



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Loral Fairchild Corp.

File: B-242957.2

Date: August 29, 1991

Ronald K. Henry, Esq., Baker & Botts, for the protester, Gregory H. Petkoff, Esq., and W. Wayne Ross, Esq., Department of the Air Force, for the agency. Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where protester did not submit a proposal by the closing date for receipt of proposals, agency was not required to provide to the protester a copy of a subsequent amendment which contained changes that did not warrant complete revision of the solicitation or alter the scope of the contract to be awarded.

2. Protester that did not submit a proposal is not an interested party to challenge the agency's evaluation of proposals.

DECISION

Loral Fairchild Corp. protests actions taken by the Air Force under request for proposals (RFP) No. F09603-90-R-81286. This RFP was issued to acquire an improved color video recording system for 750 U.S. Air Force F-15 aircraft and 122 foreign military sales F-15 aircraft.^{1/} Loral protests that the Air Force failed to provide Loral with an amendment to the RFP and is not evaluating proposals in accordance with the RFP criteria.

^{1/} Loral is currently providing a black and white video system for the F-15 aircraft.

We dismiss the protest in part and deny it in part.

BACKGROUND

The RFP contained specifications which were based on a video system developed by the Air National Guard in 1988. Offerors were required to offer a complete color video system including camera, video recorder, playback unit, and spare parts. The closing date for receipt of proposals was February 15, 1991. Loral did not submit a proposal.

On February 14, Loral filed a protest with our Office asserting, among other things, that the RFP specifications were overly restrictive. Loral specifically challenged the RFP's limitations on the size and weight of the camera head and stated that, "standing alone," these limitations precluded Loral from proposing a "one-piece" camera.^{2/} We concluded that the RFP specifications were not overly restrictive and denied Loral's protest in that regard. Loral Fairchild Corp., B-242957, June 24, 1991, 91-1 CPD ¶ 594.

Based on statements made during the bid protest conference conducted in the earlier protest, Loral now protests that: (1) the Air Force failed to provide Loral with an RFP amendment which was issued after the closing date for receipt of proposals; and (2) the Air Force is not evaluating proposals in accordance with the RFP's evaluation criteria.

RFP AMENDMENT

After proposals had been received, on March 26, 1991, the Air Force issued an amendment to the RFP which: (1) deleted a provision permitting the Air Force to perform certain environmental and safety tests; and (2) required that equipment offered be compatible with "commercially available monitors," rather than compatible with "standard Air Force video monitors."

^{2/} As described by Loral, cameras used for this application are either "one-piece" or "two-piece." Two piece cameras are those in which the camera head is physically separate from the camera control electronics unit. One-piece cameras are those in which the camera head and the camera control electronics are physically integrated into a single unit. The camera Loral is currently providing to the Air Force is a one-piece camera.

The Air Force states that the first change merely removed a provision that had been inserted at Loral's request.^{3/} The Air Force explains that the second change regarding equipment compatibility was merely a clarification and did not significantly affect the solicitation requirements, since "standard Air Force video monitors" are, in fact, "commercially available monitors."

Loral first asserts that the Air Force violated the Federal Acquisition Regulation (FAR) by failing to provide it with a copy of the RFP amendment. In this regard, section 15.606(b)(2) of the FAR states, "[i]f the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment should normally be sent only to the responding offerors." (Emphasis added.) Loral protests that, "Loral Fairchild is a responding offeror within the intent of this regulation It responded to the RFP by filing its protest."

We find unreasonable Loral's interpretation of the reach of FAR § 15.606(b)(2). In providing that solicitation amendments should be sent only to "responding offerors," the clear meaning and scope of the regulation is that amendments should be sent only to those offerors that responded by submitting proposals. Since Loral filed a protest but did not submit a proposal, the agency was not required to send a copy of the amendment to Loral.

Loral also protests that the changes made to the RFP were so substantial that the Air Force was required to cancel the procurement and reissue the solicitation. We disagree.

Section 15.606(b)(4) of the FAR provides that:

"If a change [to a solicitation] is so substantial that it warrants complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition. The new solicitation shall be issued to all firms originally solicited and to any firms added to the original list."

^{3/} Loral had filed an agency protest asserting that the Air Force's minimum needs required mandatory environmental and safety testing. In response, the Air Force had added the RFP provision which permitted the Air Force to perform such testing. When Loral chose not to submit a proposal, the Air Force deleted this provision.

In this regard, solicitation amendments that do not significantly alter the nature and scope of the contract to be awarded, or the obligations of either party, are not "so substantial [as to] warrant complete revision of the solicitation." See, e.g., Everpure, Inc., B-226395.4, Oct. 10, 1990, 90-2 CPD ¶ 275.

Here, the solicitation called for offerors to submit proposals for a color video recording system to be installed in F-15 aircraft. Partially because of the Air National Guard's positive experience with the video system on which the specifications were based, the Air Force never viewed environmental and safety testing as a significant aspect of this procurement. In an effort to resolve Loral's agency-level protest that this testing was needed, the Air Force had inserted provisions which permitted it to consider environmental and safety factors. In Loral's earlier protest to our Office, Loral continued to argue that the testing requirements should be mandatory, maintaining, among other things, that the video system components should be tested for "electro-magnetic interference, vibration, explosive atmosphere, or explosive decompression." We dismissed Loral's protest in this regard. See Loral Fairchild Corp., B-242957, supra.

Since the record evidences that the environmental and safety testing provisions for the video recording system did not constitute a significant requirement under the procurement, their deletion did not significantly alter the purpose and nature of the contract. Similarly, in light of the Air Force's explanation, we view the changes made with regard to the compatibility of equipment offered as not significantly altering the solicitation requirements. Loral has not suggested that these changes precluded it from submitting a proposal, nor has it explained how the changes otherwise altered the potential field of competition. Accordingly, Loral's protest regarding the Air Force's issuance of the RFP amendment is denied.

EVALUATION OF PROPOSALS

Based on statements made by Air Force personnel at the bid protest conference conducted in Loral's prior protest, Loral now protests that the Air Force is not evaluating proposals as required by the evaluation criteria.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(2) (1988), and our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991), a protest may be filed only by an "interested party," defined as an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Determining

whether a party is sufficiently interested involves consideration of a party's status vis-a-vis the procurement and the nature of the issues protested. Free State Reporting, Inc., et al., B-225531 et al., Jan. 13, 1987, 87-1 CPD ¶ 54.

Loral was an interested party to initially challenge the restrictiveness of the camera specifications, since it could have competed had we found the solicitation defective and required revision and a new competition. However, in light of our conclusion that the specifications were not overly restrictive, in conjunction with the fact that Loral chose not to submit a proposal, Loral has no further direct economic interest in this procurement and, therefore, is not an interested party to challenge the Air Force's evaluation of the proposals which were submitted. Maytal Constr. Corp., B-241501; B-241501.2, Dec. 10, 1990, 90-2 CPD ¶ 476. Loral's protest regarding the evaluation of proposals is dismissed.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel