

DOCUMENT RESUME

02724 - [A1882937]

[Reconsideration of Decision Regarding Preaward Qualification of New Sources]. B-187406. July 1, 1977. 3 pp.

Decision re: ERA Industries, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Definition of Performance Requirements in Relation to Need of the Procuring Agency (1902).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Linair, Inc.; Singer Co.; Department of the Air Force.

Authority: 4 C.F.R. 20.9. B-182991 (1976). B-182903 (1976).

The protester requested, on the basis of new evidence, reconsideration of a decision which held that it was not unreasonable for the Air Force to accept an offeror's representation without requiring that drawings be submitted to and evaluated by the agency. The new evidence produced by the protester did not impeach the offeror's original representation regarding its ability to produce the item. (Author/SC)

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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187406

DATE: July 1, 1977

MATTER OF: ERA Industries, Inc.--Reconsideration

DIGEST:

Where pursuant to solicitation requirement for preaward qualification of new sources, offeror represents that it obtained necessary drawings from prime contractor to repair the item and to fabricate replacement parts under prior contracts, it was not unreasonable for agency to accept offeror's representation without requiring that drawings be submitted to and evaluated by agency. Evidence produced by protester in request for reconsideration does not impeach offeror's representation regarding its possession of an adequate data package for producing item.

ERA Industries, Inc. (ERA), has asked this Office to reconsider an aspect of our decision, ERA Industries, Inc., B-187406, May 3, 1977, 77-1 CPD _____, pursuant to § 20.9 of our bid protest procedures, 4 C.F.R. § 20.9 (1976), in light of new information received by ERA's attorneys on May 9, 1977, ERA asserts this information casts serious doubt on the propriety of our decision.

Briefly, under the solicitations in question, Linair, Inc. (Linair), ERA's competitor, had persuaded the Air Force to qualify it as a new supplier of certain indicators for flight simulators. While the solicitation required qualification of new sources, Linair was considered to be a qualified source based on its experience in rebuilding the required equipment for the Link Division of the Singer Company (Singer), a previous prime contractor supplier of the indicators, and for Hill Air Force Base and upon the availability to it of engineering data which it allegedly obtained during its performance of the Singer contracts.

In its original protest to this Office, ERA argued that this engineering data rightfully belonged to the Occo Corporation, ERA's corporate predecessor. However, while

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the catalog or listing of data furnished by Linair was on Occo stationery, it bore no restrictive legend. Moreover, the Air Force inquired of Linair as to its rights in the listed data and received an affirmative response. In these circumstances we rejected ERA's argument that award should be withheld from Linair until that firm could demonstrate its rights in the information. Citing to Garrett Corporation, B-182991, B-182903, January 13, 1976, 76-1 CPD 20, we stated that this Office is not in a position to adjudicate a dispute between private parties concerning their respective rights in data and until those rights are established in a proper forum we will not disturb an on going procurement.

ERA seeks to impeach Linair's representation that it possesses a data package for the gauges which it obtained from the "Link /Division of Singer/ when the first need of maintenance of spare parts fabrication was required." In this connection ERA has submitted copies of correspondence from Singer in which the latter states that it has no record that drawings supplied to it in 1964 (presumably by protester's predecessor) were released to any other manufacturer of simulator indicators. The Singer correspondence also refers to Singer's "Specification Control Drawings" which, in its opinion, do not convey proprietary design information taken from the drawings purchased in 1964 from protester's predecessor. Singer contends that while electrical design information is not contained in its drawings, a qualified instrument house could design an indicator from its drawings and meet electrical and mechanical specifications. Moreover, Singer admits to the possibility that the Singer drawings were furnished to Linair inasmuch as the firm does not retain complete records in this regard.

In our opinion, the Singer correspondence does not impeach Linair's representation regarding its possession of a data package. Moreover, as stated in our prior decision, it is for the Government to determine in each case the extent of data needed to protect its interests. The source approval clause requires, in this connection, that offerors submit engineering data as may be required for evaluation purposes. In our opinion it is not unreasonable for the Air Force to rely on Linair's representation that a data package was obtained from Singer from which Linair

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was able successfully to perform repair contracts for the item and to produce replacement parts. In addition, the contracting officer was satisfied that during the course of these contracts Linair acquired sufficient knowledge of the items through reverse engineering. In the circumstances, we find no basis for altering our prior decision which concluded that the purpose of the source approval clause was satisfied notwithstanding the Government's decision not to evaluate the sufficiency of the data package with which Linair would manufacture the item. Linair obtained a data package from Singer, the prior prime contractor, and in view of Linair's prior experience with the item the Air Force believed it was unnecessary to evaluate that data.

Our previous decision is affirmed.


Deputy Comptroller General
of the United States