

"5.2.6 At a minimum, the aircraft provided will allow for unrestricted forward and downward viewing of the aircraft trackline.

. . . . .

"5.5.2 [The aircraft shall have] AC and DC power for 5" and 2 1/4" reconnaissance cameras, 28 volts DC (15-20 amp start up) 115 volts 400 cycles.

. . . . .

"5.5.11 The aircraft must be equipped with observer stations providing for at least 2 observers, a viewing angle from the horizon down to the vertical in the longitudinal plane and at least 45° left to 45° right in the horizontal plane."

On May 16, 1983, Commerce received a letter from AeroEco, Inc. (Aero), objecting to a number of the specification provisions, most of which have no bearing on the present protest and will not be discussed. Aero is a company that specializes in aerial photography, mapping and surveys. Its president is reportedly a principal in ICA. Aero's primary objection was that a Partenavia Observer aircraft, which it intended to lease from ICA, a Partenavia dealer, was suitable for performing the required survey, even though it could not meet the visibility and payload requirements of the specifications. Subsequently, on May 20, 1983, the Partenavia Observer was examined and evaluated to determine if it could perform the necessary tasks called for by RFP 3190-SEC. According to Commerce, the specifications were amended to allow consideration of aircraft with slightly less visibility and payload capacity.

Paragraph 5.2.2 was amended to lower the fuel requirements from 8 hours of fuel to 6-8 hours of fuel, and the payload was reduced from 1,050 pounds to 970 pounds. However, we have been advised that the Partinavia Observer was not able to meet the reduced payload requirement.

Paragraph 5.5.11 was amended to change the viewing angle from "the horizon down to the vertical in the longitudinal plane and at least 45° left to 45° right in the horizontal plane" to "the horizontal plane at least 90°

right and 90° left and from the horizon to within 15° of vertical in the longitudinal plane." Also, paragraph 5.6.114 of the specifications was amended to state that an automatic pilot was highly desirable.

ICA contends that the AT-11, a World War II vintage aircraft, requires a pilot and copilot and has no automatic pilot capability. Consequently, according to ICA, the specifications call for a payload of 1,050 pounds (reduced to 970 pounds) with 8 hours' fuel (reduced to 6-8 hours' fuel) which is necessary to carry the pilot, copilot, two or three observers, a photographic technician and photographic, radiometric and survival equipment. ICA argues that a more modern aircraft with an automatic pilot would permit the pilot and copilot to perform observation and photographic duties with the result that the required payload could be reduced.

According to Commerce, based on its prior experience in conducting surveys of this type, it has been determined that four observers are necessary to properly perform the survey. Commerce also determined, for both scientific and safety reasons, that the pilot and copilot cannot be required to perform photographic or observer functions. Concerning the scientific reason, Commerce states that it is impossible to quantify the amount of effort the pilot or copilot would dedicate to observations or photographic functions while he or she was responsible for flying the aircraft. However, what is more important according to Commerce is the safety consideration since there are 3,000 oil industry-related aircraft that operate in the same area and at the same elevation as the survey plane. For this reason, the pilot and copilot could not perform observer or photographic functions without increasing the risk of collision. Commerce, however, did recognize the desirability, if not the necessity, of having an automatic pilot since it would increase the safety factor by reducing the potential for pilot or copilot fatigue.

While ICA argues that the viewing requirements of the specifications are written to reflect the configuration of the AT-11, Commerce amended the specifications to allow the consideration of aircraft with the viewing characteristics of either the Partenavia Observer or the AT-11.

Finally, ICA contends that while the specifications call for alternating current for certain reconnaissance cameras, most cameras are powered by direct current and that

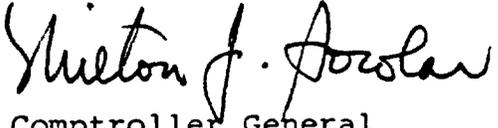
alternating current power converters are expensive, heavy and unnecessary for the intended purposes. In response, Commerce explains that the government-furnished equipment (microprocessor-driven automatic data logger and a forward image motion compensated camera system) which will be used in performing the survey requires an alternating current power source.

A protester who objects to the specifications in an RFP bears a heavy burden. This is because the determination of the government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future and, therefore, are best able to draft appropriate specifications. See Big Bud Tractors, Inc., B-209858, February 4, 1983, 83-1 CPD 127, and Amray, Inc., B-208308, January 17, 1983, 83-1 CPD 43.

While specifications must be drafted so as to maximize competition, the adoption of any specification or requirement necessarily limits competition to some extent. The question is not whether competition has been restricted, but whether it has been unduly restricted. See CompuServe, B-188990, September 9, 1977, 77-2 CPD 182. Consequently, we will not substitute our judgment for that of the contracting agency absent clear and convincing evidence that a contract awarded on the basis of the specifications would unduly restrict competition. See Bowne Time Sharing, Inc., B-190038, May 9, 1978, 78-1 CPD 347. The fact that a particular competitor is unable to compete does not establish that competition as a whole is unduly restricted. See Bowne Time Sharing, Inc., supra; CompuServe, supra.

We believe that Commerce has adequately established that the specifications, as amended, are necessary to meet its minimum needs and are not unduly restrictive, especially in light of the fact that there were at least two competitors and the awardee did not offer the AT-11 aircraft for the survey work.

The protest is denied.

for   
Comptroller General  
of the United States