

G. Wolcott



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Loral Fairchild Corp.--Reconsideration

File: B-242957.3

Date: December 9, 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. Request for reconsideration of dismissal of allegation that agency violated its internal regulations is denied where regulations were not intended to confer legal rights on outside parties, and protester has not demonstrated that the alleged violations prevented it from submitting a proposal or otherwise affected its ability to compete.
2. Request for reconsideration of decision denying protest allegation that solicitation specifications were overly restrictive is denied where protester does not show that prior decision was based on errors of fact or law.
3. Request for reconsideration of dismissal of allegation that agency used improper evaluation criteria and intended to acquire a particular product is denied where protester failed to submit a proposal and, therefore, is not an interested party after denial of its protest alleging defective specifications.

DECISION

Loral Fairchild Corp. requests reconsideration of Loral Fairchild Corp., B-242957, June 24, 1991, 91-1 CPD ¶ 594, in which we denied in part and dismissed in part its protest challenging the specifications contained in request for proposals (RFP) No. F09603-90-R-81286. This RFP was issued by the Air Force to acquire an improved color video recording system for installation in F-15 aircraft.

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We deny the request for reconsideration.

The RFP contained a list of design specifications based on a video system developed by the Air National Guard in 1988. The RFP required offerors to provide a complete video system including camera, video recorder, playback unit, and spare parts. Closing date for submission of proposals was February 15, 1991. Loral did not submit a proposal.

In its original protest, Loral (which is currently supplying the Air Force with a black and white video system being used in the F-15 aircraft) asserted that: the specifications failed to meet the agency's minimum needs; the specifications were overly restrictive; the evaluation criteria were ambiguous; and the camera the Air Force allegedly intended to acquire is manufactured by Toshiba Corporation, contrary to the requirements of the Multilateral Export Control Enhancement Amendments Act, 50 U.S.C.A. § 2410 (West Supp. 1991). In our initial decision, we dismissed the portion of Loral's protest alleging that the specifications failed to state the agency's minimum needs; we denied the portion of its protest alleging the specifications were overly restrictive; and we dismissed the remainder of the protest since Loral had not submitted a proposal and, therefore, was not an interested party to protest those issues. In its request for reconsideration, Loral asserts that our initial decision is based on errors of fact and law.

RFP'S STATEMENT OF THE AGENCY'S MINIMUM NEEDS

Loral challenged the RFP specifications on the basis that they failed to satisfy the Air Force's minimum needs regarding environmental and safety matters. Loral maintained that the RFP should have incorporated certain testing requirements contained in various military standards and Air Force regulations. We dismissed this portion of Loral's protest noting that it was based on internal Air Force regulations which did not, of themselves, provide legal rights for outside parties. See Maremont Corp., 55 Comp. Gen. 1362, 1382 (1976), 76-2 CPD ¶ 181; Sabreliner Corp., B-242023; B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326; Pacific Architects and Eng'rs, Inc., B-236432, Nov. 22, 1989, 89-2 CPD ¶ 494. We further noted that the absence of the requirements which Loral argued should have been included in the RFP did not preclude Loral from submitting a proposal or otherwise adversely affect Loral's ability to compete.

In its request for reconsideration, Loral argues that the initial opinion relies on a line of cases that exempt violations of internal agency regulations from General Accounting Office (GAO) review, which Loral maintains is inconsistent with the Competition in Contracting Act of 1984 (CICA).

Loral notes that CICA authorizes GAO to render a decision in response to "a protest concerning an alleged violation of procurement statute or regulation," and argues that CICA does not distinguish between the various types of regulation.

We do not find a basis in either CICA or its legislative history for GAO to consider protests alleging that an agency failed to follow internally generated rules intended to define or help in defining the agency's needs. If, based on such a document, the agency states its requirements in an overly restrictive manner so that full and open competition is not achieved, then a proper ground for protest arises. See Richard M. Milburn High School, B-244933, Nov. 27, 1991, 91-2 CPD ¶ _____. That is not the case here--the protester wants the Air Force to use Air Force Regulation 800-16, "USAF System Safety Programs," to make the solicitation more restrictive. The mere fact that the agency calls the document it uses to "explain policy on system safety programs" a "regulation" does not confer on private parties a right to enforce its provisions.

Further, in its request for reconsideration, Loral has not shown that it was precluded from submitting a proposal because of the absence of the testing requirements, or that it was adversely affected in any way other than being subjected to broader competition. GAO's role in resolving bid protests does not include the protection of a particular protester's interest in more restrictive specifications, which Loral is here seeking. In particular, our Office will not review a protest that an agency should have drafted additional, more restrictive specifications in order to meet the protester's perception of the agency's minimum needs. See, e.g., Cryptek, Inc., B-240369, Nov. 1, 1990, 90-2 CPD ¶ 357; C.R. Daniels, Inc., B-221313, Apr. 22, 1986, 86-1 CPD ¶ 390. Since Loral has not presented any persuasive arguments or information establishing that our prior dismissal of this portion of its protest was legally or factually erroneous, its request for reconsideration of this portion of its protest is denied. See 4 C.F.R. § 21.12(a) (1991).

OVERLY RESTRICTIVE SPECIFICATIONS

Loral also protested that the RFP's specifications were overly restrictive, stating that the limitations on the camera's head weight and dimensions were "the absolutely critical design specifications" which precluded Loral from

competing.¹ Loral suggested that the Air Force should permit a camera head weight of 2 pounds, or approximately 900 grams.

In response to the protest, the Air Force stated that it needed a small, lightweight camera to permit the pilot to easily remove, use and replace the camera during flight and explained that increasing the permissible weight and size requirements to accommodate larger, heavier cameras would limit or preclude this function. The Air Force also noted that the camera will be subjected to a considerable amount of vibration and centrifugal force caused by the aircraft's rapid acceleration,² and explained that increasing the permissible weight would increase the risk that the camera would break loose from its mount. Finally, the Air Force stated that the limitation on the size of the camera was necessary to prevent excessive protrusion into the pilot's view.

The determination of the government's minimum needs and the best methods for accommodating those needs are generally the responsibility of the contracting agency which is most familiar with the conditions under which the products will be used. Maremont Corp., 55 Comp. Gen. 1362, supra. We will not object to specifications that are "written around" design features of a particular item where the design specified is reasonably necessary to meet the agency's minimum needs. Embraer Aircraft Corp., B-240602, B-240602.2, Nov. 28, 1990, 90-2 CPD ¶ 438; Gel Sys., Inc., B-234283, May 8, 1989, 89-1 CPD ¶ 433; Fleetwood Elecs., Inc., B-216947.2, June 11, 1985, 85-1 CPD ¶ 664. Based on the Air Force explanations regarding its needs for the weight and dimensional limitations on the camera it sought to acquire, we concluded the requirements were reasonable.

In requesting reconsideration, Loral refers to our acceptance of the agency's justification for the specifications on the basis of the need for ease in hand-held, in-flight operation and potential obstruction of the pilot's view. Loral then asserts, "this description of the competing camera designs is simply wrong." In fact, our decision did not describe or compare "competing camera designs"; rather, our decision considered the restrictions imposed by the RFP specifications and concluded they were reasonably required

¹The specifications limited the camera head weight to 25 grams; the length to 59.4 millimeters; and the diameter to 17.5 millimeters.

²F-15 aircraft are subject to gravitational forces up to nine times the normal gravitational pull, i.e., up to nine "G's."

by the Air Force's needs. Although Loral disagreed with the Air Force in this regard and continues to disagree with our conclusion, that disagreement does not form a basis for reversing our decision. Loral has not shown that it was unreasonable for the agency to determine that a larger, heavier camera than one permitted by the specifications would: degrade hand-held, in-flight operation; increase the risk that the camera would break free from its mount; or obstruct pilot vision. Accordingly, its request for reconsideration of this portion of its protest is denied.

STANDING TO RAISE OTHER PROTEST ISSUES

Loral's protest also challenged the RFP evaluation criteria and the Air Force's alleged intent to acquire a product manufactured by Toshiba Corporation. Our initial decision noted that Loral was an interested party to challenge the restrictiveness of the camera specifications since, if we had sustained that portion of its protest, the remedy would have been a resolicitation under which Loral could have competed. However, because Loral did not submit a proposal and the terms of the solicitation were not overly restrictive, Loral had no further direct economic interest in the procurement and was not an interested party to otherwise challenge the procurement.

In its request for reconsideration, Loral argues that, notwithstanding our Office's finding that the RFP specifications were unobjectionable, it remains an interested party to challenge the evaluation criteria and the Air Force's ultimate award decision because it can either: (1) redesign its camera to comply with the specifications; or (2) become a dealer for a manufacturer of products that comply with the specifications.

Loral's arguments are based on the premise that it is entitled, well after the closing date for receipt of proposals, to submit a proposal responding to the solicitation. However, as a general rule, proposals may not be submitted after the time established for their submission has passed. See, e.g., Silvics, Inc., B-225299, Feb. 24, 1987, 87-1 CPD ¶ 204. Further, either of the proposed actions was available to Loral prior to the closing date for submission of proposals.

Section 21.0(a) of our Bid Protest Regulations defines an "interested party" for the purpose of filing a protest as "an actual or prospective offeror." Since Loral did not submit a proposal it is not an "actual offeror." Since the closing date for submission of proposals has passed, Loral is not a "prospective offeror." Accordingly, we find no error in our determination that Loral is not an interested

party to protest the evaluation criteria or the agency's selection of an awardee.

The request for reconsideration is denied.

Robert P. Murphy
for James F. Hinchman
General Counsel