



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: Greenwich Air Services, Inc.

File: B-277656

Date: November 5, 1997

John A. Ordway, Esq., Berliner, Corcoran & Rowe, for the protester.
Paul Shnitzer, Esq., Crowell & Moring, for Turbo Power & Marine Systems, Inc.
an intervenor.

Richard Gonzales, Esq., Department of Transportation, for the agency.
Katherine Riback, Esq., Glenn Wolcott, Esq., and Paul Lieberman, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. RFP requirement that technical representative of original equipment manufacturer (OEM) be present during six critical phases of the overhaul and repair work of power turbines is not unduly restrictive where requirement is based on agency's reasonable concerns regarding safe operation of ships.
2. Protester's unsupported speculation that involvement of OEM technical representative will undermine contract performance, thereby decreasing the protester's chances for subsequent awards, does not provide basis for protest.

DECISION

Greenwich Air Services, Inc. protests the terms of request for proposals (RFP) No. DTG40-97-R-70026, issued by the Coast Guard for the overhaul and repair of Pratt & Whitney power turbines.¹ Greenwich contends that the solicitation requirement that a technical representative of the original equipment manufacturer (OEM) be present during certain phases of the overhaul and repair process improperly restricts competition and creates an organizational conflict of interest for Turbo Power and Marine Systems, Inc., the OEM.²

¹The power turbines are used in the Coast Guard's 378' High Endurance Cutters and 400' Ice Breakers.

²Turbo Power and Marine Systems, Inc. is an affiliate of Pratt & Whitney.

We deny the protest.

BACKGROUND

On May 9, 1997, the agency issued the RFP, which contemplated the award of a requirements contract for a base year with one 1-year option period. The solicitation required that OEM brand name parts be used and that an OEM technical representative be on site during six critical phases of the overhaul and repair process.³ Prior to issuing the solicitation, the agency executed a "Justification for Other Than Full and Open Competition" (JOTFOC) which stated:

Pratt & Whitney/Turbo Power & Marine Systems, Inc. is the only known company possessing the original drawings, specifications, engineering control procedures and proprietary methods to ensure the latest design configuration, manufacturing and quality control required to produce parts to current engineering specifications and requirements. . . . Power Turbines which explode with flying debris due to faulty parts, may severely mangle or kill anyone in the engine room Catastrophic failure of the Power Turbine during engine operation could result in hundreds of thousands of dollars in damage, not only to itself, but the gas generator that the power turbine drives, and the area surrounding the turbine on the vessel.

Subsequently, the agency amended the JOTFOC to also state:

Pratt & Whitney/Turbo Power & Marine Systems, Inc. is the only known source for the technical expertise required to ensure: that repairs recommended by the contractor are necessary; that Pratt and Whitney authorized repair procedures, modifications, limits/tolerances, and inspection criteria are used; and that all Pratt and Whitney Standard Practices are met.

On May 30, Greenwich filed an agency-level protest challenging the terms of the solicitation as being overly restrictive. The agency denied that protest on July 22.

On July 23, Greenwich and Turbo each submitted a proposal responding to the solicitation. The total evaluated price of Greenwich's proposal was \$[deleted] and the total evaluated price of Turbo's proposal was \$[deleted]. On July 30, Greenwich filed this protest with our Office.

³The RFP states that the contractor shall have an OEM technical representative at the contractor's facility during the following critical operations: initial inspection, initial (dirty) inspection, clean inspection (final condition report), repairs, assembly, and testing.

DISCUSSION

Greenwich first argues that the RFP requirement for an OEM technical representative requirement improperly restricts competition because of the control it gives to Turbo, the OEM, over its competitors' prices. Greenwich argues that the requirement permits Turbo to quote an unreasonably high price for the services of its OEM representative, thereby ensuring for itself an "insurmountable price advantage," maintaining that "the complete elimination of these OEM Representative clauses is necessary to avoid the unfair competitive disadvantage." Although Greenwich acknowledges that, under previous contracts, it "[has] utilized the regional [OEM] representative for consultation and added expertise--when necessary," Greenwich nonetheless asserts "there is no reason to require any OEM Representative services, as inspections can be accomplished by others, including Greenwich, in accordance with the OEM's manual."

The agency responds that the RFP requirement for an OEM technical representative is necessary because of recent restructuring within the contracting activity that has depleted staffing, leaving a current staffing level without the necessary expertise to ensure that repairs recommended by the contractor are necessary and that the appropriate repair procedures and inspection criteria are used. Further, as discussed in the JOTFOC, the agency maintains that the specific expertise provided by the OEM technical representative is critical to the safe operation of the power turbines.

The agency notes that this identical issue was previously considered in connection with a prior solicitation for the overhaul and repair of Pratt & Whitney marine gas generators in which an OEM technical representative was required to be on site during the entire overhaul process. In response to a protest filed by Greenwich's subsidiary, the requirement was revised so that the OEM technical representative was only required to be present during six critical phases of the overhaul and repair work. The agency maintains that, as with the gas generators, the agency's review of this issue led it to conclude that the presence of an OEM representative during the specified phases was necessary since improper repairs could threaten the safety of agency personnel, result in exorbitant additional repair costs, and incapacitate agency ships.

The determination of a contracting agency's minimum needs and the best method for accommodating them are matters primarily within the agency's discretion. Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79 at 2, aff'd, B-250389.2, June 21, 1993, 93-1 CPD ¶ 472. Where a requirement relates to national defense or human safety, as here, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest possible reliability and effectiveness. Tucson Mobilephone, Inc., supra, 93-1 CPD ¶ 79 at 5.

The record provides no basis to call into question the legitimacy of the agency's concerns regarding the risk of improper repair of the power turbines absent OEM assistance, and the ramifications involved. Indeed, Greenwich itself acknowledges that in the past, assistance from an OEM representative has been necessary. Further, Greenwich's asserted concern that the requirement would [deleted]. Based on this record, including the JOTFOC and the agency's explanation supporting its requirements, we do not find the requirements unduly restrictive.

Greenwich also asserts that the OEM technical representative requirement creates an organizational conflict of interest for Turbo.⁴ Greenwich asserts that if an offeror other than Turbo receives award, Turbo's representative would have an incentive to undermine the awardee's performance, thereby improving Turbo's chances for subsequent awards.

Greenwich's argument regarding the conflict of interest on the part of Turbo is entirely speculative. While an agency may exclude an offeror from the competition because of an apparent conflict of interest in order to protect the integrity of the procurement system, even if no actual impropriety can be shown, such a determination must be based on facts and not mere innuendo or suspicion. Cleveland Telecommunications Corp., 73 Comp. Gen. 303, 308 (1994), 94-2 CPD ¶ 105 at 7.

Here, there is no support for Greenwich's speculation. On the contrary, the record indicates that Greenwich has previously relied on the OEM technical representative's expertise in successfully performing similar contracts. To the extent this portion of the protest is based on Greenwich's speculation that the agency will fail to perform an objective evaluation of proposals under subsequent procurements, it merely anticipates improper agency action and, therefore, is not for consideration on the merits. See, e.g., Harbor Branch Oceanographic Inst., Inc., B-243417, July 17, 1991, 91-2 CPD ¶ 67 at 6.

The protest is denied.

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⁴An organizational conflict of interest exists when because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. See Federal Acquisition Regulation § 9.501.