

*Stiskopf*



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Department of the Air Force--Request for  
Reconsideration

File: B-222645.2

Date: April 9, 1987

### DIGEST

1. Decision that awardee's proposal was technically unacceptable under solicitation requirement that spray system be capable of being installed in a C-130 aircraft within 30 minutes is affirmed where the contracting agency's request for reconsideration fails to show the decision was incorrect.
2. While a contracting agency may not properly relax a solicitation's material requirements and award a contract without amending the solicitation, where it has done so and the awardee meets the agency's actual needs at a lower price than the protester can possibly offer, the award should be allowed to stand, but the protester may recover its proposal preparation costs as well as the costs of filing and pursuing the protest.

### DECISION

The Air Force requests reconsideration of our decision, Biegert Aviation, Inc., B-222645, Oct. 10, 1986, 86-2 CPD ¶ 419, sustaining Biegert's protest that the Air Force improperly awarded a contract for a modular aerial spray system (MASS) to Lockheed Corporation under request for proposals (RFP) No. F09603-85-R-2116. We now conclude based on additional information from the Air Force that the RFP, as reasonably interpreted, overstated the agency's actual needs and that Lockheed's proposal met the actual needs. We therefore affirm our finding that Lockheed's proposal was unacceptable under the RFP, but, for the reasons indicated below, we withdraw our recommendation that the contract be terminated. We also now conclude that Biegert improperly was induced to compete under a solicitation which overstated the agency's needs and thus is entitled to recover its proposal preparation costs as well as the costs of filing and pursuing the protest.

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The RFP contemplated the award of a fixed-price contract to develop the MASS for dispersion of chemicals from C-130 aircraft and provided that the award would be made on the basis of the lowest-priced technically acceptable proposal. We held that Lockheed's lowest-priced proposal did not conform to the RFP requirement that the MASS be capable of being entirely installed in or removed from any C-130 aircraft within 30 minutes because Lockheed's MASS would require modification to the aircraft before it could meet the 30-minute requirement. We recommended that Lockheed's contract be terminated for convenience and an award made to Biegert based on its technically acceptable, though higher-priced proposal.

The Air Force contends that we erroneously determined that the specifications required that the MASS be capable of being installed in any C-130 aircraft within 30 minutes. In this regard, it says that any spray package relying on an aircraft's electrical system for power would require permanent electrical modifications to the aircraft that cannot be accomplished within 30 minutes. For that reason, the Air Force explains that it amended the RFP's original requirement that the MASS "should be modular to the extent that no permanent modification to the C-130 airframe or systems will be required," to state as follows:

"B.3.2.2.2 The spray package should be modular to the extent that no modification to the C-130 airframe or systems is necessary. In the event minor modifications are required, C-130 capability and performance characteristics, for missions other than spray, shall not be affected. The [Air Force] C-130 system engineer will be the final approving authority in regard to adequacy, appropriateness, and acceptability of any proposed modification to the aircraft."

The Air Force states that the intent of the change was to permit permanent modifications within the discretion of the C-130 system engineer to the 16 aircraft<sup>1/</sup> designated for

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<sup>1/</sup> The Air Force explains that it intends to use only 16 aircraft in one unit to handle spray missions. Because it is uncertain which unit might be assigned spray-mission responsibility and there are several different models of C-130 aircraft, according to the Air Force the RFP (at specification B.3.1.2) required that the MASS be capable of "interfacing with all models of the C-130 aircraft," not each and every C-130 aircraft.

spray missions, without regard to the 30-minute limitation for loading or unloading the MASS from the modified aircraft. The Air Force maintains that Lockheed's proposed MASS can be loaded within 30 minutes after the aircraft has been modified, and that therefore the Lockheed proposal was acceptable.

We do not think the RFP as amended clearly expressed the Air Force's needs. The solicitation did not indicate that the permitted modifications to the aircraft were separate from the 30-minute requirement, and we think the protester reasonably assumed that although the aircraft could be modified to accept the MASS, any modification must be accomplished within the 30-minute limit.

The Air Force now informs us that the MASS will be used in only a select number of C-130 aircraft which can be retrofitted with preliminary permanent modifications irrespective of the 30-minute requirement. According to the agency, both Biegert's and Lockheed's proposed MASS require electrical modifications to the aircraft that could entail up to 100 hours. Those necessary preliminary modifications include, at a minimum: 1) replacement of existing aircraft wiring with larger gauge wiring; 2) installation of an additional circuit breaker; and 3) the installation of a quick-disconnect power receptacle solely for MASS use. In addition, the aircraft will have to be tested for electro- -- magnetic interference. These measures, explains the Air Force, all are necessary to comply with standard military specifications referenced in the RFP.

None of this was explained either in the RFP or by the Air Force in its protest report. The RFP (at specification 5.5.1.1) stated that the necessary electrical interfacing "consists mainly of interconnection cabling" and that "the only electrical requirements, are for a continuity test and an insulation test." It further stated (at specification 5.1) that testing for electromagnetic interference could be accomplished through acceptance and other tests. Reasonably interpreted, the RFP therefore indicated that an acceptable MASS could be proposed that did not necessitate rewiring the aircraft or performing other electrical interfacing tasks which would exceed 30 minutes.

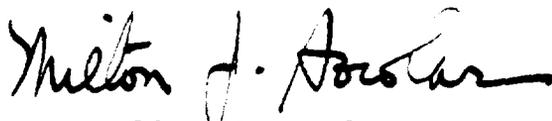
We therefore conclude that, based on the record before us at the time, our decision that Lockheed's proposal was unacceptable under a reasonable interpretation of the specifications requiring a basically modular MASS capable of integral loading or unloading in its entirety within 30 minutes was correct. We cannot, however, dispute the agency's statement that it actually needed a MASS that within 30 minutes could be installed in or removed from an aircraft that already

contained minor modifications. It appears that Lockheed's system will meet these actual needs at less cost than Biegert's system. Since the Air Force should not be required to satisfy its needs at a higher cost, we withdraw our original recommendation that the Air Force terminate the existing contract and accept Biegert's higher-priced proposal.

We think it is clear, however, that Biegert, which currently manufactures a more costly modular system upon which its proposal was based, was induced to offer its higher-priced system by the solicitation's requirement for the installation or removal of the entire MASS within 30 minutes, and by the solicitation's failure to make clear that the necessary electrical interfacing would require more than 30 minutes.

Since we understand that its system is necessarily more costly than Lockheed's system, a resolicitation of the requirement would not likely benefit Biegert.<sup>2/</sup> Consequently, we further modify our decision to allow Biegert its proposal preparation costs as well as the costs of filing and pursuing its protest. Tandem Computers, Inc., B-221333, Apr. 14, 1986, 65 Comp. Gen. \_\_\_\_\_, 86-1 CPD ¶ 362, aff'd, Tandem Computers, Inc.--Request for Reconsideration, B-221333.2, et al., Sept. 18, 1986, 86-2 CPD ¶ 315. Biegert should submit its claims for such costs directly to the agency. Bid Protest - Regulations, 4 C.F.R. § 21.6(f) (1986).

We affirm our prior decision as modified.

*for*   
Comptroller General  
of the United States

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<sup>2/</sup> In addition to the electrical modifications necessary for either proposed MASS, Lockheed's proposed MASS requires minor structural modifications to the aircraft not separately priced in its proposal. The record demonstrates, however, that the costs of these modifications to the 16 aircraft is considerably less than the price difference between the proposals, which exceeds \$1.27 million.