



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Bombardier, Inc., Canadair, Challenger Division
File: B-244328
Date: June 17, 1991

C. Joel Van Over, Esq., and Diane L. Donley, Esq., Swidler & Berlin, Chartered, for the protester.
Joel R. Feidelman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Gulfstream Aerospace Corporation, an interested party.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's intent to enter into sole-source contract is dismissed as premature where synopsis of procurement action in Commerce Business Daily invited proposals for purpose of determining whether to conduct competitive procurement, protester submitted a proposal, and agency has neither rejected protester's proposal nor determined to proceed with sole-source award.
2. Unsupported general assertion that agency's stated requirements are overly restrictive and ambiguous does not constitute a legally sufficient basis of protest.

DECISION

Bombardier, Inc., Canadair, Challenger Division (Canadair) protests the Department of the Navy's intent to conduct sole-source negotiations with Gulfstream Aerospace for the purchase of a medium lift operation support aircraft.

We dismiss the protest.

On May 20, 1991, the Navy published in the Commerce Business Daily (CBD) a notice of its intent to enter into sole-source negotiations with Gulfstream, purportedly the only known manufacturer of an aircraft meeting certain stated requirements. The CBD notice also stated that the Navy would consider proposals or statements of interest from other offerors for the purpose of determining whether to conduct a competitive procurement. On June 4, Canadair sent a letter to

the agency stating its intent to submit a proposal, and also filed this protest in our Office.

Canadair alleges that the intended sole-source procurement is improper because: (1) it is the result of inadequate agency planning; (2) it violates Federal Acquisition Regulation (FAR) requirements concerning acquisition of commercial products; (3) it does not meet the FAR requirements for sole-source acquisitions; and (4) the Navy failed properly to justify the sole-source acquisition as required by the FAR. Canadair also alleges that the specifications for the required aircraft are unduly restrictive, and that the Navy has failed to consider Canadair's submissions.

As a prerequisite to filing a protest against a sole-source procurement, we require the protester to submit a timely expression of interest in response to the CBD notice of the procurement; if the agency rejects the protester and proceeds with its sole-source approach, the protester then must file its protest within 10 days after it knows or should have known of the rejection. Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490. This rule gives the agency an opportunity to consider an offeror's preliminary proposal in order to decide whether to open a procurement to competition, while allowing only serious potential offerors to challenge the agency's sole-source decision. Id. Consequently, we think a protest of a sole-source procurement filed before the agency rejects the protester's proposal is premature.^{1/} We therefore dismiss Canadair's protest grounds related to the improper sole-source procurement. Similarly, we find premature Canadair's allegation that the Navy has failed to fully and fairly consider its submissions, since the Navy has not rejected Canadair's proposal and has not indicated that it will do so.

As to its protest of the specifications, we find that Canadair has failed to state a valid basis of protest. Our Bid Protest Regulations provide that a protest shall include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4) (1991), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). This requirement contemplates that protesters will provide, at a minimum,

^{1/} We have recognized that there may be cases where it is clear that an agency is so firmly committed to a sole-source procurement that it would be futile for a protester to first file an expression of interest with the agency; we have indicated that in such cases we will consider a protest filed within 10 days of the publication of the CBD notice. Keco Indus., Inc., B-238301, supra. We do not think this is such a case, as Canadair in fact submitted an expression of interest.

either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Professional Medical Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2.

Where a protester complains of unduly restrictive requirements in a solicitation, we require a showing that the particular specifications are not necessary to meet the agency's minimum needs. See IBI Sec. Serv., Inc., B-233726.2, Apr. 6, 1989, 89-1 CPD ¶ 359. Here, the CBD notice stated that listed requirements had been validated through the Navy's experience in Operation Desert Storm, and Canadair has not offered any reason why the Navy's determination as to each of those specifications is in error. The fact that the specifications may have been developed with reference to the Gulfstream aircraft does not by itself render the specifications unduly restrictive; the determinative consideration is whether the specifications reflect the agency's minimum needs. See Kenefick Photogrammetric Consultant, Inc., B-238384, May 4, 1990, 90-1 CPD ¶ 452. Canadair has not specifically challenged any of the Navy's six stated requirements; it has not indicated precisely why each exceeds the Navy's needs, how they will restrict competition, or how it believes the requirements should be modified to make them acceptable. We conclude that Canadair has not established the likelihood that the agency's determination of its minimum needs was improper; we therefore have no basis for considering the matter.

The protest is dismissed.



John M. Melody
Assistant General Counsel