

*Eldredge
P.L. II*

DECISION



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

04738

FILE: B-189923

DATE: January 12, 1978

MATTER OF: American Safety Flight Systems, Inc.

DIGEST:

1. Where notation on source control drawing requires that the manufacturer certify that "the system * * * conforms to applicable drawings and documents with respect to design dimensions * * *," potential offeror could reasonably conclude that agency required strict compliance with the design dimensions of the drawing. However, protester was not prejudiced by dimensional deviations in award-ee's system allowed by agency because protester's proposal contained dimensional deviations which the agency considered to be immaterial.
2. Contention that solicitation should be restrictively drawn as to place protester in sole-source position is not for consideration as bid protest. GAO will not question agency determination that less restrictive solicitation will meet Government's needs absent evidence of fraud or intentional misconduct.

American Safety Flight Systems, Inc. (American Safety) protests the award of a contract to Fluid Power, Inc. (Fluid Power) under Request for Proposals (RFP) DAAJ01-77-R-0410(PIG) issued by the U.S. Army Aviation Systems Command (Army) for oxygen systems for the MC-3 Free-Fall Parachute System. Essentially the protester contends that Fluid Power should have been rejected as nonresponsive and that American Safety did not compete on an equal basis.

American Safety had been a sole-source supplier of this item. In order to allow the solicitation of all potential suppliers, the Natick Research and Development Command (NARADCOM) updated the procurement package to include a source control drawing. The technical data necessary for a potential supplier to qualify as an approved source of supply, was issued to 17 potential suppliers. The agency states that American Safety and Fluid Power were the only

E-189923

serious contenders for this procurement. Fluid Power presented its prototype to NARADCOM for evaluation and it successfully passed various tests with respect to form, fit, dimensional compliance and configuration. Subsequently, its prototype passed all tests required to determine that it met the physical and performance requirements of the drawing.

Prior to the issuance of the RFP, American Safety informed NARADCOM in writing that its system met all of the dimensions of the drawing except in one respect:

"Our dimension from the center of gauge to the outer edge of the On-Off Control location is 2.25. Drawing 11-1-30 calls out 2.5."

The Army responded stating that it had previously evaluated and tested its system and found the 2.25 inch dimension to be acceptable and that the tolerance on the drawing would be changed accordingly. Based upon evaluation and testing by NARADCOM, American Safety was listed as an approved source of supply but the tolerance in question was never revised.

Subsequently the RFP was issued as a source controlled procurement with American Safety and Fluid Power being the only known qualified producers. After discussions with both offerors, award was made to Fluid Power.

American Safety contends that the configuration of the oxygen system offered by Fluid Power does not conform to the drawing and may not be adaptable to the end system without parachute modification. However, American Safety does not specifically indicate how Fluid Power's system failed to conform to the drawing or why parachute modification is required for Fluid Power's equipment. American Safety argues that it will not be able to compete for future procurements apparently on the assumption that a parachute modification will be made to accommodate Fluid's equipment. Consequently, American Safety believes that it was not afforded an equal opportunity to compete.

The Army concedes that the Fluid Power's oxygen system does not strictly conform to the configuration illustrated in the drawing. NARADCOM states that:

B-189923

"* * * [Fluid Power's configuration] differs in two respects, namely, the pressure gauge is mounted on top of the manifold rather than the side and the hose connection is combined with the on/off control rather than being located on the top of the manifold. It is, however, completely compatible with the free-fall parachute assembly system without the need for any modification of the parachute assembly. * * * [T]here is no requirement on the drawing that the 'configuration' be identical to the item illustrated. There is a requirement in Note 12(a) for conformance to 'design dimensions' and in at least two and possibly two other instances, the dimensions of the Fluid Power item do not conform to the exact dimensions shown on the drawing."

The Army further states that:

"* * * This Source Control Drawing is considered to be a performance specification which may be satisfied by alternate design approaches. These alternate approaches were anticipated by NAFADCOM and made known to all potential suppliers by inclosure of note 11 on the drawing which requires submission of a prototype for evaluation. This prototype was required primarily to verify its fit and function with the entire Free Fall Parachute System, a requirement which would be unnecessary if all dimensional aspects of the drawing were to be adhered to without the possibility of deviation * * *. This Source Control Drawing follows the pattern of other Natick drawings in this classification, as they are considered outline drawings wherein the dimensions provided were primarily for reference purposes to help insure that the item interfaces with other components associated with it."

B-189923

The Army is correct in stating that there is no specific requirement that the item be identical to the item illustrated. However, we believe that a reasonable reading of the RFP and the notes on the drawing could lead a potential offeror to conclude that the Army required strict compliance with the design dimensions of the drawing. The RFP required a system "in accordance with NLABS Drawing 11-1-30, Rev. C." Furthermore, Note 12 on the drawing stated:

"The manufacturer shall conduct the following tests and provide a certification that the system meets the following requirements:

"a. The assembly conforms to applicable drawings and documents with respect to design dimensions, materials and workmanship." (Emphasis supplied.)

In contrast, note 11 requires that:

"* * * any vendor desiring to be listed as an approved source of supply * * * shall submit a representative sample to NARADCOM for verification of its fit and function with the Free-Fall Parachute Assembly * * *."

Moreover, the Army's submissions in response to the protest clearly indicate that compatibility in terms of fit and function with the free-fall parachute system was deemed to be of paramount importance. Because the items offered by Fluid Power and American Safety fully complied with this requirement and met the specified tests, the Army permitted both firms to submit systems with minor deviations from the dimensions shown in the drawing.

In the circumstances of this case, American Safety was not prejudiced by the failure of the RFP expressly to indicate that an oxygen system deviating from the precise design dimensions of the drawing would be acceptable. As noted above, American Safety was informed by the Army prior to the issuance of the RFP that minor deviations with respect to design dimensions were acceptable. Although the Army

B-189923

stated the tolerance would be revised to bring the protester's unit into conformance with the drawing's dimensions, the record indicates that the procurement was accomplished without a revision to the drawing in this respect. Therefore, as to such deviations, American Safety was reasonably on notice that they were not considered by the agency to be either material or a relaxation of requirements. See International Business Machines Corporation, B-187720, May 19, 1977, 77-1 CPD 349.

Nevertheless, we are of the view that in future procurements for this item the Army should clearly indicate that systems with minor deviations from the design dimensions will be considered for award and that strict compliance with the dimensions is not required, provided the equipment is compatible with the parachute assembly. By separate letter we are recommending corrective action as to future procurements.

American Safety believes that use of the system offered by Fluid Power will necessitate parachute modification which would eliminate the firm from competing on future procurements.

The Army, however, states that no modification of the parachute end system will be required if Fluid Power's system is used. Since the protester has not shown what modifications to the parachute end system will be required, we are not in a position to question this determination. In addition, the Army states that both systems are fully interchangeable with the Free-Fall Parachute Assembly, indicating that the protester will not be required to modify its equipment for future procurements.

In response to the agency report, American Safety further contends that the Fluid Power system was not comprehensively tested. In this regard, American Safety states that jumpers who have used its system are accustomed to the location of the gauge and on/off control and by accepting the Fluid Power system which differs from previously used equipment, the Army will expose jumpers to life threatening safety hazards. Essentially, American Safety

B-189923

asserts that the solicitation should be restrictively drawn, so that only its product or an item with the exact configuration of its system would be considered for award.

Our Office will not question an agency determination that a less restrictive solicitation will meet the Government's needs absent fraud or intentional misconduct. Miltope Corporation--Reconsideration, B-189342, June 9, 1977, 77-1 CPD 417. As we stated in the cited decision:

"* * * Assurance that sufficiently rigorous specifications are used is ordinarily of primary concern to procurement personnel and other user activities. It is they who must suffer any difficulties resulting by reason of unadequate equipment * * *."

In this regard, however, the Army has reported that:

"The oxygen system is mounted horizontally in the pocket located on the bottom of the reserve parachute pack which in turn is attached to the front of the jumper's torso. The pocket is so constructed that the gauge and on/off control extend outside of the pocket such that the gauge can be checked by the jump master or by another jumper to assure the presence of an oxygen supply[.] * * * The on/off control can be activated by the jumper himself prior to leaving the aircraft."

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States