



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Assets Recovery Systems, Inc.

File: B-275332

Date: February 10, 1997

James S. Green, Esq., and Richard S. Cobb, Esq., Duane, Morris & Heckscher, for the protester.

Jeffrey I. Kessler, Esq., and Tony K. Vollers, Esq., Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office is authorized to exercise jurisdiction over protest against award under solicitation providing for exchange of property since an exchange necessarily involves acquisition of property by the government.

2. Where, under solicitation providing for exchange or sale of government-owned aircraft and parts for newer aircraft and/or cash, protester offered one new plane and possibility of others, contingent upon sufficient proceeds being generated via auctioning of the government-owned aircraft and parts, agency properly did not consider the value of the contingently offered planes in determining the overall value of the protester's offer.

DECISION

Assets Recovery Systems, Inc. (ARSI) protests the award of a contract to K & K Aircraft under request for proposals (RFP) No. DAAJ09-96-R-0681, issued by the Department of the Army Aviation and Troop Command for the exchange and/or sale of 124 government-owned U-21 aircraft for one or more Beechcraft 1900D aircraft and/or cash. The protester contends that it was entitled to award because its proposal represented the best value to the government.

We deny the protest.

BACKGROUND

In conducting this procurement, the agency sought to achieve two goals: ridding itself of an inventory of aged aircraft and components no longer suitable for the agency's mission and acquiring one or more newer aircraft. To this end, the

solicitation provided for the exchange¹ or sale of 124 U-21 aircraft and associated components for one or more Beechcraft 1900D series aircraft and/or cash. Offerors were instructed that any combination of aircraft and/or cash would be acceptable, and that award would be made to the offeror whose proposal (taking into account the value of any aircraft offered) represented the best value to the government.² To enable the Army to determine the value of the particular aircraft offered, offerors were instructed to describe in detail how the planes would be equipped and to identify the "time between overhaul" status of the major components.

Five offerors submitted proposals by the September 13, 1996 closing date. Of the three offerors other than the awardee and the protester, one offered a new aircraft, which the agency valued at \$4.4 to \$4.6 million; another offered a new aircraft (valued at \$4.4 to \$4.6 million) plus flight training for two pilots and maintenance training for one mechanic;³ and a third offered a used aircraft which it valued at \$4,947,000, plus \$33,274 in cash, for a total offer value of \$4,980,274. K & K offered a new aircraft that the agency valued at \$5.4 million⁴ and a cash payment of \$782,000, giving its offer an overall value of \$6,182,000.

¹The exchange was conducted under a one-time regulatory deviation authorized by the General Services Administration. The deviation was because the regulatory authority governing the exchange of government-owned personal property excludes certain classes of property, including aircraft, from its coverage and requires, with certain exceptions not applicable here, one-for-one exchanges. 41 C.F.R. § 101-46.202(a) and (b)(3) (1996).

²The solicitation further provided that in the event that an offeror proposing cash only were evaluated as providing the government the best value, two contracts would be awarded: the first for the sale of the U-21 planes and components, and the second for the purchase of one or more Beech 1900D aircraft.

³The contracting officer did not assign a particular value to the training, but concluded that it did not significantly increase the value of the offer.

⁴The new plane offered by K & K included much of the equipment identified by the agency in the solicitation as "desired," whereas the new planes offered by the first two offerors included only the required equipment; this resulted in K & K's plane receiving a higher valuation than the others.

ARSI's offer consisted of a four-page "Proposal for Absolute Auction," accompanied by the following two-sentence entry in Block 18a⁵ of the solicitation cover page (Standard Form 1449):

"Gauranty One Beech 1900D aircraft NEW
or more . . . Outfitted Per. Army Request
See Enclosed." (sic)

In its "Proposal for Absolute Auction," ARSI offered to sell via auction the U-21 aircraft and components and use the proceeds, less expenses and a commission of 7 percent, to purchase up to four new, standard Beechcraft 1900D aircraft for the seller. In an addendum to the proposal, the protester's president opined that his company might "be able to retrieve between 15 Million to 35 Million dollars on a worldwide scale" for the inventory. The proposal failed to specify what would happen in the event that the auction proceeds were in excess of the amount required to purchase one plane, but not enough to purchase two (or more than enough to purchase two, but not enough to purchase three, etc.). In other words, the proposal did not provide for the payment of any such proceeds to the agency.

Since ARSI's proposal, read as a whole, guaranteed only one aircraft--the purchase of others being contingent upon the proceeds of the auction--the Army valued it at \$4.4-\$4.6 million. On September 19, the Army awarded a contract to K & K.⁶

JURISDICTION

As a preliminary matter, both parties have requested that our Office exercise jurisdiction over this protest, and we see no legal impediment to doing so. To the extent that the solicitation provides for an exchange of property, property is necessarily being acquired by the government, and our Office is authorized by statute to exercise jurisdiction over protests concerning the acquisition of property by the government. Competition in Contracting Act, 31 U.S.C. § 3551(1)(a) (1994), as amended by Pub. L. No. 104-106, § 4321(d)(1), 110 Stat. 186, 674 (1996); 31 U.S.C. § 3552, as amended by Pub. L. No. 104-106, § 5603, 110 Stat. 186, 700; Crystal Cruises, Inc.--Request for Recon., B-238347.2, June 14, 1990, 90-1 CPD ¶ 560. To the extent that the solicitation provides for a sale, we will consider protests concerning

⁵This is the block in which, under an ordinary RFP, the agency would identify the office making payment.

⁶The RFP provided for award without discussions.

sales by federal agencies where, as here, the agency has agreed to our review. Bid Protest Regulations § 21.13(a), 61 Fed. Reg. 39039, 39047 (1996) (to be codified at 4 C.F.R. § 21.13(a)); Resource Recovery Int'l Group, Inc., B-265880, Dec. 19, 1995, 95-2 CPD ¶ 277.

ANALYSIS

The protester contends that its proposal represented the best value to the government and that it was therefore entitled to award. As discussed below, we disagree.

ARSI's proposal guaranteed delivery of only one plane, which the agency valued at \$4.4 to \$4.6 million. Although the protester asserts that its offer was worth far more than that, it offered additional planes contingent upon sufficient proceeds being generated by the auction. Since these planes were offered on a conditional, as opposed to firm, basis, the agency could not properly consider them in determining the value of ARSI's offer. In this regard, where a solicitation requests offers for a firm, fixed amount, an offer that is not firm cannot be considered for award. Burroughs Corp., 56 Comp. Gen. 142, 150 (1976), 76-2 CPD ¶ 472 at 11, aff'd, Honeywell Information Sys., Inc., 56 Comp. Gen. 505 (1977), 77-1 CPD ¶ 256.

In any event, it is not apparent from the record in this case that it can reasonably be anticipated that proceeds sufficient to fund the purchase of more than one plane will be generated by the auction. Not only is the protester's estimate of the inventory's value as between \$15 and \$35 million at variance with the agency's estimate--the most recent estimate of the Army's Product Manager for Fixed Wing Aircraft being \$4 million⁷--but it is also out of line with the amounts that other offerors offered in exchange for the assets. Furthermore, the agency has demonstrated that the methodology used by the protester to prepare its estimate was faulty. In this regard, the protester relied upon blue book values for the Beech King Air 90, which is the commercial version of the U-21, in preparing its estimate. The agency explains that resale values for the Beech King Air 90 and the U-21 are not equivalent, however, due to significant differences between the two aircraft--differences which result in the military planes not meeting Federal Aviation Administration standards for certification, which means that, unless they are

⁷We recognize that this estimate is at variance with earlier estimates prepared by the same office. The Product Manager explains that the change was attributable to a more accurate assessment of the state of the inventory, an explanation that we find reasonable.

reconfigured, the military planes cannot be used for commercial purposes in this country.⁸

The protester also complains that the agency engaged in improper post-award discussions with K & K. The agency explains in response that post-award conversations held with K & K concerned taking a part of the cash portion of K & K's offer and using it to acquire additional modifications to the Beech 1900D. Discussions occur when an offeror is given an opportunity to revise or modify its proposal, or to provide information essential to determining the acceptability of its proposal. Federal Acquisition Regulation § 15.601; Aquidneck Sys. Int'l, Inc., B-257170.2, Sept. 30, 1994, 94-2 CPD ¶ 122. Since the negotiations between the agency and K & K here did not affect the acceptability of the proposal and neither increased nor decreased the overall value of K & K's offer, they did not constitute discussions.

The protest is denied.

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⁸The protester offers other evidence in support of its valuation, but we find it unconvincing. For example, the protester cites an advertisement in a trade magazine offering for sale two U-21 engines, one for \$100,000 and the other for \$125,000. At these prices, the protester argues, the inventory's engines alone would be worth \$34 to \$42.5 million. The protester omits to mention that the advertisement also indicates that the engines offered have been flown 1,464 and 26 hours respectively, i.e., substantially less than the average of 11,500 hours that the planes in the inventory have been flown. Since the value of the engines can be expected to decrease as the number of hours that the planes have been flown increases, we do not think that this advertisement offers a realistic comparison for purposes of valuing the inventory.

The protester also offers as evidence of the value of the inventory a letter from the president of one of its competitors, Turbines, Inc., to his Congressman. In the letter, the president of Turbines opines that the U-21 inventory is worth \$20.5 million. We are not inclined to give this opinion a great deal of weight given that when Turbines had the opportunity to value the assets for purposes of submitting its own offer under this solicitation, it offered only a single standard Beechcraft 1900D (valued by the agency at \$4.4 to \$4.6 million) in exchange for them.