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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Continental RPVs

File: B-292768.6

Date: April 5, 2004

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DIGEST

Protest that agency's source selection decision was flawed is denied where the record reveals that the agency reasonably explained why the technical advantages offered by the awardee's proposal were worth its higher price.

DECISION

Continental RPVs protests the award of a contract to Griffon Aerospace, Inc. under request for proposals (RFP) No. DAAH01-02-R-0158, issued by the Army Aviation and Missile Command (AMCOM), Department of the Army, for the acquisition of an aerial remotely piloted vehicle target (RPVT) system and services. Continental challenges the adequacy of the agency's revised best value determination, which the agency performed in response to our decision of December 11, 2003, sustaining Continental's prior related protest. Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2003 CPD ¶ ____.

We deny the protest.

RPVTs, essentially radio-controlled, sub-scale aerial targets, are a means by which the Army and other United States military services provide training to short range air defense units in countering airborne threats at a reasonable cost; specifically, RPVTs permit live fire engagements by forces equipped with various missile and gun weapons systems. Statement of Work (SOW) § 1.1. In addition to the design and production of an estimated 400 RPVTs annually, the SOW also required the successful offeror to provide extensive operational support services (e.g., flight

operations, maintenance services, equipment security) and engineering services for the RPVT system.

The RFP, issued on October 31, 2002, contemplated the award of a fixed-price contract (with some cost reimbursement items) for a base year with four 1-year options. The solicitation identified the following evaluation factors and subfactors:

1. Technical	
	A. Design Approach
	B. Production Approach
	C. Engineering Services
	D. Resources, Personnel Skills and Staffing
2. Operational	
	A. Operational Approach
	B. Equipment Resourcing
	C. Surge (Premium Hour) Operations
	D. Resources, Personnel Skills and Staffing
3. Management	
	A. Organization
	B. Resources
	C. Personnel
4. Past Performance	
5. Price	

The RFP established that the technical, operational, past performance, and price factors were of equal importance, and that the management factor was significantly less important than the other factors.¹ The solicitation also stated the relative importance of the subfactors within each evaluation factor. Award was to be made to the responsible offeror whose proposal was determined to be most advantageous, or the “best value,” to the government, all factors considered. RFP § M-2.a.

Four offerors, including Continental and Griffon, submitted proposals by the March 5, 2003 closing date. An Army technical evaluation team (TET) evaluated offerors’ proposals under the technical, operational, and management factors using an adjectival rating system: outstanding/very low risk, highly satisfactory/low risk, satisfactory/acceptable risk, marginal/acceptable with some risk, and unacceptable/unacceptable risk. The agency also employed a performance risk assessment group

¹ Although not set forth in the RFP, the agency apparently established weights of 22.5 percent each for the technical, operational, past performance, and price factors, and a weight of 10 percent for the management factor. See Agency Report (AR), Tab U-1, Source Selection Decision, Aug. 15, 2003, at 8.

(PRAG) to separately evaluate offerors' past performance, using ratings of high risk, medium risk, low risk, and neutral.

After receipt of final proposal revisions from Continental and Griffon, the Army's final evaluation ratings were as follows:

Factor	Griffon	Continental
Technical	Highly Satisfactory	Satisfactory
Operational	Highly Satisfactory	Satisfactory
Management	Highly Satisfactory	Satisfactory
Past Performance	Low Risk	Low Risk
Evaluated Price	\$ 36,116,633	\$ 30,058,203

AR, Tab U-1, Source Selection Decision, Aug. 15, 2003, at 2-7.

The contracting officer determined that Griffon's superiority under the technical, operational, and management factors, combined with its low risk past performance assessment (equal to that of Continental), outweighed the price difference and made Griffon's proposal most advantageous to the government.² *Id.* at 8. Based on this determination, the agency made award to Griffon.

Continental subsequently filed two protests with our Office arguing that the agency's evaluation of its proposal under the technical, operational, and management factors was improper; that the Army's evaluation of Griffon's proposal under all non-price factors, including past performance, was unreasonable; that AMCOM improperly relaxed a solicitation requirement for Griffon; and that the agency's selection decision was unreasonable and not in accord with the RFP's stated award scheme.

In deciding the protests, we concluded that most of the allegations were without merit. However, with regard to the agency's evaluation of the awardee's proposal under the past performance factor, we found that there was no basis in the record upon which the agency could reasonably have determined that Griffon's past performance was, in accordance with the terms of the solicitation, the "same or similar" to the solicitation requirements. As a consequence we sustained the protest on that ground and recommended that the agency reevaluate Griffon's past performance in light of the "same or similar" requirement in the RFP. Our Office further recommended that the agency perform a new price/technical tradeoff if the reevaluation resulted in Griffon's past performance being other than "low risk."

² The contracting officer was also the Source Selection Authority (SSA) under the subject procurement.

The agency implemented our recommendation by reconvening the PRAG, which reevaluated Griffon's past performance and changed its original "low risk" rating to "neutral." AR, Tab CC, Addendum to Performance Risk Assessment Report, Dec. 18, 2003. A "neutral" rating was required, according to the agency, because Griffon "[did] not exhibit sufficient similar or same performance history experience in either scope or size, to the RPVT solicitation work." *Id.* After considering Griffon's revised past performance rating in conjunction with "all evaluation information from the SSEB process," the contracting officer (who was the source selection authority) issued a new source selection decision affirming the initial award to Griffon. Contracting Officer's Statement, Jan. 30, 2004, at 1.

This decision was documented in an "addendum" to the prior source selection decision. The addendum concluded:

The Source Selection Authority has reviewed each contractor's Area ratings as documented by the Source Selection Evaluation Board (SSEB) process and has taken into account Griffon's reevaluated past performance. While Griffon's proposal was higher priced than Continental's, it is the decision of the SSA that the evaluated technical superiority of Griffon's proposal in three evaluation areas—Technical, Operational, and Management—combined with its neither favorable nor unfavorable Neutral past performance assessment—makes Griffon's proposal the overall best value to the Government. Continental's Low Risk past performance rating and more advantageous bid price does not overcome the superiority of Griffon's technical, operational, and management proposals.

AR, Tab DD, Addendum to Source Selection Decision, Dec. 19, 2003, at 2.

In the addendum, the contracting officer also discussed the specific benefits associated with the numerous strengths and enhancements of Griffon's proposal, which justified the award notwithstanding its higher price. As they relate to the subject protest, these benefits were associated with the following four aspects of Griffon's proposal: (1) Griffon's airframe design and power plant; (2) its infrared (IR) source; (3) its proposed use of "standard composite materials" for construction; and (4) Griffon's use of a [deleted] for beyond visual range ground control of the RPVTs.

In discussing the advantages associated with Griffon's airframe design and power plant, the contracting officer stated that Griffon's design was "robust," and that Griffon "verified its key performance parameters" for its airframe design and power plant through test flights and substantiated the performance characteristics of its design with detailed information and performance data. The contracting officer added that Griffon's airframe design and power plant provided "the flexibility for low risk growth in speed, payload, and endurance potential without modifying the existing airframe" and that Griffon's "[deleted] airframe design provides the ability to

change airframe components easily in response to any future growth requirements.” Id.

As part of the initial source selection decision, the agency had stated that Continental provided a “few minor performance enhancements” for its airframe as well, “which could benefit the Government, by providing flexibility to add new requirements without having to design another airframe.” AR, Tab U-1, supra, at 2. However, the agency concluded that Continental’s strengths in this regard were offset by several weaknesses, including Continental’s failure to provide adequate information regarding “the basic airframe” and information pertaining to the performance of the airframe. Id.

In the revised source selection decision, the contracting officer also discussed the advantages associated with Griffon’s IR source, which used [deleted].³ Griffon’s IR source was an “enhancement,” according to the agency, because its energy output was more than [deleted] the RFP’s minimum requirement of 15 watts per steradian. AR, Tab DD, supra, at 2. The contracting officer stated that this enhancement was valuable because it “provided significantly more margin to offset the effects of winds at 100 miles per hour, and there were no concerns indicated by Government evaluators about the aspect angle blockage by the RPVT design.”⁴ Id. Griffon’s IR source was of further benefit because it allowed “for growth in IR requirements without having to redesign or buy a new IR device.” Id.

As part of her revised tradeoff analysis, the contracting officer also indicated that Griffon’s “proposed use of standard composite materials for construction . . . provides significant benefits to the government by reducing production costs and increasing the reliability of the target.” Id. at 3. During its evaluation of Griffon’s proposal, the agency highlighted Griffon’s use of “standard composite materials,” specifically [deleted], for construction of the RPVTs. This was a strength, according to the agency, because the materials were “low technology and low risk.” AR, Tab O-2, Interim Technical Evaluation Report, Evaluators’ Findings, June 27, 2003, at 2.

³ In the initial source selection decision, the contracting officer noted Griffon’s use of [deleted] technology for its IR source as one of Griffon’s strengths. AR, Tab U-1, Source Selection Decision, Aug. 15, 2003, at 4.

⁴ The solicitation required that each offeror’s proposed RPVT include an IR enhancing device for use in both the tracking and live fire of heat-seeking weapon systems such as the Stinger missile system. The RFP required that an offeror’s IR payload generate a minimum energy intensity of 15 watts per steradian while the aircraft was in flight at 100 miles per hour minimum. SOW § 3.8.5. The RFP also stated the agency’s desire that the minimum energy intensity be visible as close to 360 degrees around the aircraft as possible.

The contracting officer's revised tradeoff cited Griffon's use of a [deleted] for the beyond visual range ground control station as an advantage. The TET stated that Griffon's beyond visual range ground control station used "a simple readily available commercial off the shelf [deleted]," adding that "such equipment is of value to the Government as it avoids costly specialized equipment." AR, Tab O-2, Interim Technical Evaluation Report, attach., Griffon Technical Area Rollup, at 1. The TET also stated that Griffon's beyond visual range ground control station "provided in a [deleted], is an innovation that provides protection from obsolescence and flexibility to change/add to features of the control system with little or no hardware changeout/modification." AR, Tab P-2, Final Technical Evaluation Report for Griffon, at 1. The contracting officer reiterated these points in her revised tradeoff analysis. AR, Tab DD, supra, at 3.

In a letter dated December 23, 2003, the agency notified Continental of its determination that Griffon remained the successful offeror after the reevaluation. Continental requested a debriefing on January 5, 2004, and the agency faxed a letter to Continental on January 7, denying Continental's request for a debriefing, but provided Continental with a redacted copy of the agency's source selection decision. On January 9, Continental filed this protest.

In its protest, Continental argues that the contracting officer's revised best value determination was flawed in three main respects. First, according to Continental, the contracting officer's best value analysis was mechanical in nature and failed to compare the advantages of Griffon's proposal to those of Continental's proposal or explain why any advantages in Griffon's proposal were worth the \$6 million higher price. Second, Continental argues that several of the advantages offered by Griffon, which were cited as the reasons for selecting Griffon's higher priced proposal, were not valid discriminators since Continental offered the same or similar advantages. Third, Continental asserts that the contracting officer's revised source selection decision was made in the "heat of the adversarial process" and therefore inherently flawed.⁵

Where, as here, the RFP indicates that technical considerations are more important than price considerations in determining the best value to the government, selecting a technically superior, higher priced proposal is proper where the agency reasonably concludes that the price premium is justified in light of the proposal's technical superiority. The propriety of such a price/technical tradeoff decision turns not on

⁵ Continental also takes issue with the agency's determination that it was not required to suspend performance of Griffon's contract pending the outcome of this protest on the ground that the statutory stay of performance set forth under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553 (2000), was not triggered. Because Continental's protest is denied, this issue is academic. Parmatic Filter Corp., B-285288.3, B-285288.4, Mar. 30, 2001, 2001 CPD ¶ 71 at 5 n.3.

the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's evaluation scheme. Shumaker Trucking and Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 6.

In arguing that the agency's best value determination was "mechanical," Continental asserts that the contracting officer focused solely on the weights of the various evaluation factors and Griffon's superior adjectival ratings. Contrary to Continental's contentions, however, the revised source selection decision clearly reflects the fact that in reaching its decision, the agency considered at length the various strengths and enhancements offered by Griffon's proposal and how they were beneficial to the government. Moreover, in its consideration of Griffon's technical advantages, the agency expressly concluded that they outweighed Continental's \$6 million price advantage and low past performance risk. This simply is not a case where the agency's best value determination was based on a purely mechanical point scoring comparison without any qualitative assessment or explanation of why the evaluated technical superiority of an offer justified its higher price. Compare Shumaker Trucking and Excavating Contractors, Inc., supra, at 7-8 (concluding that best value determination was unreasonable where it focused on the awardee's higher point score, without comparing the advantages of the awardee's proposal or considering why the advantages were worth its higher price) with Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 12-13 (finding best value determination reasonable where the agency used its judgment in determining that a protester's proposal's technical advantages were not worth its higher price).

As a second basis for challenging the agency's best value decision, Continental argues that its proposal contained several of "the same or similar strengths" that the agency used as a basis for concluding that Griffon's proposal was worth the extra \$6 million. Continental argues that these strengths therefore could not constitute valid discriminators, and thus rendered the agency's price/technical tradeoff unreasonable. Our review of the record indicates that this argument is also without merit.

In support of this protest ground, Continental notes that the contracting officer justified award to Griffon, in part, based on Griffon's airframe design and power plant because they allowed for future growth without having to design a new airframe, which strength, the agency assertedly also found in Continental's proposal. Our review does not support Continental's position.

Specifically, with regard to Griffon's proposal, the record reflects that the contracting officer's price/technical tradeoff did in fact emphasize the fact that both Griffon's airframe design and power plant provided "low risk" flexibility for future growth without the need for modifying the airframe. Moreover, the agency specifically emphasized the fact that Griffon substantiated the performance

characteristics of its airframe design with detailed information and data as well as the [deleted] nature of Griffon's airframe design. With regard to Continental's proposal, while the agency noted that Continental's airframe design (there is no mention of Continental's power plant) could provide flexibility for adding new requirements without having to redesign the airframe, the agency also characterized this as a "minor performance enhancement" and concluded that this strength was offset by Continental's failure to provide adequate information regarding its airframe. AR, Tab DD, supra, at 2. Given the agency's conclusions about the various advantages associated with Griffon's airframe design and power plant and the fact that the strength of Continental's airframe design was offset by associated weaknesses, the agency acted reasonably when it considered Griffon's airframe design and power plant as discriminating advantages in the revised tradeoff analysis.

Continental also contends that the agency improperly justified its award to Griffon based on Griffon's use of [deleted] for its IR source since Continental also proposed to use [deleted] as its IR source. While the agency's initial source selection decision listed Griffon's use of [deleted] as a strength, in the revised source selection decision, the contracting officer explains that Griffon's proposal was worth the extra cost because Griffon's IR source output was more than [deleted] the RFP's requirements. The contracting officer's tradeoff analysis simply does not discuss the advantages associated with Griffon's use of catalytic converters. Because the agency did not rely on Griffon's use of [deleted] as a discriminator, Continental's challenge in this regard is without merit.

Continental further argues that the agency improperly justified selection of Griffon's higher priced proposal based on Griffon's use of standard composite materials for target construction and its use of a [deleted] for its beyond visual range ground control station, because Continental offered essentially the same strengths.

Regarding the use of composite materials, the record reflects that the agency found Griffon's use of [deleted], to be a strength because these materials were "low technology and low risk." AR, Tab O-2, supra, at 2. Continental contends that it offered the same strength, pointing to the statement in its proposal that "[t]he JFT [joint force target] will be constructed of composite materials. The wing and horizontal tail will be made using [deleted] and the fuselage will be constructed using [deleted]." Continental's Proposal, vol. I § IV, at 31.

In addition, the agency found Griffon's proposed use of a simple readily available commercial off-the-shelf [deleted] for its beyond visual range ground control station to be a strength because it avoided costly specialized equipment. Continental argues that it offered a similar strength, pointing to the section of its proposal describing its portable ground control station and explaining that it consists of [deleted] modules, one of which was a computer display module that could "range from a commercial [deleted] to a ruggedized industrial unit." Continental's Proposal, attach. J, p.1.

While Continental asserts that its proposal contained essentially the same strengths with regard to the use of composite construction materials and a [deleted] control station, we see substantial differences between the proposals in these areas and the record does not evidence that the agency found either of these aspects of Continental's proposal to be strengths or enhancements that were beneficial to the government.⁶ Since the record shows that the agency reasonably identified advantages in Griffon's proposal in these two areas, and no corresponding advantages in Continental's proposal, we see no basis to object to the agency's consideration in its tradeoff decision of the strengths found in Griffon's proposal that were not offered by Continental.

As a final matter, Continental argues that the contracting officer's addendum to the source selection decision was invalid "because it was essentially made in the heat of the adversarial process" and therefore did not reflect the fair and considered judgment of the agency. Protester's Comments on the Agency Report at 13. Continental expressly disavows any claim that the contracting officer was biased or did not act in good faith when she made her revised source selection decision. Rather, Continental argues, because the contracting officer was actively involved in defending the first source selection decision that was protested to our Office, and because she made her revised decision in favor of Griffon within 1 week of receiving the decision from our Office sustaining the protest, "she was still affected by the heat of the litigation," which clouded her objectivity and rendered her source selection decision unfair. Continental's Comments, at 15. We disagree.

When an agency engages in a reevaluation or redetermination while simultaneously defending against an ongoing protest, we will afford little or no weight to these post-protest activities since they are "prepared in the heat of the adversarial process," and may not represent 'fair and considered' judgments." ManTech Env'tl. Research Servs. Corp., B-292602, B-292602.2, Oct. 21, 2003, 2003 CPD ¶ 221 at 7 (quoting Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15).

In this case, however, the agency's revised source selection decision was not made while defending against a protest. Rather, the agency made its revised source selection decision after receiving the decision issued by our Office sustaining Continental's first protest. Because the agency's revised source selection decision was prepared after Continental's prior protest had been resolved, it was not prepared "in the heat of the adversarial process." Intellectual Properties, Inc., B-280803.2, May 10, 1999, 99-1 CPD ¶ 83 at 4. Nor was the agency's revised decision

⁶ Continental does not challenge the underlying technical evaluation of its proposal in these areas. In fact, we would not consider such a challenge because the agency's technical evaluation was the subject of the first two protests filed by Continental and, as noted above, we found the protests to be without merit on these issues.

rendered suspect by virtue of the agency's expeditious implementation of our recommendations in Continental's prior related protest, which was sustained, or because the agency's revised award decision followed closely on the heels of our decision in the prior protest.

The protest is denied.

Anthony H. Gamboa
General Counsel