

Winton PL-II



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Consolidated Aeronautics

File: B-225337

Date: March 27, 1987

## DIGEST

Protest that description of aircraft scrap residue in a sale invitation for bids was misleading because it did not identify specific aircraft type included is without merit where description was broad enough to encompass scrap from various aircraft and protester could have inspected lot to determine what was included in it.

## DECISION

Consolidated Aeronautics protests the award of Item 97 to AIm Enterprises, Inc. under an invitation for bids (IFB) covering Sale No. 27-6417, conducted by the Defense Reutilization and Marketing Service (DRMS), Defense Logistics Agency.<sup>1/</sup> Consolidated principally contends that because certain material in the item was grossly misdescribed, the misdescribed material should be reoffered for sale with a proper description so that Consolidated and all interested parties have an opportunity to compete for the purchase.

We deny the protest.

The IFB's index listed Item 97 as "Aluminum, Wrecked Aircraft, Scrap," and the schedule stated "ALUMINUM, WRECKED AIRCRAFT AND IRONY, SCRAP: Consisting of wing sections, fuselage, parts of helicopter (F14) with ferrous and nonferrous and other material not to exceed 5% of total weight . . . . 15,000 pounds."

The IFB's standard conditions urged bidders to inspect the property prior to bidding. Because Consolidated's Bidders' List Application did not indicate any interest in scrap, as opposed to usable, aircraft parts, the firm was not sent a copy of the IFB.

<sup>1/</sup> We consider this protest under 4 C.F.R. § 21.11 (1986) as the Defense Logistics Agency, by letter dated January 13, 1987, has agreed to our considering bid protests involving its surplus property sales.

After the issuance of the IFB, but before the inspection date, the sales activity received 7240 pounds of "wrecked A-4 [aircraft] scrap." The agency added this scrap to the property already in Item 97, without amending the IFB's Item 97 description. This was done under the sales activity's operating procedures that permit additions to scrap lots of material of identical description up until the inspection date.

Aim was the high bidder at \$.165 per pound, and Marie Ward was second high at \$.161. Two other bidders in the \$.11-.12 range completed the competition. The high bidder and the third high bidder had inspected the property prior to bidding and after the A-4 material was added to Item 97. Based on its high bid, Aim was awarded the contract.

About 1 month later, Consolidated protested the award, stating that it had recently learned that Item 97 contained A-4 aircraft residue, which is more valuable than F-14 aircraft residue. Only two portions of the lot are now at issue, a tail assembly and an ejector seat. (The record is unclear as to what percentage of Item 97 these items comprise, but it appears that it is not a major portion.) The agency has withheld delivery of these items until the protest is resolved.

The agency first argues that Consolidated is not an interested party and that the protest is untimely. The agency asserts that Consolidated is not an interested party because it did not submit a bid, and is an untimely protester because the alleged misdescription of Item 97 should have been raised prior to bid opening. We find no merit to either point. Consolidated did not submit a bid because it allegedly was misled as to what was being offered; it is clear that it is interested in bidding on the A-4 residue. Thus, we view Consolidated as having the requisite financial interest to be an interested party. See 4 C.F.R. § 21.0(a) (1986). Similarly, because Consolidated alleges that it was misled by the IFB description and only learned later that A-6 scrap was involved, the protest does not involve a solicitation defect apparent on the face of the IFB; therefore, Consolidated was not required to protest before bid opening. See 4 C.F.R. § 21.2(a).

Consolidated contends that A-4 aircraft residue is five times more valuable than the F-14 residue which, the protester alleges, was what the Item 97 description indicated. Because of the description, Consolidated alleges, it did not inspect the lot or inquire further upon receipt (source unstated) and review of the IFB prior to the opening date.

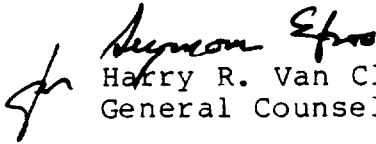
The protester concludes that adding the A-4 residue without amending the Item 97 description thus resulted in a substantial misdescription of the sale property, which violated the solicitation's representation that the property descriptions were to be based on the best information available to the sales office.

The agency points out that the Item 97 description did not indicate that only F-14 parts were included in the item and that the scrap nature of the A-4 parts substantially reduced the value of these parts compared to usable A-4 parts. The agency points out that the general description in Item 97 encompassed A-4 scrap, despite the lack of specific reference to that aircraft. At worst, the agency characterizes any possible misdescription as an innocent error of judgment.

We find no basis to recommend a reoffer of the contested A-4 residue for sale. While we think it would have been preferable for the agency to have amended the description to reflect the A-4 parts since apparently A-4 parts have a greater value than some other aircraft scrap parts, we do not believe the agency was required to amend the description or that Consolidated should have been misled. Item 97, in our judgment, should not have been read as describing only F-14 - aircraft scrap. While "(F14)" was included in the description, the overall description of wrecked aircraft, scrap, consisting of wing sections and fuselage, indicates that more may be included than F-14 parts. Certainly, the location of the term "(F14)" in the description, immediately following "parts of helicopter," suggests that the protester at the very least should have inquired as to what was meant since an F-14 is not a helicopter. Moreover, although descriptions are represented to be "based on the best information available to the sales office," the sale terms and conditions also state that the government "makes no warranty . . . as to quantity, kind, character, quality, weight, size or description . . . ." Consolidated admits it knew there was A-4 residue at the sales activity and it could have availed itself of the inspection rights set forth in the solicitation, as did the high and one of the other three bidders. That it did not do so because A-4 parts were not described is not persuasive--the protester does not allege that in sales solicitation descriptions for scrap lots each aircraft type represented by the scrap must be specifically identified.

Finally, the government appears to have received a reasonable price for the lot, as four bidders participated, and the high bidder inspected the lot before opening.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel