



Decision

Matter of: United Aeronautical Corporation

File: B-417560

Date: August 7, 2019

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DIGEST

Protest alleging that the solicitation does not provide adequate information to allow offerors to prepare a responsive proposal is denied where the solicitation provides adequate information for offerors to compete intelligently and on an equal basis.

DECISION

United Aeronautical Corporation (UAC), a small business of North Hollywood, California, challenges the terms of request for proposals (RFP) No. FA8504-19-R-0006, issued by the Department of the Air Force, for the demilitarization and retrofitting of seven HC-130H aircraft with aerial retardant delivery systems (RDS). The protester contends that the solicitation lacks critical information and does not afford offerors the opportunity to prepare intelligent and responsive proposals and compete on an equal basis.

We deny the protest.

BACKGROUND

The National Defense Authorization Act (NDAA) for Fiscal Year 2014, as amended by the John S. McCain NDAA for Fiscal Year 2019, authorizes the Air Force to demilitarize and retrofit seven HC-130H aircraft with RDS systems for transfer from the U.S. Coast

Guard to the State of California for firefighting operations.¹ The RDS system will be integrated into the HC-130H aircraft to drop fire retardant in a continuous and consistent pattern at the selected coverage level. Memorandum of Law (MOL) at 2. The HC-130H aircraft operated by the Coast Guard is a multi-role aircraft that can perform missions such as search and rescue, cargo and passenger transportation, and oil-pollution control, and is a variant of the C-130 cargo aircraft. MOL at 1 n.1. Although operated by the Coast Guard, since October 2011, the Air Force has performed routine maintenance on the HC-130 aircraft at the Air Logistics Complex at Robins Air Force Base, Georgia. Agency Report (AR), Tab 29, Decl. of Source Selection Evaluation Board Chair, at 1. In addition, as relevant to this protest, for over a decade, the government has used the modular airborne fire-fighting system (MAFFS) to deliver fire retardant out of the left paratroop door of a C-130 aircraft. AR, Tab 30, Decl. of C-130 System Engineer, at 1. The original equipment manufacturer (OEM) for the C-130 has collected flight data recorded during C-130 missions, which have employed the MAFFS delivery system. Contracting Officer's Statement (COS) at 9.

The agency conducted two prior procurements to fulfill this requirement, however, neither resulted in the performance of a contract. COS at 3. On March 29, 2019, the Air Force issued the current solicitation, which anticipates the award of a hybrid fixed-price and cost-reimbursement contract with a combined period of performance of 27 months for one trial kit/install, one verification kit/install, and five production kits/installs. AR, Tab 4, RFP, at 64-65; Tab 17, Statement of Work (SOW), at 9-10.

The RFP advises offerors that proposals will be evaluated on the basis of the following three factors: (1) technical, (2) small business participation, and (3) cost/price. RFP at 69-70. The technical factor has three subfactors, all of which are of equal importance: (1) integrated master schedule, (2) critical design factors, and (3) installation facilities. Id. The small business participation factor will be evaluated on an acceptable/unacceptable basis. Id. at 70. The RFP states that the technical factor will be significantly more important than the cost/price factor in the source selection, and that "[a]ward will be made to the responsible offeror whose proposal conforms to all required terms and conditions, includes all required representations and certifications, meets all requirements set forth in the RFP, has acceptable Small Business Participation, and also provides the best value to the Government based on the results of the evaluation." Id. at 69-70.

The RFP includes contract line item number (CLIN) 0009, which will be paid on a cost-plus-fixed-fee basis, and requires that the offeror subcontract with the OEM of the C-130 aircraft for support after contract award. RFP at 29-30. Pursuant to this subcontract with the OEM, the OEM will provide data, analysis, and validation work to ensure that the aircraft will be in airworthy condition at final delivery. SOW at 7.

¹ NDAA for Fiscal Year 2014, Pub. L. No. 113-66, § 1098, 127 Stat. 672, 881 (2013); John S. McCain NDAA for Fiscal Year 2019, Pub. L. No. 115-232, § 1083, 132 Stat. 1636, 1989 (2018).

Specifically, the OEM will be required to support the engineering certification requirement of the SOW, and provide validation for the following analyses: structural analysis; stress analysis; durability and damage tolerance analysis; drag analysis; aerodynamic and vibration analysis; and free surface, and stability and control analysis. Id. at 27-30. With respect to the data, the SOW further states:

The mission profiles and spectrum used for these analyses shall be determined by the OEM from the [United States Air Force] C-130J [MAFFS] usage recorded by the structural health monitoring system (stored in the C-130 Aircraft Inspection, Repair, Corrosion, and Aircraft Tracking System (AIRCAT) system). The derived mission profiles with MAFFS derived environmental criteria, maneuver criteria, etc. shall be applied to the appropriate loads model^[2] for the configuration of HC-130H being modified under this effort.

Id. at 16-17. The RFP required offerors to propose “add-on factor rates for CLIN 0009 ([general and administrative] rate, [cost of money] rate, and [fixed-fee] rate)” which will be “applied to the [OEM] Support proposal and shall be incorporated and obligated after contract award.” RFP at 30, 65.

Questions from industry regarding the solicitation and the agency’s responses were posted to the Federal Business Opportunities website on April 8, 15, 18, 29, and May 9. AR, Tabs 20, 21, 24, 25, and 26, Questions and Answers 1-5. In addition, on April 29, the due date for initial proposal submission was extended to May 13. COS at 4. On May 10, UAC filed this protest.

DISCUSSION

UAC argues that it cannot reasonably prepare an intelligent and responsive proposal without the MAFFS performance data from the C-130 OEM, and that the absence of this data in the solicitation makes the agency’s statement of its needs impermissibly vague and ambiguous. Protest at 7. Specifically, UAC argues that the failure to provide the MAFFS performance data until after award “will create disparate non-responsive bids based on estimating the costs of using the required unreliable data.”³ Id. Further, the protester argues that it cannot provide rates for CLIN 0009, relating to OEM support. Id.

² The agency explains that loads (stresses) on the aircraft predominantly depend on altitude, aircraft gross weight, fuel weight, airspeeds, maneuvers, and environmental effects such as turbulence. COS at 10.

³ UAC’s protest also alleged that MAFFS and RDS systems are not analogous, and that the Air Force should not use the “unreliable” MAFFS data and should instead conduct an independent study to develop performance data for use of the RDS system on the C-130 aircraft. Protest at 4-7. The protester additionally argued that the RFP requirement for a Defense Security Service cleared facility at the offeror’s installation facility is unnecessary and unduly restrictive of competition, and the RFP requirement that the

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The agency explains, as noted, that the MAFFS data “consists of raw flight data recorded during real-world C-130 missions that have employed the MAFFS delivery system,” however, the data is in a format that is proprietary to the OEM and the limited access that the agency has to the data cannot be provided to offerors in a usable format. COS at 9. The agency argues that none of the evaluation factors set forth in the RFP require the use of MAFFS data to prepare a proposal, and there is no requirement that offerors develop airworthiness criteria to compete for award. MOL at 17-18. The agency further argues that the MAFFS data will primarily be used by the OEM during contract performance to perform analysis/certification on the integration of the RDS system into the aircraft, and since OEM support work will be paid for under CLIN 0009 on a cost-plus-fixed-fee basis, offerors do not need the MAFFS data to propose their add-on factor rates. Id. at 18-20.

The protester argues that the RDS design work and aircraft integration are interrelated requirements as set forth in the SOW, and integration into the aircraft is a critical consideration that will impact the design of the RDS system. Comments at 1-2. The protester further argues that the agency’s failure to provide even minimal information unduly restricts competition because it discourages potential qualified manufacturers from participating in the procurement, and may also provide an advantage to competitors that are more familiar with the Air Force’s needs. Id. at 3.

As a general rule, contracting agencies must give offerors sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. SEK Solutions, LLC, B-406939.2, Feb. 27, 2014, 2014 CPD ¶ 87 at 5. A solicitation’s evaluation factors and subfactors must be tailored to the acquisition in question. Federal Acquisition Regulation § 15.304(a). However, there is no legal requirement that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror.

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offeror’s facility be approved by the Defense Contract Management Agency (DCMA) is sufficient to meet the agency’s needs. Id. at 7-8. The agency explained that MAFFS and RDS are sufficiently analogous with regard to aircraft operation and performance and that any differences between the two systems are insignificant for purposes of RDS design and development work. MOL at 10-16. The agency also explained that a facility clearance was required because the contractor would take possession of the aircraft prior to demilitarization, and would be required to remove communications systems that contained classified information. Id. at 20-21. The agency argued that the requirement was not unduly restrictive because the Air Force would sponsor the contractor for the facility clearance and reimburse the costs of obtaining it. Id. at 22-23. Since UAC did not respond to or rebut the agency’s response in its comments, UAC’s failure to comment on the agency’s response renders these arguments abandoned and we will not consider them further. 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10.

Sunbelt Properties, Inc., B-249469 et al., Nov. 17, 1992, 92-2 CPD ¶ 353 at 4. The determination of a contracting agency's needs and the best method of accommodating them are matters primarily within the agency's discretion. Trailboss Enterprises, Inc., B-415812.2, et al., May 7, 2018, 2018 CPD ¶ 171 at 4. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not establish that the agency's judgment is unreasonable. Chenega Fed. Sys., LLC, B-414478, June 26, 2017, 2017 CPD ¶ 196 at 3.

Here, we conclude that the RFP provides adequate information for offerors to compete intelligently and on equal terms. Although aircraft integration is encompassed within the SOW, and the successful offeror will be required to work with the OEM to integrate the RDS system into the aircraft, the RFP does not require that offerors provide a detailed approach to aircraft integration in their proposals, and aircraft integration is not an evaluation factor. As noted, the RFP contains the following three technical subfactors: (1) integrated master schedule, (2) critical design factors, and (3) installation facilities. RFP at 69-70.

As relevant to the protest allegations, the critical design factors subfactor requires that the offeror describe the tank design and aircraft integration, drop controller, and RDS system performance.⁴ Id. at 66. With respect to the tank design and aircraft integration requirement, the offeror is to provide a narrative approach demonstrating how it will satisfy certain specifications set forth in the solicitation and SOW, including: (1) the retardant dispersal payload; (2) the longitudinal, vertical and lateral factors for fixed and removable miscellaneous equipment; and (3) the door design and control. Id.; see also SOW at 14-16. For example, with respect to the retardant dispersal payload, the SOW specifies that the capacity of the RDS must remain within OEM-approved weight limitations for the aircraft, and requires a minimum 4,000 gallon tank for the RDS system with a maximum total system weight of 41,000 pounds. SOW at 14 (§ 6.2.f). The RFP states that proposals will be evaluated to determine whether the offeror demonstrates that its manufacturing and engineering approach meets the specified RDS design requirements. RFP at 71.

Further, the agency provides a reasonable explanation to demonstrate that the MAFFS data will be used in contract performance for future stages of RDS design work, but is not necessary for offerors to prepare their proposals. In pertinent part, the agency explains as follows:

[T]he [MAFFS] data is not required during the solicitation phase since the contractor's proposal is being evaluated on the design of their proposed system independent of the integration of the system into the aircraft. The

⁴ The integrated master schedule subfactor requires offerors to provide a schedule identifying all elements associated with the manufacturing and production of the HC-130H RDS. RFP at 65. The installation facilities subfactor requires the offeror to provide an approach for having access to a DCMA-approved facility. Id. at 66.

[MAFFS] data is predominantly required for use by [the OEM] for the [OEM] directed tasks. Once on contract, [the OEM] will provide the necessary integration data (stresses/loads) of the structure that is to be modified. These stresses/loads will be accounted for during the detailed design development and analysis that is accomplished post award and is evaluated through preliminary and critical design reviews. The government has no way of providing any integration data during the solicitation phase as the data that would be[] dependent on the contractor's proposed design, of which, the government has no knowledge pre-solicitation. In summary, the data cannot be provided by the government, isn't needed during the solicitation phase, and will be provided under sub-contract by the OEM as part of the normal final design efforts that are typical post award.

AR, Tab 30, Decl. of C-130 System Engineer, at 3; see also id. at 5 (“Once the contractor sub-contracts with [the OEM], the contractor will have the opportunity through Preliminary Design Review (PDR) and Critical Design Review (CDR) to finalize their designs utilizing the [OEM-]provided data.”); SOW at 44. UAC has failed to demonstrate or adequately explain why it requires MAFFS data to propose an RDS system with a tank design that is compliant with the sections of the SOW identified for evaluation under the RFP.

In addition, we find no basis for the protester's assertions that the failure to provide the MAFFS data makes the RFP unduly restrictive of competition and prevents the protester from proposing add-on factor rates for CLIN 0009. As the agency explains, the MAFFS data is in a format that is proprietary to the OEM and the limited access that the agency has to the data cannot be provided to offerors in a usable format. COS at 9. Therefore, all offerors will be required to subcontract with the OEM, and CLIN 0009 OEM support work will be paid on a cost-reimbursement basis. Accordingly, in this regard, the RFP places all offerors on equal footing.

Finally, the protester argues that “the lack of critical information may give advantage to those. . . which have much more familiarity with the Air Force specific needs in their long history with this procurement.” Comments at 3; see also Protest at 7. However, the protester has failed to allege that any such advantage is unfair. In this regard, the government has no obligation to equalize a legitimate competitive advantage that a firm may enjoy by virtue of its incumbency, its own particular business circumstances or because it gained experience under a prior government contract unless the advantage results from a preference or unfair action by the contracting agency. Foley Co., B-253408, Sept. 14, 1993, 93-2 CPD ¶ 165 at 3. Even if a prior contact with the Air

Force was helpful to another offeror, we have no basis to conclude that its prior participation resulted from a preference or unfair action by the government.

The protest is denied.⁵

Thomas H. Armstrong
General Counsel

⁵ UAC also raises other collateral arguments regarding its challenges to the terms of the solicitation. Although we do not address every issue, we have considered them all and find no basis to sustain the protest.