

**DECISION**

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

31731

**FILE:** B-218585**DATE:** July 22, 1985**MATTER OF:** Contraves Goerz Corporation**DIGEST:**

Where protester, following discussions with procuring activity, submitted revised proposal which failed to resolve procuring activity's initial objection that protester's offer deviated from solicitation's requirement for unlimited data rights in operations manuals, contracting officer properly excluded protester from further award consideration.

Contraves Goerz Corporation (Contraves) protests the award of a contract for the refurbishment of a motion simulator to any firm other than Contraves under request for proposals (RFP) No. 8-1-5-EB-26998, issued by the National Aeronautics and Space Administration (NASA).

We deny the protest.

NASA, during competitive range discussions with Contraves, advised the firm that it considered a restriction in the firm's proposal claiming as proprietary all data furnished to NASA under the contract inconsistent with section 18.52-227.74(b)(iii), of the NASA Federal Acquisition Regulation Supplement (FAR Supp.), 48 C.F.R. § 18.52-227.74(b)(iii) (1984), "Rights in Data Clause-General," incorporated into the solicitation. Paragraph (b)(iii) of the clause provides that the government shall have unlimited rights <sup>1/</sup> in "data delivered under this contract that constitutes manuals or instructional and training material for installation, operation or routine maintenance or repair." The solicitation requires the successful contractor to furnish six operation and maintenance manuals for the refurbished simulator. Because

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<sup>1/</sup> Unlimited rights in data as defined in paragraph (a) of the clause includes "the right to use, disclose, reproduce . . . [and] . . . distribute [the data] to the public . . . in any manner and for any purpose." See NASA FAR Supp., 48 C.F.R. § 18.52-227-74(a).

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Contraves failed to revise its proposal to conform with this provision, NASA found the firm's proposal unacceptable and ineligible for award.

Contraves, a successor corporation to the manufacturer of the simulator, argues that NASA has misconstrued the provisions of the solicitation's Rights in Data clause. Specifically, Contraves asserts that those provisions permit a contractor to withhold from delivery under the contract data that qualifies as limited rights data, that is, data pertaining to items or processes developed at private expense which embodies trade secrets or which is financial, confidential or privileged. NASA FAR Supp., 48 C.F.R. § 18-52.227-74(a). Contraves explains that the data NASA has requested already exists and was developed at private expense. While Contraves does not intend to withhold such data in its entirety from delivery under the contract, the firm has restricted its use to NASA personnel only.

Further, Contraves alleges that in written discussions NASA improperly failed to warn the firm of the agency's need to acquire unlimited data rights to this material.

NASA responds that the provisions of the solicitation's Rights in Data clause at paragraph (b) specifically delineate certain categories of data such as the operations and maintenance manuals required under this contract which the government is to acquire with unlimited rights. In this regard, NASA explains that NASA space station contractors use the simulator to test equipment. Thus, the agency states that it needs unlimited data rights in the simulator operations manuals so that these contractors can use the simulator in carrying out space station operations. Further, NASA states that any restriction on the use of this material would restrict competition in any follow-on contracts for simulator refurbishment. Simply stated, NASA asserts that if the agency were to accept Contraves' manuals with only limited data rights, no firm other than Contraves would be able to use the manuals to perform repair work on the simulator.

Concerning Contraves' allegation that NASA failed to advise the firm of the agency's need to acquire unlimited rights in this material, NASA points out that written discussions with Contraves included the following:

"The cover letter attached to your proposal states that . . . all data to be submitted under any resultant contract shall remain proprietary to the Contraves Goerz Corporation. The contract resulting from this RFP will include the clause 18.52-227-74 entitled 'Rights in Data-General (April 1984)' which states among other things, that . . . the Government shall have unlimited rights in data delivered under this contract . . . that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair. It is requested that you reconsider your proposed deviation from the above clause."

NASA concludes that since Contraves, in its revised proposal, simply reconfirmed its position that all data furnished under the contract would remain proprietary to Contraves, it could not accept the firm's proposal.

Based on the record, we find that NASA acted reasonably in determining Contraves' proposal unacceptable. Contraves' argument that the solicitation's Rights in Data clause allows the firm to restrict the use of the operations manuals is not supported by the solicitation language. Contraves apparently bases its argument upon paragraph (g) of the Rights in Data clause which permits a contractor to withhold data which qualifies as limited rights data. See NASA FAR Supp., 48 C.F.R. § 18.52-227.74(g). However, operations manuals specifically are excluded from coverage under paragraph (g). See NASA FAR Supp., 48 C.F.R. § 18.52-227(74)(g) and the NASA FAR Supp. provisions at 48 C.F.R. § 18-27.473-2, which provide rationale for the Rights in Data-General clause. Thus, the provisions of paragraph (g) are consistent with the provisions in paragraph (o) of the clause which set forth the allocation of data rights under this contract and which provide that NASA shall have unlimited data rights in operations and maintenance manuals. NASA FAR Supp., 48 C.F.R. § 18.52-227.74(b).

Regarding Contraves' complaint that NASA failed to warn the firm of the agency's need to acquire unlimited rights in these manuals, based on the above quotation from the written discussions with Contraves, we find that Contraves reasonably was notified of the criticality of this requirement.

NASA clearly indicated its belief that the Contraves proposal was inconsistent with the Data Rights clause and specifically requested Contraves to reconsider its position. NASA was not required to do more than that.

The protest is denied.

*for Seymour E. Van*  
Harry R. Van Cleve  
General Counsel