



Decision

Matter of: Airforce Turbine Service, Ltd.

File: B-404478

Date: February 16, 2011

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participated in the preparation of the decision.

DIGEST

In a solicitation for the repair of aircraft engines used for mission critical tasks, such as fighting forest fires, requirement that offeror must be a designated overhaul facility for the specific aircrafts is unobjectionable where agency reasonably determined that contractors with this designation will best be able to meet the agency's needs.

DECISION

Airforce Turbine Service, Ltd. (ATS), of Mathis, Texas, protests the terms of request for proposals (RFP) No. AG-84M8-S-10-0003, issued by the Department of Agriculture, Forest Service (FS) for aircraft engine maintenance and overhaul services. ATS asserts that the RFP requirement that offerors be a designated overhaul facility (DOF) to qualify to compete is unduly restrictive of competition.

We deny the protest.

FS issued the RFP on October 5, 2010 for aircraft maintenance and overhaul services of Pratt & Whitney 530A and PT6A engines installed on FS aircraft used in fighting forest fires. RFP at 3. The RFP included a requirement that contractors be Federal Aviation Administration (FAA) certified and be a DOF to perform work on Pratt & Whitney aircraft engine model numbers PWC, PT6 and 530. RFP at 10. Each offeror was required to present valid evidence of current authority to perform work on the listed engines, and only offerors that were certified DOFs were eligible for award. Id. Prior to the closing time, ATS, which is not a DOF, filed this protest asserting

that the requirement that offerors be certified DOFs is unduly restrictive of competition.¹

The determination of a contracting agency's needs and the best method of accommodating them are matters primarily within the agency's discretion. Systems Application & Techs., Inc., B-270672, Apr. 8, 1996, 96-1 CPD ¶ 182 at 3. However, where a protester challenges a specification as unduly restrictive of competition, we will review the record to determine whether the restrictions imposed are reasonably related to the agency's needs. Id.; LBM, Inc., B-286271, Dec. 1, 2000, 2000 CPD ¶ 194 at 3. Where a requirement relates to national defense or human safety, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest possible reliability and/or effectiveness. COB EventLizenz GmbH, B-401999.2, Jan. 12, 2010, 2010 CPD ¶ 24 at 4; Atlantic Coast Contracting, Inc., B-270491, B-270590, Mar. 13, 1996, 96-1 CPD ¶ 147 at 3. Ultimately, a protester's mere disagreement with the agency's judgment concerning its needs and how to accommodate them does not show that the agency's judgment is unreasonable. Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. Based on our review of the record, we find the requirement that offerors be DOF certified unobjectionable.

The agency explains that its needs are for its aircraft and engines to be ready to perform mission critical tasks, such as fighting forest fires. Agency Hearing Comments at 1²; Legal Memorandum at 3. The agency reports that it is necessary to restrict this procurement to only DOFs because only DOFs provide the "unique combination" of a streamlined warranty process and minimized downtime necessary to get fire fighting planes back into the air. Agency Hearing Comments at 4. The agency explains that a DOF provides "crucial support" to overhaul and repair the engines that is not offered elsewhere. For example, according to the agency, Pratt & Whitney provides full engineering support, test engines, and commercial support program notification to DOFs. Id.; Legal Memorandum at 4. The agency contends that since the aircraft "operate in a flight environment that leaves very little margin for error," ensuring aircraft reliability includes taking measures to ensure the highest quality of maintenance. Agency Report (AR), Tab 5, Technical Rationale for DOF Requirement, at 2.

¹ In its comments, ATS characterizes its protest as alleging that the DOF requirement "is a restraint of trade and in direct conflict with the [FAA] certification process." Comments at 3. However, our Office only has jurisdiction to review violations of procurement law and regulations, which we discuss above.

² On January 26, 2011, our Office conducted a telephonic hearing to further explore the agency's rationale for imposing the DOF requirement. The protester's representatives were present and its counsel was permitted to ask questions of the agency witness.

ATS generally disagrees with the agency and maintains that non-DOF repair facilities can satisfy the agency's needs with respect to all of the agency's concerns, and that ATS is being denied the opportunity to demonstrate its ability to meet the agency's standards.³ For example, ATS argues that it routinely handles warranty claims and that when it is faced with a customer whose aircraft is mission critical, ATS generally will purchase and install a replacement part at ATS' expense to minimize downtime. Comments at 7. In its hearing comments, the protester points out that the agency appears to be more concerned with cost issues, not downtime. Protester's Hearing Comments at 2.

The agency points out that it is not just cost but time constraints that are important. The agency explains that the DOF's more efficient warranty process ensures that any issues with the aircraft can be handled at less cost and with less downtime than non-DOFs, which gives the agency greater confidence that aircraft will be ready to fly when needed. Agency Hearing Comments, Tab 1, Differences Between DOF and Non-DOF, at 1; Agency's Hearing Comments at 2-3. The agency states that minimized downtime is a "basic necessity" to ensure that its aircraft can fly and stay in the air as long as possible during crucial fire fighting missions. Agency Hearing Comments at 2.

The protester disagrees with the agency's determination that DOFs can provide a more efficient streamlined overhaul process that minimizes downtime. However, the agency reports that it has experience with contracts with both DOFs and non-DOFs and, in its experience, a DOF provides for a streamlined engine repair/overhaul process that provides less downtime and greater safety of the aircraft than non-DOFs.⁴ Agency's Hearing Comments, Tab 2, Statement of Aviation Maintenance Officer, at 2. The agency states that, in the past, the performance of non-DOFs has had a negative impact on the readiness of the aircraft. Id.

In addition, the agency explains that the technical support provided by DOFs is superior to that provided by non-DOFs. For example, DOFs provide test engines that make it easier for the agency to trouble shoot problems during crucial times of the fire-fighting season. Agency Hearing Comments at 2. Although the protester asserts

³ ATS contends that it is a "full-service, FAA approved PT6A repair station with over 30 years experience" repairing Pratt & Whitney engine models that are the subject of the solicitation here. Comments at 1.

⁴ For example, the agency states that non-DOFs may not have the necessary parts when needed, and the use of loaner parts requires additional downtime to replace the part when a new part is available. Agency Hearing Comments at 2.

that the DOF test engines are “nothing special,” it has not shown that the agency’s concern is unreasonable.⁵

In sum, we see no reason why the agency should not be permitted to adopt a requirement aimed at ensuring the highest level of reliability and availability of its aircraft, particular in light of the need to fulfill its fire fighting mission.⁶

The protest is denied.

Lynn H. Gibson
General Counsel

⁵ According to the agency, DOFs also participate in commercial support notification programs which identify Pratt & Whitney parts that over time experience problems and should be upgraded for longer life. Agency Hearing Comments, Tab 1, Differences Between DOF and Non-DOF, at 1. The protester concedes that non-DOFs are permitted to participate in only “some” of these programs. Comments, Tab 1, Statement of ATS Partner, at 4.

⁶ The protester also asserts that agency officials made improper contact with Pratt & Whitney to substantiate the rationale for requiring DOF status. The protester argues that these communications tainted the entire bid process. Comments at 10-13. However, the contact with Pratt & Whitney occurred after the protest was filed to assist the agency with responding to protest arguments. Agency Rebuttal to Protester’s Comments, Tab 1, Statement of Aviation Management Officer, at 1. The protester’s suggestion that this communication was improper because it demonstrates a bias toward Pratt & Whitney is not convincing.