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N. Boyle
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DECISION



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

FILE: B-190327

DATE: March 10, 1978

MATTER OF: Gates Learjet Corporation

DIGEST:

Where RFP's evaluation scheme necessitates separate prices for integration and modifications because each item has different weight but best and final offers quote only total price for both items, preferred approach would be for agency to have offerors separate total price into components. However, because of thorough analysis, contracting officer knew that rank of offerors would not be changed regardless of how price reduction was allocated. Protester was not prejudiced by agency's failure to request price reduction allocation or by agency's allocation of price reduction according to price percentages in initial offers.

Gates Learjet Corporation (Gates) protests the award to Cessna Aircraft Co. (Cessna) of a contract under request for proposals (RFP) No. CS-77-22 issued by the Department of the Treasury, Customs Service, for the lease with option to purchase of a high performance jet aircraft modified to incorporate sophisticated infrared and intercept radar equipment.

Gates initially contended that: (1) the award was made with the understanding that the contract would be substantially revised; (2) the agency disclosed Gates' proprietary data to Cessna; and (3) the agency's evaluation of operational suitability of the proposed aircraft was not based on the mission profile specified in the RFP. After receipt of the agency report, it appears that Gates decided not to pursue these contentions. In any event, we believe that they have no merit for the reasons clearly explained in the agency report.

Gates also requests that this decision be based only upon information disclosed to it. Although the agency contends that we should consider the entire

B-190327

record furnished to us, citing Unicare Health Services, Inc., B-180262, B-180305, April 5, 1974, 74-1 CPD 175, and RCI Microfilm, B-182169, April 10, 1975, 75-1 CPD 220, there is no need to decide the question because we believe that the remaining matters can be resolved based only on disclosed information.

The thrust of Gates' remaining contention is that the agency erroneously evaluated the "cost" aspect of its proposal and had the evaluation been properly performed Gates would have been the successful offeror.

The RFP listed the criteria for evaluation and source selection in descending order of importance as follows: "cost," operation/mission suitability, technical, logistics, and management. Each principal criterion had subfactors listed but not arranged in any order of importance. The RFP warned that the offer containing the low price may not be chosen if a higher-priced offer affords the Government greater overall benefit due to superiority in the nonprice areas. After award it was disclosed that "cost" was worth 40 points. The cost factor was composed of these subfactors and their relative weights: initial acquisition (9.6), modifications (8.0), integration (7.2), operating costs (11.6), and training (3.6). The other factors were worth a combined total of 60 points; Gates received an evaluated score for noncost factors of 42.94 points and Cessna received a score for these factors of 49.55 points.

In their initial and second offers, Gates and Cessna supplied price information applicable to each subfactor. After receipt of initial proposals and discussions with each offeror, best and final offers were submitted; however, each offeror submitted one price figure for both the modifications and integration subfactors. Because of the desire to enter into a contract before the close of the fiscal year, and because of the agency's desire to adhere to its planned evaluation scheme, agency officials decided not to obtain a price breakdown between integration and modifications subfactors but simply to make the allocation between those subfactors as best they could based on information derived from the two prior submissions.

B-190327

At first, evaluators allocated half the total price for modifications and integration to each subfactor. This resulted in Gates receiving a score of 36.9 points and Cessna a score of 23.85; thus Gates' total score was 79.84 and Cessna's was 75.50. Upon reflection, the evaluators felt that the differences in price were not as great as the cost evaluation results indicated and, therefore, the initial evaluation results did not provide an accurate basis for a selection decision.

Next, the evaluators examined each offeror's prior submissions to ascertain the relative breakdown of price for total modifications and integration into each component and they determined that Cessna's respective percentages were 6 and 94, and Gates' were 31 and 69. Accordingly, the total modifications and integration price reduction was allocated based on the above percentages, resulting in point scores for cost of 27.01 and 28.90 for Cessna and Gates, respectively, and total point scores of 76.56 for Cessna and 71.84 for Gates. Based on this information, the agency source selection official selected the Cessna offer for award and, as further justification, stated that "[o]perational stability [one of the noncost factors worth 30 points] of the interceptor aircraft is of utmost importance to the [agency] air interdiction mission."

Gates contends that the allocation of the total offered integration and modifications price to both subfactors by using prior proposed prices was improper because actual total integration and modifications pricing information, as requested by the agency, was available and should have been used to evaluate proposals. Gates also contends that the second scoring of best and final offers, which made Cessna's offer the higher-scored offer, amounts to fraud or bad faith. Gates argues that if separate price data on integration and modifications were required, then under Federal Procurement Regulations (FPR) § 1-3.805-1 (1964 ed. amend. 52), the contracting officer should have obtained clarifications from both offerors. Gates concludes, citing 50 Comp. Gen. 16 (1970) and Group Operations, Incorporated, 55 Comp. Gen. 1315 (1976), 76-2 CPD 79, that the award to Cessna should be canceled and award should be made to Gates.

B-190327

In response, Customs contends that the rationale used for arriving at each vendor's price for modifications and integration was reasonable and provided a fair basis for evaluation. Customs recognized, however, that each vendor may not have followed exactly the allocation rationale used by Customs, and that it was necessary to look at the impact of other allocation strategies to determine the effect, if any, that such strategies might have on the evaluation scores. Customs explains that each vendor had three ways to reduce originally proposed prices to the price used in the best and final offer:

1. apply the reduction totally to the modifications price;
2. apply the reduction totally to the integration price; or
3. apply the reduction partially to modifications and partially to integration prices.

To determine the maximum possible impact on the scores, Customs looked at the four extreme cases representing the combinations of options 1 and 2:

1. Cessna reduces its modifications price to zero, applies balance of reduction to integration; Gates applies reduction totally to modifications.
2. Cessna reduces its modifications price to zero, applies balance of reduction to integration; Gates applies reduction totally to integration.
3. Cessna applies reduction totally to integration; Gates totally to modifications.
4. Both vendors apply reduction totally to integration.

B-190327

In the second evaluation, the cost scoring used by Customs gave Cessna the full 100 unweighted points for modifications, while Gates received zero points, and for integration, Cessna received zero points and Gates received 100. Customs explains that only in a situation where the difference between the prices proposed by Cessna and Gates was less than \$500,000 would this result be changed and the only situation where this occurs is in case 3--Cessna's price of modifications would be \$253,000 and the Gates price would be \$538,857, a difference of only \$285,857 between the two vendors. Customs also explains that if this extreme situation were to occur, Cessna still would receive 100 unweighted points in the modifications area, but Gates would receive 42.8 unweighted points instead of zero and the integration cost scores would not be affected. However, had this occurred Customs states that the Gates proposal may have been unbalanced in light of its initial proposal.

In any event, Customs explained the effect that this situation would have on the cost evaluation score and on the total evaluation score--the Gates cost score advantage would be increased by 5.31 points rather than 1.89 points, but the total evaluation score, because of the advantage by Cessna in all other areas, would give Cessna a final evaluation score of 76.56 points and Gates a final score of 75.26 points. Customs did not feel that the extreme allocation of the cost reductions represented by case 3 would occur, and any reduction that Cessna applied to modification or Gates applied to integration would serve to reduce the possible cost advantage of Gates shown by case 3 and could ultimately restore the difference used by Customs in the final evaluation. In any case, Customs concludes that Cessna would have had the higher point score in the total evaluation and, for this reason, it was appropriate to proceed with the allocation rationale believed to be most appropriate and proper.

In addition, Customs states that at no time was the established point scoring system abandoned and it was in the interest of preserving the scoring system that the Government separated the best and final offers into their modifications and integration cost components.

B-190327

Customs recognizes that it would have been in the best interest of all parties had the Government request for best and final offers required a breakout of modification and integration costs and in retrospect such a breakout should have been requested. However, since none was requested and in light of the September 30 deadline for the loss of fiscal year 1977 appropriations, Customs' action in applying the earlier ratios for modifications and integration was entirely proper and appropriate under the circumstances.

FPR § 1-3.805-1(a), referred to by Gates, provides that "[i]n any case where there is uncertainty as to the pricing or technical aspects of any proposals, the contracting officer shall not make award without further exploration and discussion prior to award." Here, the contracting officer failed to request the breakdown of integration and modifications prices, which information was required by the contemplated evaluation scheme. Obviously, the preferred approach would have been for the contracting officer to request each offeror to separate its total price for the item into the two required components.

However, while those price components are clearly "pricing aspects of proposals," because of the thorough analysis performed by Customs, as summarized above, the contracting officer knew that the ultimate order of rank of offerors would not be changed regardless of how the total price reduction was allocated to those components. The only displacement of Cessna's high total score by Gates occurred in the clearly illogical initial assumption that the price for the two items was to be divided equally by the offerors. Therefore, in the circumstances, we believe that there was no prejudicial "uncertainty as to the pricing aspects of the proposals" which would require further information from the offerors. The record also compels us to believe that even in the circumstances of case 3, the source selection official--who selected the higher-technical, higher-priced, higher-total score proposal because in his view that proposal promised the greatest value to the Government--would not have altered his decision since Cessna's offer would still

B-150327

have been the higher-technical, higher-priced, higher-total score proposal. Thus, we believe that Gates' conjectural argument that the source selection official was misled is without merit. See Dynalectron Corporation, 54 Comp. Gen. 562 (1975), 75-1 CPD 17.

To support its contentions, Gates has relied on our decision at 50 Comp. Gen. 16 (1970). There, the solicitation evaluation method provided that 25 of 100 total points would be allocated to reasonableness of cost but evaluators rated all offers, some priced above and some below the Government estimate, as equal--awarding zero points to all--thus effectively eliminating the cost evaluation factor. There, our decision held that such action was improper and recommended that the award based on the departure from the solicitation's evaluation method be canceled. We find no relevance to that situation here because Customs clearly did not depart from the announced evaluation scheme. Similarly, we find Gates' reliance on the decision in Group Operations, Incorporated, supra, to be misplaced. There the solicitation's evaluation scheme accorded 20 percent of the total evaluation weight to cost but we found that in using the formula the agency improperly reduced the announced percentage to about zero. Again, we find no relevance in that case to the instant case because here Customs did not depart from the announced evaluation scheme.

Accordingly, we must conclude that (1) Gates was not prejudiced by the contracting officer's failure to solicit the required price reduction allocation information or by the agency's allocation of price reduction according to the price percentages in the initial offers; and (2) there is no indication of fraud or bad faith in the record.

Protest denied.

R. F. Kinn
Deputy Comptroller General
of the United States