



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: EG&G Flow Technology
File: B-251785
Date: April 16, 1993

Dan Webster for the protester.
Paul D. Olivier for Flow Dynamics, Inc., an interested party.
Timothy A. Beyland, Esq., Department of the Air Force, for the agency.
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging improper discussions is untimely, where the protester admittedly received information forming the basis of its allegations more than 10 days before filing its General Accounting Office protest.
2. Protest alleging that the agency improperly evaluated the awardee's proposal is untimely, where the protester obtained all relevant proposal information on which it bases its protest from the awardee's president more than 10 days before filing its protest.
3. Agency had a reasonable basis to significantly downgrade the protester's proposal where it did not provide the required supporting data to establish that its proposed flow transfer standard system complied with a specification concerning the maximum allowable pressure drop level for the system, which was stated to be a significant aspect of the system.

DECISION

EG&G Flow Technology protests the evaluation of its proposal and the award of a contract to Flow Dynamics, Inc. under request for proposals (RFP) No. F33660-92-R7003, issued by the Department of the Air Force, for flow transfer standard (FTS) systems to calibrate flow instrumentation in jet engine test stands. EG&G protests that the agency miscalculated its own and the awardee's proposal, and improperly engaged in discussions with the awardee.

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

The RFP, as amended, sought proposals for a base quantity of 31 FTS systems, with options for an additional 63 units, to be produced in accordance with the RFP's performance and design specifications. The RFP provided for award on a best value basis to the offeror which achieved the highest aggregate technical and price evaluation score. The technical evaluation included five technical subfactors, listed in descending order of importance: Performance, Reliability, Design, Functional and Environmental.

Five firms, including the awardee and the protester, submitted initial proposals by the July 17, 1992, proposal receipt date. All five offerors submitted technically acceptable proposals. Flow Dynamics had the highest combined price/technical score, while the protester had the third rated proposal. Although Flow Dynamics was not the low-priced offeror, it was rated technically superior. As permitted by the RFP, the agency made award without discussions to Flow Dynamics on September 29, 1992, and sent notices to all unsuccessful offerors on the same date. At EG&G's request, the agency conducted a debriefing with that firm on October 20, 1992.

EG&G filed an agency-level protest on October 29, 1992. In part, EG&G based this protest on information obtained at the debriefing; EG&G alleges that the agency had improperly evaluated its proposal with respect to the RFP's pressure drop requirement under the performance subfactor of the technical area. EG&G also protested, based upon information obtained from the awardee, that the central computer employed in Flow Dynamics's proposed FTS system did not satisfy the RFP specifications. On December 11, 1992, the agency denied EG&G's protest.¹ EG&G's protest to our Office followed on December 24, 1992. EG&G's protest to our Office reiterated both issues raised with the agency and added a claim that the Air Force had improperly conducted discussions solely with the awardee.

EG&G's protest, insofar as it concerns the negotiation and evaluation procedures used in connection with the awardee's proposal, is untimely. With regard to EG&G's protest that

¹Flow Dynamics was the third low-priced offeror and the protester was the fourth low-priced offeror.

²Although the Air Force denied EG&G's protest on the merits, it observed that those issues pertaining to the acceptability of the awardee's computer appeared untimely, since EG&G's protest stated that it became aware of the awardee's proposed computer model shortly after award, yet EG&G did not protest this matter within 10 days of acquiring this knowledge.

the agency conducted improper discussions with Flow Dynamics, the protester states that a November 10, 1992, teleconference with agency representatives alerted it to the possibility that such discussions had occurred. However, even though it obtained no further information on this matter, the protester waited until December 24, 1992, to protest this issue to our Office. To be timely, a protest alleging other than a solicitation impropriety must be filed, either with the contracting agency or our Office, not later than 10 days after the protester learns or should have learned of its protest basis. 4 C.F.R. § 21.2(a)(2) (1993). Since EG&G waited almost 1 1/2 months to protest the alleged discussions, this protest issue is untimely and will not be considered.

EG&G's protest that the awardee's central computer does not satisfy the RFP requirements is also untimely. EG&G's protest correspondence includes an affidavit from its Director of Sales and Marketing, who states that the awardee's president apprised him on October 2, 1992, of the computer offered in Flow Dynamic's proposal. EG&G states that the awardee's president repeated this information in an October 12, 1992, meeting with EG&G representatives. EG&G did not protest the offered computer's alleged unacceptability until its October 29, 1992, agency-level protest. This was more than 10 days after the awardee disclosed to EG&G the computer named in its proposal, which provided EG&G with its protest basis.³ *Id.* Since EG&G failed to file a timely agency-level protest of this issue, its subsequent protest to our Office is untimely. 4 C.F.R. § 21.2(a)(3).

EG&G nevertheless argues that its protest of the acceptability of the awardee's central computer is timely, since the advice to EG&G by Flow Dynamics' president regarding the computer offered by his firm "was nothing more than hearsay." EG&G claims that this hearsay was only substantiated on November 10, 1992, when agency personnel named the awardee's offered computer.⁴ The proposal information furnished by the awardee's president was obviously adequate to support the protester's allegations on the issue of technical acceptability, however, since EG&G based its

³EG&G failed to meet the 10-day filing deadline, whether one measures timeliness from its October 2 or October 12 communications with the awardee.

⁴EG&G argues that it sought earlier confirmation from the agency as to the computer named in Flow Dynamic's proposal. However, EG&G has provided no documents that support this contention and the agency denies any such requests for information.

October 29 agency-level protest on this information. A protester may not delay filing its protest until receipt of information confirming the existence of a protestable issue.⁵ Rapides Regional Med. Center--Recon., B-242601.2, June 28, 1991, 91-1 CPD ¶ 614.

Finally, the protester timely protests that the agency lacked a reasonable basis to downgrade EG&G's proposal significantly under the performance subfactor with regard to delineating its system's pressure drop. The evaluation of proposals is within the discretion of the procuring agency, since it is responsible for defining its needs and the best method of accommodating them, and must bear the burden resulting from a defective evaluation. Chaffins Realty Co., Inc., B-247910, July 8, 1992, 92-2 CPD ¶ 9. In cases where an agency's technical evaluation is challenged, our Office will not independently weigh the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. OPSYS, Inc., B-248260, Aug. 6, 1992, 92-2 CPD ¶ 83.

EG&G's proposal provided supporting data for the pressure drop level for one FTS component, but admittedly did not provide such data for the other components. The technical evaluator viewed EG&G's data as inadequate to establish the pressure drop level across the entire system and downgraded EG&G's proposal significantly under the performance subfactor for this failure.⁶ The performance subfactor required offerors to demonstrate they meet each technical specification, including the pressure drop specification, and to "offer a detailed analysis of the proposed unit and its ability to fulfill the performance requirements, (and) provide evidentiary data supporting the analysis."


⁵To the extent that the protester argues that we should measure the timeliness of this issue from the October 20 debriefing conference, the protester has not alleged, nor can we find, any information from the debriefing bearing on the awardee's evaluation.

⁶We note that the technical evaluator's worksheets suggested other weaknesses in EG&G's proposal under the performance subfactor, e.g., the proposal conditioned the precision and stability of EG&G's FTS system on the Air Force's provision of a "perfect" primary flow stand, which does not exist. These other proposal weaknesses seem to have been minor since they do not appear in the evaluator's narrative summary of EG&G's proposal.

Here, EG&G admits that it only provided pressure drop data demonstrating the compliance of one FTS component, the turbine flowmeter, but argues that this should have sufficed to give it a much higher score, since the turbine flowmeter allegedly accounts for most of the system's pressure drop and its proposal stated that the pressure drop level across the system did not exceed the specifications. EG&G has not substantiated its claim that the turbine flowmeter accounts for most of the pressure drop across the FTS system. The firm did not furnish supporting evidence, either with its proposal or its protest. In contrast, the awardee's proposal does contain pressure drop data for each component of its proposed system, which reflects that the turbine flowmeter accounts for less than half of the pressure drop across the entire system. In any event, EG&G's partial pressure drop data and its blanket statement of compliance do not satisfy the evaluation standard requiring the offeror to establish the "maximum pressure drop across the FTS" with a detailed analysis of its proposed unit and supporting data. See Whittaker Elec. Sys., B-246732.2, Sept. 10, 1992, 92-2 CPD ¶ 161.

EG&G nonetheless claims that its failure to establish the maximum pressure drop level across its proposed system did not justify a significant reduction in its overall performance score. We disagree. The RFP made clear that supporting data was essential and that pressure drop was a critical element of the system. In addition, the agency stated, during the pre-proposal conference attended by EG&G, that pressure drop capability was "very, very critical" to the FTS system's overall performance and would be a "real important factor" in the evaluation of proposals. Indeed, the agency stated that excessive pressure drop in its current FTS system was "[t]he reason why this solicitation came up in the first place." Given the agency's emphasis of the pressure drop requirement and the significance of this requirement to the FTS system's overall performance, we think that the protester's failure to establish the maximum pressure drop level across its system justified the significant reduction in its performance subfactor score.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel