



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TAAS Israel Industries, Ltd.--Reconsideration

File: B-251789.5

DATE: June 28, 1994

DECISION

TAAS Israel Industries, Ltd. requests reconsideration of our decision in TAAS-Israel Indus., Inc., B-251789.3, Jan. 14, 1994, 94-1 CPD ¶ 197, in which we denied its protest against a determination that it was nonresponsible under request for proposals (RFP) No. N00383-92-R-0278, issued by the Department of the Navy's Aviation Supply Office (ASO) for the design and production of an advanced missile launcher power supply.

We deny the request for reconsideration.

The RFP called for the design, development, and production of an advanced power supply, designated model ECU-112/A, to replace the power supply then being used to provide electric current and target signals for air-to-air missiles--such as the Sidewinder--prior to launch. Although ASO found the proposal submitted by TAAS in response to the solicitation to be technically acceptable, ASO then conducted a pre-award survey of TAAS, and, based on the results of that survey, determined the firm to be nonresponsible.

While ASO's pre-award survey team verified that TAAS had the capability to produce (and in fact had produced) certain earlier power supply models, the agency concluded that the firm did not have the capability necessary to design the considerably more sophisticated and complex ECU-112/A. The solicitation stated that the item called for was essentially a new, advanced model whose precise design was to be provided by the contractor. Among the changes in the new model was an increase in total output power of more than 200 percent. While the government had developed a brassboard prototype and supplied drawings to offerors for informational purposes, changes to the brassboard prototype were required in order to meet the specification requirements. Accordingly, the solicitation specifically warned offerors that "the brassboard units have not undergone qualification testing and were not designed to satisfy the production requirements of the ECU-112/A."

Nevertheless, while TAAS's proposal had not suggested undue reliance on the brassboard prototype design as the basis for the final product, engineers on the survey team concluded that the detailed on-site discussions with TAAS clearly indicated that the firm would rely primarily on that design. ASO's engineers concluded that TAAS did not understand (1) the nature of the design challenge posed by the ECU-112/A procurement; (2) the limitations of the brassboard design, which was intended only to demonstrate the general feasibility of designing a final item that would meet the ECU-112/A performance requirements; and (3) the considerable modifications that would have to be made to the prototype. The lack of such comprehension, ASO concluded, indicated that TAAS did not have the required design skills and knowledge to produce the item.

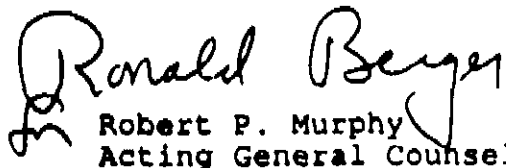
In our prior decision, we denied TAAS's protest against the nonresponsibility determination. We found that TAAS's failure, as evidenced during the pre-award survey, to understand the nature of the design challenge posed by the complexity and sophistication of the ECU-112/A, the limitations of the brassboard prototype design, and the considerable modifications that would have to be made to the prototype, were legitimate reasons to conclude that TAAS did not have the required design skills and knowledge to produce the item. In addition, we rejected TAAS's argument that the agency was required to reopen negotiations after the pre-award survey and provide it an opportunity to respond to the agency's assessment prior to making award. In this regard, we noted that ASO had concluded, not that TAAS's technical proposal was unacceptable (the agency never changed its evaluation of the proposal as technically acceptable), but that TAAS lacked the capability to implement its acceptable proposed technical approach, based on the information obtained during the pre-award survey. While the agency took a second look at TAAS's proposal after the survey to try to reconcile its impression of TAAS's proposed technical approach with the information gathered during the survey, the agency's ultimate conclusion that the firm lacked the ability to perform as proposed was in the nature of a nonresponsibility determination rather than a revision of the technical acceptability determination. See Litton Sys., Inc.; Varian Assoc., Inc., B-229921 et al., May 10, 1988, 88-1 CPD ¶ 448.

In its request for reconsideration, TAAS essentially argues that our decision overlooks a fundamental flaw in the agency's conduct of the procurement. According to the protester, by not raising its concerns with respect to TAAS's understanding of the design challenge posed by the specifications when it conducted discussions prior to requesting best and final offers, ASO deprived TAAS of the

opportunity to allay those concerns and thereby failed to conduct meaningful discussions.

TAAS's argument, however, is based on a fundamental misunderstanding of the record. TAAS does not specifically explain, nor is it otherwise apparent from our review of the record, what information ASO possessed when it conducted discussions that clearly indicated that TAAS would rely primarily on the brassboard prototype design and lacked the required design skills and knowledge to produce the power supply. Rather, as noted in our prior decision, it was the detailed on-site discussions during the pre-award survey which led the engineers on the survey team to conclude that TAAS would rely primarily on the brassboard prototype design and called into question whether TAAS had the required design skills and knowledge to produce the power supply. For example (1) ASO noted that the TAAS team referred to the ECU-112 procurement as a "build-to-print" effort, even though as indicated in the RFP the brassboard drawings were not adequate for the final design and production of the ECU-112/A; (2) the pre-award survey report indicates that when ASO asked TAAS engineers what changes they saw as necessary for the brassboard design to comply fully with ECU-112/A specifications, TAAS responded that no changes would be required; and (3) when ASO asked TAAS how it planned to test for specified operational characteristics, such as output ripple, switching spikes, output overload protection, and dynamic loading, questions that ASO's engineers expected could be readily answered by a design staff having the ability to undertake the ECU-112/A effort, TAAS was unable to provide answers. Since there has been no showing that the basis for the agency's fundamental concerns should have been clearly apparent prior to the pre-award survey, we have no basis for concluding that ASO failed to conduct meaningful discussions with TAAS.

The request for reconsideration is denied.


Robert P. Murphy
Acting General Counsel