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Decision

Matter of: Construction Helicopters, Inc., d/b/a CHI Aviation

File: B-420982.5

Date: May 5, 2023

Lee Dougherty, Esq., Effectus, PLLC, for the protester.
Tyler Ellis, Esq., Department of Agriculture, for the agency.
Kasia Dourney, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation terms as defective and unreasonably restrictive of competition is denied where the protester has not demonstrated that meeting the solicitation requirements is impossible or that the agency's judgments are otherwise unreasonable.

DECISION

Construction Helicopters, Inc., doing business as CHI Aviation (CHI), a small business of Howell, Michigan, challenges the terms of request for proposals (RFP) No. 1202SA22R9201, issued by the Department of Agriculture, Forest Service, for helicopter support services for wildland fire management. The protester contends that the terms of the RFP are defective because no offeror proposing helicopters configured from surplus military aircraft can meet the solicitation requirements. CHI also argues that the solicitation violates Federal Aviation Administration (FAA) regulations, and treats offerors proposing surplus military aircraft unequally.

We deny the protest.

BACKGROUND

The agency issued the RFP on July 28, 2022, under the provisions of Federal Acquisition Regulation (FAR) parts 12 and 15, seeking contractor-operated and maintained helicopter support services for wildland fire management for type 1

helicopters.¹ Agency Report (AR), Tab 30, RFP at 3, 261. The helicopter support services include the transport of firefighters, aerial delivery of water in support of fire suppression, helicopter operations for fire control, coordination, and project work. Contracting Officer's Statement (COS) at 1. The solicitation anticipates award of multiple fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contracts, with an ordering period of a 1-year base and nine 1-year options. RFP at 9.

The RFP provides for IDIQ awards to be made to all responsible offerors whose proposals "conform to all solicitation requirements, meet the [t]echnically [a]cceptable standard for the non-price factors," and whose prices are deemed fair and reasonable. RFP at 264. For purposes of award, the Forest Service is to evaluate the following six factors: (1) mandatory documentation; (2) minimum aircraft payload (acceptability threshold for type of helicopter offered); (3) safety management system; (4) past performance; (5) organizational experience; and (6) price. *Id.* at 261.

As relevant here, the RFP includes special requirements regarding restricted category helicopters configured from surplus military aircraft, providing that:

helicopter(s) certificated in Restricted Category shall have been issued a Special Airworthiness Certificate.^[2] Aircraft are required to have a Special Airworthiness Certificate prior to proposal [submission] and be submitted with mandatory documentation.

RFP at 49. Additionally, helicopters configured from surplus military aircraft have to comply with unique safety maintenance requirements, as follows:

Helicopters(s) which are configured from surplus military aircraft, which have FAA type certificates based upon military operation (in lieu of manufacturers' type certificate) shall have, at the time of certification all

¹ As our Office explained in a recent decision, type 1 helicopters, which are able to transport up to 15 personnel, are the largest and fastest helicopters currently procured by the Forest Service for wildland fire management. *See Brainerd Helicopters, Inc., d/b/a Firehawk Helicopters, Inc.*, Nov. 18, 2022, B-420950 *et al.*, 2022 CPD ¶ 286 at 2 n.2. The agency intends to acquire services for the operation of 38 type 1 helicopters. *Id.*

² "A restricted category special airworthiness certificate" is issued by the FAA to "operate aircraft that have been type certificated in the restricted category." *See* Special Airworthiness Certificate, available at https://www.faa.gov/aircraft/air_cert/airworthiness_certification/sp_awcert/restrict (last visited on May 3, 2023). The operation of restricted category aircraft "is limited to special purposes," including "forest and wildlife conservation." *Id.*; *see also* 14 C.F.R. §§ 21.25(a), (b)(2). Relevant here, "forest and wildlife conservation" encompasses firefighting operations. *Id.*; COS at 2; *see also* 49 U.S.C. § 40125(a)(2) (defining governmental function as "an activity undertaken by a government, such as . . . firefighting. . .").

applicable technical directives accomplished. This includes Time Compliance Technical Orders . . . , all military messages ([Aviation Safety Action Message (ASAMs), Aviation Maintenance Action Messages, Safety of Flight], etc.).

Id. Also, the solicitation advises that:

any message, bulletin etc., released by the military shall have the requirements accomplished after the original FAA type certification of former military aircraft. This includes any directives, which refer to later model derivatives which were issued after the earlier models left the military inventory. If the directive is issued for the make model, series or later derivative as an offered aircraft then the directive applies, and the requirements of the directive shall be complied with. This can be in the form of an OEM [original equipment manufacturer], TC [type certificate] holder or Owner issued Service Information that mirrors the data from the military directive.

Id. at 49-50. Offerors are instructed to “submit a plan on how they intend to comply with the completion of military messages both past and present and include a documented list of currently complied with messages for the type aircraft offered.” *Id.* at 50.

On January 20, 2023, the agency amended the solicitation by including a questions and answers (Q&A) section. Protest, exh. 8, Q&A. One of the questions sought clarification of the requirement for compliance with military messages. *Id.* No. 8. The agency responded that:

The intent is for the offeror to communicate how they will integrate the information contained in the military message after the offeror has the message, not how they will get the information. For example, will this be through an OEM, TC holder or Owner issued Service Information that mirrors the data from the military directive or some other way to address the issue to their aircraft on contract with the Forest Service.

Id. Shortly before the deadline for receipt of proposals, CHI filed this protest with our Office.³

³ Our Office recently dismissed a related protest, filed by Helimax Aviation, Inc., an affiliate of CHI, which challenged the same solicitation provision regarding restricted category helicopters. See Protest (B-420982.3, B-420982.4) at 7-9. We found that protest to be untimely because it was filed more than 10 days after the denial of Helimax’s agency-level protest. *Helimax Aviation, Inc.*, B-420982.3; B-420982.4, Jan. 26, 2023 (unpublished decision).

DISCUSSION

The protester primarily argues that the solicitation is defective, and unreasonably restricts competition. First, CHI challenges the solicitation requirement for helicopters configured from surplus military aircraft to comply with all military technical directives, arguing that it is impossible to do so as there are no legal ways to obtain that information.⁴ Additionally, the protester alleges that the terms of the RFP violate certain FAA regulations, and that offerors of surplus military helicopters are treated disparately. As discussed below, we find no basis to sustain the protest.

Compliance with Military Instructions regarding Restricted Category Helicopters

CHI contends that no offerors proposing helicopters “that are configured from surplus military aircraft” can comply with all of the applicable messages, bulletins, or directives issued by the military for their aircraft, as there are “no legal means . . . to secure information generated by the military.” Protest at 6-11; Comments at 2-9.⁵ In support, CHI relies on a recent correspondence from the Army, stating that its “safety and maintenance messages are applicable only to aircraft and equipment owned and/or operated by Army personnel,” and hence, the Army “will not authorize the release of AMCOM [Army Aviation and Missile Command] safety and maintenance messages to

⁴ Of note, in its proposal--submitted one day after filing this pre-award protest--CHI did not offer helicopters configured from surplus military aircraft. See Req. for Dismissal, exh. 9, Standard Airworthiness Certificates for CHI's N712HG, N905CH, N906CH, & N907CH Aircraft at 1-4. Rather, while alleging that it “has access to and desires to include in its proposal CH-47D Chinooks,” but it could not do so because of the impossible RFP's requirements, Protest at 12, CHI's proposal included only non-former military helicopters. *Id.* On this basis, the agency asked us to dismiss the current protest, contending that CHI is not an interested party to maintain its protest allegations because, based on the helicopters it offered, the restricted category provision is inapplicable to CHI's proposal. See Req. for Dismissal at 2, 8.

Our Office declined to do so. As we have previously explained, where a protester alleges that overly restrictive terms prevent it from submitting a proposal, the protester is nevertheless an interested party where, if the protest were sustained, the agency would be required to solicit revised proposals under an amended solicitation. See, e.g., *McRae Indus., Inc.*, B-287609.2, July 20, 2001, 2001 CPD ¶ 127. Here, CHI is an interested party to challenge the solicitation terms applicable to military surplus helicopters, where the protester alleges that it could propose such helicopters if these terms were revised.

⁵ The protester also argues that the solicitation is unreasonable because it requires that earlier model aircraft comply with military messages issued for later model aircraft derivatives. Protest at 6-11; Comments at 10-11. As discussed below, we find that the agency has provided a compelling safety interest for this requirement.

non-Army [entities] which have acquired divested Army aircraft.” Protest, exh. 3, Army Letter at 1.⁶

The agency counters that the solicitation is not defective, and there are legitimate, legal means of compliance with its requirements. Memorandum of Law (MOL) at 10-13. Specifically, the agency maintains that it included the same requirement for incorporating military safety and maintenance messages in its previous solicitations over the past 20 years, the requirement was never protested, and multiple offerors who proposed former military helicopters were able to comply with it over the years. *Id.* at 5-6, 10; COS at 5-6. Of note, the Forest Service states that one of those offerors is Helimax, CHI’s affiliate company, which certified in its proposal in response to this solicitation--as it has done in the past--that it can and will comply with the military messages requirement.⁷ Req. for Dismissal at 2.

A contracting agency has the discretion to determine its needs and the best methods to accommodate them. *Simplex Aerospace*, B-414566.2, Aug. 8, 2017, 2017 CPD ¶ 256 at 3; *see also Pride Mobility Products Corp.*, B-405371, Oct. 25, 2011, 2011 CPD ¶ 227 at 4-5 (the responsibility for drafting proper specifications that reflect the government’s needs is the contracting agency’s). However, those needs must be specified in a manner designed to achieve full and open competition. *Pride Mobility Products Corp.*, *supra*. An agency is not required to construct its procurements in a manner that neutralizes the competitive advantages of some potential offerors. *Staveley Instruments, Inc.*, B-259548.3, May 24, 1995, 95-1 CPD ¶ 256 at 3-4. The fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency’s needs. *Blue Origin Florida, LLC*, B-417839, Nov. 18, 2019, 2019 CPD ¶ 388 at 10.

Where a protester alleges that performance is impossible, we will not substitute our judgment for that of the agency or sustain the protest in the absence of clear and convincing evidence that the specifications are in fact impossible to meet or unduly restrict competition. *Instrument Control Serv., Inc.; Science & Mgmt Resources, Inc.*, B-289660, B-289660.2, Apr. 15, 2002, 2002 CPD ¶ 66 at 6. A protester’s disagreement

⁶ The Army letter referenced in CHI’s protest was addressed to Helimax, CHI’s affiliated company. Protest, exh. 3, Army Letter, *generally*. That correspondence provided a basis for Helimax’s agency-level protest, followed by a protest to our Office, discussed above, and dismissed earlier this year.

⁷ CHI and Helimax and are both subsidiaries of the Heligroup organization. See <https://chiaviation.com/about> (last visited on Apr. 20, 2023); *see also* Req. for Dismissal, exh. 2, CHI & Helimax Cover Letters at 2, 4 (stating that Helimax is CHI’s “affiliated company”). As noted by the agency, Helimax and CHI share the same company president, vice president, director of safety, vice president of operations, director of operations, chief pilot, and chief inspector. MOL at 10; Req. for Dismissal at 3.

with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not show that the agency's judgment is unreasonable. See *Gallup, Inc.*, B-410126, Sept. 25, 2014, 2014 CPD ¶ 280 at 5.

Based on our review of the record, we find no basis to conclude that the solicitation is defective. Further, we find that the protester has not demonstrated that compliance with the solicitation requirements regarding restricted category helicopters is, in fact, impossible to meet.⁸

Specifically, the agency report includes multiple examples of companies--all operating CH-47 helicopters--which were able to comply with the military messages requirement, including examples of compliance by Helimax and CHI.⁹ COS at 10-11.

⁸ CHI also alleges that the agency engaged in disparate treatment because "the agency is not enforcing the restrictions on aircraft evenly," and other potential offerors of ex-military aircraft are permitted to use OEM data instead of technical directives from the Army. See Protest at 15-17 (alleging that the Forest Service allows UH-60 aircraft to utilize data from Sikorsky Aircraft Corporation).

This argument, however, does not demonstrate that similarly situated offerors were treated unequally by the agency. The Forest Service explains that UH-60 helicopters are still being operated by the military, and military messages are provided to operators via OEM portal "Sikorsky360." COS at 12-13. The agency notes that Sikorsky's type certificate data sheet requires "compliance with . . . U.S. Army messages." AR, Tab 18, Sikorsky Type Certificate Data Sheet at 3. In contrast, CH-47D helicopters are no longer being operated by the military and compliance with the OEM would not ensure compliance with military messaging. COS at 13. Accordingly, because CHI and operators of UH-60 aircraft are not similarly situated offerors, we find no merit to this argument. See *Nexant Inc.*, B-417421, B-417421.2, Jun. 26, 2019, 2019 CPD ¶ 242 at 10.

⁹ The protester contends, however, that the agency misrepresents Helimax's compliance, including with a September 2022 ASAM issued after discovery of engine leaks that resulted in the grounding of 400 Army CH-47 helicopters. Comments at 3-5. CHI contends that "after Helimax's fleet was grounded, Helimax complied with a Service Bulletin released by Tandem Rotor LLC," and through that compliance, the Forest Service allowed Helimax's fleet to operate again. *Id.*; Supp. Comments at 5. The protester states that Tandem Rotor LLC was never provided a copy of the ASAM in any official capacity. *Id.*

We need not decide whether the agency misrepresents Helimax's compliance with respect to the September 2022 ASAM because we find, based on numerous other examples of offerors' compliance provided by the Forest Service, that offerors can meet the RFP's requirements for restricted category helicopters.

The agency also submitted a declaration from the chief of the Forest Service's airworthiness branch, who provided examples of "contractors that offer CH-47Ds" and who are in compliance with the requirement. See AR, Decl. of Airworthiness Branch Chief at 1. For instance, the branch chief states that [DELETED] "routinely incorporates OEM, military, and regulatory bulletins and safety messages" applicable to that firm, including "technical data releases" from AMCOM, Boeing, Sikorsky, Honeywell, and the FAA. *Id.* Additionally, the chief explains that another offeror, "[DELETED] has proven compliance and has stated it will comply with all military messages, past and present as stated in the solicitation." *Id.* According to the chief, "offerors can also obtain the necessary data through a Boeing customer communiqué." *Id.* (citing AR, Tab 32, Being Customer Safety Communication for CH-47).

The branch chief further details how the agency verifies compliance with the requirement at issue, and explains that the Forest Service conducts a "[p]re-[u]se inspection of aircraft" before a contractor is allowed to operate restricted category aircraft under a contract with the agency. *Id.* at 1-2.

In addition, our Office requested additional, specific examples from the agency evidencing other offerors' compliance with military messages. In response, the Forest Service provided numerous records of compliance for contractors operating former military helicopters (including models beyond the CH-47Ds); the Forest Service notes that these aircraft have been inspected recently and found compliant with the military messages requirement. Compliance with Military Message under the Current Call-When-Needed Contract and Solicitation No. 1202SA22R9201 at 1. The agency also identified excerpts from proposals received in response to the current solicitation, with a number of offerors, including [DELETED], certifying their ability to comply with the military messages requirement at issue. *Id.*

We are especially persuaded by such a certification provided by Helimax, CHI's affiliated company. Supp. MOL at 2. Specifically, in its proposal, Helimax states that it "operates a fleet of CH-47D aircraft that have been conformed to the FAA Restricted Category Type Certificate R0014DE--Tandem Rotor LLC Helicopter." Req. for Dismissal, exh. 11, Helimax Military Messages Compliance for N947CH, N948CH, N949CH, & N950CH Aircraft at 1. The company continues that it "utilizes TC holder (Tandem Rotor, LLC) issued Service Information that includes data as required from military directives." *Id.*

CHI downplays the significance of Helimax's compliance statement, arguing that the agency improperly relies on statements by "another company without . . . providing any legal context or justification of why it is even remotely relevant." Supp. Comments at 5. We find this example to be relevant, however, because Helimax and CHI share the same company president, vice president, director of safety, vice president of operations, director of operations, chief pilot, and chief inspector, and both firms indicate that they are "affiliated." See Req. for Dismissal, exh. 2, CHI & Helimax Cover Letters at 2, 4. In this context, we question the protester's representation that "there is no legal manner in which the [t]echnical [military] [d]irectives can be obtained." Protest at 9.

While we acknowledge the protester's concern that different offerors may comply with the military directives in different ways--for example, through service bulletins issued by the type certificate holder--we note that the RFP specifically provides for multiple permissible methods of compliance with the requirement, as long as they "mirror[] the data from the military directive." RFP at 50. The agency emphasized this point recently while responding to a question from a potential offeror, stating that offerors should provide a plan "how they will integrate the information contained in the military message after the offeror has the message," obtained, for example, "through an OEM, TC holder or Owner issued Service Information that mirrors the data from the military directive." Protest, exh. 8, Q&A No. 8. To the extent the protester complains about future compliance with the military directives, such issues are matters of contract administration, and not subject to review by our Office. See 4 C.F.R. § 21.5(a).

Accordingly, our review of the record does not support the protester's position that the RFP includes an impossible requirement. In short, CHI has not demonstrated that compliance with the military messages requirement is not possible.

Our conclusion is underscored by the agency's articulation of a compelling, safety-related basis for imposing the requirement. We have stated previously that where, as here, challenged requirements relate to national defense or human safety, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest level of reliability and effectiveness. *Womack Mach. Supply Co.*, B-407990, May 3, 2013, 2013 CPD ¶ 117 at 3. Additionally, where matters of human life and safety are involved, our Office affords considerable deference to the judgment of the agency's technical experts. *Complete Parachute Solutions, Inc.*, B-415240, Dec. 15, 2017, 2018 CPD ¶ 2 at 4.

In this regard, the agency explains in detail the rationale for including the military messages requirement in the solicitation, providing examples of past fatal accidents that occurred because contractors failed to accomplish certain safety-related updates to their aircraft, included in service bulletins and time compliance technical orders.¹⁰ COS at 2, 5-6; MOL at 3-5. Specifically, the agency describes the events preceding a 2002 Lockheed C-130A airtanker accident, where a Lockheed C-130A broke apart in flight while executing a fire-retardant delivery in California, causing the deaths of three crewmembers onboard. COS at 2. The accident was found to have resulted from a fatigue crack beneath a forward doubler. *Id.* Prior to this accident, two bulletins for

¹⁰ As the agency explains, service bulletins are issued by aircraft manufacturers to inform owners and operators about critical and useful information on aircraft safety, maintenance, or product improvement. MOL at 3; COS at 2; AR, Tab 1, Lockheed Service Bulletin for C-130A Aircraft. Additionally, time compliance technical orders are directives issued to provide instructions to Air Force activities for accomplishing one-time changes, modifications, or inspections of equipment, or installation of new equipment. MOL at 2-3.

other, newer model aircraft, issued in 1985 and 1987, warned of the possibility of fatigue cracks concerning the same part, and recommended “fatigue improvement modification.” *Id.* The C-130A model, however, was not included in either service bulletin because Lockheed no longer supported this version. *Id.* The agency maintains that “[h]ad the contractor [fulfilled the requirements of] either of these two messages, [it] most likely would have found [the technical issues that caused the accident] in the aircraft, and three lives could have been saved.” MOL at 4; COS at 2; AR, Tab 5, National Transportation Safety Board (NTSB) Aviation Investigation Final Report for Lockheed C-130A at 2-5, 14, 16-18.

The Forest Service also asserts that the requirement to comply with the military safety messages stems from a safety recommendation by an independent commission, Blue Ribbon Panel, established jointly by the Forest Service and the Department of Interior’s Bureau of Land Management after that 2002 fatal accident. MOL at 4-5; COS at 4-6; AR, Tab 3, Blue Ribbon Panel Report at 11-19. The Blue Ribbon Panel noted its concerns with the “ex-military helicopters,” and recommended that “operational improvements could enhance [their] safety and efficiencies.” AR, Tab 3, Blue Ribbon Panel Report at 19. Specifically, the panel documented several instances where ex-military aircraft were FAA-certified, but still suffered fatal accidents because they were engaging in stressful environments they were not built for originally. *Id.* at 13-19.

Following that safety recommendation, the Forest Service began to require that solicitations, where offerors provide former military aircraft, now include a requirement that offerors fulfill the requirements of all military messages for the proposed aircraft, to include later model aircraft derivatives. COS at 5-6. The Forest Service asserts that the requirement is necessary and has greatly reduced accidents and fatalities over the past 20 years. Supp. MOL at 7-8.

CHI disputes the agency’s position, arguing that the Forest Service is relying on “a series of anecdotes,” including the references to the 2002 accident, and alleges that other recent accidents mentioned by the agency are proof that the overly restrictive requirement concerning military messages does not prevent those accidents.

We find no merit to the protester’s arguments here. Based on the record, we conclude that the Forest Service has established a reasonable and legitimate need for complying with military safety messages for offerors providing former military helicopters.

In light of the critical need to ensure the safety of personnel providing wildland fire management services, we find to be reasonable the agency’s interest in ensuring that the helicopters used in firefighting missions achieve the highest level of reliability and effectiveness. Accordingly, we find no basis to sustain this protest ground.

Alleged Violation of the FAA Requirements

The protester also alleges that the terms of the RFP violate certain FAA maintenance requirements that must be complied with to maintain the airworthy status of proposed

aircraft. Specifically, CHI contends the solicitation requires that aircraft operators be compliant with “the certification and operations specifications of their Title 14 C.F.R. Part 119, Part 135, Part 133, and Part 137 commercial operating certificates.” RFP at 55. At the same time, however, in a recent correspondence addressed to Helimax, an FAA principle maintenance inspector of the East Michigan Flight Standards District Office stated that once an aircraft receives a civil operating certificate, it “must be inspected and maintained per the FAA approved program.” Protest, exh. 5, FAA Letter at 1; Comments at 21. The maintenance inspector further stated that Army messages “cannot be used for aircraft certificated under the [applicable FAA approved maintenance plan].” Protest, exh. 5, FAA Letter at 1. CHI argues that potential offerors are “put in an impossible scenario” because the RFP requires compliance with operating certificates “yet according to the FAA[,] compliance with the [s]olicitation would be a violation of those [o]perating [c]ertificates.” Comments at 21.

In response, the agency explains that CHI’s reliance on the above correspondence and its arguments about supposed contradictions between the RFP and the FAA regulations are irrelevant because it is the Forest Service that determines the safety standards for its public firefighting flights, not the FAA. MOL at 16-18. Because the contracted helicopters perform public aircraft operations, the agency asserts that they are excepted from the FAA’s oversight and its civil airworthiness requirements. *Id.* at 18. The agency notes that this exception has been recognized through a number of legal opinions issued by the FAA.¹¹ *Id.*; COS at 6-8. In this regard, the FAA has stated that “[i]f a civil operator is conducting a valid public aircraft operation (PAO), then the requirements of its operating certificate would not apply.” See, e.g., AR, Tab 14, FAA Letter on Legal Interpretation of PAO for Civil Operators under Contract to the U.S. Army at 1-2.

Based on our review of the applicable FAA regulations, and the numerous legal opinions issued by the FAA that were included in the agency report, we have no reason to question the agency’s position on this protest ground.

Specifically, we defer to the FAA’s legal opinion on the issue, which concluded that:

Aircraft that qualify for public aircraft operation (PAO) are not required to comply with the civil airworthiness or crew requirements of 14 C.F.R. . . . The placement of the public aircraft statute in Chapter 401 of the FAA’s authority means that public aircraft and their operations are generally not subject to the FAA’s authority to regulate under Chapter 447.

¹¹ The agency points out that the solicitation specifically advises offerors that while performing under the current contract, offerors will engage in public operations and directs them to notify the FAA’s Flight Standards District Office of that fact. RFP at 55, 88. The solicitation includes an attachment, Public Aircraft Operations Form, that offerors should use to make this notification to the FAA. *Id.* at 234.

AR, Tab 22, FAA Memo on Public Aircraft Training Flights at 2-3. The record also includes an opinion of the NTSB, recognizing that the Forest Service is responsible for overseeing the safety of its public firefighting flights:

[O]nce an aircraft is under contract to the [Forest Service], it operates as a public aircraft and is not subject to FAA oversight of those operations. Therefore, the [Forest Service] cannot rely on the FAA to ensure that its contractors are in continuous compliance with Part 135, and it must take responsibility for overseeing the safety of public firefighting flights such as the accident flight.

AR, Tab 12, NTSB Safety Recommendation for Carson Helicopter Services at 4.

The protester's concerns with maintaining the airworthy civil status of its helicopters, or returning the helicopters to civil status after the conclusion of the PAO missions with the Forest Service relate to the future performance and use of the helicopters. See Protest at 13 (arguing that its aircraft could be deemed unairworthy by the FAA for civil flights pursuant to title 14 C.F.R. at some point in the future). These concerns, again, relate to matters of contract administration that are outside the purview of our Office. See 4 C.F.R. § 21.5(a).

In sum, based on our review of the record and relevant FAA's regulations, we find that the protest's arguments here have no merit because it is the Forest Service that oversees the safety of its public firefighting flights, and not the FAA. Accordingly, we conclude that the RFP requirement does not violate the FAA regulations discussed above, or is in any way unreasonable.

The protest is denied.

Edda Emmanuelli Perez
General Counsel