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Washington, DC 20548

Comptroller General
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Decision

Matter of: Erickson Aero Tanker

File: B-411306.2; B-411306.5

Date: July 29, 2015

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Melissa D. McClellan, Esq., Department of Agriculture, for the agency.
Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Inclusion of a solicitation requirement for a safety-related system was reasonable, even though the requirement was waived during performance of the predecessor contract, where the record shows that the requirement is reasonably related to the agency's needs on the follow-on procurement.
2. Solicitation requirement that an offeror must submit certified aircraft weight and balance information at the time of pre-award inspection does not unduly restrict competition where the record shows that the requirement is reasonably related to the agency's needs.

DECISION

Aero Air, LLC, d/b/a Erickson Aero Tanker, a small business, of Hillsboro, Oregon, challenges the terms of request for proposals (RFP) No. AG-024B-S-15-9003, which was issued by the Department of Agriculture, Forest Service, for next generation (NextGen) large airtanker services for wildfire firefighting support.¹ Aero

¹ This procurement is referred to as the NextGen 2.0 procurement because it is the follow-on procurement to the previous NextGen 1.0 procurement. The Forest Service previously competitively awarded contracts to five firms, including one to Aero Air, for airtankers under RFP No. AG-024B-S-11-9009, and made an additional sole-source award to another firm. See Coulson Aviation (USA) Inc., et al., B-409356.2 et al., Mar. 31, 2014, 2014 CPD ¶ 106 at 4-5, 13-14. Our decisions in Coulson Aviation (USA) Inc., et al., supra, and Coulson Aviation (USA)

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Air alleges that the Forest Service arbitrarily included in the solicitation for this follow-on procurement a requirement for a safety-related system that the agency waived for Aero Air under its NextGen 1.0 contract. The protester also alleges that the agency's requirement for offerors to submit certified weight and balance information for their proposed aircraft at the time of pre-award inspection is unduly restrictive of competition.

We deny the protest.

BACKGROUND

The RFP, which was issued on February 19, 2015 and set-aside for small business concerns, seeks proposals for fixed-price multi-year contracts not to exceed 10 years (with a 5-year base period and up to five 1-year option periods) for large airtanker services for the initial attack of wildfires. RFP at 1. The aircraft will be used to deliver 3,000-5,000 gallons of fire retardant to a wildfire from an airtanker base by means of a fixed tank that is attached to or built into the aircraft. Agency Report (AR), Tab 25, Forest Service Special Mission Airworthiness Assurance Guide for Aerial Firefighting and Natural Resource Aircraft (Airworthiness Assurance Guide), Rev. 1 (Dec. 7, 2011), at 6.² The agency anticipates awarding up to seven line items for NextGen turbine powered tankers. RFP at 1. The agency will procure daily availability during mandatory availability periods (MAP), which correspond to primary wildfire seasons, as well as additional flight hours on an indefinite-delivery, indefinite-quantity basis. Id.

For purposes of award, the Forest Service is to evaluate the following five factors: (1) structural integrity, maintenance, and equipment; (2) safety elements; (3) past performance; (4) organizational experience; and (5) price. Id. at 153-56. The first evaluation factor is further divided into five subfactors: (a) structural integrity; (b) maintenance; (c) equipment (aircraft); (d) equipment (tank); and (e) aircraft and facility pre-award inspection. Id. at 153-54. One of the technical requirements under the structural integrity subfactor, and another under the maintenance subfactor, are relevant to the issues in this protest.

First, the RFP requires that offerors provide detailed documentation that defines and establishes a structural integrity program (SIP) in accordance with the

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Inc.; 10 Tanker Air Carrier, LLC--Costs, B-406920.6, B-406920.7, Aug. 22, 2013, 2013 CPD ¶ 197, provide further details concerning the history of the NextGen 1.0 procurement.

² The RFP requires aircraft to have a minimum payload of 3,000 gallons of fire retardant, and provides that aircraft with capacity up to 5,000 gallons will be evaluated more favorably. RFP at 11; RFP, amend. 02, at 1.

requirements set forth in RFP Section J, Exhibit 2. Id. at 146. As the solicitation explains, the purpose of the SIP is to properly manage the aircraft used in the performance of the resulting contract, including predicting and preventing catastrophic failure from fatigue separations. Id. at 55. Fatigue can result in the development of cracks in the aircraft's structure, which in turn can compromise the aircraft's structural integrity and result in fatal accidents. See AR, Tab 23, National Transp. Safety Board (NTSB) Safety Recommendations Nos. A-04-29 through -33 (Apr. 23, 2004), at 1-2. An "inherent part" of aerial firefighting operations are "[f]requent and aggressive low-level maneuvers with high acceleration loads and high levels of atmospheric turbulence." Id. at 5. As the NTSB explained in a safety recommendation following an investigation of fatal airtanker accidents resulting from aircraft fatigue:

These repeated and high-magnitude maneuvers and the repeated exposure to a turbulent environment hasten the initiation of fatigue cracking and increase the growth rate of cracking once it exists. The [NTSB] recognizes that aerial firefighting is an intrinsically high-risk operation. However, the risk of in-flight structural failure should not be considered an unavoidable risk of firefighting. This increased risk of fatigue cracking and accelerated crack propagation can and should be addressed through maintenance programs.

Id. at 6.

The Forest Service has developed an Airworthiness Assurance Guide establishing prerequisite criteria, evaluations, and monitoring for special mission aircraft, including large airtankers, to validate an aircraft for usage and to ensure it has an appropriate maintenance and inspection program based on damage tolerance analysis to assure airworthiness when used in a specific capacity. AR, Tab 25, Airworthiness Assurance Guide, at 1. One such requirement is for operational loads monitoring (OLM) systems, which provide for validation and continued monitoring of the airframe loads and stresses experienced during operations. Id. at 28. The OLM system's data is used for the aircraft's health management and/or a flight operations quality assurance program. Id. at 12-13.

Specific to large airtankers, the Airworthiness Assurance Guide requires a complete instrumentation package and recording device. Id. at 28. For at least one aircraft of a particular model in airtanker operation, an operator must utilize a more stringent initial usage evaluation OLM system that utilizes higher sampling and record rates, which is also known as a "Table 1 compliant" OLM system. Id. For multiple aircraft of the same model employed in the airtanker role, the OLM system and instrumentation requirements may be less comprehensive so long as one aircraft of the same type is equipped with a Table 1 compliant OLM system that is maintained in continued operation as an airtanker until the initial usage evaluation is completed.

Id. at 31. These less comprehensive systems are known as continuous monitoring systems, or “Table 2 compliant” OLM systems, and must be used while the airtanker is in service. Id.

Consistent with the requirements of the Airworthiness Assurance Guide, the RFP requires that an offeror have at least one plane of a particular model with a Table 1 compliant OLM system, and all other planes of the same model must have Table 2 compliant OLM systems. RFP at 58. Additionally, the RFP requires that offerors propose a detailed OLM program, including addressing 15 enumerated requirements, such as “defin[ing] and provid[ing] a detailed explanation of the exceedance for each of the recorded parameters” and “procedures to take (i.e., inspect, repair, or other maintenance action) when a structural exceedance occurs.” Id. at 61-62. The solicitation’s SIP exhibit includes the following warning: “**[f]ailure to accomplish items identified in this exhibit will result in termination of this contract.**” Id. at 58 (emphasis in original).

Second, the RFP requires that each offeror submit a detailed proposed aircraft maintenance program that demonstrates compliance with the requirements of RFP Section C, ¶ C-5, Aircraft Maintenance. Id. at 146. Among other requirements, the RFP expressly requires offerors to submit documentation regarding the “[e]mpty weight of the aircraft as equipped for this solicitation and the current weight and balance.” Id. at 146-47. Pursuant to ¶ C-5(a)(9), “[a]ircraft shall be weighed and configured as an airtanker within 30 days of being offered, and every 36 months thereafter.” Id. at 14. The RFP further specifies that aircraft must be weighed on scales that have been certified as accurate. Id. at 14-15. The RFP initially required offerors to submit certified weight and balance information with their proposals. Id. at 147.

On April 8, Aero Air filed a protest alleging that (1) the requirement for a Table 1 compliant OLM system for the 2015 fire season is unreasonable because it is inconsistent with the agency’s waiver of the same requirement on Aero Air’s NextGen 1.0 contract, and (2) the requirement for certified weight and balance information at the time of proposal submission is unduly restrictive of competition. See Protest (Apr. 8, 2015) at 2-3.³ On April 23, the Forest Service amended the RFP to extend the deadline for the submission of required certifications from proposal submission to the time of pre-award inspection, and establish that pre-award inspections would be conducted on May 4-6 in Boise, Idaho. RFP, amend. 05, at 1. Aero Air timely filed a supplemental protest challenging the extended deadline for the submission of the required certified weight and balance information as still being unduly restrictive of competition. See Supp. Protest (May 1, 2015) at 1-2.

³ Our Office previously dismissed a third protest ground as untimely pursuant to our Bid Protest Regulations. See Email from GAO (Apr. 28, 2015) at 1.

DISCUSSION

Aero Air primarily challenges the reasonableness of two RFP provisions.⁴ First, the protester argues that the RFP's Table 1 compliant OLM system requirement for the 2015 fire season is unreasonable because it is inconsistent with the Forest Service's waiver of the same requirement on the protester's NextGen 1.0 contract. Second, the protester challenges the requirement for certified weight and balance information prior to the start of performance as being unduly restrictive of competition. For the reasons that follow, we find no basis to sustain the protest on either of the grounds asserted by Aero Air.

Procuring agencies are required to specify their needs in a manner designed to permit full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agencies' legitimate needs (or as otherwise authorized by law). 41 U.S.C. § 3301(a). Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. Air USA, Inc., B-409236, Feb. 14, 2014, 2014 CPD ¶ 68 at 3. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. AAR Airlift Grp., Inc., B-409770, July 29, 2014, 2014 CPD ¶ 231 at 3.

We have recognized that an agency's otherwise legitimate requirements regarding an offeror's demonstrated ability to meet contract requirements may not generally be applied at a point in time prior to when such qualifications become relevant. See USA Jet Airlines, Inc.; Active Aero Group, Inc., B-404666, Apr. 1, 2011, 2011 CPD ¶ 91 at 5 (sustaining a protest of a solicitation requirement for the submission of proof of certification under certain industry quality standards at the time of proposal submission where the agency failed to demonstrate why the certifications were reasonably necessary prior to performance). We have also found, however, that an agency may properly require an offeror to submit evidence of its ability to meet contract requirements at the time of proposal submission where the agency has articulated a reasonable basis for requiring the evidence prior to award. See, e.g., Contract Servs., Inc., B-411153, May 22, 2015, 2015 CPD ¶ 161 at 3-4 (denying a protest challenging a solicitation requirement to possess a secret facility clearance at the time of proposal submission where the agency demonstrated that delays in obtaining the required clearance would impede the awardee's ability to perform timely and in accordance with applicable security requirements); Air USA, Inc.,

⁴ Aero Air raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's arguments and find that none provides a basis on which to sustain the protest.

supra, at 5 (denying a protest challenging a solicitation requirement to submit aircraft airworthiness data documentation at the time of proposal submission where the agency articulated a reasonable safety-related need to evaluate the documentation).

In this regard, we have held that where, as here, the challenged requirements relate to national defense or human safety, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest level of reliability and effectiveness. Womack Mach. Supply Co., B-407990, May 3, 2013, 2013 CPD ¶ 117 at 3. The determination of a contracting agency's needs, including the selection of evaluation criteria, is primarily within the agency's discretion, and we will not object to the use of particular evaluation criteria so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. SML Innovations, B-402667.2, Oct. 28, 2010, 2010 CPD ¶ 254 at 2.

OLM System Requirement

Aero Air first challenges the RFP's requirement for a Table 1 compliant OLM system for the 2015 fire season as being "arbitrary" because the Forest Service previously waived the same requirement under Aero Air's NextGen 1.0 contract. The protester argues that because the agency did not require a Table 1 compliant OLM system on the NextGen 1.0 contract for the 2015 fire season, the agency has failed to demonstrate that the restrictive provision under this RFP is reasonably necessary to fulfill the agency's needs. We find no basis to sustain the protest.

As addressed above, the Forest Service's Airworthiness Assurance Guide includes the requirement that at least one aircraft of a particular model used in airtanker operations be equipped with a Table 1 compliant OLM system. See AR, Tab 25, Airworthiness Assurance Guide, at 28. The parties agree that to meet the OLM system requirements under Aero Air's NextGen 1.0 contract, the protester elected to use a government furnished equipment (GFE) OLM system, which was procured by the agency from a third-party vendor. See AR at 5-6; Protester's Comments (May 21, 2015) at 7-8. The parties also agree that the original GFE OLM system vendor encountered difficulties with its system, thus preventing offerors who selected the GFE system from satisfying the NextGen 1.0 contract's Table 1 compliant OLM system requirement. See AR at 5-6; Protester's Comments (May 21, 2015) at 7-8. In light of the issues with the GFE OLM system vendor, the Forest Service allowed affected NextGen 1.0 contract holders to propose alternative methods to meeting the OLM system requirement. Contracting Officer's Statement of Relevant Facts (COSF) (May 8, 2015) ¶ 11. Aero Air is currently working with [DELETED] to address the OLM system requirements for the 2015 fire season, while also proposing to [DELETED] starting in 2016. Statement of Aero Air President (May 20, 2015) ¶¶ 15-16.

For the NextGen 2.0 procurement, the solicitation requires that offerors propose a contractor-furnished, Table 1 compliant OLM system, including for the 2015 fire season. RFP at 58; id., amend. 03, at 6 (rejecting proposed exemption from Table 1 compliant OLM System requirement for NextGen 1.0 contractors that elected to use the GFE system option); id., amend. 04, at 4 (confirming the agency's intent to keep the Table 1 compliant OLM system requirement). The agency represents that at least [DELETED] operators have installed Table 1 compliant OLM systems on [DELETED] aircraft. AR, Tab 22, Statement of Airworthiness Branch Chief (May 8, 2015) ¶ 11.

Aero Air argues that the Forest Service has failed to articulate a reasonable, safety-related reason for the disparate Table 1 compliant OLM system requirements between the NextGen 1.0 and 2.0 procurements. See Protester's Comments (May 21, 2015) at 12. The protester argues that if the agency's safety needs do not dictate that airtankers under the NextGen 1.0 procurement must have Table 1 compliant OLM systems for the 2015 fire season, then the agency cannot reasonably impose the requirement in the NextGen 2.0 procurement. Aero Air argues that the agency's imposition of the Table 1 compliant OLM system, at least for the initial year of the NextGen 2.0 contract, is unfair because it effectively excludes from the NextGen 2.0 competition those NextGen 1.0 contractors that previously selected the GFE OLM system option. See id. at 14-15.

As an initial matter, we find that the Forest Service has articulated a reasonable, safety-related basis for imposing the Table 1 compliant OLM system requirement. AAR Airlift Grp., Inc., supra.⁵ As addressed above, the OLM system requirements are derived from NTSB safety recommendations made following fatal accidents involving airtankers utilized in similar firefighting capacities, and from the agency's Airworthiness Assurance Guide. The OLM system provides important safety-related data regarding the structural integrity of aircraft, including "validation and continued monitoring of the airframe loads and stresses experienced during operations." See AR, Tab 25, Airworthiness Assurance Guide, at 28. The RFP

⁵ In its comments on the AR, Aero Air for the first time challenges the requirement for a Table 1 compliant OLM system, versus challenging the allegedly arbitrary decision not to extend to the NextGen 2.0 procurement the waiver of the requirement for the 2015 fire season granted to NextGen 1.0 contractors that previously elected the GFE OLM option. See Protester's Comments (May 21, 2015) at 13-15. This collateral attack on the RFP's OLM requirement, raised after both the initial and extended closing times for the receipt of proposals, is untimely. Pursuant to our Bid Protest Regulations, "[p]rotests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals." 4 C.F.R. § 21.2(a)(1). Therefore, we dismiss this untimely argument.

requires the contractor to utilize data from the OLM system as part of its SIP, including for determining when inspection, repair, and maintenance actions are necessary. RFP at 62. Therefore, we find that the record adequately demonstrates that the RFP's OLM system requirement is reasonable to fulfill the agency's legitimate safety-related needs.

Regarding Aero Air's argument that it was arbitrary for the Forest Service to impose the Table 1 compliance requirement for this procurement while waiving it under the protester's NextGen 1.0 contract, we find that the agency's waiver of the requirement on the previous contract has no bearing on the propriety of the agency's conduct under this procurement. Each procurement is a separate transaction and an action taken under one procurement is not relevant to the propriety of the action taken under another for the purposes of a bid protest. Harris Enters., Inc., B-311143, May 27, 2008, 2008 CPD ¶ 60 at 3. In this regard, the fact that a requirement may not have been included in a prior solicitation or contract does not provide a basis for finding the requirement unduly restrictive when included in a subsequent solicitation. Id.; JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 4; USA Fabrics, Inc., B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 5. We have also recognized that the fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency's needs. Contract Servs., Inc., *supra*; Y&K Maint. Inc., B-415310.2, Oct. 17, 2011, 2011 CPD ¶ 239 at 5. Here, as addressed above, the Forest Service has demonstrated that the OLM system requirement is reasonably necessary to meet the agency's needs.

Furthermore, we find that the propriety of the Forest Service's waiver of the Table 1 compliant OLM system requirement under Aero Air's NextGen 1.0 contract raises a matter of contract administration not for our consideration as part of our bid protest function. 4 C.F.R. § 21.5(a). The fact that the Forest Service elected to assume the associated safety-related risks of not having a Table 1 compliant OLM system for the 2015 fire season on the NextGen 1.0 procurement, due ostensibly to problems associated with the GFE OLM system, does not require the agency to assume the same safety-related risks on this follow-on procurement where all of the OLM systems will be contractor-furnished. See Container Prods. Corp., B-280603.2, Nov. 4, 1998, 98-2 CPD ¶ 106 at 3-4. On this record, we find no basis to sustain Aero Air's challenge to the RFP's OLM system requirements.

Certified Weight and Balance Information Requirement

Aero Air next challenges the RFP's requirement for certified weight and balance information at the time of pre-award inspection as being unduly restrictive of competition. The protester contends that the agency has failed to advance any reasonable explanation for why the information is necessary prior to award. We find no basis to sustain Aero Air's protest.

As addressed above, the RFP requires that offerors provide certified weight and balance information for their proposed aircraft by the time of pre-award inspection. RFP at 14-15, 146-47. The Forest Service asserts that the requirement for the weighing of aircraft prior to proposal submission stems from a NTSB safety recommendation following an investigation of a 2008 helicopter accident that resulted in eight fatalities. See AR, Tab 22, Statement of Airworthiness Branch Chief (May 8, 2015) ¶ 3; Tab 24, NTSB Safety Recommendations Nos. A-10-159 through -168 (Dec. 27, 2010).⁶ The NTSB's investigation determined that one of the probable causes of the fatal accident was the Forest Service contractor's "intentional understatement of the helicopter's empty weight," which, in combination with other factors, "resulted in the pilots relying on performance calculations that significantly overestimated the helicopter's load-carrying capacity and did not provide an adequate performance margin for a successful takeoff." AR, Tab 24, NTSB Safety Recommendations Nos. A-10-159 through -168, at 1-2.

As part of the investigation, the NTSB determined that the Forest Service had failed to adequately scrutinize the information contained in the contractor's proposal. Id. at 3. The NTSB concluded that:

[T]he [Forest Service's] oversight of [the contractor] was inadequate, and effective oversight would likely have identified that [the contractor] was using improper weight and performance charts for contract bidding and actual load calculations and required that these contractual breaches be corrected.

⁶ Aero Air argues that the signed statement submitted by the Forest Service's Airworthiness Branch Chief in response to the protest regarding the basis for the certified weight and balance information requirement is a post-hoc rationalization that we should afford no weight to in our review because there is no mention of, or reference to, the NTSB safety recommendation or the agency's resulting implementation in the contemporaneous record. See Protester's Comments (May 21, 2015) at 17. We find no basis to disregard the Forest Service's credible explanation regarding its reliance on the NTSB safety recommendation and the agency's resulting implementation as justification for imposing the certified weight and balance requirement. Our Office generally considers post-protest explanations, such as the one presented here, where the explanations merely provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. See TaxSlayer LLC, B-411101, May 8, 2015, 2015, CPD ¶ 156 at 8; Vinculum Solutions, Inc.--Recon., B-408337.3, Dec. 3, 2013, 2013 CPD ¶ 274 at 3 n.2. We find the Airworthiness Branch Chief's explanation and the accompanying supporting documents are credible, and note that the protester has failed to present any evidence to call into question the credibility of the post-protest submission aside from the lack of contemporaneous documentation.

Id. at 4.

The NTSB, among other recommendations, recommended that the Forest Service:

Develop mission-specific operating standards for firefighter transport operations that include procedures for completing load calculations and verifying that actual aircraft performance matches predicted performance, require adherence to aircraft operating limitations, and detail the specific 14 *Code of Federal Regulations* Part 135 regulations that are to be complied with by its contractors.

Id. at 10 (emphasis in original).

In light of the NTSB's safety recommendation, the Forest Service began to require that solicitations for helicopters used in firefighting operations include a requirement that the proposed helicopter be weighed prior to proposal submission. AR, Tab 22, Statement of Airworthiness Branch Chief (May 8, 2015) ¶ 3. The agency subsequently decided to extend the requirement to airtanker procurements. Id. The Forest Service asserts that requiring aircraft to be weighed prior to proposal submission provides the agency with a definitive equipped weight and configuration to evaluate. Id. ¶ 5.

Aero Air argues that the certified weight and balance information requirement is unduly restrictive of competition because this information is only necessary at the time of performance, and the agency failed to identify any safety-related reason for requiring the information at the time of pre-award inspection. See Protester's Comments (May 21, 2015) at 16. The protester asserts that it is currently [DELETED] that was specifically developed for the NextGen 2.0 procurement, and the timing of the RFP's certification requirement effectively excludes Aero Air from the competition. See Supp. Protest (May 1, 2015) at 2. Aero Air further contends that the agency's concerns over any potential schedule delays in the NextGen 2.0 procurement are unreasonable because the agency can procure the same or similar airtanker services under the NextGen 1.0 contract or in connection with a pending solicitation for standby airtanker services. See Protester's Comments (May 21, 2015) at 18.

In response to the protester's arguments, the Forest Service first asserts that the certified weight and balance information is a reasonable requirement within the agency's broad discretion to ensure human life and safety. AR at 7. The agency argues that its actions in this procurement are consistent with the NTSB's findings and safety recommendations regarding the need to ensure the accuracy of offerors' weight and balance information and the agency's own experience with imposing such a requirement in connection with helicopter procurements. Id. The Forest Service asserts that requiring the submission of certified weight and balance

information as part of the pre-award inspection process will allow the agency to conduct its technical evaluation based on accurate and finalized numbers for the aircraft as configured for operations as an airtanker, rather than relying on estimates. Id. at 8.

The Forest Service also argues that the requirement is reasonably based on the agency's experience on the NextGen 1.0 procurement, where four of the five awardees failed to obtain the required certifications and compliances prior to the commencement of the first MAP. Id. at 8-9; RFP, amend. 03, at 13 (rejecting in questions and answers on the RFP requests to submit letters of intent, in lieu of proof of required certifications, because “[t]he Forest Service has experienced numerous delays in recent airtanker contracts that have negatively impacted having large airtankers available for the MAP periods specified”) (emphasis in original). The agency argues that requiring offerors to submit the necessary certifications for performance at the time of pre-award inspection is needed to ensure timely performance by the start of the MAP, which, but for the protests challenging the terms of the RFP, was anticipated to commence on or around May 30, 2015. AR at 8-9.

Based on the record, we conclude that the Forest Service has established a reasonable and legitimate need for certified weight and balance information at the time of pre-award inspection. In light of the critical need to ensure the safety of personnel conducting airtanker operations, we find that the agency's interest in evaluating a proposed aircraft's certified weight and balance at the time of pre-award inspection is reasonable to achieve the highest level of reliability and effectiveness. In this regard, we note that Aero Air does not challenge the agency's overall requirement for pre-award inspection of the aircraft. We also find reasonable the Forest Service's consideration of the delays that the majority of NextGen 1.0 contractors encountered in obtaining necessary certifications when assessing its needs for this procurement. For these reasons, we think the requirement for the certified weight and balance information at the time of the pre-award inspection is reasonable so as to allow the agency to evaluate the capabilities of the airtanker in the actual configuration that the airtanker will be used to perform the resulting contract.

Additionally, we agree that the Forest Service does not need to delay the procurement simply to accommodate Aero Air's choice of technical approach. Air USA, Inc., supra, at 5. As the agency argues, the protester's decision to [DELETED] appears to be the reason why it is unable to satisfy the requirement at the time of pre-award inspection.⁷ Again, we have recognized that the fact that a

⁷ In further support of its position that the provision is not unduly restrictive of competition, the agency also represents that [DELETED] aircraft proposed in
(continued...)

requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency's needs. Contract Servs., Inc., *supra*; Y&K Maint. Inc., *supra*.⁸

Finally, we find no basis to question the reasonableness of the Forest Service's determination not to delay the procurement to allow potential offerors to obtain the necessary weight and balance information based on Aero Air's argument that the agency could accommodate such a delay by obtaining the same or similar airtanker services under the NextGen 1.0 contract or under a recent solicitation for standby airtanker services. Procuring agencies are given broad discretion in determining how best to satisfy their needs, and we will therefore object to an agency's determination in this regard only if it is shown to be unreasonable. Cox & Assocs. CPAs, PC, B-287272.2, B-287272.3, June, 7, 2001, 2001 CPD ¶ 102 at 3. Aero Air has not demonstrated that the agency's decision to procure its airtanker service needs under this RFP is unreasonable merely because the agency could have selected alternative means to procure the requirement.

In sum, we find no basis to sustain Aero Air's challenge that the timing of the RFP's certified weight and balance information requirement is unduly restrictive of competition.

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

response to the RFP appear to satisfy the certified weight and balance requirement. COSF ¶ 14.

⁸ Aero Air argues that the Forest Service misled the protester into [DELETED]. The protester specifically argues that it "reasonably assumed that when it agreed to work with the Forest Service on one airtanker related task, the agency would not knowingly draw upon the timing/circumstances of that task to build a barrier to impede Aero Air from participation in a multi-year airtanker solicitation." See Protester's Comments (May 21, 2015) at 19-20. This line of argument, however, appears to allege a breach of the protester's NextGen 1.0 contract or, alternatively, an implied-in-fact contract between the protester and the agency regarding [DELETED]. Breach of contract claims are matters of contract administration, and therefore are outside the scope of our bid protest jurisdiction. See Ceradyne, Inc., B-402281, Feb. 17, 2010, 2010 CPD ¶ 70 at 2 n.2.