

DECISION



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

Lickman

123237

FILE: B-212229

DATE: January 19, 1984

MATTER OF: Sperry Flight Systems

DIGEST:

1. Protest that award should have been made to lower priced proposal since it was evaluated as technically "good" is without merit where solicitation stated that cost proposal and technical proposal evaluation would be considered equal in importance and the contracting officer determined that the technical superiority of the awardee's proposal outweighed the cost differential between the proposals.
2. Protest after award that price should have been more significant as a basis for award than technical factors is untimely where request for proposals stated that the two would be considered equal in importance.
3. Protest allegations first raised in protester's comments on an agency report are untimely where they are not filed within 10 working days after a debriefing at which the bases of protest were made known to the protester.

Sperry Flight Systems (Sperry) protests the award of a contract to RCA Service Company (RCA) by the Department of the Air Force under request for proposals (RFP) No. F08637-82-R0099. The award is a firm, fixed-price contract for 1 year with 3 option years for the operation and maintenance of the aerial target systems and subscale scoring functions at Tyndall Air Force Base, Florida, and Holloman Air Force Base, New Mexico.

Sperry asserts that, since it submitted the lowest price offer and its technical proposal was rated as "good," it was entitled to the award. We find the protest is without merit.

The RFP stated that, in evaluating proposals, the technical proposal would be equal in importance to the cost proposal. Sperry's best and final offer (BAFO), including option years, of \$12,613,541 was approximately 4 percent

less than RCA's BAFO of \$13,127,460. However, the technical proposal review board arrived at technical proposal scores of 396.65 for RCA and of 370.83 for Sperry. The maximum possible score was 444. The scores were converted to a percentage of maximum with RCA receiving 89.4 percent and Sperry receiving 83.52 percent. The board then combined this score with the cost results, under which Sperry received the maximum and RCA received 96.09 percent to reflect its 4-percent higher cost differential. Assigning equal value to cost and technical scores and normalizing on a 100-percent scale, the combined total was 91.76 for Sperry and 92.76 for RCA. The board made no specific recommendation other than to state that all three proposals which had been received were technically adequate.

Upon receipt of the panel's assessment, the contracting officer made the determination that RCA's highest scored technical proposal was significantly superior to Sperry's lower scored technical proposal, and that the higher overall combined point score of RCA's proposal warranted award to RCA, taking into consideration the technical and cost considerations expressed in the scoring formula. In essence, the contracting officer concluded that the 4-percent cost differential was outweighed by the more than 4-percent technical differential between the two proposals.

Award was made on June 15, 1983, and a debriefing was held with Sperry on June 22, 1983. At this debriefing, the contracting officer advised Sperry of the weaknesses in its proposal which had resulted in its losing points in the evaluation. In particular, the contracting officer pointed out that, while Sperry had a good technical proposal, it was downgraded for having simply repeated the government statement of work. This was found to be particularly evident in the subscale portion of Sperry's proposal. In addition, Sperry's proposal was downgraded for the lack of a training plan for the subscale and for sufficient, but not exceptional, experience and educational qualifications for technicians and mechanics. Lack of direct subscale drone experience was also stated to be a factor in downgrading Sperry's proposal.

Sperry's protest was filed in our Office on June 28, 1983. Sperry simply protested that, since Sperry's price was lower than RCA's and Sperry's technical proposal was rated "good," Sperry was entitled to the award. In

essence, Sperry is inferring that, since its proposal was rated "good," it was technically equal to RCA's and, therefore, Sperry was entitled to award based on its lower price. However, even though the Sperry technical proposal was rated "good," the RCA technical proposal had a higher point score. Whether a given point spread between two competing proposals indicates the significant superiority of one proposal over another depends on the facts and circumstances of each case and is primarily a matter within the discretion of the procuring agency. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. Thus, we have upheld an award to a higher cost proposal judged technically superior by the contracting agency despite a technical point score spread of only 3 points. 52 Comp. Gen. 358 (1972). As we noted in that decision, the dispositive element is not the technical scores per se, but the considered judgment of the procuring agency considering the significance of the difference.

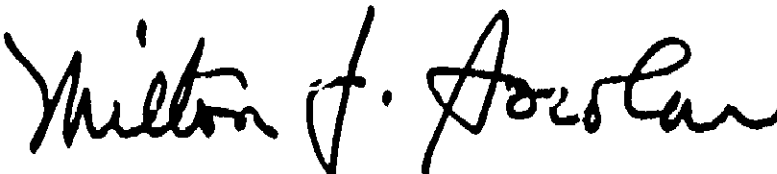
In this instance, the contracting officer concluded that the technical difference between the two proposals, as reflected by the board evaluation scores, evidenced sufficient technical superiority to warrant selection of RCA's higher priced proposal. Accordingly, the record does not support Sperry's inference that the proposals were judged to be essentially equal technically. Rather, it is clear that RCA's proposal was considered more advantageous to the Government despite its higher price. Accordingly, we reject Sperry's argument that it should have received the award based solely on its lower priced BAFO.

To the extent that Sperry is challenging, after award, the fact that the RFP treated price and technical factors as equal when price should have been the primary consideration, this constitutes an untimely challenge to RFP's stated evaluation criteria. Blue Cross-Blue Shield of Tennessee, B-210227, May 23, 1983, 83-1 CPD 555. As indicated above, the RFP explicitly stated that the two would be considered equal in importance. Our Bid Protest Procedures require that protests of alleged improprieties in an RFP which are apparent prior to the closing date for submission of initial proposals must be filed prior to that date. 4 C.F.R. § 21.2(b)(1) (1983).

In Sperry's comments on the agency's report, which it submitted more than 2 months after its original protest and the debriefing, Sperry raised a number of subsidiary

issues. These include allegations that the weaknesses in Sperry's proposal were not brought to its attention during negotiations, speculation that the evaluation panel may have been partisan or biased, and various objections to the above-mentioned areas in which Sperry's proposal was downgraded for weaknesses. We find that all of these issues are untimely since it is clear that Sperry knew of these bases of protest no later than the time the debriefing was held, yet it failed to file its protest within 10 working days from that date as required by our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1983); Bell & Howell Corporation, B-196165, July 20, 1981, 81-2 CPD 49.

We deny the protest in part and dismiss it in part.

for 
Comptroller General
of the United States