

DOCUMENT RESUME

03866 - [B2733965]

[Contested Award under Four-Step Source Selection Procedure].  
B-188369. September 27, 1977. 1 pp.

Decision re: Garrett Corp.: AiResearch Mfg. Co. of Arizona; by  
Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -  
Procurement & Contracts (058).

Organization Concerned: AVCO Lycoming, Inc.; Department of the  
Army: Army Air Mobility Research and Development Lab., Fort  
Eustis, VA; Detroit Diesel: Allison Div., Inc.

Authority: 10 U.S.C. 2304(g). Defense Procurement Circular 75-7.  
DOD Directive 4105.62, sec. III.D.5. A.S.P.R. 3-805.3. NASA  
Procurement Directive 70-15. 51 Comp. Gen. 621. 50 Comp.  
Gen. 202. 53 Comp. Gen. 977. 54 Comp. Gen. 408. 54 Comp.  
Gen. 562. 55 Comp. Gen. 715. 55 Comp. Gen. 802. B-183463  
(1975). B-170297 (1977).

The protester objected to the evaluation of its  
technical proposal and to the award of contracts to competitors.  
Based on review of the voluminous record of the technical  
evaluation, including the assessment of the technical risk  
associated with the protester's fixed-price proposal, GAO  
concluded that the Army's technical assessments were rationally  
founded. A fixed-price contract may be awarded to a  
higher-priced, but technically superior, offeror. (Author/SC)

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*Cunningham*  
*P. (L. #)*

**DECISION**



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

**FILE: B-188369**

**DATE: September 27, 1977**

**MATTER OF: AirResearch Manufacturing Company of Arizona**

**DIGEST.**

1. Since Department of Defense special test, "four-step" source selection procedures are comparable to source selection procedures of National Aeronautics and Space Administration (NASA), GAO precedent derived from protests involving NASA's prior negotiated procurements is of aid in resolving issues under contested "four-step" procurement.
2. Protest against Army's interpretation of "four-step" selection procedure and evaluation of proposals is timely under Bid Protest Procedures since protest was filed within 10 days from date protester learned of grounds giving rise to protest.
3. Based on review of areas of weaknesses and deficiencies in protester's proposal, GAO cannot conclude that failure to probe areas resulted in non-compliance with statutory mandate for discussions since discussions in areas might have led to improper leveling of merit of technical proposals, especially as concerns design weaknesses and deficiencies which are clearly within offerors' "competence, diligence, engineering and scientific judgment."
4. Based on review of voluminous record of technical evaluation, including assessment of technical risk associated with protester's fixed-price proposal, GAO concludes Army technical assessments are rationally founded.
5. Fixed-price contract may be awarded to higher-priced, but technically superior, offeror. Since agency's position that higher-priced offerors' proposals are technically superior is supported, awards to offerors cannot be questioned.

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AiResearch Manufacturing Company of Arizona, a division of The Garrett Corporation, has protested the award of contracts to AVCO Lycoming, Inc., and Detroit Diesel, Allison Division, Inc., under Department of the Army request for quotations (RFQ) DAAJ02-76-Q-0144.

The United States Army Air, Mobility Research & Development Laboratory, Eustis Directorate, issued the RFQ in June 1976 for "experimental, development, research, design, fabrication and test of an 800 Shaft Horsepower Advanced Technology Demonstrator Engine." The RFQ informed offerors that a firm, fixed-price contract type was contemplated for the work and that two contracts might be awarded.

The procurement was selected for "evaluation and contractor award" under "four step source selection test procedures," described below. Appropriate notice of the selection of this procurement for the "four step" process was set forth in the amended RFQ, as follows:

"The evaluation of all quotations received will be accomplished in accordance with the principles of proposal evaluation and 'four-step' source selection procedures."

The RFQ further informed offerors that proposals would be evaluated in two major areas: (1) Technical and (2) Financial and Management, with the Technical area considered to have the predominant weight. Under the "Technical" standard offerors were informed that quotations would be scored on the basis of "merit, general quality, responsiveness to RFQ, technical approach, substantiating data, contractor's statement of work, and adequacy of facilities." Offerors were further informed that the "technical risk" of all proposed components would be evaluated.

Five proposals, including one from AiResearch, were received on August 17, 1976. Army evaluators conducted a detailed analysis of the proposals. One offeror was found to be outside the competitive range for the procurement and was so informed. Financial proposals were then obtained from the remaining offerors in the competitive range.

The Army informs us that "meaningful discussions" were then held with the remaining four offerors--including AiResearch. The Army further informs us:

"\* \* \* Questions were discussed with offerors. Upon receipt of the offerors' response to these discussions the evaluation process continued.

"The Procurement Advisory Board met and was satisfied with the results of the 'meaningful discussions' with the four contractors, and concluded that no further discussions (with exception of one offeror not relevant here) were needed prior to requesting 'Best and Final offers.' 'Best and Final offers' were requested with a closing date of 13 December 1976. Upon receipt the proposals were evaluated in accordance with Step 3 procedures. AiResearch was advised on 20 December 1976 of its non-selection for final negotiations under Step 4. The PAB concluded that the AiResearch proposal program was considered one of very high technical risk.

"Negotiations (Step 4) commenced with the remaining two offerors and awards were made after extensive review of AVCO Lycoming and Detroit Diesel Allison on 28 January 1977, with effective date of contracts 1 February 1977.

"AiResearch requested and was granted a debriefing at the Eustis Directorate, USAAMRDL on 2 February 1977. \* \* \*

"The reasons why the Army selected AVCO and Detroit Diesel— notwithstanding the companies' higher (an average of 11 percent) proposed prices compared to AiResearch's proposed price—are contained in various documents in the Army reports. The contracting officer informs us that "AiResearch was judged to have lower engine performance with a higher risk of achieving this performance than either of the two successful offerors." By contrast, "both AVCO and Detroit Diesel," the contracting officer continues, "were evaluated to have less risk, with better engine performance in terms of horsepower and fuel consumption." The Army's counsel has also informed us that the "proposals of AVCO and Detroit Diesel were considered technically superior to the protester's" and that the "final conclusion of the Government evaluators was that the protester's lower price did not justify the high technical risk and [that] \* \* \* he would be unable to meet program objectives within the contemplated time schedule."

Subsequent to the February 2 debriefing we received (on February 11) AiResearch's protest. AiResearch's initial grounds of protest were:

"The contracting agency failed to properly evaluate AiResearch's proposal by neglecting its duty to conduct meaningful discussions in all areas in which AiResearch received less than maximum credit.

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"The contracting agency assigned 'weaknesses' and 'deficiencies' to AiResearch's proposal in an arbitrary manner.

"The contracting agency placed undue emphasis on its subjective judgment of potential technical risk, even though AiResearch's proposal must have been considered technically acceptable since AiResearch was solicited for a 'best and final offer.' It is pointed out that the solicitation contemplated a firm fixed price contract under which the contractor would assume full cost responsibility and a legal contractual obligation to perform as proposed.

"The contracting agency, as a result of failing to properly evaluate AiResearch's offer, abused its administrative discretion by awarding subject contracts at prices \$1,500,000 (13.3%) and \$1,170,000 (9.9%) higher than that proposed by AiResearch, either of which represents a material increase in direct cost to the Government for this procurement." \*

AiResearch was told at the debriefing that its proposal, while considered to be in the competitive range, was not selected for award "due to the cumulative impact of a number of 'molehills' [weaknesses] rather than for any single compelling reason." AiResearch criticized in detail the Army's technical evaluation. The criticism contested the Army's assignment of deficiencies and weaknesses ratings given to various parts of AiResearch's proposal. These contested ratings and the Army's reply (as developed in subsequent reports submitted by the Department) to the criticisms are summarized under the captioned headings listed below: (A considerable amount of documentation submitted by the Army may not be discussed in this decision because it is classified; however, we have reviewed all the material in developing this decision.)

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\* The Army argues that the protest is untimely filed under our Bid Protest Procedures (4 C.F.R. § 20.2(b)(1) (1977)) because the Army views the protest as one against the propriety of the "four step process." Since the four-step process was announced in the solicitation, the Army is of the view that AiResearch's protest should have been filed prior to the closing date for proposals rather than after award. We disagree. The protest is not one against the propriety of the process as such but against the way the Army interpreted the process and evaluated proposals. These bases of protest were not known until the February 2 debriefing. Since the protest was filed within 10 days of that debriefing, the protest is timely. 4 C.F.R. § 20.2(b)(2) (1977).

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Deficiencies

**AiResearch**

(1) inlet particle separator--AiResearch should not have been criticized for lack of previous separator experience because the company's proposal clearly stated that it had the required experience.

(2) combustor--AiResearch's combustor design, contrary to the Army's view that it is undeveloped and would require further development for acceptance, was adequately demonstrated in the company's proposal and derived from a highly developed similar combustor.

(3) bearings, seals, shafting--Even if the Army's finding that seal buffering recovery pressure is not effective, adequate pressures can be achieved by other means as shown in the proposal. Pressure for effective buffering appears to be a difference of opinion.

(4) engine design--Contrary to the Army's view that the design was deficient because of a large number of cross-excitations in turbine and generator shafts, AiResearch's design either controlled cross-excitations by damping, where possible, or properly accommodated cross-excitations which are inevitable.

**Army**

(1) The Department insists that AiResearch has not designed, fabricated, and tested the separator for a turbine engine.

(2) Notwithstanding the company's attempts to justify its design by restating much of the information previously submitted in the proposal, the Army is still of the opinion that the proposed design is undeveloped.

(3) Reaffirms position that component is not shown to be effectively buffered.

(4) The Army has information which indicates that the design of bearing mounts in AiResearch's proposal is unpredictable and, therefore, causes concern as compared with a design which does not have a large number of cross-excitations.

**AiResearch**

(5) engine performance--Although the Department insists that the engine will not meet the "600 SHP" requirement, AiResearch's calculations show that engine will produce "614 SHP." Further, the Army's estimate of compressor efficiency is in error.

(6) development plans--Although the Army faulted AiResearch's failure to specifically schedule a "gas generator test" during the engine test, AiResearch promised the test, if needed, would be conducted.

(7) engine cost--Army erroneously projected (by 43 percent) certain elements of AiResearch's engine costs beyond the 100th unit. AiResearch is correct in saying that there are little changes in cost between the 100th and 300th unit.

(8) management structure/ qualifications--Contrary to the Army's view that AiResearch's Rotary wing environment experience is limited, AiResearch does have adequate experience.

(9) "Personnel"--Contrary to the Army's view that AiResearch's IPS individual has no IPS experience, AiResearch's proposed employee is qualified and experienced.

**Army**

(5) The Government extrapolation method used to get from the evaluated sea level performance to the test condition was exactly that ratio as proposed by AiResearch. AiResearch's approach will not meet the SHP requirement.

(6) Neither the final statement of work nor the development plan states that gas generator testing would be continued after engine tests begin. Any verbal understandings were required to be included in the resubmission as was explained to AiResearch.

(7) No new information was furnished which would change the original deficiency. The Government cost evaluation method was applied universally to all offerors.

(8) The Army affirms its previous position as to AiResearch's lack of experience.

(9) Affirms judgment that individual does not have any IPS experience.

Weaknesses

**AiResearch**

(1) compressor--Contrary to the Army's view that AiResearch's compressor design is "high risk" even though "new and attractive," AiResearch insists that it has demonstrated the design as shown in its proposal.

(2) impeller performance--the proposed performance does not exceed demonstrated performance contrary to the Army's view that proposed performance is considered optimistic.

(3) diffuser performance--Contrary to the Army's view that insufficient data was provided and that the performance is not within the "state-of-the-art," AiResearch's proposal lists diffuser tests which substantiate the capability proposed.

(4) gas generator turbine--Although the Army believes the assumed pumping losses due to cooling flow are optimistic, the AiResearch data establishes the validity of approach. The experience documented in the AiResearch proposal confirms that no additional performance penalties are justified.

(5) power turbine--Notwithstanding Army's evaluation that off-design performance was optimistic, AiResearch has demonstrated the high probability of attaining the proposed performance objective. Therefore, prediction of the off-performance of the proposed turbine is well justified using AiResearch's calculation method.

**Army**

(1) Affirms judgment that use of preswirl nozzles, instead of inlet guide vanes, to raise flight idle speed appears to be high risk.

(2) The company possibly misunderstands the evaluation. Weakness is related to sea level static condition rather than evaluation while operating at the 4,000 ft., 95° condition.

(3) No additional data has been provided to substantiate the proposed diffuser performance.

(4) The weak point stemmed largely from the axial turbine experience offered as substantiation for the radial turbine. No new information was offered to change the weak point.

(5) The issue is that the off-design performance of a fan turbine does not directly apply to the off-design performance characteristics of a power turbine for a turboshaft engine. The constant mechanical speed operation of the power turbine spool of a turboshaft engine requires a different turbine operating line as compared to a turbofan engine where the fan spool operates free of RPM governing.

**AiResearch**

(6) bearings, seals, shafting-- Notwithstanding the Army's findings that cavity leakages are not developed and that one bearing's life is marginal, AiResearch's design is sound. The potential for flow reversals has been anticipated. The bearing life meets RFP requirements and is not marginal.

(7) engine design and controller memory--Notwithstanding that the Army felt there was weakness in the proposed excited modes and controller memory, the design is judicious. The system permits effective use of hydraulic mounts and does not include a volatile memory. The volatile memory weakness could have been clarified in discussions. The Army's concern with non-fundamental modes is not supported by AiResearch experience.

**Army**

(6) The proposed technique of pressure/flow control in the seal cavity was judged to be undeveloped. AiResearch had originally stated the pressure to be 150 psia and subsequently changed this to 86 psia without any clear explanation of how the pressure drop would be accomplished. In addition, the downstream flow paths described by AiResearch created a potential for flow reversals in opinion of the evaluators. The point now being made by AiResearch, that the evaluators misunderstood the method of pressure reduction, has little bearing on the original weak point. AiResearch disagrees with the method used by the Government for bearing life calculation. The method used is widely accepted and was used universally with all proposers using the bearing loads proposed. All bearings except for the No. 3 bearing were calculated to have adequate life using the Government calculation techniques.

(7) AiResearch confirms that certain portions of the engine performance and mechanical condition information would be lost upon shutdown. This loss of information was the basis of the weak point. Although multi-shaft engine designs with vibration modes in the operating range are an accepted practice, the weak points were assigned due to the recognized difficulty in predicting bearing mount characteristics which could cause these self-excited modes to be of considerable concern later. A design which had no vibration modes within the operation range is desirable, particularly in a helicopter installation.

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**AiResearch**

(8) development plans--Since the RFP defines performance points at which performance data will be taken and the Army will approve test plans, the Army's criticism that AiResearch's proposal failed to specify demonstration at specific power points lacks credibility.

(9) engine cost--Although the Army criticized the proposal for providing a material list for the 300th engine rather than data on the 100th engine, the RFQ did not clearly define the base quantity for the table. Further--contrary to the Army's view--the submission of two cost reduction targets was appropriate. Sufficient supporting cost information was also provided.

**Army**

(8) For the inlet thermal distortion and heat rejection tests, the engine development plan does not specify demonstration at specific power points over a suitable range of interest. The final Statement of Work or Development Plan does not address this specific area of concern. Any verbal understandings were required to be included in the resubmission as was explained to AiResearch.

(9) The Design Monitoring Material List (DMML) is given for the 300th production engine, whereas the RFQ requests this data for the 100th engine. Although the RFQ did not specifically speak to the DMML, all other cost information was requested for the 100th engine. AiResearch recommended that two DTUPC targets be established, one for low-risk, near-term production and one for a production period using technologies yet to be developed. It was felt by the Government that the use of two targets would have been confusing. The RFQ specified the use of one target based on the engine design proposed for the ATDE program. The Preliminary Parts List (PPL) proposed for use in DTUPC tracking does not contain sufficiently detailed information on the elements that make up the reported costs in terms of labor and material. The use of the PPL was proposed as a technique to assist in tracking the engine cost during the course of the ATDE program. Failure to break out the items on the list as to labor

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AiResearch:

(10) management structure/ qualifications--Army's criticism that the decision maker in the project organization has not been identified is not well founded. The proposal clearly shows the project engineer as the decision-maker.

(11) personnel--Contrary to Army's view, the proposed key combustion man is well qualified and should not be seen as having only minimum qualifications.

Army:

and material was considered a weak point in that less visibility would be available to the analyst using the PPL during the course of the program. Information referenced in the offeror's Supplement 2 has to do with the estimated cost of the proposed engine, not techniques to be used for cost tracking during the program.

(10) The original concern was that it was not clearly indicated who had authority to make program decisions and major commitments. AiResearch states that the Government was assured that the Project Engineer had primary technical responsibility for the program, during the discussions of 3 Nov 76. No written clarification of the Management Proposal was made. Any verbal understandings were required to be included in the resubmission as were explained to AiResearch.

(11) Most of the information given expanded on the background of the proposed "key combustor man", over and above the proposal resume. The basis of the weak point is that the originally submitted resume reflects that the proposed individual has minimum qualifications to act as the keyman in development of the ATDE combustor.

#### "FOUR STEP" PROCEDURES

The "four step" procedures referenced in the RFP and applied in the subject procurement were set forth in Defense Procurement Circular #75-7, February 27, 1976, as follows:

"The Department of Defense is testing a new method of source selection for advanced, engineering, and operational systems development contracts on a selected number of procurements in each Military Department.

"This test is being conducted pursuant to instructions outlined in Section III.D.5 of the attached DoD Directive 4105.62, 'Selection of Contractual Sources for Major Defense Systems,' dated January 6, 1976 (Pages 20 thru 32 of this DPC).

"The following special test ASPR 3-805.3 language [Duplication of certain key provisions of the directions] is applicable only to those procurements involved in the test.

"3-805.3 Discussions With Offerors.

"(a) Except as provided in (b) below, all offerors selected to participate in discussions shall be advised of deficiencies in their proposals and shall be offered a reasonable opportunity to correct or resolve the deficiencies and to submit such price or cost, technical or other revisions to their proposals that may result from the discussions. A deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements.

"(b) In discussing technical proposals for procurements involving advanced, engineering or operational systems development (see 4-101), contracting officers shall apprise offerors selected to participate in discussions of only those identified deficiencies in their proposals that lead to a conclusion that (i) the meaning of the proposal or some aspect thereof is not clear, (ii) the offeror has failed to adequately substantiate a proposed technical approach or solution, or (iii) further clarification of the solicitation is required for effective competition. Technical deficiencies clearly relating to an offeror's management abilities, engineering or scientific judgment, or his lack of competence or inventiveness in preparing his proposal shall not be disclosed. Meaningful discussions shall

be conducted with the respective offerors regarding their cost/price proposals. Such discussion may include:

- (i) cost realism;
- (ii) mathematical errors or inconsistencies;
- (iii) correlation between costs and related technical elements, and other cost/price factors necessary for complete understanding of both the Government requirement and the proposal for meeting it, including delivery schedule, other contract terms, and trade-off considerations (with supporting rationale) among such elements as performance, design to cost, life cycle cost, and logistic support. Offerors shall be afforded a reasonable opportunity to correct or resolve deficiencies and submit revisions to either their technical or cost/price proposals. \* \* \*

The genesis of DOD's "four step" procedures lies in similar procedures adopted several years ago (and used, with slight modification, to the present time) by the National Aeronautics and Space Administration (NASA). (See, for example, NASA Procurement Regulation Directive 70-15, December 3, 1975, currently in effect.) In both procedures there are statements as to the need to allow competitive-range offerors the opportunity for discussions of technical proposals to clarify or substantiate the proposal (or clarify the solicitation meaning when needed). Both procedures specifically prohibit discussions of technical weaknesses (NASA's term) or deficiencies (DOD's term) relating to an offeror's lack of competence, diligence, inventiveness, or lack of management abilities, engineering or scientific judgment.

Since the DOD procedures are, in the main, comparable to the NASA procedures, our decisions involving contested NASA procurements will be of aid in resolving the issues raised here.

NASA's procedures were initially reviewed in our decision in B-173677, March 31, 1972 (summarized in 51 Comp. Gen. 621 (1972)). We recognized that, although the provisions of 10 U.S.C. § 2304(g) (1970) do not define the nature, scope or extent of the discussions required by the statute, it was our view that the legislative history of the law evidenced a congressional intent that negotiations be conducted under competitive procedures to the extent practicable and that they be "meaningful by making them discussions in fact and not just lip-service."

We further observed:

"The many decisions cited by the parties to this protest, as well as others dealing with the matter of 'discussions,' were not decided in a vacuum or intended to be merely abstract statements of law. They involved actual disputes concerning the conduct of negotiations for various services and supplies, ranging from maintenance services to sophisticated electronic equipment; the justifications for negotiation involved many of the 17 exceptions to formal advertising, including public exigency, research and development, and property or services for which it was impracticable to obtain competition; and the methods of contracting including fixed price and one of several cost reimbursement types. Necessarily, these varied procurements involved different considerations, requiring judgments as to the methods and techniques utilized in consummating the contracts. In recognition of these facts, we have not construed the requirement for 'written or oral discussions' as an inflexible, stereotyped mandate unrelated to the particular procurement involved. Thus, in many cases we have found that deficiencies had to be pointed out in order to have meaningful discussions. On the other hand, in other cases, the facts and circumstances called for a different conclusion. For example, in 50 Comp. Gen. 202 (1970), which NASA has cited as an instance where we held that the mere acceptance, in effect, of a late revision constituted discussions under 10 U.S.C. 2304(g), the issue was whether the other offerors should also be given an opportunity to revise their initial proposals. We stated that since 'discussions' had been conducted with one offeror, discussions must be conducted with all offerors within the competitive range. In B-170297, May 26, 1971, also cited by NASA, the procurement called for a quantity of generators on a firm fixed-price basis. Additional tests were required after the initial proposals were received, and the offerors were requested to submit revised prices to reflect these additional tests. Award was made after receipt of the revised prices. It was contended in part that these proceedings did not constitute 'oral or written discussions' but rather the acceptance of an initial proposal without discussions. We disagreed with this contention but stated that, 'we do not mean to discourage more extensive negotiations of price in

similar situations nor to imply that they would be inappropriate.' Thus, we have attempted to resolve these disputes not only in light of the circumstances of the particular procurement, but in recognition of the clear congressional mandate as evidenced by the legislative history of 2304(g), for competitive negotiations designed to obtain for the Government the most advantageous contract.

"Therefore, it is our view that whether the statutory requirement for discussions must include the pointing out of deficiencies, and the extent thereof, is a matter of judgment primarily for determination by the procuring agency in light of all the circumstances of the particular procurement and the requirement for competitive negotiations, and that such determination is not subject to question by our Office unless clearly arbitrary or without a reasonable basis. However, the statute should not be interpreted in a manner which discriminates against or gives preferential treatment to any competitor. Any discussion with competing offerors raises the question as to how to avoid unfairness and unequal treatment. Obviously, disclosure to other proposers of one proposer's innovative or ingenious solution to a problem is unfair. We agree that such 'transfusion' should be avoided. It is also unfair, we think, to help one proposer through successive rounds of discussions to bring his original inadequate proposal up to the level of other adequate proposals by pointing out those weaknesses which were the result of his own lack of diligence, competence, or inventiveness in preparing his proposal.

"We think the propriety of the prohibition in NASA Procurement Directive 70-15 against discussing 'deficiencies' must be considered in the light of these problems. We think certain weaknesses,

inadequacies, or deficiencies in proposals can be discussed without being unfair to other proposers. There well may be instances where it becomes apparent during the course of negotiations that one or more proposers have reasonably placed emphasis on some aspect of the procurement different from that intended by the solicitation. Unless this difference in the meaning given the solicitation is removed, the proposers are not competing on the same basis. \* \* \*

Despite our feeling that the Directive needed to be clarified, we were unable to conclude--based on analysis of the particular facts involved--that the negotiations had with the protester did not comport with the statutory mandate for oral or written discussions. Particular facts entering into this conclusion were:

- (1) The protester had considerable "informal and formal contact" regarding technical requirements of the procurement for a 1-year period prior to submitting a proposal;
- (2) The procurement was for research and development and requested independent approaches substantiated by extensive data;
- (3) Many of the protester's weaknesses resulted from failure to submit backup data;
- (4) Written and oral discussions were in fact conducted although they did not include pointing out of deficiencies as such;
- (5) Many of the technical questions asked did relate to areas later judged weak, although they were framed in the context of clarifications;
- (6) The protester did submit substantial revisions to its proposals;
- (7) Although some informational deficiencies in one area of the protester's proposal might have been the subject of "fruitful discussions," any possible upgrading of the protester's proposal in this one area would have been insignificant because the source selection official's award decision was based primarily on a proper consideration--confidence in engine design--not involving this one area;
- (8) The weaknesses in the protester's proposal were deficiencies only in comparison with relative strengths of the selected company; therefore, discussions concerning deficiencies in comparative weaknesses would inevitably have involved technical "leveling" and "transfusion."

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The observations made in B-173677, supra, have been used as guiding principles in deciding several other NASA protests. See, for example, Lockheed Propulsion Company; Thiokol Corporation, 53 Comp. Gen. 977 (1974), 74-1 CPD 339; Sperry Rand Corporation and others, 54 Comp. Gen. 408 (1974), 74-2 CPD 276; Dynallectron Corporation, Lockheed Electronics Company, Inc., 54 Comp. Gen. 562 (1975), 75-1 CPD 75; Management Services, Inc., 55 Comp. Gen. 715 (1976), 76-1 CPD 74; Union Carbide Corporation, 55 Comp. Gen. 802 (1976), 76-1 CPD 134.

The procurement involved here contains similar facts to the circumstances in B-173677, supra, namely: (1) Both procurements were for research and development; (2) Independent technical approaches to be substantiated by extensive data were sought; (3) Discussions were in fact conducted although they did not include the pointing out of deficiencies as such; and (4) Many of the protester's weaknesses resulted from failure to submit backup data and were only weaknesses in relation to the contents of other superior proposals. Reviewing the areas of weaknesses and deficiencies, we cannot conclude that the failure to probe the areas resulted in a failure to comply with the statutory mandate for discussions. Specifically, we cannot fault the position implicit in the Army's report that discussions in the areas might have led to an improper "leveling" of the merit of technical proposals, especially insofar as relates to design criticisms, which are clearly within the realm of an offeror's "competence, diligence, engineering and scientific judgment." Moreover--to use one of the tests for the absence of meaningful discussions mentioned in B-173677, supra,--there is no indication that discussions should have been conducted to correct reasonable, albeit erroneous, interpretations of the company of some part of the solicitation.

#### TECHNICAL ISSUE

We have reviewed the Army's technical evaluation of AiResearch's proposal. Contrary to AiResearch's view, we think the voluminous record of technical evaluation supports a conclusion that the Army fairly and impartially assigned ratings for the proposals involved. Although AiResearch obviously disagrees with the Army's judgments on these complicated technical issues, we conclude that the Army assessments are rationally supported--including the assessment of technical risk associated with the AiResearch proposal. The mere fact that AiResearch's technically risky proposal was on a fixed-price basis--while fixing the immediate price of the work--does not eliminate the real possibility of needed adjustments in contract price that might be required by contract amendment to cure the performance problems associated with acceptance of a technically "risky" proposal.

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AWARDS AT PRICES HIGHER THAN THAT OF AIRESEARCH

Aikasearch's final ground of protest relates to the Army's determination to award contracts at prices nearly 10 percent higher than AiResearch's proposed price. AiResearch also says that the Army ignored its lower life-cycle costs compared to costs proposed in the successful quotations. We have held, however, that a fixed-priced contract may be awarded to a higher-priced, but technically superior, offeror. Bell Aerospace Company, B-183463, September 23, 1975, 75-2 CPD 168, and cases cited in text. Since we have not questioned the technical superiority of the selected offerors based on our review of the record, we cannot take exception to the higher prices contained in the awarded contracts. Moreover, contrary to Aikasearch's understanding, its proposed and evaluated life-cycle costs were not low in comparison to the selected offerors' life-cycle costs.

Protest denied.

  
Acting Comptroller General  
of the United States