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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** NavCom Defense Electronics, Inc.

**File:** B-276163.3

**Date:** October 31, 1997

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Richard B. Oliver, Esq., McKenna & Cuneo, L.L.P., for the protester.  
Clarence D. Long, III, Esq., Department of the Air Force, for the agency.  
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

Agency does not abuse its discretion in implementing a recommendation for corrective action by reopening discussions with all offerors whose proposals are in the competitive range and by requesting the submission of another best and final offer from each offeror.

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## DECISION

NavCom Defense Electronics, Inc. protests the agency's implementation of our recommendation for corrective action as provided in NavCom Defense Elecs., Inc., B-276163, May 19, 1997, 97-1 CPD ¶ 189, which involved a procurement for the repair of multiple line items of the AN/ARN-118 TACAN (Tactical Air Navigation) system under request for proposals (RFP) No. F09603-95-R-81729, issued by the Department of the Air Force.

We deny the protest.

In sustaining NavCom's initial protest, we concluded that the agency's evaluation of the offerors' performance, and the source selection decision based upon that evaluation, were not reasonable. In this regard, the agency evaluated NavCom (which submitted the fourth lowest price) and the awardee (which submitted the lowest price) as each being of low performance risk under the performance evaluation criteria. However, the agency failed to establish any basis upon which it could reasonably have decided that the awardee's demonstrated performance was, in accordance with the terms of the RFP, the "same" as or "similar" to the solicitation requirements. We recommended if the RFP, as drafted, conveyed the agency's needs, that the agency reevaluate the awardee's performance in light of the "same or similar" requirement and document the basis for a particular performance risk rating. If the awardee was determined to be of other than a low performance risk, we recommended that the agency make a performance/price tradeoff in accordance with the terms of the RFP. Depending on the results of that tradeoff,

we recommended that the agency either continue the contract with the awardee or terminate the awardee's contract and award to NavCom. If the RFP, as drafted, did not convey the agency's needs, we recommended that the agency amend the RFP and request new best and final offers (BAFO).

While the agency states that the RFP conveys its needs and therefore does not require amendment, the agency advises that in implementing our recommendation for corrective action, it has determined to reopen discussions with all seven competitive range offerors (including three offerors which submitted higher prices than NavCom), to reevaluate their performance in light of the RFP's "same" or "similar" requirement, to request a second BAFO from each of these offerors, and to properly document its evaluation and source selection records.

NavCom, the incumbent contractor, contends that in reopening discussions and in requesting another round of BAFOs, the agency is not following our recommendation for corrective action. Specifically, NavCom complains that since the RFP reflects the agency's needs, the agency should simply be reevaluating the awardee's performance and if anything other than a low performance risk rating is assigned to that firm, making a performance/price tradeoff between that firm and NavCom. NavCom also contends that the course of action adopted by the agency, in addition to being inconsistent with our recommendation, will result in an impermissible auction. In this regard, NavCom states that based on the notices of award and post-award debriefings, the offerors know their own ranking based on price (and NavCom speculates that they know the rankings of the other offerors) and the awardee's low price. NavCom further complains that offerors can learn what its price was as the incumbent contractor under the predecessor contract with the Air Force and under other agency contracts for the same services because the contract prices are publicly available information.<sup>1</sup>

The details of implementing our recommendation for corrective action are within the sound discretion and judgment of the contracting agency. OMNI Int'l Distributors, Inc., 67 Comp. Gen. 123, 124 (1987), 87-2 CPD ¶ 563 at 2. Here, in implementing our recommendation for corrective action, the agency is not abusing

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<sup>1</sup>NavCom also contends that the original competitive range of seven should be limited to the four lowest-priced proposals. Including the three higher-priced proposals in the competitive range clearly does not directly prejudice NavCom, who submitted one of the lower-priced proposals. Instead, NavCom is essentially seeking to have the field of competition restricted. GAO's role in reviewing bid protests, however, is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in a more restrictive procurement. See, e.g., Petchem, Inc., B-228093, Sept. 8, 1987, 87-2 CPD ¶ 228 at 3.

its discretion in determining to reopen discussions with all offerors whose proposals are in the competitive range and in requesting a second BAFO from each offeror.

The record shows that it has been approximately 8 months since the award was made and more than 1 year since the original BAFOs were submitted for evaluation. The agency explains that because its initial performance risk assessment was not properly performed, as evidenced by our prior decision, discussions must be reopened with all competitive range offerors to address issues involving an offeror's performance in light of the RFP's "same" or "similar" requirement. For example, the agency states its intention to discuss inadequate or inaccurate performance information and performance information involving other than repair contracts. The agency states that these areas must be discussed with the offerors in order to reasonably assess an offeror's performance and to reasonably assign a performance risk rating to the offeror. In addition, because of the time that has elapsed since the initial submission of BAFOs, the agency believes that offerors should be given an opportunity to update their performance information and to address performance information not previously considered because at that time the agency may have improperly viewed the information as not being relevant to the requirements of the RFP. Although our recommendation referred to reopening discussions only in the context of a need to amend the RFP, we think the agency's reasons for reopening discussions amply justify doing so and then requesting second BAFOs, and that course of action is not inconsistent with our recommendation.

Moreover, we do not believe the agency's action will result in an impermissible auction. We note initially that there is no evidence any information was improperly disclosed. With respect to the agency's disclosure of price rankings, Federal Acquisition Regulation (FAR) § 15.1006(d)(2) provides that in a post-award debriefing, the overall evaluated price and technical rating of the awardee and the debriefed offeror are to be provided. In addition, FAR § 15.1006(d)(3) provides that an agency is required in a post-award debriefing to furnish "[t]he overall ranking of all offerors when any ranking was developed by the agency during the source selection." To the extent the competitive range offerors, which all received the same low performance risk rating, know their own and others' rankings and know the awardee's price, that information was properly disclosed by the agency. With respect to the release of the awardee's price in the notice of award, the agency's disclosure of this information was in accordance with FAR § 15.1003(b)(1)(iv), which provides that in the notice of award to unsuccessful offerors, the notice shall include, among other things, the total contract price. Finally, since a successful offeror's contract price, like NavCom's, becomes publicly available information through the notice of award and post-award debriefing process, the disclosure of such information is not objectionable.

Because the agency properly released price rankings and contract price information, NavCom has no basis to object that the competitive range offerors' knowledge of such information will result in an impermissible auction upon the agency's

implementation of our recommendation for corrective action. No unfair competitive advantage results where an agency carries out the FAR requirements for notices of award and post-award debriefings and later events require the reopening of proceedings under the procurement. See, e.g., Sherikon, Inc., B-250152.4, Feb. 22, 1993, 93-1 CPD ¶ 188 at 2-3. Moreover, the need to preserve the integrity of the competitive procurement system outweighs the risk of an auction. The importance of correcting an improper award through further negotiations overrides any possible competitive disadvantage to an offeror. Id. at 3-4. In this case, we believe the agency is reasonably implementing our recommendation for corrective action and is not engaging in an impermissible auction.

The protest is denied.

Comptroller General  
of the United States