



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

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June 27, 1973

Norman Jacobson, Esquire
32 Broadway
New York, New York 10004

Dear Mr. Jacobson:

This is in reply to your letters of November 24, 1972, and March 2, 1973, protesting on behalf of J. A. Maurer, Incorporated, against award of a contract under request for proposals No. F33657-72-R-1037, issued by the Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio.

The solicitation was for 10 KS-121A photo-reconnaissance camera systems and associated equipment. Proposals were submitted by Maurer and by the CAI Division of Bourns, Incorporated. After evaluation of the proposals, award was made to CAI, the low offeror, on September 21, 1972.

You claim that the award was not made in accordance with the applicable regulations and with the terms of the RFP. You assert that CAI's proposed equipment deviates from the specification requirements for a camera system compatible with the nose of the F-5A aircraft. You also state that amendments were issued to the RFP on September 8, 1972, but that those amendments were not furnished to Maurer, thereby denying Maurer an opportunity to have its proposal considered on the same basis on which the award was made. You further claim that the Air Force did not adhere to the evaluation factors concerning costs that were set forth in the RFP. In addition, you challenge the award because negotiations were not held with Maurer.

Paragraph 1.1 of the Statement of Work included with the RFP, as amended, called for a camera system "for use in the F-5E Aircraft Reconnaissance Nose" which "shall be electrically and mechanically compatible with the F-5A Reconnaissance Nose." Paragraph 3.8.1.1.1 of Exhibit ASD/ASD 72-11, which set forth specification requirements for the camera system, called for utilization of threaded stainless steel inserts "for mounting the assembled camera to the F-5 camera mount structure" as shown in certain enumerated drawings. You state that the CAI camera system requires the use of a special mount and therefore is contrary to the requirements for compatibility and mounting. You also indicate that the CAI system may not be electrically compatible with the F-5A nose.

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B-177535

The Air Force takes the position that the CAI camera is fully compatible with the RF-5A nose cone. It states that the CAI camera can be installed in the RF-5A nose cone with a "different" but not a "special" mounting bracket and that the use of a different bracket does not involve a change to the aircraft, since the substitution of one type of detachable mounts and/or brackets for another already in use "[does] not represent aircraft modification." The contracting officer points out that the RFP required the camera system to have a "configuration that will allow installation in both the RF-5A and F-5E nose cones," but did not require interchangeability of either RF-5A with F-5E nose cones, or of the KS-121A camera system with the KS-92 system previously furnished by Maurer and installed in F-5A aircraft. With regard to the mounting requirement, the Air Force reports that the CAI proposal indicated that its camera system "could be fitted as required" and award was made on that basis, although "as performance progressed under the contract, the adapter camera bracket has been simplified for better installation." The Air Force also reports that it has received assurances from the aircraft manufacturer that the CAI system is electrically compatible with the RF-5A.

On the basis of the record before us, we do not find that acceptance of the CAI proposal was predicated on deviations from specification requirements. While it is clear that the CAI system requires the use of a mounting bracket that is not required with the Maurer proposed system, we have no basis for disagreeing with the Air Force that the use of such a mount does not constitute a change to the aircraft. We note that the mount is considered a part of the CAI system and that the cost of the mounts was included in CAI's proposed price. In our view, the specifications required the camera system to fit within the confines of and otherwise be compatible with the RF-5A nose cone. The Air Force is satisfied that the CAI system meets these requirements, and you have not established that the Air Force is in error in this regard.

With respect to your assertion regarding the September 8, 1972, amendments to the RFP, our review indicates that the RFP was not formally amended on that date or on any other date subsequent to the August 1972 closing dates for receipt of proposals. However, the contract awarded to CAI contains a Statement of Work which bears the notation "Revised 8 September 1972" and which references "Exhibit ASD/ENR 72-11, revised 8 September 1972" while the Statement of Work contained in the RFP, and Exhibit ASD/ENR 72-11 referenced therein, both were dated April 7, 1972. The contracting officer reports that the Exhibit and the Statement of Work "were revised 8 September 1972 merely to consolidate and incorporate all changes and amendments

B-177535

thereto, which had been previously provided in the basic RFP * * * and Amendments Number 0001 and 0002," and that these revised documents were submitted to CAI "for the first time along with the contract for their review and signature." Our examination of the revised documents reveals that certain editorial changes were made along with the incorporation of the changes made by prior amendments, but that there was no meaningful change in any specification requirement. The file also indicates that the Air Force Source Selection Authority chose the CAI offer as being most advantageous to the Government on September 7, 1972, and directed that award be made to that firm. Accordingly, it does not appear that the solicitation was improperly amended, that CAI was afforded an opportunity not given to Maurer, or that award was made on any basis other than that on which Maurer submitted its proposal.

Section D of the RFP specified that cost to the Government would be "a significant factor in the final selection of a source for this procurement." It provided that price proposals would be compared against technical and management rankings of the proposals "to determine the combination of price and technical/management excellence most advantageous to the Government." You assert that this provision was not followed because the Air Force did not consider the cost of purchasing special mounting adapters or of modifying the RF-5A nose cone "to accommodate the CAI design." As noted above, the cost of the mounts was included in the CAI unit prices for the 10 systems, and the Air Force denies that the nose cones will require modification. The Air Force points out, however, that the mounting brackets in question cost approximately \$20 and require one half-hour to install, so that even if it were to incur some additional cost, such cost would not exceed \$25 or \$30 for each of the 20 systems (basic quantity plus options) it could purchase under the contract. Since the contract price is more than \$130,000 lower than Maurer's proposed price, this additional cost would be insignificant and have no bearing on the award. Although you claim that this cost should be applied to the hundreds of F-5A aircraft throughout the world, the solicitation was only for 20 camera systems (including options) for installation in new aircraft, not for installation in any existing aircraft.

Finally, you object to the Air Force's failure to conduct negotiations prior to making award. The Air Force reports that award was made upon receipt of initial proposals pursuant to ASFR 3.805-1(a)(v), which provides that negotiations need not be conducted if there is "adequate competition or accurate prior cost experience with the product" which demonstrates that "acceptance of the most favorable initial proposal without discussion would result in a fair and

B-177535

reasonable price." The Air Force procurement file indicates that it was determined that the required competition was obtained by receipt of the two proposals. The selection authority determined that "true competition did exist" and that there was "no significant potential for price improvement through negotiations." Also, the RFP warned offerors that awards might be made on the basis of initial proposals in accordance with 10 U.S.C. 2304(g) and ASPR 3-805.1(a)(v). Therefore, we cannot object to the award because negotiations were not conducted. B-170633(1), May 3, 1971.

For the foregoing reasons, your protest against the award is denied.

Sincerely yours,

Paul G. Darbling

For the Comptroller General
of the United States