

McArthur



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Fairchild Weston Systems, Inc.  
File: B-229843.2, B-229843.3  
Date: June 3, 1988

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### DIGEST

1. Statements made at debriefing conference unsubstantiated by other evidence do not establish that source selection authority considered weaknesses in protester's proposal to be a more than trivial factor in source selection decision.
2. Agency decision to discount potential problems in obtaining required agency certification of computer processor was not unreasonable in view of evidence that major processor component previously had passed certification.
3. Protest that agency unreasonably failed to downgrade awardee based on information in preaward survey is untimely where solicitation stated that preaward survey might be considered in evaluation and protester waited 6 weeks after contract award to pursue its basis of protest by filing a Freedom of Information Act request for preaward survey. In any event, the record shows that source selection official in considering the entire record including both the preaward survey and technical evaluation had a basis to conclude that evaluation of awardee was reasonable.

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### DECISION

Fairchild Weston Systems, Inc. protests the award of a contract to Hughes Aircraft Company under request for proposals (RFP) No. F08635-87-R-0216 issued by the Department of the Air Force for manufacture of a GBU-15 Automatic Test System (GATS), which diagnoses and tests air-to-ground weapon components. Fairchild contends that the agency unfairly downgraded its proposal for nonexistent deficiencies while ignoring real weaknesses in Hughes' proposal.

We deny the protest.

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The RFP provided that the source selection authority would select a proposal for contract award based on an integrated assessment of the proposals to determine which proposal was most advantageous to the government. Under the RFP, cost-price was considered less important than technical criteria and equal in importance to logistics.

Offerors submitted initial proposals on July 1, 1987. On October 6, after discussions, the agency requested all offerors in the competitive range to submit best and final offers by October 20. After receiving a final briefing by the source selection evaluation committee (SSEC), the source selection authority (SSA) determined that while all offerors in the competitive range submitted adequate revised proposals, the proposal of Hughes was superior in several areas, among them operational effectiveness, "in part because of the excellent thru-put, growth and operability of the TASC0 1750A computer" proposed by Hughes. The SSA also found Hughes' proposed system software and hardware design to be superior and its proposal to be strong in the area of reliability and maintainability and overall design and manufacturing approach. Furthermore, Hughes' proposed cost with options was substantially less than that of other offerors in the competitive range. Thus, the SSA selected Hughes for award because he considered its proposal stronger than Fairchild's and its price was lower.

On December 9, 1987, the agency awarded contract No. F08635-88-C-0064 to Hughes at a price of \$10,670,000. On December 18, Fairchild filed a protest with this Office.<sup>1/</sup> On January 21, 1988, while that protest was pending, the agency conducted a debriefing. Debriefing officials advised the protester that its proposal was sound and was considered to present low risk to the program but that its offer was more costly than the awardee's.

On February 4, 1988, Fairchild filed the instant protest, alleging that based on what the Air Force said at the debriefing, the agency had improperly downgraded its proposal for nonexistent deficiencies. In addition, having received a copy of the source selection decision in connection with its first protest, Fairchild filed an additional protest ground claiming that the awardee's use of the TASC0 1750A computer was a weakness, not a strength, since that computer had not been certified to the Air Force standard, administered by the Air Force System Engineering Avionics Facility (SEAFAC).

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<sup>1/</sup> We denied this protest in a decision, Fairchild Weston Systems, Inc., Apr. 1, 1988, 88-1 CPD ¶ 331.

Regarding Fairchild's allegation that it was improperly downgraded for nonexistent weaknesses, the record shows that while there were some weaknesses, the protester's proposal was rated acceptable, as was the awardee's proposal. In view of the awardee's cost advantage, the protester is reduced in essence to arguing that if not for the proposed "weaknesses," its proposal would have appeared superior to the awardee's. As requested by the protester, however, we have reviewed the SSEC worksheets and, despite the impression apparently conveyed at the debriefing, we find no evidence that any of these weaknesses affected the protester's rating.

For example, the protester has supplied reliability and maintainability (R&M) milestone charts from its proposal to contradict the debriefing criticism, "R&M milestone task schedule not provided." From the record, however, it is clear that the briefing official misstated what the SSEC found, which was not that there were no milestones but that some milestones were omitted and that the protester had failed to persuasively integrate milestones on the charts with overall program tasks. The protester has provided evidence refuting the criticism "inadequate capacity for future TRU's [test replacement units]"; again, from the record it appears that the debriefing incorrectly referred to the wrong item in the technical area and that in fact, the SSEC appeared generally satisfied by the protester's submissions. The debriefing criticisms were not intended to indicate that Fairchild's proposal was not considered acceptable, but were provided to suggest ways for Fairchild to improve its future proposals. In fact, the record indicates that none of the weaknesses discussed at the debriefing was a more than trivial factor in the selection decision.<sup>2/</sup>

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<sup>2/</sup> In its comments submitted in response to the agency report, the protester argues that by failing to identify these weaknesses during discussions, the agency failed to conduct meaningful negotiations. This issue is untimely raised under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988), although we note that extensive discussions did take place and that in every item where the protester was rated less than acceptable (red or yellow), it supplied a response that resulted in a rating of acceptable/green. SPM Manufacturing Corp., B-229844, Apr. 13, 1988, 88-1 CPD ¶ 363; Structural Analysis Technologies Inc., B-228200, Nov. 9, 1987, 87-2 CPD ¶ 466 (no obligation to discuss every aspect of an acceptable but lower rated proposal).

With regard to the acceptability of Hughes' proposal, specifically Hughes' proposed use of the TASC0 1750A computer, the protester refers to the requirement that the computer processor/control function "shall contain a digital computer having true, non-emulated MIL-STD-1750A Instruction Set Architecture, and shall be suitable for high speed data handling functions as defined in MATE [Modular Automatic Test Equipment] Guide G2V3P1S7." The protester points out that the MATE Guide requires that the processor pass the validation testing performed by the SEAFAC and that the TASC0 1750A computer has not been so certified. The protester argues that the awardee was bound to offer a computer that had been certified prior to award. The protester has not shown where the RFP requires certification prior to award. Moreover, our review of the solicitation and statement of work leads to the conclusion that processor validation is merely one of several certifications that offerors are expected to obtain in the process of demonstrating MATE compliance after award or prior to final delivery. The record further shows that the McDonnell Douglas MDC-1750A computer utilizing the same MDC-281 chip set used in the TASC0 1750A has received SEAFAC certification. Since the differences between the TASC0 1750A and the MDC 1750A apparently are unrelated to the requirements for SEAFAC validation, the SSEC reasonably found that SEAFAC validation of the MDC-281 chip set was sufficient to indicate that Hughes could obtain certification of the TASC0 1750A without difficulty.

Fairchild has filed an additional protest charging that the agency unfairly failed to downgrade the awardee's proposal based on information contained in a preaward survey of Hughes. The protester also contends that it was unfair to survey Fairchild's entire operation while confining the survey of Hughes to the specific division that would perform the GATS contract. Fairchild argues that this protest is timely because it is filed within 10 working days of receipt of the preaward survey received on February 19, 1988, pursuant to a Freedom of Information Act request filed 40 days after contract award on January 20, 1988. The protester argues that until it reviewed its own preaward survey and realized the errors made by the preaward survey team in surveying Fairchild, it had no basis to believe that similar errors might have been made in surveying Hughes.

Our Bid Protest Regulations provide that protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). A protester's failure to pursue a matter diligently by seeking necessary

information within a reasonable time will result in dismissal of the protest as untimely. J&J Maintenance Inc., B-223355.2, Aug. 24, 1987, 87-2 CPD ¶ 197. The RFP specifically stated that preaward surveys might be considered in an offeror's overall evaluation; furthermore, the protester does not allege that the information appearing in the preaward survey relative to Hughes' past contracting experience was information of which it was not already aware. We believe that the protester did not therefore show the required diligence in waiting until receipt of the survey to raise these issues or waiting approximately 6 weeks to request a copy of the survey. Id.

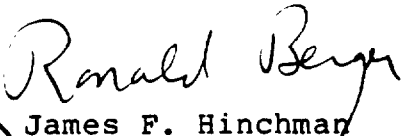
In any event, the record shows that the preaward survey report, issued prior to the award selection by the SSA, criticized Hughes' lack of experience in producing similar items and problems in managing government-furnished property. The report also pointed out that the company's existing quality control system allegedly did not conform to contract requirements and questioned its ability to obtain a GBU-15 technical data package from another company. The protester argues that the survey constitutes evidence that the evaluators unreasonably scored the Hughes proposal high in areas in which the preaward survey criticized Hughes.

The agency reports that, notwithstanding the preaward survey team's qualifications on Hughes' responsibility, the SSA, which considered both the survey and the SSEC evaluation, had ample evidence to rebut and outweigh the survey concerns. For example, the alleged "handicap" perceived by the preaward survey team concerning lack of MATE experience was not concurred in by the SSA. The SSA had before it information from the Hughes proposal to show that Hughes Support System Division personnel had worked on MATE compliance programs for other Hughes divisions and that Hughes had an agreement since 1985 with the Air Force activity handling MATE to identify and promote MATE standards necessary to advance automatic test equipment technology. Similarly, the SSA concluded that, for example, the need for the firm to comply with a Department of Defense software development standard and to acquire the GBU-15 technical data package owned by another company was satisfactorily answered in the Hughes proposal. The record indicates that Hughes responded to these requirements in its proposal, explaining its proposed method of compliance which the agency found acceptable. Based on this record, we find that the agency decision to give slight weight to the preaward survey was not objectionable and that the evaluation was in accordance with stated criteria.

The protester also alleges that it was unfair for the agency to survey Fairchild's entire operation while looking at only one of Hughes' corporate divisions and that Fairchild was penalized for facilities not involved in the GATS work. The agency explains that it surveyed the organization that submitted the offer under evaluation, Fairchild in the one case and Hughes' Support System Division in the other; the record does not support Fairchild's assertion that it was penalized for failures of facilities not involved in the GATS program. We also cannot, as a general proposition, see how a survey of Fairchild's entire operation rather than the evaluation of one division as in Hughes' case could be less advantageous to Fairchild. We find no basis for objecting to the agency's decision to conduct an organization-wide survey of the protester.

The protest is denied.

Since we deny the protest, Fairchild's request for the cost of pursuing its protest, including attorneys' fees, and proposal preparation costs is denied. 4 C.F.R. § 21.6 (1988).

  
for James F. Hinchman  
General Counsel