



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Pemco Aeroplex Inc.

**File:** B-239672.5

**Date:** April 12, 1991

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Edward U. Kissel, Jr., for the protester.  
Raymond S.E. Pushkar, Esq., and Alison Doyle, Esq., McKenna & Cuneo, for Lockheed Aeromod Center, Inc., an interested party.  
Roger G. Lawrence, Esq., Department of the Navy, for the agency.  
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Selection of awardee on the basis of its overall technical superiority, notwithstanding its higher price, is unobjectionable where agency reasonably determined awardee's higher-priced proposal was worth the additional cost, and cost/technical tradeoff was consistent with the evaluation scheme.

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### DECISION

Pemco Aeroplex Inc. protests the Navy's award of a contract to Lockheed Aeromod Center, Inc. under request for proposals (RFP) No. N68520-89-R-0029, issued by the Naval Aviation Depot Operations Center (NADOC) at Patuxent River, Maryland for various repair and maintenance programs for Navy and Air Force aircraft. Pemco contends that the Navy's evaluation of competitive proposals was flawed and that its award decision was improper. The protester contends that its own proposal was technically equal to Lockheed's, and that Pemco's lower price entitled the firm to the award. We deny the protest.

The RFP, issued on September 29, 1989, required offerors to submit proposals for the labor, materials, and facilities needed to accomplish standard depot-level maintenance, periodic depot maintenance, and mid-term inspection of Navy and Air Force C-9 aircraft. The work basically involves the mandatory comprehensive inspection, tear down and overhaul of aircraft fuselages, engines and components that have reached maximum specified flight hours, or are beyond the repair

capability of any lower-level maintenance facility, before they can be returned to service.

The RFP solicited a firm, fixed-price requirements contract. Award was to be made on the basis of the proposal offering the best value to the government, price and other factors considered. The proposals were to be evaluated on the basis of the following six areas: management/experience, production/facilities, quality, flight safety, industrial safety, and cost/price. These areas were listed in descending order of their importance for evaluation purposes, with the first three approximately equal in weight. The RFP stressed that technical criteria were more important than cost and that a proposal meeting the solicitation requirements with the lowest price might be selected for award if award to the higher-priced offeror would afford the government a greater benefit. The RFP advised offerors that an unsatisfactory rating in any of the five technical areas would render the proposal unsatisfactory overall. In addition, each proposal was to be rated as presenting low, medium, or high risk. Technical proposals were to be evaluated separately from cost proposals.

The Navy received seven proposals; the agency initially found all seven to be unacceptable but susceptible of being made acceptable, and requested some clarifications from each of the offerors. After the seven firms' responses were reviewed, the technical evaluation team (TET) found only Pemco and Lockheed to be in the competitive range. The Navy conducted preaward surveys of these firms' facilities and requested and received best and final offers (BAFOs) from Pemco and Lockheed. Intertec Aviation, a firm whose proposal had been rejected as technically unacceptable, protested to our Office the Navy's exclusion of its proposal from the competitive range, arguing that its proposal was capable of being made acceptable without major revisions.

The Navy initially withheld awarding the contract pending our resolution of Intertec's protest, as required under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(c) (1988). The Navy later determined, however, that urgent and compelling circumstances existed that significantly affected the interest of the United States, requiring the Navy to award the contract.

In its award recommendation memorandum to the source selection authority (SSA), the source selection evaluation board (SSEB) stated that it judged Lockheed's and Pemco's technical proposals to be essentially equal and concluded that price was therefore the predominate selection factor. Since Lockheed had submitted the lower offer, the SSEB recommended award to Lockheed. The Navy awarded the contract to

Lockheed, limiting the award to a delivery order for a maximum of two Air Force C-9 aircraft until the protest was resolved.

We sustained Intertec's protest, see Intertec Aviation, B-239672; B-239672.2, Sept. 19, 1990, 69 Comp. Gen. \_\_\_\_\_, 90-2 CPD ¶ 232, and recommended that the Navy reopen negotiations with Intertec included in the competitive range and then request a new round of BAFOS.

The Navy conducted a second round of written discussions with Lockheed and Pemco, as well as held discussions with two others that had initially been excluded from the competitive range, Elsinore and Intertec. Prior to the second round of discussions, the agency decided to change members of the technical team to the extent it could afford to do so, to eliminate the possibility of a decision prejudiced by the initial protest and to ensure the technical evaluation would be conducted according to the solicitation. The SSEB chairman and two members of the TET were changed. (The NADOC executive remained the source selection authority (SSA).) Written discussions were followed by oral discussions with each of these offerors, allowing the firms to ask for any clarifications they might need. A second round of BAFOs was requested and received.

The new technical evaluation team (TET) reviewed the four BAFOs and again rated Pemco's proposal acceptable, with a low risk factor. Although the TET gave Lockheed's proposal the same overall rating as Pemco's, it found certain technical advantages in Lockheed's proposal and recommended awarding the contract to Lockheed.

The source SSEB agreed with the TET's evaluation of Pemco's proposal as acceptable, but found Lockheed's proposal to be "highly acceptable." The SSEB agreed that Lockheed should receive the award. The SSA reviewed the TET's and the SSEB's reports and recommendations and selected Lockheed's proposal as the one that represented the best overall value to the government. Award was made to Lockheed, and this protest followed.

Pemco argues, basically, that its own proposal is technically equal to Lockheed's proposal and that price should therefore have been the determinative factor in the agency's award decision. Since Pemco's second BAFO price was approximately 9 percent lower than Lockheed's, the protester argues that Pemco should have received the award. Pemco contends that the conditions that the SSA cited in its source selection decision document to support finding Lockheed's proposal superior to Pemco's were unchanged from the earlier period, and challenges

the agency's decision to give Lockheed's proposal a superior rating in the final evaluation.

The determination of the relative merits of proposals is primarily a matter of agency discretion which we will not disturb unless it is shown to be without a reasonable basis or inconsistent with the evaluation criteria listed in the RFP. Crawford Technical Servs., Inc., B-240383, Sept. 20, 1990, 90-2 CPD ¶ 244. The mere fact that the protester disagrees with the agency does not render an evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

We find the agency's final evaluation of Pemco's and Lockheed's proposals reasonable and consistent with the evaluation criteria. The agency did not find Pemco's proposal to be deficient; the SSA described it as "solid" and "acceptable in all technical evaluation areas." However, the agency found Lockheed's proposal superior in all of the most important technical evaluation areas.

During the time between the initial contract award to Lockheed and the final evaluation/second award decision, Lockheed was performing the same work as was required under the RFP at issue here. Pemco, also, was performing a contract for similar services, since it holds a contract with the Navy for major modifications of eight used DC-9 aircraft. Therefore, in addition to the proposals, the Navy was in a position to compare the actual performance of the two firms that had submitted acceptable proposals. We point out, in this connection, that the RFP required offerors to submit certain historical data showing their past performance of similar work, and advised offerors that past performance data obtained from other sources could be used for evaluation.

Lockheed had performed three mid-term inspections under one contract, completing two of them early and one on time, all without any quality defects. The Navy was completely satisfied with their performance. Lockheed's performance under an Air Force contract for similar work was also considered outstanding. Pemco's performance history, on the other hand, was "not what was originally promised and expected." The Navy's protest report states that Pemco's DC-9 modification contract was scheduled for completion by August, 1988, but that "due to numerous delays, over 90 percent due to contractor fault, Pemco is still at work under this contract." The Navy points out that Pemco did not address the late deliveries under that contract in its proposal or BAFO (despite the RFP's warning that past performance problems not addressed by offerors would be considered to be still in existence). Pemco's protest

comments, submitted in response to the agency's report, are similarly silent on this point.

In our view, the record supports the agency's judgment that Lockheed's demonstrated past performance was highly acceptable and superior to Pemco's. We find no basis to object to the agency's conclusion that Pemco's offer was weak in the area of delivering contract performance as promised. We note, also, that this past performance was required to be addressed in at least two of the most important evaluation factors, quality and management/experience.

The Navy found Lockheed's offer to be highly acceptable in the area of management/experience, also, based in part on a licensing agreement Lockheed holds with McDonnell Douglas Corporation, the original manufacturer of the C-9 aircraft, allowing Lockheed to use technical information, data and process specifications for the manufacture of C-9 parts and components. Lockheed also has been granted C-9 parts-making authority by the Federal Aviation Administration (FAA), so that any parts manufactured by Lockheed are FAA-certified. The Navy viewed Lockheed's ability to produce its own aircraft parts when parts are not otherwise available as a significant advantage. The agency stresses that because of the advancing age of the C-9 aircraft, replacement parts and components are often not available and their procurement can cause long delays when the contractor is not able to produce these parts itself. Lockheed's proposal was the only one offering this FAA authorized capability. In contrast, the Navy points out that PEMCO previously has in fact had difficulty in obtaining or manufacturing C-9 parts and can only manufacture C-9 parts with supplemental FAA authority governing a specific part.

The Navy also rated Lockheed's proposal highly acceptable in the area of production/facilities. The agency found significant advantages in this area in Lockheed's ability, as the incumbent, to commence airplane inductions immediately and Lockheed's firm plans for facilities improvements (including an increase in hangar space) that were already funded and would provide even greater capacity during the later stages of this contract's performance period. Pemco, in contrast, had mentioned during oral discussions a "several week delay" that it would incur while hiring or recalling the 125 personnel required for performance, but did not address the issue in its BAFO. In response to the Navy's concerns about this delay, Pemco simply stated in its protest comments that "all bidders would have to increase their work force to meet the requirements." Regarding Pemco's hangar space, while the SSB found it adequate under the RFP's minimum requirements, there remained some concern that work under another of Pemco's contracts that was to be performed at the

same time could require the use of the same facilities, and that any delay under either contract would create a bottleneck effect, delaying the completion of both contracts. We think the agency's conclusion that Lockheed's proposal was superior in this area was reasonable.


We believe the Navy's conclusion that Lockheed's proposal was highly acceptable in these areas and technically superior to Pemco's is adequately supported by these examples, and therefore will not discuss the other bases mentioned by the agency. We stress, as the agency did in its report, that Pemco's proposal was not found unacceptable, or even particularly weak; rather, Lockheed's proposal was found to be technically superior and to offer the best value to the government.

Pemco argues that its proposal was found to be technically equal to Lockheed's under the SSEB's evaluation prior to the first award to Lockheed and that no significant changes occurred during the time between that evaluation and the SSEB's subsequent determination that Lockheed's proposal was superior. We disagree. First, the composition of the evaluating teams (both the TET and the SSEB) changed to a limited extent. In our view, although it is not clear what affect these individuals had on deliberations, the new evaluators including the SSEB Chairman were not bound by the judgments of their predecessors. Second, the evaluators did have revised BAFOs from both Lockheed and PEMCO, and the opportunity to consider Lockheed's and PEMCO's ongoing performance under current contracts. Further, the concerns identified as a basis for not considering PEMCO equal to Lockheed, the ability to provide adequate manning timely, recent management and quality experience, and ability to manufacture any required parts are matters which reasonably support the finding that Lockheed's proposal was technically superior as well as the source-selection decision in favor of Lockheed, notwithstanding the prior determination of equality.

Regarding Lockheed's higher price, we point out that the solicitation indicated that technical quality was more important than cost and, therefore, reasonably placed offerors on notice that the Navy was willing to pay a cost premium for a technically superior offer. See Midwest Research Inst., B-240268, Nov. 5, 1990, 90-2 CPD ¶ 364. Cost/technical tradeoffs may be made in selecting an awardee subject only to the test of rationality and consistency with

the established evaluation factors. Virginia Technology  
Assocs., B-241167, Jan. 29, 1991, 91-1 CPD ¶ 80. We find  
reasonable the Navy's cost/technical tradeoff here.

The protest is denied.



James F. Hinchman  
General Counsel