



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aviation Enterprises Inc.
File: B-223175
Date: September 24, 1986

DIGEST

1. Protest that agency acted improperly by not requesting protester to clarify alleged ambiguity in its proposal as to whether basic aircraft was offered or modified version is denied since protester's proposal clearly indicates that modified version would be provided and no clarification on this issue is needed.
2. Where solicitation requires that offeror submit Federal Aviation Administration (FAA) approved type certificate and operation manuals, which specify aircraft's operating limitations and which will be utilized by contracting agency to evaluate whether offered aircraft can meet RFP requirements, offered aircraft, which exceeds its current certificated maximum take-off weight and for which an amendment to current certificate and approval by FAA is required, is properly excluded from the competitive range since without an FAA approved certificate incorporating the proposed modification, agency is not able to evaluate whether offered aircraft will comply with RFP requirements.

DECISION

Aviation Enterprises Inc. (AEI) protests its exclusion from the competitive range under request for proposals (RFP) No. DTFA01-86-R-31221 issued by the Federal Aviation Administration (FAA) for two light, long range turbojet/turbofan aircraft. The aircraft are to be equipped by the contractor with specialized equipment and accessories and when operational, the aircraft will provide the FAA with automatic flight inspection capabilities. AEI contends that FAA unreasonably excluded its proposal from the competitive range and requests that it be included in subsequent negotiations.

We deny the protest.

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The RFP was issued on January 31, 1986 and indicated that the FAA was soliciting a current production, fuel efficient, pressurized, multi-engine turbojet/turboprop powered airplane. Offerors were required to provide a definitive statement that the proposed aircraft is a U.S. certificated aircraft and were also required to provide a copy of the aircraft's type certificate with the proposal.^{1/} In addition, each offeror was required to provide three copies of the FAA approved Aircraft Flight/Operations Manual for the proposed aircraft. The RFP indicated that the FAA would utilize the manuals provided to ensure that the proposed aircraft would meet the RFP requirements without exceeding the operating limitations approved by the FAA under the type certificate.

AEI submitted with its proposal the type certificate and aircraft flight and operations manuals for the Model 1125 Westwind Astra manufactured by Israeli Aircraft Industries Ltd. The type certificate data sheet and manuals for the airplane indicate that the FAA approved maximum take-off weight is 23,500 pounds and the maximum ramp weight is 23,650 pounds.

In reviewing AEI's proposal, the FAA discovered that AEI was not offering the exact Westwind Astra as specified by the aircraft's approved type certificate and operating manuals. The FAA found that AEI intended to increase the maximum take-off weight of the aircraft provided the FAA by 850 pounds and, as modified, the aircraft exceeded the weight limitation contained in the type certificate and manuals provided by AEI. Since the change contemplated by AEI required an amendment to the type certificate submitted with the proposal, the FAA was unable to determine whether the modified aircraft would meet the RFP's performance requirements.

In addition, the FAA concluded that it could not evaluate the basic aircraft, for which the type certificate and manuals were submitted, since AEI intended to provide a modified version. The FAA determined that substantial revisions to AEI's proposal would be required to make it acceptable and, accordingly, the FAA excluded AEI from further consideration.

^{1/} The FAA evaluates aircraft in the interest of safety and a type certificate is issued where the FAA finds that the minimum standards, rules and regulations prescribed by the Secretary of Transportation are met. 49 U.S.C. § 1423 (1982). The type certificate includes the type design, the operating limitations, the certificate data sheet and any other terms, conditions and limitations deemed appropriate. See 14 C.F.R. § 21.41 (1986).

AEI contends that the FAA improperly concluded that AEI was offering a modified aircraft and that AEI in fact offered to provide the basic ASTRA aircraft specified in the type certificate and manuals submitted with its proposal. AEI states that this is supported by the many specific references in its proposal to the Astra as the aircraft being offered and the many statements by AEI that the Astra would meet the FAA's requirements. Although acknowledging that portions of its proposal may have confused the Air Force, AEI contends that any ambiguity as to which aircraft was being offered could be easily clarified and would require changes to only 21 pages of its 1500 page proposal. AEI argues that FAA's own regulations require the agency to provide offerors an opportunity to clarify significant ambiguities and the question of whether AEI was offering the basic Astra or a modified version is precisely the type of ambiguity which the regulations were designed to resolve.

AEI also contends that the FAA should have evaluated the type certificate and operations manual submitted with its proposal. AEI argues that the proposed increase in weight is a minor change which will not significantly affect the performance of the basic Astra aircraft and that it is unreasonable for the FAA to ignore the information provided. Further, AEI contends that there is no requirement that all proposed changes to the aircraft be approved by the FAA as of the closing date for receipt of proposals. In this respect, AEI notes that the installation of the specialized equipment will need subsequent FAA approval for airworthiness purposes which, AEI argues, is similar to the approval required for increasing the certificated weight of the Astra. AEI indicates that final delivery of the aircraft is not required until two and one-half years after contract award and there is no reason to exclude AEI at this juncture.

In addition, AEI argues that both the basic Astra and the modified version will meet all of the RFP requirements. AEI asserts that the FAA only expected larger aircraft to be offered and because the Astra is smaller and relatively new, the FAA is attempting to eliminate it from the competition. AEI contends that the Astra meets all the requirements that were specified in the RFP and will result in substantial savings to the government if selected. AEI argues that the firm should be afforded the opportunity to revise its proposal.

FAA argues that AEI's proposal was not ambiguous and that the firm clearly was offering to provide the FAA with an Astra aircraft which exceeded its certificated weight and for which an amended certificate and amended operations manuals were required. The FAA notes that the proposal was ambiguous only as to whether the Astra would meet a critical long range performance requirement without the proposed increase in weight since AEI's proposal contained conflicting statements in this regard. In addition, the FAA argues that the RFP did not permit offerors to propose an aircraft requiring an amendment to the aircraft's type certificate and that the type certificate and operation manuals for the aircraft actually offered were necessary in order to evaluate the acceptability of the aircraft. As a result, the FAA contends that it could not evaluate the acceptability of the basic Astra since this was not offered by AEI and the acceptability of the modified version also could not be evaluated since the amended type certificate and operations manuals were not provided.

Concerning the magnitude of the deficiency, the FAA states allowing AEI to change its proposal to offer the basic Astra would, in effect, permit AEI to submit a totally new proposal which the FAA is not required to do. Furthermore, although AEI insists that the proposed change is minor and FAA approval likely, the FAA asserts that numerous revisions to the type certificate and operation manuals will be required because of the increased weight. Also, the FAA contends that there are no guarantees as to the time it will take to approve the change or whether any additional restrictions not contemplated by AEI would be required. While the FAA acknowledges that the delivered aircraft will need subsequent FAA approval, the FAA argues that this approval, unlike the modification proposed by AEI, should not result in any change to the aircraft's operating limitations. The FAA contends that other manufacturers may have declined to submit a proposal because their currently certificated aircraft would not meet all the RFP requirements and AEI's failure to obtain approval for its proposed modification demonstrated a serious lack of understanding for the RFP requirements. The FAA argues that AEI's proposal was grossly deficient and its exclusion from the competitive range was proper.

The evaluation of technical proposals and the resulting determination of whether an offeror is in the competitive range is a matter within the discretion of the procuring agency since it is responsible for defining its needs and the best method for accommodating them. Advanced ElectroMagnetics, Inc., B-208271, Apr. 5, 1983, 83-1 CPD ¶ 360 at 4. In reviewing an agency's technical evaluation, we will not

independently determine the relative merit of an offeror's technical proposal but will only examine the agency's evaluation to insure that it had a reasonable basis. Id., see also SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121 at 13. Moreover, the protester has the burden of showing that the agency's evaluation was not reasonable. See Coherent Laser Systems, Inc., B-204701, June 2, 1982, 82-1 CPD ¶ 517 at 5. In addition, a technical evaluation must be based on information submitted with the proposal and if an offeror does not submit an adequately written proposal, it will not be considered in the competitive range or in line for discussions in a negotiated procurement. Health Management Assocs. of America, Inc., B-220295, Jan. 10, 1986, 86-1 CPD ¶ 26.

Based on our review of AEI's proposal, we think it is clear that AEI offered to provide the FAA with an Astra with an increased maximum take-off weight from that specified in the type certificate and operation manuals submitted with its proposal. While there are conflicting statements as to whether the basic aircraft could meet all the RFP requirements without modification, we find nothing in AEI's proposal which contradicts the many statements which in our view, demonstrate that AEI intended to obtain an amendment to its current type certificate and deliver to the FAA an aircraft which exceeded its current certificated take-off weight. For example, in Volume I of its proposal, AEI stated that "[a]n engineering analysis . . . will be conducted . . . with a view of increasing the aircraft's maximum takeoff weight. . . ." In addition, AEI clearly stated that upon completion of the analysis, the type certificate of the aircraft will be amended to reflect the new maximum gross weight. Furthermore, we believe AEI's argument that it offered or intended to offer the basic ASTRA is even contradicted by its post conference comments, in which AEI states that once the amendment to the type certificate is approved, "all of the Astra Aircraft including the two delivered to the FAA 2 or 2-1/2 years from now, will have the higher Maximum Takeoff Weight and greater usable load." (Emphasis in original.)

Consequently, we find unpersuasive AEI's contentions that it intended to offer the basic Astra or that its proposal was ambiguous regarding the aircraft offered. Moreover, since we find that AEI clearly offered to provide the FAA with a modified Astra, we see no basis to object to the agency's alleged failure to discuss this matter with AEI. A proposal must be evaluated based on the information provided and an offeror risks being excluded from the competition if it does not submit an adequately written proposal. Although AEI asserts that both the basic aircraft and the modified version will meet all the RFP requirements, the basic aircraft was not

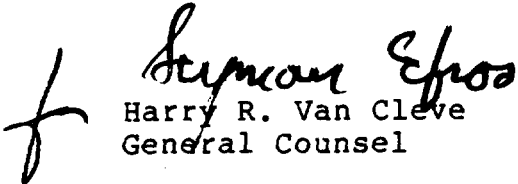
the aircraft AEI offered to provide and we believe the FAA reasonably limited its evaluation to what AEI offered rather than consider other alternatives that could have been submitted. Pharmaceutical Systems, Inc., B-221847, May 19, 1986, 86-1 CPD ¶ 469. Accordingly, we believe the sole issue which must be decided is whether the FAA was justified in excluding from the competitive range an aircraft for which an amended type certificate was required.

In this respect, we note that the RFP, at paragraph L.9.0, Volume IV, stated that the FAA would utilize the approved Aircraft Flight/Operations manuals to ensure that the proposed aircraft would meet the RFP requirements without exceeding the operating limitations approved by the FAA under the type certificate. In addition, the RFP indicated that a current production aircraft was required and offerors were advised to provide a definitive statement that the proposed aircraft is a U.S. certificated aircraft. Contrary to AEI's assertions, we think that these solicitation provisions establish that the aircraft offered must have all contemplated changes approved at the time proposals are submitted. While we recognize AEI's argument that the changes involved here are minor and will in all likelihood be approved, AEI cannot guarantee the agency that the FAA will not require additional restrictions or that other changes to the aircraft, not currently contemplated will be needed before approval of the higher take-off weight is obtained. In view of this uncertainty, we believe the FAA's conclusion that AEI failed to supply the type certificate and operations manuals for the aircraft offered is reasonable since the current certificate may not reflect all the restrictions under which the aircraft may be required to operate.

In addition, although AEI argues that FAA approval of the proposed change will be obtained before actual delivery of the aircraft is required, the record indicates that such approval does not appear imminent and the FAA indicates that there are no guarantees regarding the time necessary for this process. Consequently, the FAA is presently unable to evaluate whether the aircraft AEI intends to deliver will meet all the RFP requirements. Also, we note that the record shows that an FAA approved type certificate and operations manual incorporating the increased take-off weight for the Astra could not be provided by AEI even if discussions were held with the firm. Based on the information contained in AEI's proposal, the FAA found that AEI offered an aircraft which could not be evaluated against the requirements of the RFP since FAA approval of the proposed modifications had not been obtained. Under these circumstances, we find the FAA's exclusion of AEI from the competitive range reasonable.

Finally, with respect to AEI's assertion that the Astra can meet the FAA's requirements at a substantially lower cost than the other aircraft proposed, we have held that the costs proposed by an offeror are irrelevant where that offer is not within the competitive range and cannot be considered for award. ALM, Inc., et al., B-217284, et al., Apr. 16, 1985, 85-1 CPD ¶ 433. Concerning AEI's allegation that the FAA excluded it from the competition because it prefers a larger aircraft to the relatively new and smaller Astra, we find no evidence, other than the protester's bare assertion, to support this allegation. The protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Mechanical Equipment Co., Inc., B-213236, Sept. 5, 1984, 84-2 CPD ¶ 256.

The protest is denied.


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General Counsel