

DOCUMENT RESUME

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[Charge of Inadequate and Unfair Competition]. B-192439.
November 30, 1978. 5 pp.

Decision re: Mercury Refueling, Inc.; by Robert F. Keller,
Deputy Comptroller General.

Contact: Office of the General Counsel: Procurement Law I.
Organization Concerned: Butler Aviation International, Inc.;
Department of Defense: Defense Fuel Supply Center,
Alexandria, VA.

Authority: 4 C.F.R. 20. B-189585 (1978). E-190178 (1978).
Parkins v. Lukens Steel, 310 U.S. 113 (1940).

The protester alleged that the award of a contract was the result of inadequate and unfair competition because an alternative product not available to the protester was considered for award. This protest was untimely since it was not filed prior to the date set for receipt of proposals. The solicitation clearly provided for the consideration of specified alternative products. The fact that the protester as the former incumbent might suffer financial hardship as a result of loss of the contract provides no basis for questioning the award where cost was established as the sole criterion for discriminating among competitors. (Author/SC)

J. Carter
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DECISION



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

84105

FILE: B-192439

DATE: November 30, 1978

MATTER OF: Mercury Refueling Inc.

DIGEST:

1. Allegation that award of contract was result of inadequate and unfair competition because an alternative product not available to protester was considered for award is untimely because solicitation provided clear and uncontradictable notice to offerors that alternative products would be considered. Protest of alleged impropriety in solicitation must be made prior to date set for receipt of proposal.
2. Protest against consideration of alternative jet fuel product is denied because consideration was in accord with solicitation which provided for consideration of specified alternative products.
3. Fact that protester as former incumbent might suffer economic hardship as result of loss of contract provides no basis upon which award of new contract might be questioned where solicitation established cost as sole criterion for discriminating among competitors.

On October 14, 1977, the Defense Fuel Supply Center (DFSC) issued a request for proposals (RFP) seeking offers on a 1- or 3-year basis for the into-plane delivery of aviation fuel products at 70 airport locations in the United States. Paragraph D57.100 of the solicitation advised prospective contractors to propose unit prices and that award would be made on the basis of the lowest estimated total cost of all products and/or services combined, with a separate award at each airport location. This same paragraph also made the following provision for alternate products:

"(b) Alternate Products

* * * * *

"(2) Similarly, at those airport locations for which JP-4 w/FSII is the preferred product, offers of JP-4 w/o FSII or commercial jet fuel may be considered for award, if 'JP-4' is available and/or it is in the Government's interest to do so. If commercial jet is offered, indicate the material offered by brand name and ASTM D1655 designation and whether product will contain FSII. If JP-4 with or without FSII is not available, the order of preference for offer of alternate commercial jet is as follows:

"(i) Com Jet B with FSII

"(ii) Com Jet B without FSII

"(iii) Com Jet A-1 with FSII

"(IV) Com Jet A-1 without FSII

"(V) Com Jet A with FSII

"(VI) Com Jet A without FSII"

Offers were received from the incumbent, Mercury Refueling, Inc. (Mercury), and Butler Aviation International, Inc. (Butler), for services at the Los Angeles International Airport as follows:

Product	3-Year Est. Qty.	Mercury Price	Butler Price
AVGAS 115/145	165,000	\$0.5537	\$0.5875
MIL-L-22851B Type II	2,700	2.34	3.00
Jet JP-4	1,845,000	0.5402	
Com Jet A w/FSII	1,845,000		0.4683

The DFSC polled potential users and verified that Com Jet was an acceptable substitute for JP-4. On January 5, 1978, DFSC advised Mercury by telephone that it was interested in receiving a quotation for Com Jet both with and without FSII, to which Mercury responded by letter dated January 9, incorporating a price quote of \$0.5582 for Com Jet A. The DFSC and Mercury are in disagreement regarding whether Mercury's quotation constituted an offer.

The contract for refueling service at the Los Angeles International was awarded to Butler on March 14, 1978. Mercury protested to the DFSC upon notice of the award. By letter dated June 1, 1978, Mercury advised the DFSC that it was in a position to offer Com Jet A on a competitive basis and requested that the solicitation be reopened. On July 13, 1978, the contracting officer denied Mercury's protest. Mercury timely protested to our Office.

Mercury contends that the award to Butler was the result of unfair and inadequate competition because the contracting officer knew or should have known that it had no access to Com Jet because of fuel allocation restrictions and that consideration therefore was being given to a product available to only one offeror. Mercury also asserts that it had no knowledge of the "switch" to commercial jet fuel and that the loss of the contract will result in a financial hardship because of Mercury's investments in equipment and personnel under its prior contracts. For the reasons stated below, we find no basis for legal objection to the award to Butler.

We note at the outset that we cannot accept Mercury's assertions that it had no knowledge of the "switch" to commercial jet fuel. Paragraph D57.100 of the solicitation provided for the consideration of commercial alternatives to JP-4, as we noted above, and Schedule E on which prospective contractors, including Mercury, submitted their prices specifically referred offerors to clause D57 if they were offering an alternate product, provided separate and distinct

lines for offers for the products "Jet JP-4" and "Com Jet," and under paragraph V of the one-page form stated: "If Com Jet is offered above, indicate grade and if with or without FSII. If Com Jet offered is without FSII offeror is requested to provide price for injecting 'Prist' (MIL-I-27686) into fuel as prescribed in MIL-STD 1548A." The contractor's name was to be entered immediately below paragraph V. We think this constituted clear and uncontradictable notice to prospective contractors that offers to provide commercial alternatives to JP-4 would be considered.

To the extent that Mercury's protest raises an objection to the provisions permitting consideration of alternative fuels, it is untimely under our Bid Protest Procedures, 4 C.F.R. part 20 (1978), because these provisions were apparent on the face of the solicitation and Mercury's protest was not made until after the date for receipt of initial proposals. 4 C.F.R. § 20.2(t)(1) (1978). And, to the extent that Mercury objects to the actual consideration of Butler's offer to furnish Com Jet A, we need note only that such consideration was in accordance with the terms of the RFP.

Furthermore, Mercury's assertion that it will suffer an economic hardship as the result of the loss of the contract provides no basis upon which the award might be questioned. It is well established that no prospective contractor has a right to the Government's business. Perkins v. Lukens Steel, 310 U.S. 113 (1940). We have consistently held that a procuring activity must advise offerors of the criteria by which proposals are to be evaluated and must adhere to those criteria when evaluating proposals. Four-Phase Systems, Inc., B-189585, April 19, 1978, 78-1 CPD 304. An offeror may not be given additional credit for some attribute not specified as an evaluation factor. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10. The RFP specifically established cost as the sole criterion for discriminating among competitors.

The protest is denied.

R. F. K. 11/14
Deputy Comptroller General
of the United States