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

Decision

Matter of: Bombardier, Inc., Canadair, Challenger Division

File: B-243977; B-244560

Date: August 30, 1991

Diane L. Donley, Esq., and C. Joel Van Over, Esq., Swidler & Berlin, for the protester.
Joel R. Feidelman, P.C., Esq., and Daniel I. Gordon, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Gulfstream Aerospace Corporation, and Paul Shnitzer, Esq., Crowell & Moring, for Falcon Jet Corporation, interested parties.
Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that various requirements listed in Commerce Business Daily notice and subsequent request for proposals for jet aircraft unduly restrict competition because they are allegedly "wr tten around" design features of a competitor's aircraft is denied where agency establishes that at least one requirement that the protester cannot meet, involving the ability to use a short runway for takeoff, is necessary to meet its mission needs.

2. Agency is not required to accept an aircraft that only partially meets its valid minimum requirements, even at a cost savings.

DECISION

Bombardier, Inc., Canadair, Challenger Division protests the Air Force's statement of its design and performance requirements for C-20 type aircraft, synopsized in a March 13, 1991, Commerce Business Daily (CBD) notice and later specified under Request for Proposals (RFP) No. F33657-91-R-0027. Bombardier protests, in essence, that the requirements outlined in the CBD synopsis were written in order to describe the characteristics of the Gulfstream IV aircraft and improperly limited competition to Gulfstream Aerospace Corporation.

We deny the protest.

The CBD notice announced the Air Force's intention to acquire two new intercontinental-range business jet aircraft, with an option for a third, and listed the agency's minimum configuration and performance requirements. The aircraft will be assigned to the 89th Military Air Wing (MAW) and will be used to provide worldwide air transportation for the Vice President of the United States, cabinet members, Members of Congress, and other high-ranking dignitaries of the United States and foreign governments. The Air Force states that the requirements at issue were established by the Military Airlift Command's system operational requirements document, which was based on the missions that the 89th MAW was currently accomplishing and the capabilities of C-20B aircraft that the MAW was currently operating.

The CBD "sources sought" notice advised interested sources to submit sufficient information to allow the agency to evaluate the offeror's capability to meet the minimum requirements as stated in the synopsis. It stated, further, that solicitations would only be issued to those prospective sources that had met the established requirements and could meet the agency's delivery schedule.

Bombardier protested to the Air Force that the requirements had been improperly developed, arguing that the firm's own Challenger aircraft could meet the Air Force's needs as well as the Gulfstream, with significantly lower acquisition and operating costs. The protester cited a number of specifications that it found unduly restrictive, and requested that the Air Force restate its needs in a manner designed to enhance, rather than restrict, competition. At the same time, Bombardier responded to the CBD notice with relevant technical information describing its Challenger 601/3A aircraft. The Air Force also received two other responses to the synopsis. The agency's Aeronautical Systems Division performed an engineering analysis of the three submissions, and after obtaining from Bombardier some additional technical information, concluded that the proposed Challenger aircraft could not satisfy the agency's requirements and that only Gulfstream offered an aircraft that could meet the requirements in the synopsis. The Air Force notified the protester of its conclusions and also denied Bombardier's agency-level protest, on the basis that each of the challenged requirements accurately reflected the agency's minimum need. After performing a market survey to identify any other aircraft capable of meeting the agency's needs, the Air Force concluded that the Gulfstream IV was the only known aircraft that could satisfy its minimum requirements. A justification authorizing the sole-source acquisition of these aircraft was prepared pursuant to 10 U.S.C. § 2304(c)(1), and is in the process of approval.

When this protest was filed, the Air Force was required by the Competition in Contracting Act of 1984 (CICA) to withhold any award pending the resolution of the protest. 31 U.S.C. § 3553(c) (1988). The Air Force has not made an award. However, in June the Air Force published another CBD notice, announcing its intent to issue the RFP for one new C-20 jet aircraft, with an option for two more, and its expectation that the contract would be awarded to Gulfstream on a sole-source basis. Bombardier filed an additional protest, on essentially the same grounds, against the second CBD notice. The Air Force has advised us that this is not a new procurement, but the continuation of the procurement process initiated by the original CBD notice.

Bombardier argues that although the CBD sources-sought notice purported to develop sources for the procurement of long-range intercontinental-business jet aircraft, the Air Force's real objective was to justify a sole-source procurement of Gulfstream IV airplanes. The protester complains that the requirements listed in the CBD notice are expressed in terms of design rather than functional requirements, and that they mirror the specifications of the Gulfstream IV. Bombardier expresses concern about various factors that may have influenced the agency in determining its requirements, such as a reference to the Gulfstream IV in the Conference Report to the Fiscal Year 1991 Defense Appropriations Bill (H.R. Conf. Rep. No. 938, 101st Cong., 2d Sess. 70 (1990)), the agency's alleged failure to make an independent determination of its needs, and its alleged failure to consider the economic advantages of more relaxed technical requirements that might enhance competition.

The threshold issue is whether the requirements listed in the CBD notice reasonably reflect the Air Force's actual minimum needs. CICA requires that agencies specify their needs and solicit offers in a manner designed to achieve full and open competition, 10 U.S.C. § 2305(a)(1)(A)(i) (1988), and use restrictive solicitation provisions only to the extent necessary. 10 U.S.C. § 2305(a)(1)(B)(ii). Thus, an agency must have a reasonable basis for including provisions that restrict the ability of offerors to compete for the agency's requirement. Engineered Fabrics Corp., B-239837; B-239839, Oct. 3, 1990, 90-2 CPD ¶ 268. At the same time, contracting agencies have broad discretion in identifying their needs and determining what characteristics will satisfy those needs. We therefore will not question an agency's determination of its needs so long as it has a reasonable basis. See Phillips Information Sys., Inc., B-208066, Dec. 6, 1982, 82-2 CPD ¶ 506. An agency's use of design specifications thus provides a basis for determining that a solicitation restricts competition only where those specifications exceed the

government's minimum needs. Id. Indeed, even specifications that are based upon a particular product are not necessarily improper in and of themselves; an assertion that a specification was "written around" design features of a particular product will not provide a valid basis for protest if the record establishes that the specification is reasonably related to the agency's minimum needs. Infection Control and Prevention Analysts, Inc., B-238964, July 3, 1990, 90-2 CPD ¶ 7.

The CBD notice included requirements that the aircraft be able to take off from short runways under specified conditions and be capable of flying 2,900 nautical miles without refueling. More specifically, it specified that the aircraft must be able to take off from a 5,000-foot level, paved, wet runway at sea level pressure altitude, international standard atmosphere (ISA) + 15 degrees Celsius, carrying a crew of 5 and 12 passengers (with a total weight allowance of 3,825 lbs.). The Air Force states that this requirement was based on its past flight experience and the capability of its current aircraft. The requirement is designed to measure the aircraft's ability to take off from relatively short runways, an ability that is affected by the weather conditions present at the time of takeoff and the weight of the load the aircraft is carrying. The agency included in its protest report "trip narratives" documenting recent flights and points out that in 1990, for example, the agency flew 22 missions from runways of 5,000 feet or less. The requirement that the aircraft be capable of flying 3 hours without refueling is based on a variety of factors such as remote area operations, the availability of alternate routes and airfields, weather, crew duty days, and dignitary schedules. The agency points out that 25 percent of the missions flown by its current C-20 aircraft were for distances at least as long as the minimum range required here, and argues that the requirement to complete this range without refueling is supported by the importance of the passengers to be flown and the time-sensitive nature of their schedules.

Bombardier has examined the flight records and concedes that its aircraft could not have flown 2 of the 17 recorded flights from short runways under the worst conditions that occurred on the day of the actual flights. However, it argues that it is unduly restrictive for the Air Force to impose restrictions regarding wetness and temperature and alleges that the requirements cannot, in fact, be justified as based on the agency's experience or current actual needs because no actual past mission precisely corresponded to the minimum requirements set forth in the CBD notice. The

protester contends that its Challenger aircraft could have flown all of the flights listed in the narratives if only one or the other of the hypothesized conditions (of wet runway or warm temperatures) were present.

In our view, the Air Force has demonstrated that its requirement has a reasonable basis. The flight logs show that it has, in fact, had to meet the requirements for runway length and flight range in the recent past, and that it is reasonable for it to anticipate that its needs will continue. While the protester argues that the combination of wetness and warm temperatures is a condition that is usually not long in duration and that it therefore would make more sense to simply delay flights until conditions change than to acquire an aircraft capable of accommodating those conditions, we do not find this argument persuasive. As the Air Force points out, it is not unusual for the passengers on these aircraft to be high-ranking dignitaries with pressing schedules and time constraints. In our view, it was reasonable for the Air Force to consider the aircraft's ability to avoid weather-related delays in this context. In addition, we find it only reasonable that the agency should consider the potential for adverse weather conditions, whether or not the precise combination of conditions occurred often in the past. It is not disputed that given the plane's intended use, the plane reasonably could have to fly under these adverse weather conditions.

We therefore conclude that the Air Force's requirements regarding runway length and flight range were reasonable, and that the agency properly could reject Bombardier as a potential source based on the Challenger's inability to meet these requirements. Accordingly, we need not consider the other challenged requirements or Bombardier's allegation that the technical information it submitted describing its Challenger aircraft was improperly evaluated since Bombardier concedes that it cannot meet the takeoff/runway length requirement.

Bombardier also protests that the Air Force performed no analysis to determine whether the Air Force's minimum needs were proposed in a manner that allowed them to be met in the most cost-effective way. However, this argument presumes that the Air Force should be required to draft specifications for (and ultimately accept) an aircraft that would only partially satisfy the agency's stated needs if it could save money by doing so. Since we have found that the agency had a reasonable basis for its stated minimum needs, the agency is

not required to accept anything less, even at a possibly lower cost. Embraer Aircraft Corp., B-240602; B-240602.2, Nov. 28, 1990, 90-2 CPD ¶ 438.

The protest is denied.1/

Ronald Berger
for James F. Hinchman
General Counsel

1/ By this decision, we dismiss the protest against the June 7 CBD notice, since our decision here involves the same issues and resolves the propriety of the agency's conduct.