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Decision

Matter of: Chromalloy San Diego Corporation

File: B-416990.2

Date: June 3, 2019

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DIGEST

In solicitation for depot-level overhaul of turbine generators used to power certain Navy ships, agency reasonably required offerors to have access to the original equipment manufacturer's (OEM) technical data and to OEM tooling.

DECISION

Chromalloy San Diego Corporation, of San Diego, California, protests the provisions of request for proposals (RFP) No. N64498-18-R-4023, issued by the Department of the Navy, to perform depot-level overhaul of LM2500 turbine gas generators.¹ Specifically, Chromalloy challenges, as overly restrictive, the solicitation's requirements that an offeror have access to the original equipment manufacturer's (OEM) technical data and OEM tooling.

We deny the protest.

BACKGROUND

The record establishes that the LM2500 generator was developed as a commercial item by the General Electric Company (GE) approximately 40 years ago, and that the

¹ The LM2500 generators power the Navy's CG-47 Class surface ships and are also referred to as marine turbine gas engines. Agency Report (AR), Contracting Officer's Statement/Memorandum of Law, Mar. 27, 2019, at 1-2.

development and manufacture of those generators was funded entirely by GE.² Hearing Transcript (Tr.) at 9-11.³ Since then, the engines have been purchased by various customers, including the U.S. Navy.⁴ In connection with its development and manufacture of the LM2500, GE created a manual containing the technical data necessary for overhauling the LM2500, which it updates periodically. GE considers the information in the manual, and the manual updates, to be proprietary and marks the documents as such. Specifically, the cover of the manual states:

The information contained in this document is GE proprietary information and is disclosed in confidence. It is the property of GE and shall not be used, disclosed to others, or reproduced without the express written consent of GE, including, but without limitation, it is not to be used in the creation, manufacture, development, or derivation of any repairs, modifications, spare parts, designs, or configuration changes

All technical documentation and information contained herein have been developed and approved for use with GE engines and parts that have been operated and maintained in accordance with GE technical documentation and recommendations. GE has no . . . obligation for non-GE approved parts and repairs. . . .

This document contains trade secrets and confidential commercial or financial information. . . .

Agency's Post-Hearing Comments, Apr. 30, 2019, encl. 1 at 1.

In this context, GE divides the maintenance, repair, and overhaul of the LM2500 into various categories or "levels." Level I refers to routine maintenance performed aboard ship by Navy personnel; levels II and III refer to more complicated repairs; and level IV refers to complete overhaul--that is, "disassembly, repair of components . . . rebuild and test." Tr. at 13. Level IV repairs that are performed by a commercial entity must be performed at a depot that holds a GE level IV license. There are currently 6 depots worldwide that hold GE level IV licenses; Chromalloy is not a level IV licensee.

² The LM2500 is a derivative of GE's CF-6 family of aircraft engines.

³ In resolving this protest, GAO conducted a hearing, on the record, at which the Navy provided testimony from three witnesses: the contracting officer; a Navy engineer; and a GE product development manager. Chromalloy was given an opportunity to cross-examine the Navy witnesses, and Chromalloy did not offer any witnesses of its own.

⁴ The LM2500 has also been purchased for use in the oil and gas industry; by commercial marine users; and by foreign navies. Tr. at 9-11, 137-38. Although the Navy is the largest single customer, the Navy's purchases of the LM2500 have constituted no more than half of the total engines manufactured. Id. at 137.

On August 28, 2018, the agency issued RFP No. N64498-18-R-4023, seeking proposals for the “commercial depot-level overhaul” of a quantity of LM2500 generators. AR, encl. 1, RFP at 3. The solicitation contemplates multiple awards of indefinite-delivery, indefinite-quantity (IDIQ) contracts, under which subsequent task orders will be issued during a five-year ordering period, and provides that awards will be made to all offerors that are found to be technically acceptable. As initially issued, the solicitation provided that, to be technically acceptable, an offeror must hold a GE level IV license. Id. at 100. Chromalloy filed a protest challenging that requirement, asserting that it should be considered capable of performing the overhaul requirements even though it does not hold a level IV license.⁵ In an effort to enhance competition, the agency responded to the protest by stating that it would further consider its solicitation requirements; accordingly, we dismissed the protest.

Thereafter, the agency amended the RFP several times. As ultimately amended, the solicitation provides that, to be technically acceptable, an offeror must either hold a GE level IV license or “have access to all relevant LM2500 OEM service manuals, updates to those manuals, and service bulletins concerning the LM2500 engine, periodically issued by the OEM.”⁶ AR, encl. 7, RFP amend. 6, at 6. The amended RFP also provided that an offeror must “demonstrate it owns or has access to all OEM-produced special tools required to completely disassemble, overhaul, and reassemble the LM2500 engine,” and lists 23 such tools identified by OEM tool number. Id. Prior to the final closing date following the RFP amendments, Chromalloy filed this protest.

DISCUSSION

Chromalloy challenges the solicitation requirements regarding (1) access to the OEM’s technical data and (2) access to OEM tooling, characterizing these requirements as “overly restrictive and unreasonable,” and as “overstat[ing] the Navy’s actual requirements.” Protest at 4.

Technical Data Requirements

Chromalloy first challenges the requirement that an offeror “have access to all relevant LM2500 OEM service manuals, updates to those manuals, and service bulletins.” See RFP amend. 6, at 6. Although Chromalloy generally characterizes this requirement as “overly restrictive,” it does not meaningfully argue that the information in GE’s manuals

⁵ Chromalloy holds GE licenses to repair a limited number of LM2500 components, but it has never sought a GE level IV license to perform a complete overhaul of the engines. Tr. at 79-83.

⁶ GE authorizes distribution of the information in its LM2500 manuals and updates to level IV licensees.

is not required to perform the solicitation requirements.⁷ Rather, Chromalloy primarily asserts that the Navy has acquired “unlimited rights” to GE’s technical data and, based on that assertion, Chromalloy maintains that the solicitation should state that the Navy will provide GE’s technical data, along with GE’s future updates, to offerors that do not hold level IV licenses. Chromalloy Comments on AR, Apr. 8, 2019, at 3-5. In this context, Chromalloy asserts that, pursuant to a recent contract, the Navy provided GE’s technical data to Chromalloy, and Chromalloy maintains that the Navy should continue to do so.

The agency first responds that the OEM technical data is critical to successful contract performance. More specifically, the agency notes that: the CG-47 Class ships are used for ballistic missile defense; the LM2500 powering these ships is a complex engine that must be overhauled to exacting standards;⁸ the prescribed procedures are periodically updated by GE to reflect “lessons learned and changes in technology”; and failure to properly overhaul the engines could result in catastrophic consequences for both the ship and shipboard personnel. AR, Contracting Officer’s Statement/ Memorandum of Law, Mar. 27, 2019, at 4-6; Tr. at 154-55, 161. Accordingly, the agency maintains that an awardee’s access to GE’s technical data reflects the agency’s minimum needs.

With regard to Chromalloy’s assertion that the Navy is authorized to provide GE’s technical data to Chromalloy, the Navy disagrees. More specifically, the agency notes that: the LM2500 was developed and manufactured at GE expense; GE provides its technical data to the Navy voluntarily to support the Navy’s government-owned depot; the Navy has never acquired unlimited data rights to GE’s manufacturing or process data; GE has consistently marked its manual containing the data necessary for overhauling the LM2500 as proprietary and subject to the Trades Secrets Act--violation of which would constitute a criminal act;⁹ and GE has not authorized release of such data to non-level IV licensees. Id.; Agency Post-Hearing Comments, Apr. 30, 2019,

⁷ See Chromalloy Comments, Apr. 8, 2019, at 2. (“[T]he Navy correctly describes the information at issue as needed for ‘service,’ i.e. repair.”)

⁸ At the GAO hearing, counsel for Chromalloy acknowledged that “[the LM2500 is] a complicated engine.” Tr. at 80-81.

⁹ The Trade Secrets Act, 18 U.S.C. § 1905, states:

[A]n officer or employee of the United States or any department or agency thereof . . . [who] publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties . . . which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus . . . of any person, firm, partnership, corporation, or association . . . shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

at 2-6; Tr. at 156-58. Finally, the Navy states that it inadvertently provided GE's technical data to Chromalloy under a recent contract, but has since notified Chromalloy of the error and advised Chromalloy to destroy the data. See Agency Post-Hearing Comments, Apr. 30, 2019, encl. 4. The Navy further notes that its prior mistake regarding release of GE data does not provide a basis for failing to comply with the Trade Secrets Act in the future.

In preparing a solicitation, a contracting agency must generally solicit offers in a manner designed to achieve maximum competition and may include restrictive provisions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1)(A). Nonetheless, a contracting agency has the discretion to determine its needs and the best method to accommodate them. AdaRose, Inc., B-299091.3, Mar. 28, 2008, 2008 CPD ¶ 62 at 3. 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. Remote Diagnostic Techs., LLC, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 3-4. GAO will examine the adequacy of the agency's justification 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. 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. Womack Mach. Supply Co., B-407990, May 3, 2013, 2013 CPD ¶ 117 at 3.

Based on our review of the record, including the testimony provided during the GAO hearing, we reject Chromalloy's assertion that the solicitation requirement that an offeror demonstrate its own access to the LM2500 manuals and updates overstates the agency's requirements. The record provides ample support for the proposition that the OEM information is necessary for successful contract performance; indeed, Chromalloy effectively concedes this fact. See Chromalloy Comments on AR, Apr. 8, 2019, at 2; Chromalloy Post-Hearing Comments, Apr. 30, 2019 at 2. Further, we reject Chromalloy's assertion that the Navy must provide this data to Chromalloy. As discussed above, the record is consistent with the Navy's assertions that the information was developed by GE at its own expense, and that GE has consistently identified the information as proprietary. Finally, other than referring to the Navy's apparent prior release of GE technical data, Chromalloy has presented no support for its assertion that the Navy has acquired unlimited rights to that data. On this record, the agency has reasonably supported its assertion that release of the information to Chromalloy would raise serious concerns regarding violation of the Trade Secrets Act, and the agency's prior release of such information does not render the current solicitation provision improper. Chromalloy's protest challenging the data access requirements of the solicitation is denied.

Tooling Requirements

Next, Chromalloy challenges the solicitation requirement that an offeror have access to certain OEM tooling, asserting that Chromalloy's own tooling should be considered adequate. Protest at 5-6. In this regard, Chromalloy asserts, generally, that it has previously performed repairs on the LM2500 using its own "equivalent" tooling, and maintains that the Navy's "failure to conduct an equivalency analysis" of such tooling is "arbitrary and capricious." Id.; Chromalloy Post-Hearing Comments, Apr. 30, 2019, at 7.

The agency responds that the OEM tools required by the solicitation are designed and built to the OEM's specifications and standards, and are based on proprietary GE drawings. Specifically, the Navy's lead engineer for the LM2500 testified that the required OEM tools are necessary to determine that the overhauled engine meets certain tolerances and performance requirements,¹⁰ and that the designated tools are critical to ensuring that the engines are not damaged and personnel are not injured during the overhaul, testing, and operation of the engines. Tr. at 158-63. Finally, the Navy states that it is unable to make a valid determination as to whether Chromalloy's allegedly "equivalent" tools will perform as required.¹¹ AR, Contracting Officer's Statement/ Memorandum of Law, Mar. 27, 2019, at 5-7.

As noted above, GAO will examine the adequacy of a procuring agency's justification for allegedly restrictive requirements to ensure that the justification is rational and can withstand logical scrutiny. AAR Airlift Grp., Inc., supra. 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. Womack Mach. Supply Co., supra.

Based on our review of the record, including the testimony provided during the GAO hearing, we reject Chromalloy's assertion that the requirement for an offeror to demonstrate access to a limited number of OEM tools overstates the agency's minimum needs. In this regard, the record establishes that the requirements at issue relate to national defense and human safety and reasonably supports the agency's determinations regarding the necessity of the tools to successfully perform the contract requirements. Chromalloy's general assertion that its tools are "equivalent" fails to meaningfully refute the agency's representations in this regard.

¹⁰ For example, the Navy's lead engineer discussed a specific exhaust nozzle that must be precisely calibrated by the OEM to ensure proper performance during the testing phase of the overhaul. Tr. at 161-63.

¹¹ Following the hearing, the Navy specifically referred to the exhaust nozzle, discussed above, as an example of a tool about which it is unable to make a reasonable equivalency determination. Agency's Post-Hearing Comments, Apr. 30, 2019, at 6-7.

Accordingly, we reject Chromalloy's assertion that the solicitation's tooling requirements are overly restrictive, unreasonable, and/or overstate the agency's minimum needs.

The protest is denied.

Thomas H. Armstrong
General Counsel