwell did not file its protests until July, this allegation is untimely.

Contracting agencies have wide discretion in determining the nature and scope of negotiations. While discussions must provide offerors with an equal opportunity to revise their proposals, the content and extent of discussions are within the discretion of the contracting officer. See Tritech Field Eng'g, Inc., B-255336.2, April 13, 1994, 94-1 CPD ¶ 261. Since the number and type of deficiencies, if any, will vary among proposals, there is no requirement that all offerors receive the same number or type of discussion questions. Textron Marine Sys., B-255580.3, Aug. 2, 1994, 94-2 CPD ¶ 63. Rather, the agency should individualize the evaluated deficiencies of each offeror in its conduct of discussions. Pan Am World Servs., Inc.; et al., B-231840, et al., Nov. 7, 1988, 88-2 CPD ¶ 446; Indian Community Health Servs., Inc., B-217481, May 15, 1985, 85-1 CPD ¶ 547. Because the degree of deficiencies in proposals will vary, the amount of specificity or detail of discussions will also vary among the offerors. Pope Maintenance Corp., B-206143.3, Sept. 9, 1982, 82-2 CPD ¶ 218.

The record clearly shows that Beech and Rockwell were each presented with CRs and DRs and oral discussion items, tailored to the specific deficiencies identified in their written proposals or in their respective evaluation aircrafts. The fact that Beech was presented with a different number of questions on any particular issue than was Rockwell is simply a reflection of the results of the evaluation of proposals and the offerors' responses to the CRs and DRs, rather than any inequality in the treatment of offerors. For example, in response to one DR, Beech included a detailed table of test points for [DELETED] "runs" Beech had conducted since the flight evaluation. During oral discussions, the Air Force asked Beech the same two questions with respect to [DELETED]. Different runs from the [DELETED] listed in Beech's response (and, thus, Beech was permitted to present one viewgraph in response to each question). Accordingly, the record shows that the number of viewgraphs Beech presented was a function of Beech's detailed responses to DRs, and not the result of unequal treatment of offerors. Moreover, Rockwell had ample opportunity to submit additional information to satisfy the Air Force's concerns in its responses to the CRs and DRs; in its revised proposal in response to the RFP's amendments; during oral discussions; and in its BAFO. All offerors, including Rockwell, were requested to submit a BAFO after oral discussions, and were permitted to make any changes to their offers deemed appropriate based on the written and oral discussions. Thus, Rockwell was afforded the same opportunities as the other offerors to respond to the agency's concerns. If Rockwell believed that it did not respond fully to the agency's

concerns during discussions, the firm could have done so in its BAFO. See Ways, Inc., B-255219, Feb. 17, 1994, 94-1 CPD ¶ 120. There is no support in the record for the protester's suggestion that offerors were not treated equally during discussions.¹⁹

COST/TECHNICAL TRADEOFF

Rockwell argues that the selection of Beech's proposal was improper because the SSA placed undue weight on two aspects of Beech's MPLCC--low production cost and low fuel usage. Rockwell maintains that the SSA's reliance on those two components of cost essentially made them unannounced evaluation criteria. According to the protester, had the agency conducted a proper evaluation, the SSA would have realized that Rockwell's proposal represented the best value to the government.

In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. 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 CPD ¶ 325. Awards to offerors with higher technical scores and higher costs are proper so long as the result is consistent with the evaluation criteria, and the procuring agency reasonably determines that the technical difference is worth the cost premium. Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44.

The protester's allegation that the SSA placed undue weight on unannounced evaluation criteria is without merit. The source selection decision document shows that the SSA based her decision on an integrated review of the evaluation results, including the terms and conditions agreed to during negotiations, and the results of the early operational assessment of the aircrafts.

The record shows that the SSA specifically considered several strengths of Beech's proposal under the most important evaluation factors, and concluded that Beech's proposal provided the best value to the government overall. For instance, the SSA

¹⁹The protester relies on our decision in National Medical Staffing, Inc., B-259402; B-259402.2, Mar. 24, 1995, 95-1 CPD ¶ 163, to argue that the Air Force conducted unequal discussions. In that case, unlike the facts here, we concluded that the agency's discussions were flawed and sustained the protest because the agency failed to advise the protester during discussions of weaknesses in its proposal, while it advised two other offerors of the same weaknesses in their proposals. As already explained, that was not the case here.

noted that Beech proposed the only aircraft with no weaknesses under the "operational capability" factor, and that Beech's aircraft was the only aircraft that met the primary flight training requirements without modifications or additional student pilot training. The SSA also noted that Beech's aircraft was tolerant to five of six common student errors and displayed excellent spin performance. The SSA's decision also specifically cites specific strengths the evaluators noted with respect to Beech's proposed cockpit. The SSA found that Beech proposed a superior approach over other offerors with respect to manufacturing and quality assurance, and logistics support. The SSA specifically noted that Beech's proposal satisfied all scheduling requirements, and that Beech's past and current performance on other contracts earned the proposal performance and proposal risk ratings of "low" under all evaluation factors. While the SSA noted that Beech's MPLCC was not the lowest, the SSA specifically found that Beech's MPLCC was only slightly higher than the lowest evaluated MPLCC in the competition.

Based on her integrated assessment, the SSA concluded that the superior characteristics of Beech's proposal and that firm's lower performance and proposal risks were worth its slightly higher cost. Contrary to the protester's suggestion, the SSA did not accord undue weight to Beech's low production cost and low fuel usage. Rather, these were only two aspects which the SSA considered in her assessment of Beech's proposal.²⁰ Based on our review of the record, we find that the SSA reasonably concluded, consistent with the RFP, that Beech's proposal presented the best value to the government. See DynCorp, B-245289.3, July 30, 1992, 93-1 CPD ¶ 69.

The protest is denied.

Comptroller General
of the United States

²⁰Even a cursory review of the source selection document shows that Rockwell's contention that the SSA placed undue weight on Beech's low production cost and low fuel usage is meritless. After a detailed discussion of the strengths of Beech's proposal under the most important evaluation factors, the SSA noted that "Beech exhibited the lowest most probable production cost and low fuel usage." Given the SSA's detailed analysis of the strengths and benefits of Beech's proposal under several factors, it cannot be said that the SSA placed undue weight on those two components of the MPLCC in her selection decision.