

DECISION

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

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FILE: B-208418

DATE: November 23, 1982

MATTER OF: Simulators Limited, Inc.

DIGEST:

Where questions and answers relating to specifications place offerors on notice that incumbent contractor's front mounted engine design for target aircraft satisfies solicitation requirements for visual representation of specific aircraft whose distinguishing feature is the design of its nose, protester's assertion that only its rear mounted engine design will satisfy visual appearance requirement is without merit.

Simulators Limited, Inc. protests the Department of the Army's evaluation of proposals received in response to Request for Proposals (RFP) DAAH01-82-R-A345 for target flight services. The protest concerns target aircraft which the awardee is to furnish and operate in support of live fire exercises at the Army's National Training Center (NTC), Fort Irwin, California.

Simulators has learned that the Army is considering front mounted engine designs, which unlike its rear mounted engine design, alters the visual appearance of the nose of the target. The RFP requires that the contractor furnish targets which are to be remotely controlled 1/7th scale aircraft "presenting the visual appearance of the Mikoyan/Gurevich MIG-27." The most significant distinguishing feature of the MIG-27 (by comparison with the MIG-23, for example) is the shape of its nose. Simulators' contends that the solicitation clearly precludes designs with front mounted engines, since such engines will alter the visual appearance of the craft.

We deny the protest.

Although a number of issues have been raised and briefed, we think Amendment #4 to the solicitation is dispositive of this protest. That Amendment contained a series of questions and answers about the procurement including the following question 46:

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"Q. Is the aircraft currently provided by the existing contractor acceptable in all terms of scale, size and representation? (Emphasis added)

"A. Yes."

We agree with the Army that from this question and answer the protester knew or should have known that aircraft similar to the existing contractor's aircraft with front mounted engines were considered by the Army to be sufficiently representative to meet its stated needs.

The protester, who maintains that only it has an operating rear engine design, knew that the incumbent's target uses a front mounted engine. However, the protester disagrees regarding the significance of question 46, which it labels a "red herring." According to the protester:

"When Simulators Limited received its copy of Question and Answer No. 46, Jan Eglen [president of Simulators] telephoned Brian Cole [the contracting officer], * * * and asked whether the import of this Question and Answer was that the incumbent's model satisfied the specifications for RFP DAAH01-82-R-A345. * * * Mr. Cole informed Jan Eglen that the incumbent's model did not meet all of the specifications of the RFP, but would not state specifically which specifications were not met by the incumbent model. The Protester took heart from this conversation and remained firm in its view that its interpretation of the specifications was reasonable, and that a model would only be acceptable if the visual appearance of the nose was like that of a MIG-27."

In fact, the protester insists, its interpretation of the visual appearance requirement is buttressed rather than undercut by other questions and

answers. For example, the protester cites question and answer 33 as illustrative, which states:

"33Q. Is the target plane currently flown at NTC by RS Systems of the same size and configuration as the one in which you are basing DAAH01-82-R-A345? It is very important to know this in order to know if the hit ratio previously provided is based on a target of the scale and speed or if the data is based on a different platform.

"33 A. Yes, within the dimensions as specified in the RFP."

According to Simulators, answer No. 33, taken with the contracting officer's statement, led Simulators to believe it was on the right track.

Moreover, Simulators suggests, the import of question 46 should not be considered because it was raised by the Army in rebuttal after the record should have been closed under § 21.3(d) of our Bid Protest Procedures, 4 C.F.R. § 21.3(d)(1982). That section states that any rebuttal a protester or other interested party may wish to make shall be filed within 5 working days after receipt of the comments to which the rebuttal is addressed.

We do not agree that § 21.3(d) prevents us from considering the impact of question 46. Question 46, and the answer given, was addressed in the Army's initial report to our Office.

As we view the case, the effect of question 46 was to explain the visual appearance requirement thus placing offerors on notice that exact visual likeness with a MIG-27 was not required, at least to the extent an exact likeness would be incompatible with designs accommodating a front mounted engine. The amendment states categorically that the incumbent's target which includes an engine conspicuously mounted in the front was sufficiently representative to meet the Army's need.

Generally, oral explanations given prior to award are not binding and should not be relied upon. Airflote, Incorporated, B-180425, July 18, 1974, 74-2 CPD 42, aff'd. In any case, Simulators' reliance on its interpretation of the contracting officer's oral statement was unreasonable. In fact, the contracting officer specifically refused to identify which requirements were not satisfied. Thus, he did not contradict the clear import of the answer to question 46, that the incumbent's design was satisfactory in appearance.

We have carefully reviewed those portions of the record which the protester claims buttress its view that front mounted engine designs were unacceptable. They do not support its position.

For example, placed in context, question 33 quoted above inquires as to whether the hit ratio (the chance that a plane will be struck by ground fire) data given by the Army was based on the configuration and size of the incumbent's craft. The Army required that the contractor assume the risk that some of his targets would be hit and price his proposal accordingly. Since the probability of a hit depends upon the speed and exposed area presented by the craft, the answer given to question 33, "Yes, within the dimensions as specified in the RFP," indicated that the questioner was correct in assuming that the hit data was based on the incumbent's target and was considered representative of losses which could be expected of craft having a configuration within the dimensions specified. Neither the question nor the answer had anything to do with the acceptability of a particular appearance.

Finally, we briefly consider an ancillary complaint which Simulators has filed concerning the Army's handling of the procurement after the protest was filed. Anticipating that this protest might take some time to resolve, the Army amended its performance schedule and reopened negotiations with offerors remaining in the competitive range. According to the protester, who has a fully operational target, this action allows its competitors additional time in which to improve their designs, at the protester's expense.

We see no basis to this complaint. The Army may reopen negotiations at any time, provided it has a reasonable basis for doing so. A substantial change in an agency's requirements provides such a basis. Washington School of Psychiatry/The Metropolitan Education Council for Staff Development, B-192756, March 14, 1979, 79-1 CPD 178. Absent circumstances which would justify making an award in the face of the protest, the filing of the protest caused a change in requirements since it altered the Army's planned schedule. Thus, the Army had a reasonable basis for reopening negotiations.

The protest is denied.

for Milton J. Rowland
Comptroller General
of the United States