Decision

Matter of: Pilot Xpress, LLC

File: B-417292

Date: May 14, 2019

Bryan R. King, Esq., and Andres M. Vera, Esq., Offit Kurman Attorneys-at-Law, for the protester.
Amy A. Cook, Esq., and Angie Calloway, Esq., General Services Administration, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency’s solicitation of certain elements of the required services using commercial item procedures is denied where record shows protester was not prejudiced by agency’s actions.

DECISION

Pilot Xpress, LLC (PX), of Dallas, Texas, protests the terms of request for proposals (RFP) No. ID07180066, issued by the General Services Administration (GSA), on behalf of the Department of the Air Force, for aircrew flight and maintenance training for helicopters. PX argues that the agency improperly is soliciting certain services on a commercial item basis, despite the fact that such services are not sold commercially.

We deny the protest.

The RFP contemplates the award principally of a fixed-price contract to provide aircrew flight and maintenance training for a base year and four 1-year option periods on a best-value tradeoff basis using price and non-price evaluation considerations. The RFP identifies both part 15 of the Federal Acquisition Regulation (FAR) (contracting by negotiation) and FAR part 12 (acquisition of commercial items/services) procedures as applicable to the acquisition. RFP (part 1) at 7, 60; RFP (part 2) at 35. The RFP (continued...)
requires firms to offer both classroom coursework, and hands-on training using both flight simulators (or static aircraft where flight simulators are unavailable) and aircraft performing flight operations. RFP (part 1) at 9-27.

The focus of PX’s protest relates to the solicitation’s requirements for live-fire training, under which firms must provide both classroom coursework and training aboard aircraft equipped with mounted machine guns to be used in live-fire exercises performed by the trainees. RFP (part 1) at 16-24. According to the protester, live-fire training services are not available on a commercial basis. Consequently, PX argues that the RFP improperly contemplates the use of commercial services procedures, as outlined in FAR part 12.²

We deny the protest because we conclude that PX has not been prejudiced by the terms of the solicitation. Where, as here, the record shows that there is no reasonable possibility that the protester will be prejudiced by the agency’s use of commercial item procedures or contract provisions, our Office will not decide the issue of whether the solicited services properly are designated as a commercial item, or whether the solicitation properly was issued using commercial item procedures. Johnson Controls World Services, Inc., B-285144, July 6, 2000, 2000 CPD ¶ 108 at 4; see also Global Solutions Network, Inc., B-298682, Nov. 27, 2006, 2006 CPD ¶ 179 at 3 (protest denied where protester fails to demonstrate that any of the provisions or procedures unique to commercial item procurements put it at a competitive disadvantage, and also fails to demonstrate that use of commercial item procedures otherwise prejudiced the protester’s competitive position).

Here, the record shows that the sole reason the agency issued the subject solicitation is that, although there are other contracts available for obtaining aircrew flight and maintenance training in general, there is no existing contract vehicle available for acquiring aircrew flight and maintenance training that includes the live-fire element being acquired here. Specifically, the agency’s acquisition plan provides as follows:

The customer is the AETC [Air Force Training and Education Command] which is an organization in direct support of training pilots, loadmasters, and flight engineers for the service members who fly in theater. AETC

(...continued)

Report (AR), exh. 8, RFP Documents, sub-exh. 8b, 8d. Several other sub-exhibits included appendices and attachments to the RFP. AR, exh. 8, RFP Materials.

² In responding to the protest, and in support of its position that the services at issue are available on a commercial basis, the agency identified four businesses that offer live-fire activities: Gunship Helicopters (https://gunshiphelicopters.com); Machine Guns Vegas (https://machinegunsvegas.com); Helibacon (https://www.helibacon.com); and Bullets and Burgers (https://bulletsandburgers.com).
was previously receiving training support from an air force multiple aircraft contract. However, the contracting officer informed them this requirement was out of scope due to the live-fire training. As a result, AETC contacted GSA to request assisted services in this acquisition.

AR, exh. 7, Acquisition Plan, at 3. The record therefore establishes that the live-fire element of the current requirement is central to the agency’s reason for issuing the solicitation.

The record also establishes that PX has the capability to offer the live-fire element of the requirement, AR, exh. 6, Pilot Express Capabilities Statement, and that, in fact, it submitted a proposal in response to the solicitation that includes the live-fire element of the requirement. AR, exh. 12, Pilot Express Proposal.

PX has not challenged the agency’s need for the live-fire element as a part of its requirement, but argues only that it should not be solicited as a commercial item. However, PX has not argued or shown that any aspect of the provisions or procedures unique to commercial item procurements put it at a competitive disadvantage, or that it otherwise is prejudiced by the agency’s use of commercial item procedures. PX’s sole basis for claiming that it has been prejudiced by the agency’s identification of the live-fire element of the requirement as a commercial item is its assertion that it will be required to use a subcontractor to provide these services as part of its proposal team.

In the final analysis, even if we agreed with PX that the agency inappropriately has solicited the live-fire element of the requirement as a commercial service, our recommendation would be to simply continue with the acquisition using only FAR part 15 negotiated contracting procedures. In light of the central nature of the live-fire element, we would not, for example, recommend that the agency eliminate the live-fire element from the solicitation.\(^3\) It follows that, since PX is able to compete under the current RFP, and has not alleged or demonstrated that any aspect of FAR part 12’s provisions or procedures unique to commercial item procurements put it at a competitive disadvantage, there is no basis for our Office to sustain its protest, even if we were to agree with PX about the merits of its position.

The protest is denied.

Thomas H. Armstrong
General Counsel

\(^3\) In its protest, PX requests, alternatively, that we recommend either that the agency amend the RFP to remove the live-fire element of the requirement, or that it revise the RFP and solicit the requirement under FAR part 15.