



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Loral Data Systems--Reconsideration

File: B-250532.4

Date: July 26, 1993

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Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision denying protest of contract award for cockpit voice recorders (CVR) to firm whose product allegedly does not meet certain RFP requirements is denied where protester essentially merely disagrees with General Accounting Office's conclusions that the solicitation did not require a technical evaluation, that the awardee submitted an unequivocal offer to furnish CVRs in accordance with the solicitation requirements, and that nothing on the face of awardee's proposal established noncompliance with the requirements.

DECISION

Loral Data Systems requests reconsideration of our decision, Loral Data Sys., B-250532.3, Mar. 30, 1993, 93-1 CPD ¶ 277, in which we denied its protest of the award of a contract to Universal Navigation Systems under request for proposals (RFP) No. DTFA02-92-R-00024, issued by the Federal Aviation Administration (FAA) for solid state cockpit voice recorders (CVR).

We deny the request.

The RFP required the awardee to furnish 47 solid state CVRs in accordance with the requirements of FAA technical issuance engineering order (TIEO) 91-E-24, which defines the FAA's minimum performance standards for CVRs. The TIEO incorporates several other documents as part of the specification, including FAA Technical Standard Order (TSO) C123. TSOs generally set forth the minimum performance standards for specified articles used on all civil aircraft, see 14 C.F.R. § 21.601(b)(1) (1993); TSO C123 contains the minimum performance standard for CVRs.

In connection with the TSO C123 requirement, the RFP statement of work required offerors to submit evidence that the CVR manufacturer holds a TSO authorization issued by FAA under 14 C.F.R. part 21. A TSO authorization is a design and production approval document issued by FAA to a manufacturer whose product has been found to meet a specific TSO. 4 C.F.R. § 21.601(b)(2). TSO C123 requires that the CVR meet the minimum performance standard set forth in the European Organization for Civil Aviation Electronics (EUROCAE) Minimum Operational Performance Requirements for Cockpit Voice Recorder System, Ref. ED-56, chapters 4, 5 and 6. Other than the requirement for evidence of TSO authorization, the RFP did not require any specific technical information in the proposal; award was to be made to the low-priced, technically acceptable offer. While both Loral's and Universal's proposals were considered technically acceptable, Universal's offered price of \$359,932.50 was approximately 33 percent lower than Loral's. Accordingly, the agency awarded the contract to Universal.

Loral protested the award, alleging that Universal's offered CVR, model CVR-30A, does not meet certain requirements of TIEO 91-E-24 as specified in the RFP. First, Loral asserted that the CVR-30A did not meet all of the requirements for authorization under TSO C123, notwithstanding the fact that Universal had been granted the required TSO authorization. Second, Loral argued that the CVR-30A did not meet two requirements of Aeronautical Radio, Inc. (ARINC) Characteristic No. 557 and Specification 404A, which were also referenced in the TIEO.

With respect to the TSO C123 requirements, we held that the agency properly determined on the basis of Universal's TSO authorization, the only specific technical information called for by the RFP, that the CVR-30A met those requirements. We declined to review the propriety of the TSO authorization itself, holding that this is a matter of the FAA's statutory authority to regulate airworthiness standards, and therefore is outside the scope of our bid protest function; absent any provision in the RFP for a technical evaluation addressing the requirements underlying the TSO authorization, we had no basis to question the agency's acceptance of Universal's TSO authorization as evidence of compliance with the TSO C123 requirements. As to the ARINC requirements, based on our review of the requirements and Universal's proposal, we concluded that Loral's allegations of noncompliance were without merit.

In its reconsideration request, Loral contends that we erroneously equated the RFP's TSO C123 requirements with the broader TIEO 91-E-24 requirements, one of which is compliance with TSO C123. As a result, Loral alleges, we erroneously equated Universal's TSO C123 authorization with

TIEO compliance. Loral asserts that the Universal unit did not comply with certain TIEO requirements that were outside the TSO C123 requirements--for example, a requirement for compliance with the crash survivability testing procedures in chapter 7 of EUROCAE ED-55--and that we therefore erroneously concluded that the agency properly found Universal's CVR acceptable based on its TSO authorization. Moreover, Loral argues, our conclusion that the TSO authorization demonstrated Universal's compliance with the TSO requirements was unreasonable because information included in Universal's own technical proposal established that the CVR-30A did not meet those requirements.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1993). Loral has not met this standard.

Loral is not correct that our decision equated the RFP requirement for TIEO compliance with the constituent requirement for TSO C123 authorization. We did focus on the TSO C123 requirements because most of the requirements that Loral alleged Universal did not meet--those set forth in chapters 4, 5 and 6 of EUROCAE ED-56 and chapter 7 of EUROCAE ED-55--are requirements under TSO C123.¹ That being the case, we concluded that Universal's TSO authorization encompassed these requirements, and that the agency properly relied upon the TSO authorization as evidence that the CVR-30A met these requirements. While there were two other requirements not encompassed by the TSO which Loral alleged were not met--design requirements of ARINC Characteristic No. 557 and ARINC Specification 404A--we addressed these separately, and concluded that Loral's allegations were without merit. Accordingly, our conclusion that the agency reasonably found the CVR-30A to be in

¹Loral argues that the agency was required to evaluate compliance with chapter 7 of EUROCAE ED-55 separately from compliance with the EUROCAE requirements of TSO C123 because chapter 7 of ED-55 is not actually a requirement of the TSO. As noted in our decision, chapter 6 of EUROCAE ED-56, which is a requirement of the TSO, prescribes the use of crash survivability test procedures set forth in chapter 7 of EUROCAE ED-55, and Universal's application for TSO authorization included the results of these tests. While Loral alleges that these results, which were included in Universal's technical proposal, establish noncompliance with the requirements, the FAA essentially determined otherwise when it issued Universal's TSO authorization.

compliance with the TIEO requirements was not the result of any misunderstanding of the scope of the TSO authorization.

Loral challenges our conclusion that the agency reasonably found the CVR-30A in compliance with the two ARINC requirements referenced above. In doing so, however, Loral merely reasserts the arguments it made during our consideration of its protest, and disagrees with our conclusion. For example, Loral alleges that the language of ARINC Specification 404 expressly requires the CVR to have rear hold-down holes for rack mounting; the CVR-30A does not have them. However, as Loral has acknowledged, ARINC Specification 404 was superseded by Specification 404A, which provides only that there "may be circumstances" where new construction must provide hold-down holes to accommodate older equipment racks that use hold-down pins; we concluded that hold-down holes are not mandatory. Loral's mere disagreement with our conclusion does not provide a basis for reconsideration. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

As to Loral's second basis for challenging our conclusion that the agency properly relied on Universal's TSO authorization--that Universal's technical proposal established noncompliance with the TSO requirements--Loral contends that our decision improperly concluded that the existence of Universal's TSO authorization relieved the contracting officer of his responsibility to review Universal's technical proposal for compliance with the RFP requirements notwithstanding its TSO authorization.

Contrary to Loral's view, our decision did not hold that the contracting officer had no responsibility to determine Universal's compliance with the RFP requirements. Rather, it held that the contracting officer properly relied upon the TSO authorization to establish compliance because that was all the RFP called for. While Loral argues that the contracting officer was required to determine compliance with the RFP requirements for each offeror whether or not the offeror submitted a TSO authorization, this position is not consistent with the RFP. As the RFP did not provide for submission or evaluation of any additional technical information, there was no basis for the contracting officer to make an independent determination of Universal's compliance with the TSO requirements.² Loral's argument to

²Loral alleges that, notwithstanding the TSO authorization, the contracting officer was not permitted to ignore the evidence in Universal's proposal that the CVR-30A did not meet the RFP requirements. While it is true that a contracting officer may not ignore evidence of noncompliance
(continued...)

the contrary amounts to mere disagreement, with our conclusion, and thus does not provide a basis for us to reconsider it. R.E. Scherrer, Inc.--Recon., supra.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel

²(...continued)
in a proposal, our decision noted that we found no such evidence on the face of Universal's proposal.