



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Learjet, Inc.

File: B-274385; B-274385.2; B-274385.3

Date: December 6, 1996

Lars E. Anderson, Esq., and J. Scott Hommer III, Esq., Venable, Baetjer and Howard, LLP, for the protester.

L. Graeme Bell III, Esq., Crowell & Moring, LLP, for Tracor Flight Systems, Inc., the intervenor.

Major Jeffrey W. Watson, Michael J. Mullin, Esq., John Laricca, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest allegations based on a disagreement with the agency over the interpretation of solicitation requirements are untimely since they were not raised within 10 days after the protester was informed in writing during discussions of the agency's interpretation of the solicitation.
 2. Agency properly considered technical data contained in protester's proposal which called into question the proposal's acceptability while not requesting similar data from awardee where the solicitation did not require the submission of such data.
 3. Protester's mere disagreement with agency evaluation does not provide a basis for disturbing that evaluation.
 4. Protest challenging a cost/technical tradeoff decision is denied where: (1) no tradeoff was required because: protester's proposal was technically unacceptable and could not form the basis for an award; and (2) the decision was reached in accordance with the solicitation's method of award provisions.
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DECISION

BACKGROUND

Learjet, Inc. protests the award of a contract to Tracor Flight Systems, Inc. under request for proposals (RFP) No. F33657-95-R-0082, issued by the Department of the Air Force for C-21A replacement aircraft and related contractor logistics support

(CLS).¹ Learjet alleges that proposals were improperly evaluated and that the cost/technical tradeoff decision resulting in the award to Tracor was flawed.

We deny the protest.

The RFP, issued on March 21, 1996, with a May 7 closing date for initial proposals, contemplated the award of two contracts to a single offeror--for two replacement aircraft (with an option to purchase two more aircraft) and for CLS services. Award was to be made to the offeror whose proposal was determined to present the best value to the government considering integrated management framework (IMF) and most probable life cycle cost (MPLCC). IMF was subdivided into two equally weighted factors--technical and CLS. The IMF factors were to be assigned three ratings: a color/adjectival rating based upon how well the proposal met the solicitation requirements; a proposal risk rating based upon the perceived risk of the offeror's proposed approach to accomplish the RFP requirements; and a performance risk rating based on past and present performance. Although a total of four aircraft could be purchased, the RFP provided that the MPLCC was to be calculated using the basic quantity of two aircraft.

Proposals were received from Learjet and Tracor. Following an objective oral presentation (OOP) by each offeror, the source selection evaluation team (SSET) evaluated Learjet's proposal as "red" (unacceptable) with moderate proposal risk in the technical area and "yellow" (marginal) with low proposal risk in the CLS area. Tracor's proposal was rated as "yellow" with moderate proposal risk in both areas.

Learjet's proposal received an unacceptable technical rating because the SSET found that both the proposal and the OOP identified problems in complying with two RFP technical requirements set forth in the Operational Requirements Document (ORD)--aircraft range and cabin noise. With respect to the range requirement, the ORD specified that the aircraft had to be capable of completing a flight profile from Andrews Air Force Base, Maryland to a destination airport at San Francisco with a missed approach and diversion to an alternate airport 120 nautical miles away; upon completion of the profile, the aircraft had to have reserve fuel as stated in Air Force Instruction (AFI) 11-206. Learjet identified a problem at the OOP with meeting this requirement, specifying that it could meet the standard under certain wind conditions if fuel reserves were calculated by Learjet's particular reading of AFI 11-206 which in effect would double count Learjet's reserves by giving it credit for each leg of the flight profile. Two deficiency reports (DR) were issued to Learjet concerning the matter, outlining the Air Force's position; in

¹Tracor was awarded a contract for the aircraft and a separate contract for CLS services. For convenience, this decision refers to these two awards in the singular.

telephonic discussions Learjet conceded that it could not meet the requirement under the agency's interpretation of the reserve requirement.

The ORD also specified that the preferred speech interference level (PSIL) for the cabin interior shall not exceed 65 dB at maximum operating velocity and maximum operating Mach number and at any given altitude, with a desired level of not more than 60 dB. At the OOP Learjet indicated that it could not meet the 60 dB standard and had a problem meeting the 65 dB level. Although not required by the RFP, Learjet submitted technical data relating to the cabin noise level in its proposed aircraft; this data was evaluated by the agency and found to support a conclusion that Learjet's proposal was unacceptable. This resulted in the issuance of another DR to which Learjet responded that it could not comply with the 65 dB level requirement without a significant design and development program.

Best and final offers (BAFO) were received on August 5; Learjet's proposal remained unchanged with respect to the two identified technical deficiencies. On final evaluation, Learjet's proposal was rated red with low proposal risk in the technical area and "green" (acceptable) with similar risk in the CLS area. Tracor received a "blue" (exceptional) rating with low proposal risk in both areas. Both offerors were rated as having low performance risk for IMF.

Tracor's proposal was found to have met all cost criteria. Learjet's proposed cost was found to be unrealistic and unreasonable. From the initial proposal to the BAFO, Learjet's CLS overhead was reduced by 146 percent; while Learjet explained this reduction by stating it was accomplished through management reductions and a reduction of on-site inventory, the agency found that the latter was contradicted by information contained in the BAFO. The MPLCC over 20 years was calculated at \$57.6 million for Tracor and \$53.5 million for Learjet. The source selection authority (SSA) concluded that, notwithstanding this differential, Tracor's proposal represented the best overall value to the government given the technical deficiencies in Learjet's BAFO and considering Tracor's technical superiority and higher merit. Award was made on August 22, Learjet was debriefed on August 28, and this protest was filed on August 29.

PROTEST AND ANALYSIS

First, the protester argues that the agency improperly rated its proposed aircraft unacceptable for failure to meet the fuel reserve requirements and improperly rated Tracor's aircraft acceptable under the same requirements. Learjet alleges that the agency misinterpreted the RFP fuel reserve formula and reasserts the interpretation it advanced during discussions--effectively giving credit for each leg of the prescribed flight profile rather than computing a single fuel reserve at the final destination after a missed landing in San Francisco. In the alternative, the protester

argues that the agency failed to consider exceptions taken to the fuel reserve requirements in its BAFO as a "tradeoff" required by the RFP as amended.

These allegations are predicated on a disagreement over how fuel reserves are to be computed pursuant to the RFP. Under Learjet's interpretation, its aircraft is compliant with the RFP and Tracor's is not; under the Air Force's interpretation, the reverse is true. Learjet was informed, as early as the May 23 issuance of a DR indicating the Air Force's method of computing fuel reserves, that its proposal was unacceptable due to an inadequate fuel reserve. Nothing changed throughout the remainder of discussions, further evaluation and the submission of BAFOs. Since Learjet did not dispute the agency's known interpretation of the full reserve requirement until it filed this protest on August 29, the issue is untimely raised and we will not consider it further. Bid Protest Regulations, section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)) (requiring filing within 10 days after the basis of a protest is known or should have been known), amending 4 C.F.R. § 21.2(a)(2) (1996) (which, for protests filed prior to August 8, 1996, required filing within 14 days after the basis of the protest was known or should have been known); Securiguard, Inc. et al., B-254392.8 et al., Feb. 9, 1994, 94-1 CPD ¶ 92 (basis of protest on interpretation of RFP provisions is known when agency gives offeror notice of its interpretation).²

Next, Learjet complains that the agency treated offerors unequally in evaluating the technical information relating to cabin noise level contained in its proposal while not requiring Tracor to submit similar information for evaluation. The RFP did not require the submission of data to establish compliance with the requirement. Since, unlike Learjet, Tracor did not take exception to the requirement, we find nothing improper in the agency's considering the data contained in Learjet's proposal while not requesting similar data from Tracor. Rather than treating offerors unequally, the agency evaluated each proposal based on what it contained.³

Learjet further alleges that the agency improperly credited Tracor for technical advantages involving such matters as its proposed cooling system, flight control

²Learjet's challenge to the rejection of its offer for failure to meet the cabin noise level requirements is also untimely because the protester was notified on May 23 of the unacceptability of its proposal in this regard.

³Also, Learjet alleged that its proposal should have been given credit for superior past performance and that Tracor's proposal should have been downgraded for an alleged problem during the demonstration of its aircraft. These matters were fully addressed in the agency report and the agency's explanations were not rebutted by Learjet in its comments. Accordingly, the issues are abandoned and not for further consideration. Battelle Memorial Inst., B-259571.3, Dec. 8, 1995, 95-2 CPD ¶ 284.

system, and choice of aircraft batteries. Learjet asserts that its aircraft is equal or superior to Tracor's in each regard.

The evaluation of technical proposals is the function of the contracting agency; our review is therefore limited to determining whether the evaluation was reasonable and consistent with the RFP evaluation criteria. Mere disagreement with the agency's evaluation does not render the evaluation unreasonable. Research Assocs. of Syracuse, Inc., B-259470, Mar. 28, 1995, 95-1 CPD ¶ 169.

With regard to cooling systems, Tracor proposed an air cycle machine with only ducts to distribute the air which the agency found preferable to Learjet's proposed vapor cycle refrigeration system which required aircraft disassembly to maintain on a routine basis. Learjet states that it is "well-known" in the industry that air cycle machines present no distinct advantages to refrigeration systems and are "quite possibly" less efficient. Similarly, the agency found Tracor's flight control system to require less maintenance. Noting some, but not complete, similarity between each offeror's control system, Learjet simply asserts that Tracor's system has no relevant advantages over the protester's. Finally, with respect to batteries, Tracor proposed what the solicitation indicated was the preferable battery--nickel cadmium in lieu of lead acid--which Learjet proposed; Learjet disputes that the nickel cadmium batteries are preferable. Learjet's positions on these matters simply articulate its subjective qualitative assessments and represent, at best, a disagreement with the agency's evaluation; they provide no basis for us to conclude that the agency's evaluation was unreasonable. Accordingly, they provide no basis for disturbing that evaluation.

Finally, with respect to the technical evaluation, in its comments filed on October 15, Learjet raised objections to the acceptance of Tracor's proposal, arguing that the proposal was noncompliant with specifications relating to minimum cabin height, operations in specified weather conditions, thrust deficiency and training requirements. The basis for these allegations is Learjet's reading of Tracor's contract which was provided to the protester at the August 28 debriefing. Since the objections were not raised within 10 days after that date, they are untimely. Bid Protest Regulations, section 21.2(a)(2), 61 Fed. Reg. 39039, 39043, supra.

Regarding the cost evaluation and the resulting cost/technical tradeoff, Learjet principally argues that the agency failed to consider its offer of a \$2.0 million trade-in credit for each of two optional aircraft. Assuming that Tracor offered no trade-in

credit,⁴ the protester alleges that the selection decision failed to consider that Learjet's proposal offered an additional savings of \$4.0 million, which, when added to the difference between competing MPLCCs, meant that Learjet's proposal was \$8.1 million less expensive than Tracor's.

As indicated above, Learjet's proposal was properly rated as technically unacceptable, and, therefore, could not form the basis for an award, Household Data Servs., Inc., B-259238.2, Apr. 26, 1995, 95-1 CPD ¶ 281; nonetheless, the agency went through a tradeoff exercise. The record shows that the SSA's decision was based on the \$4.1 million difference in the MPLCC of the two competing proposals which was calculated without considering the option aircraft trade-ins. Since the solicitation specifically excluded option aircraft from the calculation of the MPLCC and provided that the best value analysis would use the MPLCC, Learjet's position that the agency acted unreasonably in its selection decision is based on a mistaken premise and is without merit.

The protest is denied.

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⁴The assumption is incorrect. The record establishes that, when he asked the SSET about option aircraft, the SSA was properly advised that Tracor offered a \$1,422,500 trade-in credit for each of the option aircraft and further advised that this credit declined in value every 90 days as provided in the RFP.