



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Air Tractor, Inc.  
File: B-228475  
Date: February 5, 1988

---

### DIGEST

1. Although agency reduced the maximum number of technical points available from the number stated in the request for proposal evaluation scheme, protest of this issue is denied where the reduction does not appear to have affected the selection because the two competing technical offers were essentially equal and the awardee offered a substantially lower cost.
2. Protest that agency failed to require flight test of aircraft is denied where agency had reasonable basis for its decision not to conduct flight test and protester fails to show that agency position was based on bad faith as alleged.

---

### DECISION

Air Tractor, Inc. protests the award of a firm, fixed-priced indefinite quantity contract to Ayres Corporation under request for proposals (RFP) No. 0000-520102JS, issued by the Department of State (DOS) for purchase of "highly modified" agricultural spray aircraft to be used for aerial eradication of narcotics crops overseas. The RFP contemplated a contract for an estimated 8 aircraft, plus spares, during the first year and an estimated 7 aircraft, plus spares, during the second year. DOS awarded the contract to Ayres after determining that Ayres met all the RFP requirements and was rated higher on technical factors and offered a lower price than the protester.

Although Air Tractor initially advanced numerous objections concerning the conduct of the procurement, the protester, in its comments on the agency report and on the conference held in connection with this protest, addressed only three issues: the propriety of the evaluation, the issuance of Amendment No. 0005 and the failure to require Federal Aviation Administration (FAA) certification. In addition to arguing the merits of these issues, the protester also

041214/134983

alleges that DOS' actions with regard to the evaluation, the amendment and FAA certification show overall bad faith on the part of DOS officials in the conduct of this procurement. We will deem all other issues to have been abandoned and will not address them in this decision. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

The RFP provided for award to the offeror whose proposal received the highest number of total points resulting from the price and technical evaluation. The technical criteria in the RFP were assigned 70 points. The RFP technical evaluation criteria were, in descending order of importance: (a) speed; (b) maneuverability; (c) altitude performance; (d) range; (e) take off, climb, cruise and landing performance; (f) spray patterns; (g) maintenance requirements; (h) airframe and ancillary parts availability; (i) product support base; and (j) company production history. The price evaluation was worth 30 points and the RFP provided that the offeror whose proposal was determined to be the lowest overall cost to the government, price and price related factors considered, would be awarded the maximum of 30 points.

Three proposals were received, one of which was determined unacceptable for reasons not germane to the protest. Evaluation of the remaining offers from Ayres and Air Tractor included site visits to both firms by teams of experts from DOS, FAA and Hardron, Inc., a consultant employed by DOS to assist in completing the technical evaluation. The technical and price evaluation results after best and final offers (BAFOs) were as follows:

<u>Firm</u>	<u>Tech. Score</u>	<u>Cost</u>	<u>Cost Score</u>	<u>Total Score</u>
Air Tractor	48.5	\$12,954,654.65	27.6	76.1
Ayres	50	11,927,784.40	30	80

The difference in technical scoring primarily resulted from Ayres substantially higher rating for production history; Air Tractor received a lower rating because its proposed prototype aircraft is not yet in full production.

Air Tractor contends that DOS did not properly evaluate proposals. The protester specifically argues that for some unexplained reasons the total points assigned the technical factors during evaluation was changed so that the overall possible technical point score to be awarded was reduced from 70 maximum to 55.5. Also, the protester states that within the 55.5 point total more possible points were assigned to production history in obvious disregard of the

established evaluation criteria and the point scoring scheme contained in the agency's internal evaluation workbook.

The record supports the protester's contention that the agency reduced the total points available for technical from 70 to 55.5. No explanation has been provided for this change. Nevertheless, the point scoring plan actually used by the agency maintained the relative importance of the technical factors as set out in the RFP, with production history receiving the least weight, which is consistent with the evaluation scheme. Moreover, in view of the essentially equal technical scores and Ayres' substantially lower cost, the reduction in total technical points to be awarded does not appear to have affected the selection decision or otherwise been prejudicial to Air Tractor.

The protester also argues that the issuance of Amendment 0005, which deleted evaluation factor e, takeoff and climb, and factor f, spray patterns was improper and unfair to the protester. The agency reports that these factors were deleted because they could not be evaluated without the use of a flight test since available data was insufficient and incompatible. Air Tractor insists that a flight test should have been conducted and the deleted factors considered and that the decision not to do so was intended to favor its competitor.

The agency did not require a flight test for the following reasons: (1) time required for a flight test would result in loss of funds; (2) delay in meeting urgent requirements; (3) technical considerations indicating that such a test was unnecessary; and (4) the substantial burden that would be placed on the offerors. While the protester objects to the failure to conduct a flight test, it has not shown that the agency's judgment lacked a reasonable basis. In this regard, we consistently have recognized that a contracting agency has broad discretion to establish an evaluation plan that is best suited to its needs. Augmentation, Inc., B-186614, Sept. 10, 1976, 76-2 CPD ¶ 235.

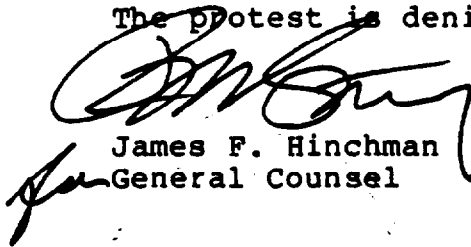
Finally, Air Tractor objects to the fact that a FAA certification was not required upon submission of a proposal. The protester contends that the failure to consider certification at the time of submission of proposals resulted in its being penalized because it did have a certification and Ayres did not.

The solicitation did not impose any requirement for submission of evidence of FAA certification with the proposal. The RFP stated only that "[a]ll aircraft proposed must meet or exceed all current United States Federal Aviation Agency (FAA) standards in effect at the time the aircraft is

manufactured. FAA certification is required." While this language clearly imposes a requirement that the proposed aircraft be manufactured in accordance with certain standards and be certified by the FAA, it does not require that the certification exist at the time of proposal submission or that evidence of the certification be provided at that time. In this respect, it is clear from this record that the agency was not limiting the competition to existing aircraft, but was also willing to consider design proposals for which certification could not yet be available. Thus, we find no merit to this contention.

As stated above, the protester asserts that DOS proceeded in bad faith motivated by a desire to assure an award to Ayres. Where agency bad faith is alleged, the protester must present supporting factual evidence; contracting officials are presumed to act in good faith and, in order to establish otherwise, there must be virtually irrefutable proof that the agency had a malicious and specific intent to harm the protester. Urdu Industries, Ltd., B-222421, June 17, 1986, 86-1 CPD ¶ 557. The record does not support the protester's allegation. As indicated, the agency's actions here appear to be reasonable under the circumstances.

The protest is denied.



James F. Hinchman  
General Counsel