Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Universal Technologies, Inc.--Reconsideration

File: B-241157.2

Date: May 24, 1991

Ronald S. Perlman, Esq., Porter, Wright, Morris & Arthur, for the protester.
John S. Pachter, Esq., and Jonathan D. Shaffer, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for Hughes Aircraft Company, an interested party.
Catherine M. Evans, David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior decision denying protest is affirmed where protester's request does not show that decision--holding that protester with relatively low-ranking technical proposal was not prejudiced by award at higher quantity than solicited--was in error.

DECISION

Universal Technologies, Inc. requests reconsideration of our decision, Universal Technologies, Inc., B-241157, Jan. 18, 1991, 91-1 CPD ¶ 63, in which we denied its protest of the Department of the Air Force's award of contracts to United Telecontrol Electronics, Inc. (UTE) and Hughes Aircraft Company under request for proposals (RFP) No. F08635-90-R-0196, for advanced medium range air-to-air missile (AMRAAM) missile rail launchers (MRL). Universal's protest alleged, among other things, that the Air Force improperly awarded contracts for a quantity of MRLs greater than the quantity solicited.

We deny the request for reconsideration.

The RFP contemplated award of one or more combination fixed-price, incentive and firm fixed-price contracts for production, inspection, testing and delivery of AMRAAM MRL Lot IV over a 26-month period, with two 24-month options for Lots V and VI. The RFP informed offerors that technical and cost factors were of equal importance, but that award could be made to other than the low-priced offeror after consideration of all factors. Following discussions and submission of best

and final offers, Hughes' proposal, at $62.2 million, received an acceptable technical rating and low risk ratings, UTE's proposal, at $48.7 million, received an acceptable technical rating and low to moderate risk ratings, and Universal's proposal, at $53.6 million, received a marginal technical rating and high risk ratings. Based upon the evaluation results, the source selection authority (SSA) determined that a multiple award, combining UTE's low price and moderate performance risk with incumbent Hughes' low performance risk would be most advantageous to the government. The SSA also found that, given UTE's and Hughes' prices, which were well below the government estimate, and the Air Force's immediate need for MRLs, two awards for a total of 2,191 MRLs, rather than the 1,435 maximum quantity stated in the RFP for Lot IV, were warranted.

In its protest of the ensuing awards, Universal contended that it was not proper for the Air Force to award two contracts for a total quantity of MRLs greater than the RFP maximum quantity, and that the Air Force instead should have either amended the RFP or issued a new solicitation to reflect the increased requirement.

We agreed with Universal, finding that Federal Acquisition Regulation § 15.606(a) requires agencies to amend RFPs when there are changes in the government's requirements either before or after the receipt of proposals, including, as was the case here, a significant change in the government's quantity requirements. Harris Corp., B-237320, Feb. 14, 1990, 90-1 CPD ¶ 276. We also determined that, because of its low technical ranking among the 12 offerors, Universal would not have been in line for award even if it had been afforded the opportunity to submit an offer for the increased quantity, and therefore was not prejudiced by the agency's failure to amend the solicitation. See Connaught Laboratories, Inc., B-235793, Oct. 11, 1989, 89-2 CPD ¶ 337.

In its request for reconsideration, Universal essentially argues that it and other offerors and potential offerors were prejudiced by the agency's failure to hold a competition for the increased requirement.

Prejudice is an essential element of any viable protest. Lucas Place, Ltd.--Recon., B-238008.3, Sept. 4, 1990, 90-2 CPD ¶ 180. Generally, if a solicitation, proposed award, or award does not comply with statute or regulation, our Office will find sufficient prejudice to sustain the protest only if the record establishes a reasonable possibility that the protester would have been the successful offeror absent the violation. See Logitek, Inc.--Recon., B-238773.2; B-238773.3, Nov. 19, 1990, 90-2 CPD ¶ 401.

In order for us to have sustained Universal's protest, the record would have had to indicate that Universal stood a reasonable possibility of award for the additional, unadvertised quantity of MRLs. We found that the evaluation was conducted in accordance with the stated evaluation criteria, and that the agency's low rating of Universal's technical proposal was reasonable. Furthermore, Universal's cost proposal offered the same per-unit MRL prices regardless of the quantity produced. In contrast, both UTE and Hughes offered decreasing unit prices for increased quantities. Universal does not challenge our conclusions with respect to the technical evaluation of its proposal, nor claim it would have offered a lower unit price for the higher quantity. Therefore, we have no reason to change our conclusion that Universal would not have been in line for award had it been afforded the opportunity to revise its proposal to include the increased quantity of MRLs or to submit a new proposal for the additional quantity.

In some cases in which prejudice to the protester itself was not clear, we nevertheless sustained the protest upon finding a likelihood that full and open competition was significantly compromised by the agency's actions. See, e.g., ManTech Advanced Sys. Int'l, Inc., B-240136, Oct. 26, 1990, 90-2 CPD ¶ 336 (agency improperly waived restrictive experience requirement for only one firm where the requirement essentially defined the field of competition); Ideal Servs., Inc., et al., B-238927.2 et al., Oct. 26, 1990, 90-2 CPD ¶ 335 (where no small business bids were received under set-aside, resolicitation rather than award to large business bidder was required). Here, not only is it clear that the protester itself was not prejudiced by the complained-of action and would not have been in line for award had it competed for the increased quantity, but we do not believe that the failure to compete the additional quantity significantly compromised full and open competition. There were 12 firms seeking to provide MRLs to the Air Force. Not one other unsuccessful offeror has complained to us that it would have made changes in its technical or cost proposals if the agency had conducted a new competition for the additional quantity. Nor is there any indication that the field of competition would have been any different for the additional quantity.

The request for reconsideration is denied.

Robert P. Murphy

for James F. Hinchman
General Counsel