



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Biegert Aviation, Inc.
File: B-222645
Date: October 10, 1986

DIGEST

Contracting agency unreasonably determined that a proposal to design, develop, and supply a modular aerial spray system (MASS) for C-130 aircraft was technically acceptable where the proposed design materially fails to conform with the solicitation's requirement that the MASS be capable of being installed in any C-130 aircraft within 30 minutes.

DECISION

Biegert Aviation, Inc. protests the award of a contract to Lockheed Corporation under request for proposals (RFP) No. F09603-85-R-2116, issued by the Department of the Air Force, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia. The RFP contemplated a firm fixed-price contract to design, develop, and supply a modular aerial spray system (MASS), and to provide ancillary items, for chemical dispersment from C-130 aircraft. The RFP also included two 1-year options for additional items, including 4 MASS in the second-option year. Under the RFP's evaluation criteria, award was to be made to the offeror of the lowest-priced technically acceptable offer. Biegert contends that Lockheed's lowest-priced proposal should have been considered technically unacceptable. Biegert also contends that the evaluation methodology was deficient because it failed to take into account costs the government allegedly will incur under Lockheed's proposal. The protest was filed within 10 days after the contract was awarded on May 30, 1986, and the Navy has proceeded with performance based on a determination that such action is in the government's best interest.

We sustain the protest.

The RFP's Technical Specification (Spec.) B.3.1.2 required that the MASS "provide for interfacing with all models of the C-130 aircraft both mechanically and electrically so as not to

037048

interfere with or degrade the existing aircraft systems or jeopardize the aircraft's ability to operate within its performance envelope." Spec. B.3.2.2.2 elaborated as follows:

"The spray package should be modular to the extent that no modification to the C-130 airframe or systems is necessary. In the event minor modifications are required, C-130 capability and performance characteristics, for missions other than spray, shall not be affected"

Spec. B.3.2.2.3 stated that the "roll-on/roll-off capability of the airborne package should be such that on-loading/off-loading can be accomplished within 30 minutes." The same Spec. further provided that the MASS design shall provide for "integral transporting/loading capability on unimproved runway/ramp conditions."

Further, the Air Force's answers to questions submitted by potential offerors at a preproposal conference were incorporated into the RFP by amendment 0001, which indicated that the MASS must be capable of being transported with the aircraft pressurized and capable of achieving speeds of more than 200 knots indicated air speed (KIAS).

Three firms submitted proposals; Biegert's and Lockheed's were considered within the competitive range. Discussions were held with both offerors. Lockheed proposed a system utilizing spray booms attached to the outer portions of the wings and additional booms attached to the fuselage at the paratroop door locations. While the proposed location of the chemical tanks, pumps and controls is on pallets that can be rolled on and off the aircraft through the rear cargo door, hoses (connecting the wing booms to the pumps and chemical tanks) must be installed within the wing structure. Attaching the booms and making the necessary plumbing connections will require modifications to the aircraft, including the substitution of existing wing panels and paratroop doors with modified temporary panels and doors. Lockheed estimated that these modifications could be accomplished in 15 minutes. Regarding the hoses in the wings, Lockheed stated in its written answers to technical questions during discussions that installing or removing the hoses would take 2-3 hours. Lockheed therefore recommended permanently retaining the hoses in the wing, and capping them when not in use. Lockheed's proposal also explains that it would be necessary to attach wing stiffeners in order to transport the attached booms at speeds exceeding 200 KIAS.

The protester proposed a system that is entirely contained on pallets that can be rolled on and off the aircraft. The spray booms are mounted on the container tank unit and stored in a retracted position. For spraying, the aircraft's rear cargo door is opened and the booms are deployed through the opening. When the MASS is not in use, it can be transported with the cargo door closed and without interfering with the aircraft's flight capabilities.

The Air Force determined that although the Specs. required a basically modular--that is, self-contained--system, the Specs. also permitted a MASS that necessitated minor modifications to the aircraft, and that Lockheed's proposed modifications were minor. The Air Force also concluded that the proposed system complied with the time limitations for installation and removal, based in part on Lockheed's representation that certain modifications--installing and removing the temporary panels and paratroop doors--could be accomplished within 15 minutes. The Air Force, in its report on the protest, also contends that offerors were advised at the preproposal conference that preliminary minor modifications to the aircraft would be permitted if they could be accomplished within 24 hours and the plane could be restored to its original configuration within another 24 hours. According to the contracting officer and the contracting activity's Chief System Program Management Division, Directorate of Material Management, however, the 30-minute roll-on/roll-off requirement never was waived.

The protester argues that Lockheed's proposal did not comply with the RFP's requirements for a modular system with a roll-on/roll-off capability such that the installation or removal of the system will require 30 minutes or less.

In negotiated procurements, any proposal that fails to conform to the material terms and conditions of the solicitation should be considered unacceptable. Ridge, Inc., B-222481, June 24, 1986, 65 Comp. Gen. ____, 86-1 CPD ¶ 583. The contracting agency has the responsibility of determining whether a proposal is technically acceptable or unacceptable, however, and we will disturb its determination only upon a clear showing that the determination was unreasonable. Ridge, Inc., supra. In this regard, a determination that is not based on the solicitation as a whole and fails to give effect to all of the material provisions of the solicitation will be found unreasonable. See Sys. Dev. Corp., B-219400, Sept. 30, 1985, 85-2 CPD ¶ 356.

To the extent the Air Force's evaluation relies on alleged oral advice to offerors that minor preliminary modifications to the aircraft would be acceptable if the modifications could be accomplished within 24 hours, no such statement was incorporated into the RFP and Biegert contends that the statement was not made.

It is rudimentary that an oral change to a solicitation should be followed by a written amendment verifying the change. Federal Acquisition Regulation, 48 C.F.R. § 15.606(a) (1985); I.E. Levick & Assocs., B-214648, Dec. 26, 1984, 84-2 CPD ¶ 695. Since the Air Force amended the RFP to include statements from the preproposal conference that it desired in the RFP, and the alleged statement was not included, the Air Force cannot rely upon the statement to support its evaluation of Lockheed's proposal. Furthermore, the statements of the Air Force's own personnel who conducted the conference indicate that no change was made to the installation-time requirements, but to the removal-time requirements. The Air Force's C-130 Systems Engineer, who wrote the Specs., decided that minor modifications to the aircraft would be permitted if the aircraft was capable of being returned to its original configuration (of being de-modified) within 24 to 48 hours.

We note that Lockheed itself does not allege that the Air Force orally amended the RFP to permit minor modifications capable of being accomplished within 24 hours. Rather Lockheed suggests that the RFP tolerated preliminary modifications to the aircraft to make it capable of having the full system installed within 30 minutes, if the basically permanent modifications would not affect the aircraft's use for purposes other than spray missions. Lockheed interprets the RFP's language requiring that the MASS design provide for interfacing with all models of the C-130 aircraft to mean that the MASS must be capable of being installed in one plane out of each model--C-130 "A" through C-130 "H"--aircraft, and not that the MASS must be capable of being installed in any of the C-130 aircraft. Thus, Lockheed's apparent position is that the hose and stiffeners may be installed in the wings of select C-130 aircraft without regard to the 30-minute installation and removal requirement as long as the select planes then can be outfitted fully for a spraying mission within 30 minutes.

This interpretation is contrary to the plain language of the RFP requiring a roll-on/roll-off capability within 30-minutes, and also the evident purpose of the RFP to obtain a global MASS capability based on a system that can be rolled on and off any C-130 aircraft even at remote sites under unimproved runway conditions. Further, the Air Force does not support

Lockheed's interpretation. If the RFP contemplated limiting the capability to transport and utilize the MASS to select C-130 aircraft, the RFP would not have required basically a modular system with a roll-on/roll-off capability within 30 minutes, nor integral transporting/loading capabilities, but would have permitted minor preparatory modifications to the individual aircraft regardless of the time required to accomplish them.

Based on the Specs. as a whole and particularly on those set forth above, we interpret the RFP as requiring a MASS that is capable of being installed in and removed from any C-130 aircraft within 30 minutes even in remote areas with unimproved runway conditions; the MASS also must not interfere with the aircraft's capabilities except during actual spraying.

Lockheed's proposal materially fails to comply with the requirements for a system capable of being installed in any C-130 aircraft within 30 minutes and that does not interfere with the aircraft's performance capabilities. Lockheed's proposed system requires preliminary modifications (installing the hoses in the wings) to the aircraft that only can be accomplished in significantly more than 30 minutes. To retain the C-130's flight capabilities, Lockheed's system further requires structural reinforcements to the wings, and the Lockheed proposal contains no estimate of the time needed to install the stiffeners. Moreover, there is some question whether the modified temporary panels and paratroop doors necessary to attach the booms can be installed in 30 minutes, and there is no evidence that the Air Force critically evaluated this factor.

The Air Force--in comments submitted after a conference on the merits, see 4 C.F.R. § 21.5 (1986)--suggests that Biegert was not prejudiced by the Air Force's determination that Lockheed's proposal was acceptable since both proposals purportedly failed to meet the requirement for installation within 30 minutes. The Air Force states that the contracting activity's engineering personnel determined that both Lockheed's and Biegert's proposed systems require electrical connections and modifications to the aircraft that cannot be accomplished within 30 minutes. This statement was made in response to the protester's contention that the only electrical modifications required for its system would be the connection of 4 wires to an existing junction box in the aircraft that easily could be accomplished within 30 minutes. In contesting the protester's contention, the Air Force did not submit any supporting statement, explanation or documentation from the engineering personnel. Lockheed, which manufactures the C-130, does indicate in its proposal that

further modifications for its system must be made to the aircraft's electrical system--a receptacle must be installed inside the bulkhead and connected to the power source, and fuses or circuit breakers must be installed to protect the aircraft's electrical system. Assuming Biegert's system requires the same modifications, it is not apparent to us that they could not be accomplished within 30 minutes. Moreover, the Air Force does not argue that the time needed to make the necessary electrical connections would materially exceed 30 minutes, whereas installing the hoses necessary for Lockheed's system takes 2-3 hours and the time necessary to install the wing stiffeners is not estimated. We therefore are not persuaded that Biegert's proposal also failed to materially conform to the time limitations for installation of the MASS.

We find the Air Force unreasonably determined that Lockheed's proposal was technically acceptable where the proposal materially failed to comply with the requirement for a MASS capable of being installed within 30 minutes--a requirement which the contracting officer and contracting activity insist never was waived, and therefore represents the agency's needs. Since we sustain the protest on this basis, we need not consider Biegert's allegation of unevaluated costs associated with Lockheed's proposal.

Although approximately one-half of the 9-month delivery time has elapsed, the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(b)(2) (Supp. III 1985), requires that where, as here, the agency receives notice of the protest within 10 days after the contract award but justifies continuing with contract performance on the basis that the government's best interests so require, this Office recommend corrective action without regard to any cost or disruption from terminating, recompeting or reawarding the contract. We therefore recommend that the Air Force terminate Lockheed's contract for convenience and award a contract to Biegert, whose proposal was acceptable, if Biegert otherwise qualifies for award.

The protest is sustained.

for *Harry D. Van Cleave*
Comptroller General
of the United States