



Comptroller General
of the United States

152223

Washington, D.C. 20548

Decision

Matter of: Paramax Systems Corporation; CAE-Link Corporation--Modification of Remedy

File: B-253098.6; B-253098.7

Date: March 22, 1994

Anne H. Warner, Esq., for Paramax Systems Corporation; and Stuart B. Nibley, Esq., and Michael B. Hubbard, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for CAE-Link Corporation, the protesters. Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request to modify remedy that agency reopen discussions and request another round of best and final offers because the recommendation is not practicable is denied where the agency has implemented the recommendation.

DECISION

Paramax Systems Corporation and CAE-Link Corporation request modification of the remedy that we recommended in Paramax Sys. Corp.; CAE-Link Corp., B-253098.4; B-253098.5, Oct. 27, 1993, 93-2 CPD ¶ 282, in which we sustained their protests against the award of a contract to Statistica, Inc. under request for proposals (RFP) No. N61339-92-R-0051, issued by the Department of the Navy.

We deny the requests.

As we explained in our original decision, the RFP sought proposals for the design and installation of the defense satellite communications system training device, which is a computer based system for training service personnel in the operation, maintenance, repair, alignment, and testing of the defense satellite communications system. The RFP required offerors to submit proposals for lots I through IX, each of which contained cost-plus-incentive fee (CPIF), firm, fixed-price, and/or time and materials line items. The RFP required offerors to propose a fee of not more than 9 percent for CPIF line items in lots III through IX. The contract was to be awarded to the offeror whose proposal offered the best value to the government based on an

evaluation of training, system design, management, logistics, and cost.

After the submission of best and final offers (BAFO), the Navy informed Statistica that its BAFO appeared to contain a 12 percent maximum fee for the CPIF line items in lots III through IX, contrary to the 9 percent fee limitation set out in the RFP. The Navy then permitted Statistica to submit a letter stating that its maximum fee for those lots was 9 percent. We found that by including a fee in its proposal that was greater than the maximum fee permitted by the RFP, Statistica made its proposal unacceptable, and by permitting Statistica to change the fee, the Navy engaged in discussions with Statistica. Since the Navy did not reopen discussions with the other competitive range offerors, we sustained the protests. We recommended that the Navy reopen discussions with all offerors in the competitive range and request a new round of BAFOs. We also recommended that if a firm other than Statistica is selected as a result of the agency's evaluation of the BAFOs, the Navy should terminate Statistica's contract and make award to that firm. In addition, we concluded that the protesters were entitled to recover the costs of filing and pursuing their protests, including reasonable attorneys' fees.

Paramax and CAE-Link request that we modify the recommended corrective action to permit them to recover their proposal preparation costs rather than to have the Navy reopen discussions and request additional BAFOs. Specifically, Paramax and CAE-Link argue that due to the substantial expenses that will be incurred as a result of any delay in performance of the contract should an offeror other than Statistica be found in line for award,¹ and the fact that a significant portion of the contract has been completed, our recommended corrective action is impracticable. In addition, CAE-Link asserts that Statistica has a significant advantage in any recompetition because it has been performing the contract.

After our decision was issued, the Navy reopened discussions with the competitive range offerors and requested BAFOs, as we recommended. Based on its reevaluation of the BAFOs, the Navy again selected Statistica for award. The protesters thus have been afforded the remedy to which they were entitled--namely, a reasonable opportunity to be

¹After the protests were filed, the Navy determined, in accordance with Federal Acquisition Regulation (FAR) § 33.104(c)(2), that it was in the best interest of the government to continue performance of the contract notwithstanding the protest. As a result, Statistica has continued performing the contract.

considered for award of the contract. Since the Navy has complied with our recommendation, we see no basis to modify our initial decision.²

The requests for modification are denied.

Robert P. Murphy
Acting General Counsel

²In the alternative, CAE-Link asserts that if we refuse to modify our recommendation, the Navy should be required to give the competitive range offerors the cost and technical data from Statistica's period of performance, since this information would give Statistica a competitive advantage in any recompetition. Since the Navy requested revised cost proposals only, Statistica had no opportunity to utilize any information that it learned during contract performance to amend its technical proposal. With respect to the cost information from the initial months of performance, since that information is based on performing the contract using Statistica's approach, we fail to see the value of that information to other offerors who proposed their own approaches to the contract. We thus do not think it was necessary to release this information to other competitive range offerors to ensure competition on an equal basis.