Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ST Aerospace Engines Pte. Ltd.

File: B-275725

Date: March 19, 1997

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Steven V. Hagberg, Esq., Mark W. Peery, Esq., and Karl A. Oliver, Esq., Mahoney, Hagberg & Rice, for Standard Aero Ltd., an intervenor.
B. J. Braun, Esq., U.S. Coast Guard, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency erred in downgrading protester on the basis of negative past performance information pertaining to its affiliate where record does not establish relevance of affiliate's past performance to likelihood of successful performance by protester; because the affiliate's negative past performance was the determinative factor in the decision not to award to protester, agency was required to raise the issue with the protester during discussions.

DECISION

ST Aerospace Engines Pte. Ltd. (STA Engines) protests the award of a contract to Standard Aero Ltd. under request for proposals (RFP) No. DTCG38-94-R-30006, issued by the U. S. Coast Guard, Department of Transportation, for the overhaul and repair of C-130 T56 engine reduction gearboxes and torquemeters. The protester contends that its proposal was improperly downgraded based on negative past performance information pertaining to one of its affiliates that had not been discussed with it.

We sustain the protest.

The RFP sought offers for the overhaul and repair of the reduction gearboxes and torquemeters used in the T56 engines aboard Coast Guard C-130 aircraft. The solicitation provided for award to the responsible offeror whose combination of technical merit and proposed price represented the greatest value to the government, with the former carrying greater weight in the selection process than

the latter. Technical proposals were to be evaluated on the basis of the following five factors, listed in descending order of importance: past performance, certification, industrial capacity/capability, warranty, and engineering and support capability. To permit evaluation of their past performance, offerors were instructed to furnish references regarding their performance of the same or similar work, data concerning any quality deficiency problems encountered under earlier related contracts, and data concerning their percentage of on-time deliveries under the earlier contracts.

Nine offerors submitted proposals. The proposals of six firms, including STA Engines, were included in the competitive range, and the agency conducted two rounds of discussions with each of the six. Upon completion of the discussions, the source evaluation board (SEB) concluded that Standard Aero's proposal, which was [DELETED] in price and which had received a technical rating of [DELETED] and a risk assessment of [DELETED], represented the best value to the government. The agency then awarded a contract to Standard Aero.

In selecting Standard Aero's proposal for award, the Coast Guard concluded that its combination of technical merit and price represented a better value to the government than STA Engines's proposal, which was [DELETED] in price and had received a technical rating of [DELETED] and a risk assessment of [DELETED].[1] The evaluators explained that they had not selected STA Engines for award primarily due to concerns regarding the firm's past record for on-time delivery. In this connection, the SEB noted that although STA Engines's past performance "was for the most part considered good," the offeror had been consistently and significantly late on delivery of overhauled material under a separate ongoing Coast Guard contract for propeller overhaul and repair.

The protester contends that it was improper for the agency to attribute this negative performance data to it, because it had no involvement in the contract in question, which was being performed by one of its affiliates, ST Aerospace Systems (STA Systems). In this regard, the protester maintains that although STA Engines and STA Systems are owned by the same parent holding company, ST Aerospace, they are distinct entities with completely separate facilities, management, and work forces. The protester further argues that by failing to bring this negative information pertaining to its affiliate's past performance to its attention during

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[1]Of the remaining four proposals in the competitive range, three were considered not to represent the best value to the government because [DELETED]. The fourth proposal, which was [DELETED], was considered not to represent the best value because it had received [DELETED] and the [DELETED], leading the SEB to conclude that the potential cost savings to the government did not justify the performance risks.

discussions, the agency violated Federal Acquisition Regulation (FAR) § 15.610(c)(6), which requires that an offeror be given an opportunity to discuss any negative past performance information obtained from references on which the offeror has not had a previous opportunity to comment.[2]

The agency argues in response that it was appropriate for it to attribute STA Systems's negative performance to STA Engines because the protester held out the two as affiliated by listing STA Systems's propeller contract as a reference and otherwise emphasizing the cohesiveness of the ST Aerospace group of companies in its proposal and by using the same individuals to represent both companies in meetings with agency contracting personnel. Further, the agency asserts that it was not required under FAR § 15.610(c)(6) to raise the matter with STA Engines.

In determining whether one company's performance should be attributed to another, the agency must consider not simply whether the two companies are affiliated, but the nature and extent of the relationship between the two--in particular, whether the workforce, management, facilities, or other resources of one may affect contract performance by the other. In this regard, while it would be appropriate to consider an affiliate's performance record where it will be involved in the contract effort or where it shares management with the offeror, Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241; Macon Apparel Corp., B-253008, Aug. 11, 1993, 93-2 CPD ¶ 93, it would be inappropriate to consider the affiliate's record where that record does not bear on the likelihood of successful performance by the offeror. Cf. Contract Servs. Co., Inc., B-246604.2 et al., June 11, 1992, 92-1 CPD ¶ 508. As explained below, in this case we conclude that it was not reasonable for the agency, based on the evidence before it, to attribute the past performance of the affiliate to the protester without inquiring further into the relationship between the two companies and giving the protester an opportunity to address the issue during discussions.

While STA Engines represented in its proposal that it was affiliated with STA Systems, it did not represent--nor was there other evidence in the record indicating--that the past performance of STA Systems is of any relevance to the likelihood of successful performance by STA Engines. With regard to the agency's assertion that by virtue of being owned by the same parent holding company the two affiliates clearly shared the same top level management, there is no indication

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[2]To the extent that the protester also argues that the Coast Guard violated its own evaluation plan by failing to discuss with STA Engines its affiliate's negative past performance data, this does not provide a separate basis for protest since internal agency instructions do not give outside parties any rights. Burnside-Ott Aviation Training Ctr., Inc.; Reflectone Training Sys., Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158.

in STA Engines's proposal that the parent company or its management was to be involved in any aspect of contract performance. Rather, the proposal stated that "overall responsibility for this program is [in] the SVP/GM [Senior Vice President/General Manager] of ST Aerospace Engines . . . ." (Emphasis added.)

Regarding the agency's argument that it reasonably understood that other companies in the ST Aerospace group would be involved in performance, the proposal clearly identified STA Engines--and not the ST Aerospace group--as the offeror. In addition, required certifications (submitted with the proposal) from the original equipment manufacturer, Allison, and from the Federal Aviation Administration were in the name Singapore Aerospace Engines;[3] and the proposal outlined a management structure headed by the Senior Vice President/General Manager for STA Engines. The protester did emphasize the strength and diversity of the ST Aerospace Group in the introductory paragraph of its proposal and the protester listed contracts performed by other affiliates within the ST Aerospace Group, presumably with the goal of enhancing its rating under the past performance criterion. However, we do not think an agency can automatically rely on such a listing without some additional basis for viewing the affiliate's past performance as relevant to the offeror's performance.

In support of its argument that it was led to believe that the parent corporation, ST Aerospace, would be involved in management of the engine overhaul contract by the fact that employees of the parent corporation represented the offeror in meetings with agency personnel, the agency cites only one example of a meeting held on October 17, 1996, concerning the engine overhaul solicitation (other than the debriefing) in which employees of the parent company are alleged to have represented STA Engines. The protester denies that a substantive meeting concerning the engine overhaul solicitation took place on October 17, however; what did happen on that date, according to the protester, is that representatives of the parent company's North American administrative office, who were visiting the contracting office on other business, encountered and engaged in a brief conversation with the contracting specialist responsible for the engine overhaul solicitation, during the course of which they exchanged pleasantries and inquired about the projected contract award date, but did nothing more. The agency does not dispute the protester's explanation of what occurred on October 17, and has offered no other examples of pre-award meetings in which STA Engines was represented by employees of the parent company. We do not think that it was reasonable for the agency to conclude, on the basis of this single exchange, that the parent company's North American administrative staff represented STA Engines with regard to the engine overhaul solicitation.

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[3]As the agency was aware, Singapore Aerospace Engines changed its name to ST Aerospace Engines in 1995.

In sum, the record before the agency lacked evidence establishing the nature of the relationship between the companies for purposes of this procurement. Given the potential for variations in the extent and nature of the relationship between two companies that are affiliated, it is not reasonable for an agency simply to accept, without more, an offeror's representation that the performance of an affiliated company--positive or negative--should be attributed to that offeror. Such representations are essentially self-serving in nature, and, for reliance on them to be reasonable, there must be some actual or potential relationship to contract performance.[4]

Verifying the relationship between two companies before attributing the past performance of one to the other is particularly important given the current emphasis on evaluation of an offeror's past performance as a prominent feature of all evaluations in negotiated procurements. FAR § 15.605(b)(1)(ii). In this case, before the agency properly could attribute STA Systems's past performance to STA Engines, it should have determined the planned relationship between the companies on the contract at issue. Once that relationship was known, the agency then could make an informed decision as to whether attribution was proper. See Fluor Daniel, Inc., supra; Contract Servs. Co., Inc., supra.

The agency was also required to raise the issue of the affiliate's relationship with STA Engines during discussions with the firm. For discussions to be meaningful, an agency must point out significant weaknesses in a proposal, that unless corrected, would prevent the offeror from having a reasonable chance for award. Department of the Navy--Recon., 72 Comp. Gen 221 (1993), 93-1 CPD ¶ 422; Alliant Techsystems, Inc.; Olin Corp., B-260215.4; B-260215.5, Aug. 4, 1995, 95-2 CPD ¶ 79. Here, the affiliate's negative past performance was the determinative factor in the decision not to award to STA Engines. Since the agency's decision to attribute the affiliate's performance to STA Engines was the foundation for this dispositive determination, we think the agency was required to raise the issue with the protester during discussions and give it an opportunity to respond.[5]

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[4]A potential relationship might exist where, for example, a parent corporation has a history of marshalling corporate-wide resources to assist a subsidiary encountering performance difficulties.

[5]The agency contends that it was not required to discuss the information because it was historical in nature and therefore not subject to change and because it had already discussed it with representatives of STA Systems, who had not denied responsibility for it. Both of these arguments miss the point. The issue is not whether STA Systems was correctly held responsible for its lateness under the propeller contract; the protester has never denied STA Systems's responsibility for
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We conclude that the agency improperly downgraded STA Engines's proposal on the basis of past performance information pertaining to its affiliate, STA Systems, without clarifying the relationship between the companies and without affording STA Engines an opportunity to comment on the information during discussions.[6] It is clear from the record (i.e., the evaluators' statement that they had not selected STA Engines for award primarily due to concerns regarding the firm's past record for on-time delivery; [DELETED]; and the change in the evaluators' past performance rating from [DELETED] to [DELETED] upon consideration of the propeller overhaul late deliveries) that STA Engines was prejudiced[7] by the attribution of STA Systems's negative past performance to it. Accordingly, we sustain the protest.

We recommend that the agency reopen discussions to clarify the extent of involvement of STA Systems in STA Engines's proposed effort. This is the only topic that STA Engines should be permitted to address during discussions and the protester should not be allowed to revise other aspects of its technical proposal or its price. Once the discussions have been completed and STA Engines has submitted a new limited best and final offer (BAFO), the agency should reevaluate the offers to determine which represents the best combination of technical merit and price.[8] If it determines that the proposal of an offeror other than Standard

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[5](...continued)
its own performance deficiencies. What the protester has denied is that this negative performance by one of its affiliates should have been attributed to it--and that is the issue that the agency could, and should, have allowed the protester to address during discussions.

[6]Because we conclude that the agency had an obligation to raise the matter of nature of the affiliation between the two companies during discussions, we need not address the issue of whether the agency had a separate obligation to discuss the negative performance information under FAR § 15.610(c)(6).

[7]Competitive prejudice is an essential element of a viable protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379.

[8]This recommendation differs from the one made in the original protected version of this decision. We originally recommended that after discussions with STA Engines had been completed, another round of BAFOs be solicited. After issuance of the protected decision, the protester requested that we modify our decision to delete the recommendation for another round of BAFOs. The protester argued that a reopening of the price competition would create the risk of an auction since
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Aero represents the best value, it should terminate the award to Standard Aero and make award to the firm that it has now selected. We also recommend that the agency pay the protester the costs of filing and pursuing its protest, including attorneys' fees. Bid Protest Regulations, section 21.8(d)(1), 61 Fed. Reg. 39039, 39046 (1996) (to be codified at 4 C.F.R. § 21.8(d)(1)). In accordance with section 21.8(f)(1) of our Regulations, STA Engines's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of the decision.

The protest is sustained.

Comptroller General
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[8](...continued)
offerors' prices have been disclosed by the agency, and that the defect in the process may otherwise be remedied without impairment to the integrity of the procurement process by limiting the scope of the reopened negotiations. We agree with the protester, and, accordingly, have modified our decision as noted. See URS Int'l, Inc., and Fischer Eng'g & Maintenance Co., Inc.; Global-Knight, Inc., B-232500; B-232500.2, Jan. 10, 1989, 89-1 CPD ¶ 21, recon. den., Pacific Architects and Eng'rs, Inc.--Request for Recon., B-232500.4, Mar. 3, 1989, 89-1 CPD ¶ 231.