

**DECISION**



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

60210

FILE: B-184245

DATE: November 24, 1975

MATTER OF: Honeywell Inc.

97687

**DIGEST:**

1. Standard form 33A (March 1969) language that award will be made to offeror whose offer is most advantageous to Government "price and other factors considered" did not, contrary to protester's contention, permit Air Force to consider "cost of ownership" as evaluation factor. ASPR § 3-501 (1974 ed.) and GAO decisions require that all principal evaluation factors be set forth in RFP, and RFP did not contain cost of ownership factor.
2. Alleged improprieties which are apparent in RFP as originally issued must be protested prior to closing date for receipt of initial proposals. Protest after award against failure of Air Force to consider cost of ownership as evaluation factor is untimely, because cost of ownership factor was not included in RFP and protester knew or reasonably should have known of alleged impropriety from examination of RFP upon receipt.

The protest of Honeywell Inc. presents two issues: (1) Did request for proposals (RFP) No. F42600-75-R-6284 permit, as contended by Honeywell, consideration of "cost of ownership" as an evaluation factor? (2) If it did not, should this alleged solicitation impropriety have been apparent to Honeywell prior to the closing date for receipt of proposals, thus requiring Honeywell to protest prior to that date?

For the reasons which follow, we answer the first question in the negative and the second in the affirmative and, therefore, find the protest to be untimely and not for consideration on the merits.

The RFP sought offers for the repair of accelerometers and float assemblies in the Minuteman missile guidance and control system. Only the two approved sources, Honeywell and The Bendix Corporation, Guidance Systems Division (Bendix), were solicited.

Offers were received from both by the closing date for receipt of proposals, March 21, 1975. Award was made on June 16, 1975, to Bendix, whose evaluated price (\$1,845,309.81) was \$263,969.63 lower than Honeywell's.

Honeywell protested to our Office on June 20, 1975. Honeywell contends that a decade of Government reliability data, combined with information developed more recently concerning the costs of ownership of the Honeywell and Bendix devices, required that the Air Force give consideration to cost of ownership as an evaluation factor in the procurement. Honeywell states that during fiscal year 1974, it began replacing a gas bearing wheel in its repaired units, making these repaired units comparable in their failure characteristics (mean time between failure (MTBF)) to new units. Honeywell cites a report prepared for the Air Force which analyzed data on this subject up to April 30, 1975, showing MTBF for Honeywell repaired units to be 271,000 hours compared to 78,000 hours for Bendix repaired units. Honeywell concludes that the extra cost associated with the less reliable Bendix repaired units would be \$230,000 for the 1-year term of this contract and substantially more should Bendix receive follow-on contracts over the next several years. Based upon these considerations, the protester urges that the award to Bendix should be overturned and that it should receive the award.

The Air Force states that Honeywell's protest is against the failure of the terms of the RFP to allow recognition of the alleged superior reliability of Honeywell's units. The agency points out that it would have been improper for the Government to unilaterally apply in the evaluation reliability or other criteria which were not contained in the RFP. Also, both the Air Force and Bendix have taken the position that the statistical data cited by the protester is too limited in scope to reasonably support the allegations of the Honeywell units' superior reliability.

Honeywell argues that the RFP allowed the Air Force to consider cost of ownership in the evaluation in light of the following language in paragraph 10(a) of standard form (SF) 33A (March 1969): "The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered."

We do not view this provision as empowering the contracting agency to introduce into the evaluation additional factors which were not stated in the RFP itself. Both decisions of our Office (see AEL Service Corporation et al., 53 Comp. Gen. 800 (1974), 74-1 CPD 217) and the Armed Services Procurement Regulation (ASPR) make clear that the RFP must set forth the price, technical and other factors upon which proposals are to be evaluated.

See, in this regard, ASPR § 3-501(b) Sec. "D" (1974 ed.), which provides that solicitations shall contain:

"(i) factors other than price (including technical quality when technical proposals or quotations are requested), which will be given paramount consideration in the awarding of the contract; when an award is to be based upon technical and other factors, in addition to price or cost, the solicitation shall clearly inform offerors of (A) the significant evaluation factors, and (B) the relative order of importance the Government attaches to price and all such other factors. \* \* \*"

See, also, ASPR § 3-501(b) Sec. D(x), which provides for identification of special factors, such as Government costs or other expenditures, including reliability requirements, which are to be considered in the evaluation of proposals.

The RFP in the present case did not set forth an evaluation factor dealing with cost of ownership. The only evaluation factors other than the acquisition price specifically stated in the RFP were the options for the second and third years; an economic price adjustment - labor and material clause; transportation costs; and a competitive advantage of the use of Government property provision. The present procurement was, therefore, comparable to formal advertising in that price was essentially the only criterion for determining award. According to the contracting officer's determination and findings, negotiation was undertaken pursuant to 10 U.S.C. § 2304(a)(10) (1970) because a comprehensive work statement covering the amount of effort to be accomplished could not be established, thus rendering formal advertising impracticable. Also, the Air Force states that since Honeywell and Bendix were both qualified producers and able to meet the Government's minimum needs, it was considered unnecessary to include detailed repair and product specifications or other technical evaluation criteria in the RFP.

In response to the Air Force's statement that any factors other than price were required to be specifically set forth in the RFP, Honeywell cites paragraph 10(f) of SF 33A, supra, which states: "The right is reserved to accept other than the lowest offer and to reject any or all offers." Honeywell's argument is apparently that this statement, taken in conjunction with paragraph 10(a) of SF 33A, supra, indicates that, contrary to the Air Force's position, factors other than the lowest price were properly to be considered in the evaluation.

We disagree. These statements from SF 33A do not override the requirement of ASPR § 3-501, supra, to specifically set forth all principal evaluation factors in the RFP. Moreover, the SF 33A

language per se is not inconsistent with the Air Force's position. We believe that, under the circumstances here, the SF 33A language simply reserved the right to the Air Force to reject the lowest-priced offer in the event that it was submitted by a concern found to be unqualified due to nonresponsibility, failure to certify as a "manufacturer" or "regular dealer," or failure to meet other qualifications requirements.

In view of the foregoing, we agree with the Air Force that the RFP did not permit consideration of cost of ownership as an evaluation factor.

In regard to the second issue presented by this protest, we note that section 20.2(b)(1) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) provides that protests based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to the closing date for receipt of initial proposals.

Also, it is well established that apparent solicitation improprieties within the meaning of this rule can consist of omitted provisions which allegedly were required to be included. See, in this regard, B-175814, August 24, 1972 (protest after bid opening alleging omission of insurance requirements from IFB held untimely); B-178206, April 4, 1973 (protest after bid opening alleging omission of patent indemnification clause from IFB held untimely); and A.C.E.S., Inc., B-181926, January 2, 1975, 75-1 CPD 1 (protest after award alleging omission of Service Contract Act clauses from RFP held untimely).

In this regard, the protester has made the following statement concerning its understanding of the RFP:

"Honeywell is familiar with the rulings of the Comptroller General to the effect that when an award is to be based upon other factors in addition to price, the solicitation must specifically delineate those other factors and indicate the relative order of importance. However, in the cases we are familiar with, there was not in existence a decade of Government reliability data together with the more recent transformation of such data into dollar costs of ownership with which the offerors were familiar. In addition, there was not in those cases an absence of a specific indication of evaluation criteria. In the instant case price was not stated to be the sole

evaluation criteria, which left only the Standard Form 33A language that the award would be made to the offeror whose offer 'will be most advantageous to the Government, price and other factors considered' for consideration by the offerors. It was thus reasonable for offerors to assume that cost-of-ownership would be most advantageous to the Government."

As for the specificity of the RFP's evaluation criteria, we do not agree that Honeywell could reasonably interpret the RFP so as to assume that cost of ownership would be taken into consideration in the evaluation. We do not believe that the RFP's evaluation criteria were not sufficiently specific. See, in this regard, Dynalectron Corporation et al., B-181738, June 5, 1975, 54 Comp. Gen. 1009, 75-1 CPD 341. There, the protester argued that an RFP was defective for failure to indicate the relative importance of price vis-a-vis other evaluation factors, and that the RFP made no specific reference to the relative importance of the various factors. Our decision concluded, however, that a reading of the RFP's evaluation factors statement gave a reasonably clear indication of the factors' relative importance. This decision illustrates that while evaluation factors are sometimes not stated with ideal precision, they nevertheless may upon examination and reasonable interpretation be specific enough to satisfy legal requirements. Any doubts on an offerors' part concerning the factors should, of course, be promptly brought to the agency's attention so that clarification can be obtained.

In this regard, it has been held that offerors must be expected to carefully scrutinize the entire solicitation to ascertain the Government's requirements. See Abbott Laboratories, B-183799, September 23, 1975, 75-2 CPD 171. We note that paragraph 2 of SF 33A advises offerors to examine the solicitation, and that failure to do so will be at the offeror's risk. Under paragraph 3 of SF 33A, offerors are afforded an opportunity to request explanations from the contracting agency of the meaning and interpretation of the solicitation's contents.

The obligations resting upon offerors to carefully examine the solicitation would appear to apply with even greater weight in the circumstances of the present case. Honeywell's correspondence indicates that it has participated in past procurements of this nature where cost of ownership apparently was not considered as an evaluation factor. Honeywell also has contended that the Air Force

B-184245

procuring activity has had available to it over the past few years the pertinent engineering data upon which to establish a cost of ownership factor for use in such procurements.

If, as Honeywell contends, the reliability data was so apparent that the Air Force should have made it a part of the evaluation, it seems equally clear that Honeywell was or should have been on notice upon initially receiving and examining the RFP that cost of ownership was not set forth as an evaluation factor. Since the alleged solicitation impropriety was or should have been apparent to Honeywell at that time, any protest should have been filed prior to March 21, 1975, the closing date for receipt of initial proposals.

Accordingly, the protest is untimely and not for consideration.

*for Milton Fowler*  
Paul G. Dembling  
General Counsel