



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Israel Aircraft Industries Ltd.--Request  
for Reconsideration

File: B-223175.2

Date: November 19, 1986

## DIGEST

Allegation by interested party that prior decision ignored uncontroverted evidence in the record is without merit where review shows that alleged factual misstatements are not in error.

## DECISION

Israel Aircraft Industries Ltd. (IAI) requests reconsideration of our decision in Aviation Enterprises, Inc., B-223175, Sept. 24, 1986, 86-2 CPD ¶ \_\_\_\_\_, in which we denied the protest of Aviation Enterprises, Inc. (AEI) concerning its exclusion from the competitive range under request for proposals (RFP) No. DTFA01-86-R-31221, issued by the Federal Aviation Administration for two light, long range turbojet/turbofan aircraft.

We affirm our prior decision.

Both IAI and AEI submitted proposals based on the Model 1125 Westwind Astra manufactured by IAI which were rejected by the FAA for the same reasons. IAI did not file a separate protest but participated as an interested party in the protest filed by AEI. In our decision, we found the FAA's exclusion of AEI reasonable because we agreed with the FAA that AEI offered to provide an aircraft with an increased maximum takeoff weight for which amendments to the FAA approved type certificate and operations manuals were required.

IAI asserts that our decision was clearly based on the mistaken assumption that the Astra aircraft proposed was somehow structurally different from the certificated aircraft. In this respect, IAI points to our repeated references to the "modified aircraft" and complains that we ignored the evidence in the record which showed that the aircraft would not be modified, would not undergo a weight increase, and that only an engineering analysis was required to achieve certification for an increased takeoff weight. In

addition, IAI takes issue with our statement in which we indicated that there was a conflict in AEI's proposal as to whether the basic aircraft, without any increase in takeoff weight, would meet the RFP's requirements. IAI requests that we reverse our decision because it is not based on the factual record.

Our decision, however, was not based on whether the Astra aircraft proposed by AEI was structurally different from the certificated aircraft. Rather, our review of AEI's proposal showed that the FAA's determination that AEI offered the FAA an aircraft with an increased takeoff weight was reasonable and that the proposed increase would require FAA approval and necessitate changes to the type certificate and operations manuals submitted by AEI. Moreover, in our view, a reading of our decision indicates that it was in this sense that we referred to a modified version of the aircraft offered by AEI.

Furthermore, we reached no conclusion as to what extent, the basic Astra would require physical changes, only that FAA approval for the changes proposed would be required to amend the Astra's current type certificate and operations manuals and that there were no assurances as to the time this process would take or whether changes not contemplated would be required before FAA approval was granted. The FAA was unable to evaluate whether the aircraft offered would meet the RFP requirement and under the circumstances we found the FAA's decision to exclude AEI from the competitive range was reasonable.

We also disagree with IAI that we ignored the "uncontroverted" factual record in this case. Although IAI states that it offered the basic Astra without any weight increase, we found ample support in the record which justified the FAA's conclusion that an aircraft which exceeded its current certificated takeoff weight would be provided. AEI stated in its proposal that an engineering analysis will be conducted to increase the aircraft's maximum takeoff weight and indicated in other areas of its proposal its intention to obtain an amended certificate for the aircraft it would deliver to the FAA. Based on this record, we concurred with the FAA that an aircraft with an increased takeoff weight would be provided.

We find a similar lack of support for the remaining material misstatement alleged by IAI. IAI states that it is uncontroverted that the basic Astra aircraft meets all RFP requirements and that our statements which found some

ambiguity on this point is clearly in error. However, the full record includes AEI's proposal which states in Volume II, Detailed Technical Proposal, as follows:

"The Contractor has checked the Model 1125 ASTRA's performance under the conditions described in Section 3.3, and has determined that all missions will be accomplished within the ASTRA's operating limitations as certified by the FAA, with the exception of a higher maximum take-off weight (24,350 pounds) needed only for the language mission described in Section 3.3.4. Contractor will fully comply with all FAA requirements for FAA certification of this higher limit."

This statement alone properly raises a question as to whether the basic aircraft, without the proposed weight increase, will meet the RFP requirements. Indeed, AEI acknowledged in its protest submissions to our Office that there was some basis in its proposal for the FAA's confusion on this issue. We found that the FAA reasonably limited its evaluation to what AEI offered, rather than consider other alternatives that could have been submitted.

Finally, with respect to the potential cost savings of the Astra, we have held that an offeror's proposed costs are irrelevant where that offer is not within the competitive range and cannot be considered for award. ALM, Inc., et al., B-217284 et al., Apr. 16, 1985, 85-1 CPD ¶ 433. Also, in view of our findings above, we do not believe the conference requested by IAI is warranted. BrightStar Communications Ltd.--Reconsideration, B-218021.3, Nov. 26, 1985, 85-2 CPD ¶ 43.

Our prior decision is affirmed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel