

DOCUMENT RESUME

02674 - [A1732751]

[Protest against Exclusion of Proposal from Competitive Range].
B-187887. June 10, 1977. 13 pp.

Decision re: Magnetic Corp. of America; by Robert P. Keller,
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Air Force:

Wright-Patterson AFB, OH; General Electric Co.

Authority: B-184974 (1976). B-186787 (1976). B-187197 (1976). 55

Comp. Gen. 60. 53 Comp. Gen. 1. 52 Comp. Gen. 382. Bid

Protest Procedures, sec. 20.2(b)(2).

Protester objected to its exclusion from competitive range due to technical risk factors in its proposal. Protestor should have assumed that the agency would make its own risk assessment when the protester did not. There was rational support for the rejection of protester's proposal. The protest was denied. (QM)

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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187887

DATE: June 10, 1977

MATTER OF: Magnetic Corporation of America

DIGEST:

1. In determining whether decision to exclude proposal from competitive range is rationally founded, decision is examined under certain guidelines: (a) Is proposal so deficient that meaningful discussions would be precluded?; (b) Are alleged informational deficiencies material?; and (c) Was informational deficiency in solicitation area which definitely elicited detailed responses?
2. Notwithstanding protester's recent view that agency's technical conclusions regarding exclusion of proposal from competitive range are not in dispute, it is still considered that protest essentially involves conflict as to complex technical issues. Agency's characterization of rejected proposal as "too risky" does not completely convey evaluators felt inadequacies about protester's proposed approach.
3. Fact that protester received favorable score on "understanding of problem"--theoretical knowledge criterion--does not necessarily conflict with poor score received on "soundness of approach" standard which measured how well offeror could put theoretical knowledge to practical application.
4. Unlike case cited by protester in which it was held that RFP did not specifically call for information regarding delivery of computer software, RFP in subject case did specifically call for information regarding "risk factors."
5. Since protester did not ask for clarification as to meaning of specified call for offerors to address risk assessment--or ask questions about amount of detailed information to be submitted--company must be presumed to have recognized that evaluators would necessarily have to make subjective judgment under broad concept of risk assessment.
6. Based on review of voluminous record relating to evaluation of protester's proposal, GAO agrees that there is rational support for position that proposal was outside competitive range considering inadequacies, apart from other problems, in proposed composite and potted coil approaches.

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7. Fact that Air Force held discussions with protester in earlier canceled procurement is not inconsistent with exclusion of proposal from competitive range in present procurement since Air Force insists questions it posed in earlier procurement were not adequately addressed by protester in present proposal.
8. Apart from technical rationale for rejecting proposal, criticism of proposal for company's lack of key experience suggests that completely rewritten proposal would have been necessary to remedy this problem--assuming it could have been remedied--and technical inadequacies.
9. Because of lack of technical merit in rejected proposal, low estimated costs of rejected proposal--some of which were questioned under "realism standard"--do not, in themselves, put proposal in competitive range.
10. Ground of protest questioning propriety of canceling earlier solicitation is untimely filed under Bid Protest Procedures.

On June 24, 1976, request for proposals (RFP) No. F33615-76-R-2167 was issued by Wright-Patterson Air Force Base for an "exploratory development program in advanced, superconducting, high power generators for airborne applications."

Evaluation criteria to be used in determining the successful offeror and "description/specifications" for the program were set forth in length in the RFP. The evaluation criteria (listed in descending order of importance) were:

- (1) Soundness of Approach--An offeror was required to show "in detail" the proposed solutions for this "high risk program." The standard also specified:

"The most important factor under Soundness of Approach is the methodology of the contractor in selecting the field winding conductor and associated field winding conductor stress support, potting, and cooling techniques to minimize overall generator weight.

"Proposed generator designs should be strongly grounded on extensive experimental data. The risk factors in alternate designs will be carefully evaluated by the proposal. [Emphasis supplied] These risk factors will be carefully balanced against the other proposals during the evaluation process to determine the soundness of approach of the offers.

"Since a large part of this effort will involve design calculations of model generators based on a computer program, details on the computer program should be included in the proposal. A general description in block diagram form will be adequate for the proposal, but a statement of assumptions about the computer model and model verification examples will be provided to demonstrate the soundness of the computer model design approach.

"A preliminary approach to rotating field winding assembly and test will be provided in the proposal for evaluation of the soundness of the approach. The testing portion of this program will be discussed in detail; especially the specialized test facility requirements and availability. The absence of this discussion will cause the proposal to be rated unacceptable."

(2) Understanding the Problem—The offeror was required to "show an understanding that this effort should produce a significant advance in high power, lightweight generator technology using new * * * technology such as * * * advanced composite structures, [and] advanced potting techniques * * *";

(3) Special Technical Factors—Experience in superconducting generator design, fabrication, and testing was important. Among other things, the standard specified a demonstration of "potting techniques for the * * * field winding.";

(4) Compliance with Requirements—Offerors were to justify fully any "alternate approaches to these specifications." It was further explained that a mere "will comply" statement concerning specifications would be unsatisfactory.

"Cost Realism" was not shown as a "ranked factor;" however, offerors were informed by the RFP that "Cost Realism" was a significant factor in the final selection of a source for the procurement. Further, the RFP informed offerors that the Air Force reserved the right to "award a contract at other than a low proposed or a low negotiated price."

After describing a history of Air Force research efforts to-date under the program, the RFP generally cautioned that "acknowledgement of risk will allow the contractor to use new technologies to advantage such as * * * advanced composite structures, * * * and advanced potting and cooling methods for the field windings." There followed a detailed listing of specifications for the generator most of which were performance rather than design in character.

Three offerors submitted proposals for the requirement. Of the three submitted proposals only the proposal of Magnetic Corporation of America (Magnetic) was rated technically unacceptable. The proposal was therefore excluded from consideration for award. Negotiations were then held with the other two offerors considered to be in the competitive range. Finally, as a result of these discussions, the proposal submitted by General Electric Company was selected for award. After being notified of the rejection of its proposal, Magnetic filed a protest with our Office. The basic grounds of Magnetic's protest were that:

1. The award cost of GE's contract was nearly \$200,000 higher than the cost Magnetic proposed for the work suggesting that the Air Force improperly slighted the financial advantage allegedly inherent in Magnetic's lower-priced proposal; and
2. The Air Force improperly found Magnetic's proposal to be technically unacceptable.

The Air Force has refused to release to Magnetic certain key documents evidencing the rationale for rejecting Magnetic's proposal. Nevertheless, we will review the entire record before us in determining the soundness of this rationale. The initial respective positions of Magnetic and the Air Force concerning the company's proposal were:

Magnetic

- (1) The RFP stressed that only a "preliminary approach to rotating field winding assembly and test" was to be provided in the proposal. Since the RFP called only for a preliminary approach the proposal

Air Force

- (1) The proposal failed to show that the "proposed generator design was strongly grounded on experimental data and * * * failed to carefully evaluate risk factors." Thus Magnetic's

should not have been rejected because of lack of detail. Moreover, the proposal was "grounded in experimental data" because it contained "photographs and data" of fully potted windings designed and built. Data is shown in pages 42-55 of proposal which shows actual operating data of coils, current densities, and a discussion of eight coils, including field winding. Discussion of data for similar coils illustrates risk factors.

- (2) Proposal followed RFP requirements regarding high tip speeds and recognized importance of tip speeds with formulas. (2)
- (3) Risks of problems were described in several pages of proposal dealing with composite coil construction. (3)
- (4) & (5) Proposal discusses rotor design as integral with other major factors, for example, structural configuration. Proposal contains detailed discussion of design structure. RFP did not mandate specific organization of conductor material. (4)

proposal did not comply with:

(a) Section D-5 "Evaluation Criteria" of the RFP which specifically requires that "Proposed generator designs should be strongly grounded on extensive experimental data;" and (b) RFP evaluation criteria which require that "the risk factors in alternate designs will be carefully evaluated by the contractor in his proposal;"

Magnetic's proposal failed to evaluate "important risk factors associated with high stresses to be experienced at the high tip speeds required by the RFP;"

The proposal did not contain an "adequate assessment of the risks of applying advanced composites;" as to points (2) and (3) the involved evaluation criteria read: "The factors in alternate designs will be carefully evaluated by the contractor in his proposal."

The proposal "failed to show in sufficient detail [the] proposed approach to composite rotor structure." The evaluation criteria clearly require that the "offeror must show in detail that proposed problem solutions and the program plan assure maximum probability of success for this high risk program" and that the "offeror's proposal will contain a detailed discussion of generator design parameters."

- (5) The proposal failed to provide detailed methodology for selecting the proposed structure; further, the methodology for selecting the conductor was presented in a disorganized manner. The evaluation criteria are emphatic regarding the importance of methodology in selection of a proposed structure; it is stated that the most important factor under soundness of approach is the methodology of the contractor in selecting the field winding conductor and associated field winding stress support, potting and cooling techniques to minimize overall generator weight.
- (6) Magnetic provided program descriptions, block diagrams, and discussion which consisted of several pertinent computer programs used in generator design. Specific examples of program output are discussed and plotted. Full details need not be shown because RFP provided specifics.
- (6) The proposal did not contain enough detail to evaluate the soundness of the computer design approach. The RFP required that details on the computer program should be included in the proposal and that a general description in block diagram form will be adequate, but a statement of assumptions about the computer model and model verification examples will be provided to demonstrate the soundness of the computer model design approach.
- (7) Attention to this capability is shown in the Introduction and Summary, together with a picture shown of a "large coil system" using advanced potting techniques. The company cannot understand why the Air Force "require[s] an effective approach to achieving the necessary potting capability when examples of fully potted coils that we have designed and manufactured are contained through out the proposal."
- (7) Although the proposal discussed the need for adequately potted windings the company failed to provide an effective approach to achieving the necessary potting capability. The RFP required that the "offeror * * * show in detail that proposed problem solutions and the program plan assure maximum probability of success for this high risk program."

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Although the discussion of the initial protest was initially framed in terms of technical dispute, Magnetic's attorney now insists that its "protest does not [necessarily] raise the issue of the validity of the [Air Force's] technical evaluation." The company does "contend, however, that the reasons given for finding Magnetic's proposal technically unacceptable are not described in Section D-5 of the RFP entitled 'Evaluation Criteria,' and are inconsistent with the technical description."

Magnetic says that, in part, the proposal was rejected because the Air Force was "no longer interested in a high-risk program." Yet, Magnetic points out, the RFP describes the requirement as "high risk" in several places of the RFP. For example: (1) In section D-5, subparagraph 1(a) offerors were informed that the program plan must "assure maximum probability of success on this high risk program;" and (2) In subparagraph 1.4 of Section F the RFP provides that the "intent of this effort is to take risks in advancing the state-of-the-art of superconducting alternators." The company also argues:

"MCA's technical competence was not questioned, its understanding of the problem was rated highly, and its proposal was near acceptability[;] there was [therefore] no basis * * * to conclude that Magnetic's substantially lower-priced proposal could not be capable of being made acceptable through discussion."

Magnetic further says that the failure to conduct discussions was incongruous in light of Magnetic's presence in the competitive range for a similar requirement under an earlier, albeit canceled, solicitation. Magnetic also notes that precedent exists which holds that an "informational deficiency in an area which was not definitely called for by the solicitation should be resolved by negotiation rather than rejection of the proposal as outside the competitive range." HETRA Computer & Communications Industries, Inc., B-184974, August 11, 1976, 76-2 CPD 152. Further, Magnetic argues that the failure to have given due weight in the competitive range determination to the significantly lower cost proposed by Magnetic was improper.

Magnetic's final comments, which were submitted in response to those parts of the Air Force protest report released to Magnetic, may be summarized, as follows:

1. It is inconsistent for the Air Force to acknowledge Magnetic's competence and high score under "understanding the problem" while eliminating the proposal from the competitive range;
2. The Air Force did not use "objective evaluation criteria" in evaluating the proposal;
3. Inadequate "assessment of risk" is too ambiguous a concept to allow the phrase to be used as the reason for the rejection of the proposal; further, it is clear that it was not the level of risk proposed that was objectionable but Magnetic's supposed failure to describe "what it was going to do;"
4. Although three of the reasons for rejecting the proposal involved "insufficient detail," the RFP did not specify the amount of detail that was thought desirable. For example, the RFP provides: "a general description in block diagram form will be adequate for the proposal, but a statement of assumption about the computer model and model verification examples will be provided * * *." In response to this requirement Magnetic submitted 29 pages on computer programs which should have been sufficient.

In response to the suggestion of Magnetic's attorney that the protest is not primarily concerned with the Air Force's technical evaluation as such, the Department has furnished detailed documents which exclusively focus on the "technical issues" aspects of the initial protest. Key statements in these additional documents are:

1. Although discussions of superconductivity theory and principles of superconductor applications are adequate, the company's attempts to translate theory into practical design, construction, and operation are inadequate;
2. "Tip speeds" assessment discussed only weight minimization;
3. The composite was selected without supporting rationale. The analysis of machine design is inadequate since criteria require that knowledge of composite structures must be demonstrated; moreover, welding of metal structures should have been analyzed;

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4. The problem of joining metal shafts to composites was not addressed--the problem of the enormous stress imposed on rotor resulting in fatigue was not analyzed;
5. There was no analysis of current elements assumed from computer modeling of coils;
6. Illustrations of potted coils do not show they are effective--degradation caused by motion is a serious problem with coils--incomplete data on coils demonstrates degradation;
7. Company lacks experience with actual generator development--analytical experience is with large rotating machinery only, augmented by incompletely defined computer programs--lack of actual rotating machine expertise on this program constitutes technical unacceptability; and
8. Potential for material costs growth because of risky advanced composite structure approach proposed.

Deciding which proposals are in the competitive range for a given procurement necessarily involves the exercise of a considerable range of administrative discretion. Moreover, it is not our function to evaluate proposals, and we will not substitute our judgment for that of the procuring agency as to the adjectival ratings or numerical scores to be assigned proposals. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35. We will not question these determinations--particularly where, as here, the procurement involves highly technical issues--unless they are clearly not rationally founded. See, for example, Flessey Environmental Systems, B-186787, December 27, 1976, 76-2 CPD 533.

In determining whether a decision to exclude an offeror's proposal from the competitive range is rationally founded, the decision is examined for compliance with certain guidelines, namely: (1) a proposal is within a competitive range unless it is so deficient or out-of-line in price as to preclude further meaningful negotiations. 53 Comp. Gen. 1

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(1973); (2) a proposal may be excluded from the competitive range for informational deficiencies (claimed to be present in Magnetic's proposal) if the deficiencies are so material as to preclude any possibility of upgrading the proposal to an acceptable level, except through major revisions or additions (Servrite International, Ltd., B-187197, October 8, 1976, 76-2 CPD 325); and (3) an informational deficiency in a solicitation area which did not definitely require detailed responses should be resolved by negotiation rather than rejection of the proposal as outside the competitive range. HETRA Computer and Communications Industries, Inc., B-184974, *supra*.

Although Magnetic's attorney has shifted the focus of the initial protest by insisting that Magnetic does not now question the validity of the Air Force's technical conclusions, we still view the protest as essentially involving conflict on complex technical issues relating to the soundness of Magnetic's proposed approach concerning the generator. The Air Force, in our view, simply views Magnetic's approach as "too risky"--a characterization which may not completely convey what we take to be the Air Force evaluators felt inadequacies about the proposed approach. Magnetic, on the other hand, obviously considers its approach as not being "too risky." Thus, it may be more accurate to consider the dispute as one not involving "informational deficiencies" as such but as one involving conflicting technical assessments about the soundness of Magnetic's proposed approach. (The fact that Magnetic received a favorable score on "understanding of the problem"--a theoretical knowledge criterion--does not necessarily conflict, in our view, with its poor score on "soundness of approach"--a criterion measuring how well an offeror can put theoretical knowledge to practical application. It is not uncommon that theoretical knowledge does not necessarily lend itself automatically to skill in practical application.)

Accepting at face value Magnetic's present view that its proposal was rejected not for inadequacy itself but for failure to contain adequate information, the propriety of that rejection turns, as Magnetic points out, on the degree to which the solicitation definitely called for the information.

In HETRA Computer and Communications Industries, Inc., *supra*, cited by Magnetic, the solicitation did not specifically call for information regarding the proposed delivery of computer software. Nevertheless, the procuring agency rejected the proposal because of uncertainties regarding the delivery of software.

Unlike the MFTRA case, we think it was clear from the Air Force's RFP that offerors were specifically called to provide the information in dispute--that is information relating to "risk factors" (see, for example, the soundness of approach criterion, quoted above). Although this requested information was described in general terms, the general description obviously sought to elicit specific responses. See PRC Computer Center, Inc., supra, at page 73. Since, before submitting a proposal, Magnetic did not ask the Air Force to clarify the meaning of the specific call for risk assessment--or to ask questions about the amount of detailed information to be submitted--the company must be presumed to have recognized that the Air Force's technical evaluators would necessarily have to make subjective technical judgments about the adequacy of proposals under the broad concept entitled "risk assessment." Further, Magnetic, as well as all other offerors, was presumed to have known--in accordance with one of the commonly understood ground rules for all negotiated procurements--that negotiations would not automatically be afforded to offerors for the purpose of allowing the correction of unacceptable proposals.

Based on our review of the voluminous record relating to the evaluation of Magnetic's proposal, we agree that there is rational support for the Air Force's position that Magnetic's proposal was outside the competitive range considering the inadequacies, apart from other technical problems, in Magnetic's "composite" and "potted coil" approaches. We cannot disagree with the Air Force's official position (notwithstanding Magnetic's suggestion that it was otherwise told its proposal was "nearly acceptable")* that the proposal would need to be completely revised in order for the possibility of meaningful discussions to be held with the company. Nor do we agree that the rejection of Magnetic's "risky" proposal was inconsistent with the RFP's statement that the proposed effort was a "high risk program." It is our view that, even though the procurement was considered high risk, Magnetic's approach (especially in potted coils) was simply considered beyond the limits of reasonable high risk solutions.

*The Air Force has explained that the "nearly acceptable" label was used by the Department's project engineer at a "debriefing" in an "effort to be tactful as well as direct." Notwithstanding the engineer's characterization, the Air Force reports that the engineer also emphasized the deficiencies in the proposal. At best, these contrary assertions by the engineer are ambiguous as to the actual technical assessment of the engineer. Perhaps the engineer's concern for a tactful reply led him to make an unartful characterization of the proposal without regard to (or with erroneous understanding of) the legal significance attached to that label--a label which might otherwise suggest that the proposal was within the competitive range. Further, the Department's buyer explained at the debriefing that the "nearly acceptable" label--as legally understood--did not apply to the Magnetic proposal. In any event, the weight of technical opinion in the record undercuts the "nearly acceptable" label.

In response to Magnetic's argument that it is incongruous to reject Magnetic's proposal here when discussions were held with the company in an earlier, canceled procurement, the Air Force points out that on the earlier procurement Magnetic was asked 13 technical questions which, in the Air Force's view, "pertain directly to the [reasons why Magnetic's proposal has been rejected here]." Essentially, the Air Force admits that it conducted discussions and posed questions on the earlier procurement, but that Magnetic failed to adequately address itself to the questions in its present proposal--thereby meriting, in part, the rejection of the proposal. Consequently, we do not think it is necessarily inconsistent that the Air Force discussed Magnetic's proposal on the earlier procurement but rejected the company's present proposal.

Apart from the technical rationale for rejecting the company's proposal, we consider the rejection of the company's proposal warranted for lack of certain key experience--an inadequacy which suggests that should discussions on this point have prompted the company to acquire many new key individuals with necessary experience, this remedy, along with needed technical remedies, would have required a new proposal.

Since we find rational support for the rejection of Magnetic's technical proposal, the alleged merit in the company's substantially lower cost estimate, which was questioned in terms of cost realism, would not have required, in itself, the Air Force to place the proposal in the competitive range. See 52 Comp. Gen. 382 (1972).

Finally, the propriety of the Department's cancellation of the earlier, "similar" procurement is questioned. This ground of protest, raised months after the cancellation, is untimely filed under section 20.2(b)(2) of our Bid Protest Procedures. It is urged, however, that the "good cause" exception to the timeliness requirement should be invoked so as to permit consideration of the argument. Good cause is allegedly present here because the suggested impropriety--cancelling the procurement for reasons other than the stated reason of changed requirements--was not known for some months.

We disagree. If the protester thought the changed requirements were an inadequate reason to cancel the earlier solicitation, then upon receipt of the new solicitation, it should have challenged the purported changes as inadequately justifying the resolicitation within 10 days after receiving the newly issued solicitation. Thus we do not find good cause to support an exception to the timeliness requirements.

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Protest denied.

R. F. Keenan
Deputy Comptroller General
of the United States