

DECISION

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

FILE: B-209513

DATE: December 23, 1982

MATTER OF: The Management and Technical Services
Company, a subsidiary of General Electric
Company

DIGEST:

1. No firm, no matter how expert or qualified, is automatically conferred with legal entitlement to an award, and therefore no firm should expect to be considered for award based on a proposal that does not clearly reflect the offeror's capability to meet the agency's needs as expressed in the solicitation.
2. There is no legal requirement that a contracting agency confer with another agency in evaluating proposals. While an agency may deem consultation of that sort appropriate or advisable in a given situation, in the final analysis the contracting agency whose requirements are in issue is responsible for applying its own subjective judgments in determining the merits of technical proposals.
3. The selection of evaluators is within the contracting agency's discretion, and GAO therefore generally will not object to the composition of an evaluation panel. Moreover, there is no legal requirement that the contracting agency's evaluators solicit the opinions of another executive agency's personnel simply because those personnel have experience with the contract services involved.
4. An agency is not required to reopen negotiations after best and final offers are submitted, so that an offeror that substantially revises its proposal in its best and final offer assumes the risk that the proposal will be rejected as unacceptable without further discussions.

5. The determination of whether an interchange between the Government and an offeror constitutes clarification or negotiations depends on the nature of the interchange, not on a party's characterization of it. Where information is requested that is essential to determining a proposal's acceptability, negotiations have been conducted.
6. Where a best and final proposal is found technically unacceptable, it cannot be considered for award, so the fact that it offers a lower cost than the successful proposal is not controlling in the selection decision.

The Management and Technical Services Company, a subsidiary of General Electric Company (GE-MATSCO), protests the rejection of its offer under request for proposals (RFP) SA-82-RSA-0015, issued by the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA). The contract resulting from the competition, which NOAA awarded to Computer Sciences Corporation (CSC), is to provide maintenance, operation and technical support services for the Ground Segment Facility at Goddard Space Flight Center in support of the Landsat-D satellite program. The Landsat satellites are used to monitor the earth's resources and provide data to Government agencies and foreign and domestic concerns; Landsat-D is the fourth in the Landsat series (only Landsats 2 and 3 are still functioning¹), and its technology is considerably more sophisticated than that of the earlier satellites.

We deny the protest.²

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- ¹ Once in orbit a satellite letter designation is changed to a number designation: Landsat-D, launched in mid-1982, is now termed Landsat 4.
 - ² GE-MATSCO also filed suit in the matter in the United States Claims Court (Civil Action No. 531-82C) before the contract was awarded. On December 2, the court requested our decision on the bid protest.

BACKGROUND

The National Aeronautics and Space Administration (NASA) was responsible for all phases of the Landsat program--research and development, and operation and maintenance--from the program's inception more than 10 years ago. General Electric (as opposed to its subsidiary, GE-MATSCO) has been NASA's contractor for the design, development and operation of each of the Landsat satellites, including the Landsat-D satellite. General Electric also designed and constructed the Ground Segment Facility, which is a computer facility that controls the satellite and processes data the satellite transmits.

Pursuant to Presidential Directive 54, November 16, 1979, the responsibility to manage the Landsat satellite activities was transferred from NASA to NOAA, with NASA retaining research and development responsibility. The contract in issue is part of the transfer of functions in response to the directive; this procurement is to provide operation and maintenance services for the Landsat-D satellite after the post-launch period provided for in General Electric's contract with NASA expires on January 31, 1983. The contract period is one year, with options for three additional years.

The RFP stated that for purposes of selecting the awardee, the sum of the offeror's scores under the listed technical factors would be approximately twice as important as the cost proposed. The technical factors were, in descending order of importance, Performance Plan; Program Management; Innovation; Related Experience; Continuity of Service; and Key Personnel Qualifications.³

Appendix A to the RFP's Statement of Work was a sample staffing plan. The sample plan was described as a preliminary estimate, prepared by the development contractor (General Electric), of the required staffing for the Ground Segment Facility. Offerors were cautioned:

³ In the actual evaluation, Performance Plan was weighted as 55 points of 150 points maximum; Program Management as 35 points; Innovation as 20 points; Related Experience as 15 points; Continuity of Service as 15 points; and Key Personnel as 10 points. Cost was worth 80 points.

"The Government neither endorses nor questions this staffing plan. It is provided as information only and as some indication of the general magnitude and skill mix of the required staffing."

The sample staffing plan showed a total of 162 personnel each year.

Four firms responded to the RFP, and three were found to be in the competitive range; GE-MATSCO at 125.2 of the maximum 150 technical points; CSC at 101.2 points; and Bendix at 90.8 points. After negotiations and reevaluation of proposals, the competitive range was reduced to GE-MATSCO at 116.4 points and CSC at 112.6 points. At that juncture, GE-MATSCO's proposed contract price (cost plus award fee) for the base and three option years was \$30,859,206 (down from \$31,281,960 initially), and CSC's was \$26,600,537 (down from \$26,758,504). NOAA requested best and final offers by letters of August 10, including with each letter comments on the firm's proposal.

GE-MATSCO reduced its option year staffing level significantly in its best and final offer. Also, GE-MATSCO presented a "shared management" scheme in which the same contractor personnel would manage the NOAA operational contract and General Electric's Landsat research and development contract with NASA, performed at the same location at Goddard Space Flight Center. As a result, GE-MATSCO was able to reduce its offered price by almost \$8,000,000, to \$22,911,142. NOAA, however, found that GE-MATSCO's reduced staffing levels and shared management approach rendered the proposal technically unacceptable (74.8 points), and awarded the contract to CSC. CSC's final technical score was 119.4 points, and the proposed contract price is \$24,798,400.

PROTEST

GE-MATSCO, raising a matter that underlies the entire protest, complains that the rejection of its offer was unreasonable because the evaluators should have realized that a firm with GE-MATSCO's (or at least General Electric's) experience with the Landsat program would not be offering an unacceptable proposal in general, or unacceptable staffing or management plans in particular. GE-MATSCO suggests that the only possible reason for the finding of

unacceptability is that the evaluators were unqualified to judge the proposal; the protester suggests they should have conferred with NASA officials before reaching any conclusions.

GE-MATSCO also protests that NOAA failed to disclose to the firm all the deficiencies perceived in its intermediate proposal, and actually led the firm into making cost-cutting staff reductions in its best and final offer.

Finally, GE-MATSCO argues that the firm's best and final offer was acceptable as submitted. The protester contends that if NOAA's evaluators had any questions about it they nonetheless should have presumed that the proposal must be acceptable because of the identity of the offeror, and therefore had a duty to reopen negotiations with GE-MATSCO to allay their concerns, if only to afford the Government the benefit of the firm's low cost proposal.

ANALYSIS

I. As discussed in section II, infra, the propriety of the award in this case ultimately depends on whether NOAA's evaluation of the GE-MATSCO best and final offer was reasonable and, if so, whether the agency should have solicited further input from GE-MATSCO before rejecting the offer. We believe NOAA acted properly in both regards. Before discussing these matters, however, we will address (1) the impact of GE-MATSCO's experience in proposal evaluation; (2) the qualifications of NOAA's evaluators; and (3) a protest issue that we believe is irrelevant to the ultimate propriety of the award decision: the evaluation of GE-MATSCO's intermediate offer.

(1) GE-MATSCO's experience

The protester strenuously argues that it is irrational to find technically unacceptable a proposal submitted by a subsidiary of General Electric because of the parent's history of involvement in the Landsat program. We disagree.

It is well established that there is no basis for favoring a firm in a competition with presumptions based on prior performance or experience. Rather, all offerors must

demonstrate in their proposals compliance with the requirements set out in the solicitation so that each firm can be evaluated on a common basis under the scheme expressly established for selecting the successful competitor. No firm, no matter how expert or qualified, is automatically conferred with legal entitlement to an award, and therefore no firm should expect to be considered for award based on a proposal that does not clearly reflect the offeror's capability to meet the agency's needs as expressed in the solicitation. See Mutual of Omaha Insurance Company, B-201710, January 4, 1982, 82-1 CPD 2; University of New Orleans, B-184194, January 14, 1976, 76-1 CPD 22. The propriety of the award thus must depend on GE-MATSCO's demonstrated, not presumed, capability.

We note here that NOAA did establish experience and expertise as a factor in evaluating proposals through the criterion Related Experience, and under which GE-MATSCO received almost the maximum 15 points. NOAA, however, could not in effect exaggerate the importance of its knowledge about GE-MATSCO's experience or expertise by using that knowledge, instead of the firm's proposal itself, as the primary basis for judgments about the remaining 135 technical points.

(2) NOAA's evaluators

GE-MATSCO contends that before rejecting the firm's best and final offer NOAA should have consulted with the NASA officials familiar with General Electric's participation in the Landsat program. GE-MATSCO suggests that NOAA's evaluators simply were not expert enough in Landsat operations to recognize the advantages of the firm's revised staffing proposal and shared management approach.

We find no merit to the protester's position. There is no legal requirement that a contracting agency confer with another agency in evaluating proposals. While an agency may deem consultation of that sort appropriate or advisable in a given situation, see University of New Orleans, supra, in the final analysis the contracting agency whose requirements are in issue is responsible for applying its own subjective judgments in determining the merits of technical proposals.

As to the qualifications of NOAA's evaluators themselves, the record includes the following statement from the Technical Advisory Committee (TAC) chairman:

"The six members of the Technical Advisory Committee were chosen to bring to bear on the evaluation the many years experience they had in similar or related activities. Collectively the Technical Advisory Committee's members have 100 years experience in spacecraft operations, systems operations and maintenance, hardware maintenance, image and spacecraft data processing and systems development. The experience of the Committee was gained at such entities as [NASA, NOAA,] the U.S. Air Force, U.S. Army, U.S. Geological Survey, and a number of private industrial firms. Most recently, the members of the Technical Advisory Committee have all been employees of the National Earth Satellite Service of the National Oceanic and Atmospheric Administration. The Technical Advisory Committee members were chosen to represent the combined experience required to evaluate proposals involving the scope of the Statement of Work in the solicitation."

The statement also describes the Chairman's involvement in many phases of the Landsat program from its inception and, in synopsis form, reviews the qualifications of each committee member.

We consistently have held that the selection of evaluators is within the contracting agency's discretion, and we will not object to the composition of an evaluation panel absent evidence of fraud, bad faith, conflict of interest, or actual bias. See Art Services and Publications, Incorporated, B-206523, June 16, 1982, 82-1 CPD 595. Under the circumstances, GE-MATSCO's allegation to the effect that the same NOAA evaluators who judged the firm's first two technical proposals superior were incapable of a reasonable evaluation of its best and final proposal, because if they were capable they would have found it acceptable, reflects a difference of opinion, but obviously does not constitute the evidence contemplated in that principle.

(3) The intermediate proposal

GE-MATSCO protests that NOAA failed to conduct adequate discussions with it about its revised proposal (not the best and final offer) in that NOAA advised GE-MATSCO of only two of seven deficiencies noted in the TAC's evaluation of the proposal.

The seven deficiencies concerned:

1. "too many duties" for the Operations Support Manager;
2. the duties of the control and simulation facility (CSF) Flight Operations supervisor;
3. control of the CSF scheduling functions;
4. Image Processing Analyst backup and support;
5. lack of a second CSF computer operator per shift;
6. certain reprogramming capability; and
7. weekend in-house maintenance.

NOAA's request for a best and final offer only mentioned the fifth and sixth matters.

NOAA argues that four of the five deficiencies (numbers 2-4, and 7) had existed in the firm's initial offer and in fact were communicated to GE-MATSCO in connection with the evaluation of that proposal, and that the contracting officer did not view the remaining item (number 1) as an actual deficiency.

Initially, we note NOAA's letter inviting GE-MATSCO to a negotiations session to discuss the firm's initial offer indeed specifically mentions two of the five matters: image processing analyst backup and support, and a weakness in weekend in-house maintenance (numbers 4 and 7).

Two other points in that letter appear reasonably related to deficiencies numbers 2 and 3. As to the remaining "deficiency," the contracting officer states he disregarded the TAC's concern "because GE-MATSCO had identified adequate back-up personnel who could assume his duties if he was tied up."

In any event, we believe this protest issue has no significant bearing on the propriety of the award to CSC. GE-MATSCO's offer was not judged unacceptable because the five matters in issue in the intermediate proposal were not communicated to the firm and thus repeated in the best and final offer to GE-MATSCO's detriment. Rather, NOAA found the best and final offer technically unacceptable because of the significant changes in staffing and management schemes from those in the initial and intermediate proposals, so that the five intermediate proposal matters noted essentially became insignificant once the firm changed its staffing and management approach in its final response to the solicitation. The propriety of the award therefore depends on the reasonableness of the TAC's reactions to that response, discussed below.

We note here the protester's contention that NOAA, during the negotiations process, actually misled the offeror into significantly changing its best and final offer to reduce costs. GE-MATSCO bases its contention essentially on two NOAA communications, the first being a reminder in the August 10 request for a best and final offer that this was an operational, not a developmental contract, and the second being a statement by a NOAA official that GE-MATSCO should "sharpen its pencils."

We find no merit to this argument. The contract to be awarded was a cost plus award fee contract, and the first allegedly misleading advice involved the fee proposed by GE-MATSCO, and was conveyed in this comment:

"Your proposal total fee and the distribution between base and award fee are considered unacceptable.

"The services to be provided do not merit a total potential fee of 10%. Your assertion that this is a developmental effort is incorrect. The developmental phase will have been completed under a previous contract and should not be continued into this effort.

"This shall be an incentive type contract. A contractor must earn its fee through superior performance, not by establishing an excessive total fee. * * * A total fee of 8% is a maximum acceptable fee for this contract. Your proposed base fee of 3% is excessive. A 2% base fee is reasonable and consistent with the purpose of this contract, which is to maximize contractor performance by the use of the incentive provisions."

The second comment was made orally during an August 6 meeting unrelated to the procurement between a General Electric employee and a NOAA official not involved in the actual procurement process, but nonetheless connected with the satellite program and aware of the procurement. The NOAA official concedes that while he allegedly had no knowledge of the offerors' revised cost proposals, after the General Electric employee raised the subject of the Landsat procurement he "made a casual statement to the effect that all offerors should 'sharpen their pencils.'"

We simply do not see how either the August 10 or August 6 comment reasonably can be viewed as having led GE-MATSCO, to its ultimate detriment, into submitting what it characterizes "an innovative, cost-reducing [best and final] proposal based on an intimate operating knowledge of the contract's true staffing requirements * * *."

Rather, we believe that for purposes of deciding whether NOAA misled GE-MATSCO as argued the firm could reasonably rely on the August 10 written advice only in reexamining and revising its proposed fee structure. Also, we believe the firm acted entirely at its peril in relying on the extra-procurement August 6 conversation between a

General Electric (not GE-MATSCO) official and a NOAA official not involved in the negotiation, evaluation or selection process; indeed, we seriously question the propriety of the conversation while the procurement was in process.

II. It is evident from the above that GE-MATSCO had no rational basis to assume that NOAA's evaluation team would accept its revised proposal simply because the firm is a subsidiary of General Electric. Rather, GE-MATSCO, as is the case with any offeror, should have expected that the evaluation would focus on how the firm framed its written response to the RFP, and whether in that response the offeror demonstrated the merits of its approach to meeting NOAA's needs.

The critical issues for resolution therefore are whether NOAA's evaluators reasonably concluded that the changes in GE-MATSCO's best and final offer rendered the offer unacceptable, and whether they should have contacted the firm to permit it to respond to their concerns. We believe NOAA acted reasonably in both respects.

The evaluators had no major problems with the staffing plan in GE-MATSCO's initial technical proposal. The offer scored 125.2 points out of the maximum 150 points, and in fact was judged the only proposal acceptable as submitted. GE-MATSCO lost almost 9 points upon evaluation of its revised offer, however, in large part because of CSF staffing reductions in what the TAC saw as an apparent effort to cut costs. The TAC relayed its concern about the firm's staffing in its request for best and final offers.

GE-MATSCO responded to the best and final offer request with a substantially changed proposal, focused on limiting the number of contract personnel needed over the four-year performance period, and thereby reducing costs--the eventual personnel reduction was by more than 20 percent, and the resultant cost reduction was from almost \$31 million to almost \$23 million.

For example, GE-MATSCO proposed significant staff reductions every six months for the first two program years, reducing the staff total from 126 in February 1983 to 100 in

February 1985; the retained personnel would assume the responsibilities of the eliminated positions. Accompanying the staff reductions would be changes in management structure every six months.

Also, whereas GE-MATSCO initially had offered to transfer all operational personnel involved in the NASA contract to the NOAA effort, the firm intended to replace at least 60 of them over the first two contract years.

Finally, GE-MATSCO proposed a "shared management" plan under which the same General Electric employees would manage both NOAA's operational contract and NASA's research and development effort--as stated above, performance under both contracts is in the same facility at Goddard Space Flight Center. Under the plan, NOAA and NASA would share, through their separate contracts, 6 key management positions, with 2 managers involved in NOAA's effort 50 percent of the time, 3 involved 66 percent, and 1 involved 75 percent. The agencies also would share 24 support people, with 10 percent of their time devoted to NASA.

In the TAC's final evaluation report, the TAC Chairman states that it was a "mystery to the committee as to why, at the last minute, GE completely revised their proposal and did so in a way as to lower their score so drastically." The Chairman summarizes the TAC's position on the proposed staff reduction and shared management:

"These changes when combined create a ripple effect on other parts of the proposal. In addition, the modifications create unacceptable staffing and management plans especially in the out years.

"The staffing levels in the out years are inadequate to accommodate not only routine operations but to respond to changes in requirements or changes caused by spacecraft or sensor degradation. The management area is chaotic to say the least. Management of facilities and functions change every six months in a management version of musical chairs with neither training nor experience required for the personnel needed to do these jobs. There are times when major functions are without any supervision entirely during

certain shifts. Backups disappear and chain-of-command and responsibility becomes confusing. The net result is there is no standardization of procedures that can be effective for more than six months at a time. Instability appears to be the dominant point that comes across the proposal.

"Elimination of the higher paid personnel in the first option years ensures that the experience gained from being the development contractor will vanish with the people. * * * within two years, five of the seven key personnel will not be on the job. * * * The programmed turnover rate in addition to the replacement of higher priced personnel in the initial and first option year is excessive even by M&O [maintenance and operation] typical replacement rates.

"The shared management approach proposed by GE is unacceptable for this NOAA M&O support. Some of the individuals names in this plan are considered to be already overburdened in the positions they hold in the NOAA M&O contract. For example, the operations support manager who additionally has responsibility for mission supervisor during weekdays is now being reduced in his availability by 25 per cent which is being diverted to NASA functions.

"In general, it is the opinion of the Technical Committee that the GE proposal was hastily prepared, incomplete and poorly executed * * *."

The report continues with a litany of specific criticisms about the radical changes in GE-MATSCO's best and final offer. One example is the statement:

"* * * The shared management approach they chose to take leads to a conflict between NOAA and NASA over priorities for resources and will reduce overall system performance. The philosophy for each agency is different as well in the time of work performed under the two contracts - operational versus [research and development]. It is anticipated that an inordinate amount of time would be spent by NASA and NOAA managers on conflict resolution."

GE-MATSCO has responded to NOAA's position in the protest, and to the TAC final report specifically, with considerable argument as to why the committee is wrong in its conclusions about the staff reductions, shared management, and various other aspects of the proposal. For example, GE-MATSCO basically argues that NOAA's concerns with the option year staffing proposed in the firm's best and final offer is irrational. It argues that as the subsidiary of the incumbent NASA contractor, and thus able to draw on General Electric's experience in Landsat operations both in the years before the July 1982 launch and in the short post-launch period before the best and final offer was submitted, it--not the TAC--is in the best position to know what staffing will be needed. The protester also suggests that rather than view the proposed reductions in and replacements of experienced General Electric staff as a weakness, NOAA should have judged the concurrent retention of experienced General Electric staff as a strength of the proposal.

As to the shared-management scheme, the protester argues that it is totally irrational for NOAA to assume that the proposal will prove anything but advantageous to the Government. The reason here is GE-MATSCO's view, as summarized in a submission to our Office, that:

"* * * As this approach would save costs, and recognizes the interfaces explicitly referred to in the [Statement of Work] between the NOAA and NASA work emanating from operation of the very same spacecraft under the very same Landsat-D Program, and the fact that employees under both contracts are rubbing elbows in the very same facility, on its face the approach makes eminent sense.* * *"

GE-MATSCO suggests that NOAA's judgments were unfairly influenced by NOAA jealousy of and rivalry with NASA. As evidence, the protester points out that, as discussed above, NOAA did not fully include NASA in its evaluation of the firm's proposal; GE-MATSCO contends "It is indeed nonsensical and arbitrary to assert that proposing to do things that actually work in operating the facility [for NASA] is a 'technically unacceptable' proposal for operating the facility [for NOAA]."

We see nothing unreasonable, however, in the TAC's reactions to the staff reductions or the shared management scheme related in GE-MATSCO's best and final offer, which clearly formed the basis for the rejection of the proposal. Concerning the former, we believe the TAC's concerns with option year staffing, management and staff turnover as expressed in the quoted excerpt from the final report as well as in the extensive documentation that accompanies the protest unquestionably are legitimate. Also, we certainly cannot conclude that a contracting agency is compelled to accept an offeror's proposition that it is to the Government's advantage if the agency, administering one contract, shares the same contractor management positions and personnel with another agency administering a separate (albeit related) contract, even if the two contractors are a parent corporation and its subsidiary. The fact that GE-MATSCO does not agree with NOAA's judgments does not invalidate them. See Armidir, Ltd., B-205890, July 27, 1982, 82-2 CPD 83 at p.7.

Through its protest, GE-MATSCO would have our Office intervene in a phase of negotiated procurements--de novo proposal evaluation--that we consistently and frequently have stated is appropriate only for the contracting agency itself. See, e.g., The Jonathan Corporation, B-199407.2, September 23, 1982, 82-2 CPD 260. It is an obvious and necessary principle of the Federal Government's organization and contracting system that the determination of an agency's needs and the method of accommodating them is primarily the responsibility of the procuring agency. See Diversified Data Corporation, B-204969, August 18, 1982, 82-2 CPD 146. Consequently, in determining a proposal's desirability, contracting officials enjoy a reasonable degree of discretion, and their determinations will not be questioned by our Office unless clearly shown to be unreasonable, arbitrary, or in violation of procurement statutes and regulations. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44.

Moreover, even if GE-MATSCO could have explained its proposal if afforded the opportunity, we have no legal basis to object to NOAA's decision simply to award the contract to CSC rather than permit GE-MATSCO that chance. The reason is that the vehicle the firm selected to create, in the TAC Chairman's word, a "mystery" of proposal revision, was the firm's best and final offer. While the

regulations governing negotiated procurements require an agency to discuss proposal deficiencies with offerors in the competitive range, Federal Procurement Regulations § 1-3.805-1(a)(1964 ed.), they do not require discussions after best and final offers are submitted where negotiations already have taken place and the deficiencies arise initially in the best and final offer. It is up to the contracting agency, not a single offeror, to decide when the negotiation and offer stage of a procurement will end, so that a firm has no legal right to insist that negotiations be reopened after best and finals are submitted. As we stated in Sperry Univac, B-202813, March 22, 1982, 82-1 CPD 264:

** * * In fact, discussions should not be reopened after best and final offers are received unless it is clearly in the Government's best interest to do so.* * * While an offeror may modify its earlier proposals in its best and final offer, * * * in doing so it assumes the risk that its changes might result in the rejection of its proposal, rather than in further discussions, if the agency finds the revised proposal unacceptable.* * **

In this respect, conducting negotiations with one firm after best and final offers would necessitate reopening the procurement to negotiate with all offerors in the competitive range so that all firms are treated equally. University of New Orleans, supra.

Thus, the burden was on GE-MATSCO to demonstrate the merits of its revised best and final offer, or risk having the offer rejected. Logicon, Inc., B-196105, March 25, 1980, 80-1 CPD 218. The firm took the risk and lost--as stated above, in our view NOAA reasonably found the offer unacceptable--and an agency has no legal duty to reopen the competition to permit a single offeror another chance to demonstrate the merits of its approach. See Centennial Systems, Inc., B-201853.2, April 16, 1982, 82-1 CPD 350 at p. 9.

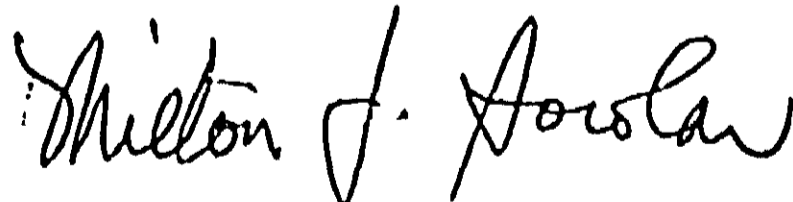
Alternatively, GE-MATSCO contends NOAA at least should have asked the firm to "clarify" the parts of its best and final offer that concerned the agency, which allegedly would not have required a reopening of the negotiations process.

Indeed, when contacts between an agency and an offeror are for the limited purpose of seeking and providing clarification, discussions need not be held with all competitive range offerors. John Fluke Manufacturing Company, B-195091, November 20, 1979, 79-2 CPD 367. Nonetheless, the true nature of an interchange between the Government and an offeror--negotiations, or clarifications--depends on the parties' actions, not on one party's characterization of them. New Hampshire-Vermont Health Service, 57 Comp. Gen. 347 (1978), 78-1 CPD 202. While the line between clarifications and negotiations is not always clear, we believe the types of contacts GE-MATSCO contends were appropriate clearly would have constituted negotiations. GE-MATSCO's best and final proposal was judged unacceptable because of the unquestionably significant changes in its staffing and management schemes from the approaches in its initial and revised offers. Where information is requested from an offeror that is essential to determining the acceptability of the proposal, the agency's request for clarifications constitutes a reopening of negotiations. CompuServe Data Systems, Inc., 60 Comp. Gen. 468 (1981), 81-1 CPD 374.

Thus, the type of request GE-MATSCO has in mind would constitute discussions and would necessitate reopening the negotiations process. See JVAN, Inc., B-202357, August 28, 1981, 81-2 CPD 184. As stated above, NOAA had no duty to take that action. Sperry Univac, supra.

As a final matter, we recognize that GE-MATSCO's proposed contract cost was \$1,900,000 less than CSC's. The lower proposed cost is not controlling, however, since the proposal was reasonably found unacceptable and thus could not be considered for award. See Jekyll Towing & Marine Services Corp., B-200313, July 23, 1981, 81-2 CPD 57.

The protest is denied.

for 
Comptroller General
of the United States