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Comptroller General
of the United States
United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Houston Air, Inc.

File: B-292345

Date: August 15, 2003

William B. Allison for the protester.
Sherry Kinland Kaswell, Esq., and Alton E. Woods, Esq., Department of the Interior, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably and in accordance with the solicitation's evaluation scheme selected awardee's higher-priced, higher-rated proposal for aircraft services, where the awardee's more relevant experience and past performance was reasonably found to be superior and to offset the protester's modest price advantage.

DECISION

American East Airways, Inc. dba Houston Air, Inc. protests the award of a contract to Spur Aviation Services by the Department of the Interior's Office of Aircraft Services, pursuant to request for proposals (RFP) No. 8003-25, for contractor operated and maintained air attack fixed wing aircraft, for use in support of the Bureau of Land Management's (BLM) fire management program to assist in the suppression of wildfires. Houston Air argues that the agency unreasonably evaluated its experience and past performance, and made an unreasonable award decision.

We deny the protest.

The RFP was issued on March 2003 using simplified acquisition procedures. The RFP anticipated award of up to three separate fixed-price contracts for three aircraft, based at Ely, Nevada, Richfield, Utah, and Billings, Montana, for "exclusive use" during the fire season, with three option periods of the same duration for the fire seasons in the next 3 years. Each of the aircraft here will be used to provide an aerial platform for the government Air Attack Group Supervisor (ATGS), who provides communication and direction to tactical, fire suppression aircraft. The contractor-provided pilot and the ATGS essentially control the airspace over the fire area, thereby helping to reduce the risk of mid-air collision of aircraft. At issue here is the award of item No. 3 to Spur Aviation for an aircraft and pilot for Billings, Montana for "exclusive use" 14 hours a day for the 86-calendar day fire season (with the three options).

The RFP advised that the offers would be evaluated for award based on the following evaluation factors: evaluated price, aircraft payload capacity[1], and offeror capability.[2] The offeror capability factor was comprised of two subfactors: organizational experience and organizational past performance. With regard to organizational past performance, the RFP stated, "[o]ur own experience with you, if any, will be given greater weight than reports obtained from others." RFP § D3.4.2. Award was to be made to the proposal that offered the "best combination of aircraft payload capacity, offeror capability, and evaluated price." RFP § D3.5.

The agency received eight proposals, including those of Houston Air and Spur, by the April 1 closing date. The contracting officer eliminated two proposals as being unreasonably high priced, and compared the remaining six proposals based on price and the non-price factors. Spur's proposal was the only one that received an excellent rating for the aircraft payload capacity factor and for the organizational experience and organizational past performance subfactors.[3] Spur's evaluated price for item No. 3 was second highest at $588,660.[4] Houston Air's proposal also received an excellent rating for the aircraft payload capacity factor, and received good ratings for the organizational experience and organizational past performance subfactors. Houston Air's evaluated price for item No. 3 was fourth highest at $560,660. Agency Report, Tab 16, Source Selection Decision, at 6. The contracting officer concluded that Spur's proposal represented the best value to the government and made award to that firm for item No. 3. The contracting officer's explanation for selecting Spur's higher-rated, higher-priced proposal for award was as follows:

> Item 3- Spur Aviation is the highest rated offer under all 3 items; however, this firm limited its offer to award of 1 item. Their price is

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[1] The target aircraft requirements in the RFP stated that the plane must have a payload of at least 780 pounds. RFP § A1. The RFP also stated that the higher the payload of the proposed aircraft, the better evaluation it will receive under the aircraft payload capacity factor. RFP § D3.3.

[2] In addition, "offer acceptability" was evaluated on a go/no go basis.

[3] An adjectival rating of excellent, good, acceptable or inadequate was assigned to each proposal for each factor and subfactor.

[4] The total evaluated price was the sum of the evaluated prices for all contract and option years.

> higher than 4 other firms. The additional costs for Spur Aviation is insignificant in comparison to the excellent experience and past performance of Spur Aviation, specifically working for the BLM in the western area. Billings, Montana can take advantage of Spur Aviation's increased aircraft payload capabilities due to use of the aircraft as a training platform where a third crewperson will be a normal compl[e]ment.

Id. at 7. This protest, contesting the agency's award of item No. 3 to Spur, followed.

When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition. Environmental Tectonics Corp., B-280573.2, Dec. 1, 1998, 98-2 CPD ¶ 140 at 4. When reviewing protests against an allegedly improper evaluation, we will examine the record to determine whether the agency met this standard and reasonably exercised its discretion. Lynwood Mach. & Eng'g, Inc., B-287652, Aug. 2, 2001, 2001 CPD ¶ 138 at 2.

Houston Air argues that its good rating under the organizational experience subfactor was unreasonably low, given its extensive "call-when-needed" aircraft usage experience during the past 3 years, together with the one "exclusive use" contract that it performed during the 2002 operating season for 125 hours (which was not renewed for 2003), which it identified in its proposal.

The agency explains that the evaluation of organizational experience focused on "the extent to which [the offeror has] performed services of the kind described in . . . the Technical Specifications of this RFP and under similar contract terms." RFP § D.3.4.1. This procurement required that the contractor provide an airplane and pilot for "exclusive use" by the ATGS for 86 days at Billings Logan Airport in Billings, Montana. Spur's proposal identified the three "exclusive use" contracts that it is currently performing for the BLM with usage ranging from 240 to 300 hours per year, an "exclusive use" contract that it performed for the BLM in 2001 for 290 hours, as well as extensive "call-when-needed" usage experience during the 2001 fire season. It was this more extensive "exclusive use" experience that contributed to Spur's excellent rating for organizational experience, as compared to Houston Air's good rating based on its "call-when-needed" experience.

The agency notes that there are many differences between "exclusive use" and "call-when-needed" contracts/aircraft rental agreements, including the day-to-day logistical support and operational requirements. For example, the agency explains that performing work over a long period of time away from the operator's place of business is a consistent part of the "exclusive use" effort, and, while "call-when-needed" contracts may entail extended absences from the fixed base operation of the operator, it is not a consistent occurrence nor is it mandatory. Agency Report, Tab 13, Government's Technical and Experience Evaluation of Houston Air, at 7. The agency goes on to state that:

> Under Call When Needed, the vendor has a right of refusal of the order or acceptance of the order with a caveat allowing the operator to remove the aircraft from service for repairs, replacement, or to take advantage of an opportunity cost, unlike what is required under an exclusive use contract. We are not discounting the Call When Needed experience entirely, rather in this case it is being compared with a firm that has a proven track record of providing highly reliable service under the terms of a exclusive use contract.

Agency Report, Tab 21, Contracting Officer Letter to Houston Air (May 28, 2003), at 2. While Houston Air asserts that "call-when-needed" contracts actually put more risk on the contractor and that such experience should have been given more weight in the evaluation, we find nothing unreasonable in the agency giving "exclusive use" experience, the subject of this contract, greater weight in the evaluation, given that the RFP put offerors on notice that performing "under similar contract terms" would be given more credit.

Next, Houston Air argues that the good rating that it received for the organizational past performance subfactor was unreasonably low because it had performed numerous similar contracts with other agencies and received excellent ratings, yet this experience was given lesser weight than experience with BLM. Houston Air notes that fire fighting missions with land management agencies have been interagency for quite a while, and therefore it follows that "experience with any of the Agencies participating in the National Wildland Coordinating Group would [have] been given the same weight in evaluation of proposals." Houston Air's Comments at 2. Here too, the agency's evaluation was reasonable and consistent with the RFP. In this regard, the RFP specifically advised that experience providing similar services with BLM would be given greater weight than experience with other agencies, RFP § D3.4.2, and the record shows that Spur has extensive relevant BLM experience and Houston Air does not.[5]

[5] To the extent Houston Air is protesting the propriety of the evaluation preference for BLM experience, such a protest would be untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in an RFP be filed prior to the date set for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (2003). Since Houston Air did not protest this matter prior to the closing date for receipt of proposal, any such protest would be untimely.

Finally, Houston Air contests the agency's cost/technical tradeoff that found Spur's significant "exclusive use" experience and outstanding performance under BLM contracts, and outstanding aircraft capabilities, justified the increased cost of $28,000 (the difference between the total evaluated price of the proposals of Spur and Houston Air) over the 4-year period (including options). As noted above, Spur's higher ratings for experience and past performance were reasonable and in accord with the RFP evaluation scheme, and we find that the agency reasonably determined that this superiority offset Houston Air's modest price advantage.

The protest is denied.

Anthony H. Gamboa
General Counsel