



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** National Test Pilot School--Request for  
Reconsideration

**File:** B-237503.2; B-237503.3

**Date:** June 22, 1990

Sean C. Roberts, for the protester.  
James Vickers, Esq., and John Brosnan, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

### DIGEST

On reconsideration, General Accounting Office has no basis to change corrective action recommendation that options not be exercised to a recommendation that the contract be terminated and award made to protester, where record does not show that protester in fact submitted the technically superior proposal and agency has a continuing need for training services which would be interrupted with the termination of the existing contract.

### DECISION

National Test Pilot School (NTPS) requests reconsideration of the recommendation for corrective action contained in our decision National Test Pilot School, B-237503, Feb. 27, 1990, 90-1 CPD ¶ 238, sustaining NTPS' protest of the evaluation of proposals under request for proposals (RFP) No. DTFA-02-89-R-00018, issued by the Federal Aviation Administration (FAA) for developing and conducting training courses for flight test pilots and engineers.

We affirm our decision.

Our Office sustained NTPS' protest because we found that the FAA made award to the University of Tennessee Space Institute based solely on price when the evaluation scheme in the RFP indicated that price and technical considerations were to be weighted equally and that the agency would determine the relative ranking of the technical proposals. We found that the agency's failure to follow the announced evaluation scheme could have prejudiced the protester, who in reliance on the RFP evaluation scheme may have proposed a

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superior technical approach. Since contract performance had continued while the protest was under consideration, we found that it was not feasible to recommend contract termination. Instead, we recommended that options for subsequent years not be exercised and that a new competition be held. We further found NTPS entitled to its costs of filing and pursuing its protest as well as its proposal preparation costs.

In its request for reconsideration, NTPS argues that if the University is allowed to complete the initial year of the contract it will gain an unfair competitive advantage because of the experience it will obtain by conducting the classes. NTPS requests that the University's contract be terminated and award made to it.

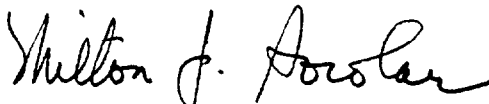
NTPS' argument provides no basis for modification of our recommendation. The Competition in Contracting Act of 1984 (CICA) provides that where our Office determines that a contract award does not comply with statute or regulation, we shall recommend that the agency implement certain specified remedies (e.g., refrain from exercising options), or "implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations." 31 U.S.C. § 3554(b)(1) (1988). This mandate is reflected in our Bid Protest Regulations, which provide that if we determine that an award is improper, we may recommend that the contracting agency implement remedies we deem appropriate under the circumstances. See 4 C.F.R. § 21.6(a) (1990); Monarch Enters., Inc.--Request for Recon., B-233724.2, May 16, 1989, 89-1 CPD ¶ 463.

We continue to believe that it is not appropriate to recommend that the contract be awarded to the protester. This is so primarily because the University has begun performance and there is a continuing need for the classes which would be interrupted with a termination of the existing contract. Moreover, it was not at all clear from the record whether in fact NTPS submitted the technically superior proposal and would have received the award following evaluation of both cost and technical considerations. It was, and still is, our view that the most appropriate remedy is for a new competition to be held after the initial year is completed. We recognize that the University will benefit from the initial year of performance; nevertheless, we do not think that the record supports a recommendation that the award go to NTPS.

Finally, NTPS continues to challenge our prior decision regarding the failure of the FAA to suspend contract performance during the pendency of the protest. NTPS believes that the protest it filed at the FAA invoked the suspension provisions of CICA and argues that the proper measurement of time is 10 "working days," not "calendar days." 31 U.S.C. § 3553(d)(1). As we pointed out in our decision, only a protest filed with our Office invokes the suspension provisions. Award was made on September 27, 1989 and NTPS' protest was filed here on October 19. The fact that the NTPS filed an earlier protest with the agency has no effect on the suspension provisions of CICA.

With regard to the 10-day time period for filing of protests, our Bid Protest Regulations define "days" as "working days" of the federal government. 4 C.F.R. § 21.0(e). They indicate, however, that this definition is not applicable to the CICA provision concerning suspension of performance. Id. Our Regulations repeat the statutory language that generally requires an agency to suspend performance if our Office notifies it of a protest "within 10 days of the date of contract award." Consulting and Program Management, 66 Comp. Gen. 289, (1987), 87-1 CPD ¶ 229.

The decision is affirmed.

  
for Comptroller General  
of the United States