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Decision

Matter of: Coulson Aviation (USA), Inc.

File: B-411306; B-411306.3; B-411306.4

Date: July 8, 2015

Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for the protester.

Melissa D. McClellan, Esq., Department of Agriculture, for the agency.

Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In a procurement for airtanker services for wildfire firefighting support, the protester is not an interested party to challenge a solicitation requirement to submit proof of safety certification as being unduly restrictive of competition where the protester did not have the safety certifications even after the extended period of time requested by the protester has elapsed.
 2. Protest challenging the requirement for a pre-award inspection is dismissed where the protester suffered no competitive prejudice because it otherwise was ineligible for award.
 3. Protest challenging the amount of time afforded to offerors to respond to the solicitation is denied where the record shows that the agency provided reasonable advance notice to offerors of the agency's requirements and afforded offerors a reasonable opportunity to respond to the solicitation.
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DECISION

Coulson Aviation (USA) Inc., of Port Alberni, British Columbia, Canada, challenges the terms of request for proposals (RFP) No. AG-024B-S-15-9003, which was issued by the Department of Agriculture, Forest Service for next generation (NextGen) large airtanker services for wildfire firefighting support.¹ Coulson argues

¹ This procurement is referred to as the NextGen 2.0 procurement because it is the follow-on procurement to the previous NextGen 1.0 procurement. The Forest

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that the requirements to submit proof of safety certifications at the time of pre-award inspection and complete a pre-award inspection at the times scheduled by the agency are unduly restrictive of competition, and the agency failed to afford offerors a reasonable period of time to respond to the solicitation.

We deny in part and dismiss in part the protest.

BACKGROUND

The RFP, which was issued on February 19, 2015 and set-aside for small business concerns, seeks proposals for fixed-price multi-year contracts not to exceed 10 years (with a 5-year base period and up to five 1-year options) for large airtanker services for the initial attack of wildfires. RFP at 1. Airtankers deliver fire retardant to wildfires, thereby reducing fire intensity and rate of spread until ground personnel can reach the fire or in support of ground personnel already working on the fire. Agency Report (AR), Tab 18, Forest Service Large Airtanker Modernization Strategy (LAT Modernization Strategy) (Jan. 17, 2012), at 4.² The agency anticipates awarding up to seven line items for NextGen turbine powered tankers. RFP at 1. The agency will procure daily availability during mandatory availability periods (MAP), which correspond to primary wildfire seasons, as well as additional flight hours on an indefinite-delivery, indefinite-quantity basis. Id.

For purposes of award, the Forest Service is to evaluate the following five factors: (1) structural integrity, maintenance, and equipment; (2) safety elements; (3) past performance; (4) organizational experience; and (5) price. Id. at 153-56. The first evaluation factor is further divided into five subfactors: (a) structural integrity; (b) maintenance; (c) equipment (aircraft); (d) equipment (tank); and (e) aircraft and facility pre-award inspection. Id. at 153-54. The certification requirements under the structural integrity subfactor, and the aircraft and facility pre-award inspection subfactor are relevant to the issues in this protest.

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Service previously competitively awarded NextGen 1.0 contracts to five firms, including one to Coulson, for airtankers under RFP No. AG-024B-S-11-9009, and made an additional sole-source award to another firm. See Coulson Aviation (USA) Inc., et al., B-409356.2 et al., Mar. 31, 2014, 2014 CPD ¶ 106 at 4-5, 13-14. Our decisions in Coulson Aviation (USA) Inc., et al., supra, and Coulson Aviation (USA) Inc.; 10 Tanker Air Carrier, LLC--Costs, B-406920.6, B-406920.7, Aug. 22, 2013, 2013 CPD ¶ 197, provide further details concerning the history of the NextGen 1.0 procurement.

² The RFP requires aircraft to have a minimum payload of 3,000 gallons of fire retardant, and provides that aircraft with capacity up to 5,000 gallons will be evaluated more favorably. RFP at 11; RFP amend. 02, at 1.

First, the RFP initially required that each offeror submit with its proposal, among other materials, a Federal Aviation Administration (FAA) issued supplemental type certificate (STC) for the offeror's proposed tanking system. Id. at 146. An STC is the FAA's approval of a major change in the design of a previously approved aircraft or aircraft-related component. FAA Advisory Circular No. 21-40A, Guide for Obtaining a Supplemental Type Certificate (Sept. 27, 2007), at 2. The FAA describes the STC requirement accordingly:

When we find that a product (an aircraft, aircraft engine, or propeller), is properly designed and manufactured, performs properly, and meets the prescribed airworthiness standards [in Title 14 of the Code of Federal Regulations], we issue a design approval in the form of a type certificate. When a type-certificated product is altered, we must evaluate the changed product. After finding that the changed product complies with the prescribed airworthiness standards, we will issue an STC or, in the case of type certificate holders, either an amended type certificate (ATC) or an STC (at type certificate holders' discretion).

Id. at 1; see also 14 C.F.R. §§ 21.111-21.120 (setting forth STC requirements); AR, Tab 18, LAT Modernization Strategy, at 7 (requiring "FAA approval of all modifications and alterations to the aircraft which change the configuration to the firefighting role.").

Second, the RFP requires that each aircraft offered for use on the resulting contract be subject to a pre-award physical inspection by the Forest Service to validate that the aircraft, tank, engineering, and the maintenance organization are consistent with the offeror's proposal and meets contract requirements. RFP at 147, 154-55. The RFP states that "[p]roposed aircraft that do not pass the inspection will not be considered further for award." Id. at 154. The RFP initially provided that "[i]nspections will be scheduled within 60 days of receipt of proposals," and that "[a]ircraft must be inspection ready by the inspection date." Id. at 147.

On March 31, Coulson filed a timely pre-award protest with our Office challenging the timing of the STC and pre-award inspection requirements, as well as the amount of time afforded to offerors to submit proposals in response to the RFP and its subsequent amendments. The protester filed a supplemental protest on April 9; this supplemental protest did not allege any new grounds of protest, but was filed "in an abundance of caution" because the agency had amended the solicitation without addressing the protester's initial protest allegations. Supp. Protest (Apr. 9, 2015) at 1. On April 23, the Forest Service amended the RFP to extend the deadline for the submission of all required certifications from proposal submission to the time of pre-award inspection, and establish that pre-award inspections would be conducted on May 4-6 in Boise, Idaho. RFP amend. 05, at 1. On April 28, Coulson filed a second supplemental protest arguing that amendment 5 to the RFP did not moot its

challenges regarding the unduly restrictive nature of the challenged RFP terms and proposal submission deadline.

DISCUSSION

Coulson raises three primary challenges to the terms of the solicitation and the Forest Service's actions in regard to this procurement.³ First, the protester argues that the requirement for offerors to submit STCs at the time of pre-award inspection, as opposed to at the time of commencement of the first MAP, is unduly restrictive of competition and unfairly favors competitors who already have STCs. Second, Coulson argues that the Forest Service's scheduling of pre-award inspections on May 4-6 was unduly restrictive of competition because inspections should be conducted closer to the commencement of the first MAP.⁴ Relatedly, the protester also alleges that the May 4-6 inspections were unduly restrictive of competition and unfair because the agency knew that Coulson was not available to participate at that time due to conflicting testing with the agency. Third, Coulson argues that the Forest Service failed to provide offerors with a reasonable period of time to respond to the initial solicitation and the subsequent amendments. For the reasons that follow, we find no basis to sustain Coulson's protest.

MAP Commencement Date

Before addressing Coulson's three primary arguments, we must first address the parties' dispute regarding the date by which the Forest Service reasonably requires the airtankers for the commencement of performance. Determining that date is a prerequisite to analyzing the reasonableness of the timing for the submission of certification and pre-award inspection requirements challenged by Coulson. Based on the record, we find that the appropriate date for measuring the reasonableness of the challenged timing requirements is the RFP's anticipated May 30 MAP commencement date.

The draft RFP, which was issued on September 16, 2014, included an anticipated initial MAP start date between May 10-20, 2015. AR, Tab 12, Draft RFP, at B-3; Contracting Officer's Statement of Relevant Facts (COSF) (May 4, 2015) ¶¶ 4. The RFP, which was issued in February 2015, states that the first MAP was anticipated to commence on May 30, plus or minus five days. RFP at 3. Coulson's initial

³ Coulson raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's arguments and find that none provides a basis on which to sustain the protest.

⁴ Although these dates have now passed, the protester's challenge to these requirements was timely filed prior to the closing date for the solicitation. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

protest essentially requested an enlargement of time to submit the required certificates and to make its plane available for pre-award inspection until or around the anticipated May 30 start of the MAP:

The FAA conformities have all been completed and there is minimal risk that Coulson would not have an FAA STC prior to the May 30, 2015 MAP start date, the earliest possible date the agency needs the STC.

Protest (Mar. 31, 2015) at 8; Second Supp. Protest (Apr. 28, 2015) at 12-13.

Coulson is requesting a delay of only two weeks, [from May 4-6] to and including May 25, 2015 in which to provide its STC. . . . No offeror would be prejudiced by the agency's delay of [the requirement to submit proof of STC by the time of pre-award inspection] to and including May 25, 2015, including the agency, because the STC would be submitted before the May 30, 2015 MAP date.

Second Supp. Protest (Apr. 28, 2015) at 13.

In order to level the playing field, the RFP should be amended to specify that the pre-award inspection will take place 60 days post-proposal submission and should remove the conflicting RFP terms such that offerors can submit their certifications any time after award, but prior to MAP on May 30, 2015.

Protest (Mar. 31, 2015) at 11; Second Supp. Protest (Apr. 28, 2015) at 16.

The Forest Service's report in response to Coulson's initial challenges to the requirement that (1) proof of STC be provided by the time of pre-award inspection, and (2) the timing of pre-award inspection, argued that the early May deadlines for the completion of these requirements were reasonably necessary to ensure timely performance by the anticipated May 30 start of the MAP. See AR at 4-7. The contracting officer represented that the May 30 MAP commencement date was selected "because it would have vendors start performing right before the heart of the typical fire season and would allow them to operate through the 4 busiest months of the season (June-Sept.)." COSF ¶ 12.⁵

⁵ Coulson argues that the agency's representations regarding the basis for the May 30 MAP commencement date and that date's impact on the requirement for the submission of proof of certifications and pre-award inspection in early May are improper post-hoc rationalizations to which we should afford no weight in our review because there is no accompanying contemporaneous materials in the record

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After receiving the agency's report, Coulson, for the first time, argued that the Forest Service's need for the airtankers is much later than the RFP's anticipated May 30 MAP commencement date. Specifically, Coulson relies on the following excerpts from the acquisition plan's "Acquisition Cycle Milestones" table and the source selection plan's "Project Milestones" table to support its argument that the agency's actual need for certified and inspected airtankers is much later than May 30:

MILESTONES	PROJECTED COMPLETION DATE
SSA Approval of Selection	04/27/15
Congressional Notification	04/27/15
Award of Contract	05/26/15
Notifications to Unsuccessful Offerors	05/26/15
Post Award Debriefings	05/29/15
Potential Protest Period	06/08/15 – 09/07/15
Pre-work/Post Award Meeting	TBD (Sep 2015)
Start Work (Notice to Proceed)	TBD (Sep 2015)

AR, Tab 16, Acquisition Plan (Nov. 25, 2014), at 3; Tab 17, Source Selection Plan (undated), at 9.⁶

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expressing similar explanations. See Protester's Comments (May 18, 2015) at 20. We find no basis to disregard the Forest Service's credible explanation regarding the MAP commencement date being selected to coincide with the busiest part of the wildfire season. Our Office generally considers post-protest explanations, such as the one presented here, where the explanations merely provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. See TaxSlayer LLC, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 8; Vinculum Solutions, Inc.--Recon., B-408337.3, Dec. 3, 2013, 2013 CPD ¶ 274 at 3 n.2. We find the contracting officer's explanation is credible, and note that the protester has failed to present any evidence to call into question the credibility of the post-protest submission aside from the lack of contemporaneous documentation.

⁶ Because the anticipated contracts to be awarded will be multi-year contracts which include cancellation ceilings in excess of \$12.5 million, the Forest Service states that it must provide 30 days advance notice to the committees on appropriations of the House and Senate and the appropriate oversight committees of the House and Senate for the agency prior to making awards. See Federal Acquisition Regulation (FAR) § 17.108(a).

Based on these projected dates in the agency's internal planning documents, Coulson argues that the Forest Service's internal planning documents show that the agency does not need certified and inspected airtankers until at least September 2015. See Comments (May 18, 2015) at 14, 22-23. Alternatively, the protester argues that the agency will not need certified and inspected airtankers until 30 days after the agency provides the required notice to Congress. See Supp. Comments (June 3, 2015) at 5-6. The Forest Service responds that the agency's "acknowledgement of [the schedule risk resulting from a post-award protest] did not affect the Agency's legitimate need for Next Gen 2.0 airtankers for the 2015 fire season." Supp. AR at 3. We find no basis to challenge the agency's reasonable determination that its need for the requirements being procured under the RFP began on or around May 30.

We agree with the Forrest Service that it is not reasonable to assess the date by which an agency requires services by requiring the agency to factor in the potential for a protest to our Office. A timely protest to our Office requires an agency to stay the award or performance of a contract until the protest is resolved (absent an override of the stay); our Office must resolve protests within 100 calendar days of the filing of the protest. 31 U.S.C. §§ 3553(c), (d)(3); 3554(a)(1). We do not agree with the protester that the filing of a protest tolls the agency's legitimate need for the goods or services being acquired. The agency's internal planning documents reflect that the agency anticipated that potential bid protests could impact the performance schedule for the resulting contracts. We do not find, however, that the agency's stated need for the airtankers during the height of the wildfire season is undermined merely because the agency accounted for the potential schedule delay attendant to a potential protest in its internal planning. In the absence of a protest, the Forest Service could have proceeded with the required notice to Congress, award of the contracts, and authorized performance on or near the RFP's anticipated May 30 MAP commencement date. Cf. Mark Dunning Indus., Inc., B-405417.2, Nov. 19, 2013, 2013 CPD ¶ 267 at 4 (finding a protester was not prejudiced by an agency's extension of the term set forth in the bid schedule in order to award the full potential contract term where the delay in the contract award was the result of multiple, unsuccessful size protests filed by the protester); Lifecare Mgmt. Partners, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 6 (finding that a protester could not "protest the solicitation, delay the agency's ability to award a contract, and then reasonably argue that any alteration of the planned contract start date constitutes a relaxation of the requirements in favor of the new awardee").

Therefore, we find that the RFP's anticipated May 30 MAP commencement date is the appropriate measure for evaluating the reasonableness of the challenged RFP requirements and agency actions at issue here. We next address the protester's primary arguments.

Timing of STC Requirement

Coulson challenges the RFP's requirement for an offeror to produce proof of FAA-issued STCs for its proposed tanking system by the time of pre-award inspection as being unduly restrictive of competition and unfairly favoring offerors who already possess the required certifications. See Second Supp. Protest (Apr. 28, 2015) at 12-13. Based on our finding that, but for the protest, the MAP commencement date likely would have been on or around May 30, we conclude that Coulson is not an interested party because it failed to possess the requisite STCs prior to May 30.

Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. DNC Parks & Recreation at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 12. Whether a protester is an interested party is determined by the nature of the issues raised and direct or indirect benefit or relief sought. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Moreover, competitive prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7.

As addressed above, Coulson's initial and supplemental protests effectively sought an enlargement of time until May 30 to submit proof of STC for its proposed tanking system. See, e.g., Protest (Mar. 31, 2015) at 8; Second Supp. Protest (Apr. 28, 2015) at 12. Even if we were to sustain the protest and find that the requirement to submit proof of STC at the time of pre-award inspection (May 6-8), as opposed to the start of the MAP (May 30), was unreasonable, the protester would not be eligible for award because it did not have the required STCs by May 30. See Piedmont Propulsion Sys., LLC, B-410026.2, Mar. 30, 2015, 2015 CPD ¶ 140 at 7 (dismissing protest challenging a sole source award where the protester would be ineligible for award because it failed to timely submit a source approval request). In response to questions from our Office, Coulson confirmed that it must obtain two STCs from the FAA, one for its lower fire retardant tank and one for its upper tank. See Email from Protester's Counsel (June 15, 2015) at 1. With regard to the lower tank, Coulson provided to our Office a copy of STC No. ST02537LA, which was issued by the FAA. That STC indicates that Coulson applied for the STC on September 22, 2014, and the FAA issued the STC on June 12, 2015. STC No. ST02537LA (June 12, 2015) at 1.

Regarding the upper tank, Coulson provided our Office with a FAA Memorandum dated July 1, 2015 titled “Acceptance of Engineering Data to Support Field Approval.” See Email from Protester’s Counsel (July 2, 2015), attach. 1. The Memorandum indicates the FAA’s approval of certain enumerated engineering data, and states that “[w]e find that this air tanker system complies with all the transport category regulations and is eligible for a normal category airworthiness certificate.” Id. at 1. Without elaboration or citation to any supporting authority, Coulson claims that the FAA Memorandum, which Coulson refers to as a “Form 337,” is equivalent to the required STC. See Email from Protester’s Counsel (June 15, 2015) at 1. The Forest Service, however, counters that the FAA Memorandum provided by Coulson is not an STC. See Email from Agency Counsel (July 2, 2015) at 1. Even assuming that the FAA Memorandum submitted by the protester is equivalent to an STC, and thus would have been responsive to the RFP’s certification requirements, the fact remains that Coulson did not obtain the FAA Memorandum for the upper tank until July 1, 2015, nearly two months after the RFP’s deadline for submitting proof of certification and more than a month after the anticipated May 30 MAP commencement date.

Therefore, we find that Coulson is not an interested party to challenge the RFP’s STC requirement because, even if we found that the Forest Service reasonably did not require proof of certification until the anticipated May 30 MAP commencement date, the protester did not possess the required certifications by that date.⁷

⁷ On July 2, 2015, Coulson filed a notice of supplemental authority regarding our Office’s recent decision Bode Aviation, Inc., B-411265, June 26, 2015, 2015 CPD ¶ 119. Protester’s Notice of Supp. Authority (July 2, 2015). In Bode Aviation, our Office denied a protester’s post-award challenge that the awardee was ineligible for award because it failed to possess the required FAA airworthiness certifications prior to the time of award. We found that the solicitation’s certification requirement, which stated in relevant part that “[c]ontractors shall hold a current [FAA] Air Carrier or Operating Certificate,” did not impose a requirement on offerors to submit proof of certification prior to award. Bode Aviation, Inc., supra, at 3. Coulson argues that Bode Aviation, which also involved a Forest Service procurement of airtanker services, demonstrates that the requirement in this procurement to submit FAA certifications prior to award exceeds the agency’s legitimate, minimum needs and provides further evidence that “the Forest Service is treating Coulson disparately.” Protester’s Notice of Supp. Authority (July 2, 2015) at 1. We find neither argument provides a basis on which to sustain the protest. First, the fact that a requirement may not have been included in a prior solicitation or contract does not provide a basis for finding the requirement unduly restrictive when included in a subsequent solicitation. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 4; USA Fabrics, Inc., B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 5.

Additionally, the agency has not engaged in any disparate treatment in connection
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Timing of Pre-Award Inspection

Next, Coulson argues that the Forest Service's scheduling of pre-award inspections on May 4-6 is unduly restrictive of competition because it "is prejudicial to offerors who can meet inspection by the May 30, 2015 MAP mandate, but not a significantly shorter period [of time]." Second Supp. Protest (Apr. 28, 2015) at 15. The protester also challenges the scheduled dates for pre-award inspection as being unreasonable because "the agency scheduled the mandatory pre-award inspections at a time when it knew Coulson was not available to participate." Protester's Supp. Comments (June 3, 2015) at 8.

We dismiss these protest allegations because, even if we were to sustain Coulson's protest that the Forest Service's scheduling of the pre-award inspection was unreasonable, Coulson has failed to establish that it was competitively prejudiced because it would nonetheless have been ineligible for award because it did not possess the required FAA certifications by the extended deadline of the May 30 MAP commencement date. Therefore, we dismiss these protest allegations because Coulson has failed to demonstrate that it was competitively prejudiced by the scheduling of the pre-award inspections.⁸

Solicitation Response Time

Finally, Coulson argues that the time afforded to offerors to submit proposals in response to the solicitation, and the five amendments thereto was inadequate, and was therefore unduly restrictive of competition. See Second Supp. Protest (Apr. 28, 2015) at 16. The protester argues that the complexity of the technical requirements

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with the imposition of the certification requirement in this procurement because all offerors, not just Coulson, are subject to the same requirement.

⁸ In its comments on the AR, Coulson for the first time challenges the pre-award inspection requirements as redundant with the requirements of the mandated Interagency Airtanker Board testing, and thus unduly burdensome and restrictive of competition. See Protester's Comments (May 18, 2015) at 29-30. This challenge to the terms of the solicitation, which is separate from the protester's asserted challenge to the timing of the pre-award inspection requirement, is untimely. Pursuant to our Bid Protest Regulations, "[p]rotests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals." 4 C.F.R. § 21.2(a)(1). Therefore, we dismiss this untimely argument.

in the RFP, including obtaining FAA certification, require substantially more time than the agency afforded to offerors. See id. at 17.

Except for the acquisition of commercial items, agencies are required to allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the proposed contract action is expected to exceed the simplified acquisition threshold. FAR § 5.203(c). There is no per se requirement that the closing date in a negotiated procurement be extended following a solicitation amendment. Harmonia Holdings, LLC, B-407186.2, B-407186.3, Mar. 5, 2013, 2013 CPD ¶ 66 at 7. The determination of what constitutes a sufficient amount of time for proposal preparation is a matter committed to the discretion of the contracting officer; we will not object to that determination unless it is shown to be unreasonable. Financial Asset Mgmt. Sys., Inc., B-409722.9, Apr. 24, 2015, 2015 CPD ¶ 145 at 6. We limit our review of such determinations to the questions of whether the refusal to extend the closing date adversely impacted competition and whether there was a deliberate attempt to exclude an offeror. Harmonia Holdings, LLC, supra.

The Forest Service contends that it afforded offerors a meaningful opportunity to respond to the solicitation. The agency first argues that it released a draft RFP to prospective offerors 6 months in advance of the release of the RFP. AR at 10. The Forest Service next submits that it complied with the requirements of FAR § 5.203(c) by providing offerors with an initial period of 34 days to submit proposals, and then extended the proposal deadline by 15 additional days following the publication of subsequent amendments. Id. The agency also argues that a further enlargement was not necessary in light of the amendments to the RFP because they merely answered offerors' questions, corrected typos, and provided clarification to the terms of the RFP. Id. at 11. The Forest Service argues that Coulson has failed to articulate how the amendments had any material impact on Coulson's ability to prepare its proposal. Id. Based on the record, we find that the agency did not unreasonably decline to extend the deadline for the submission of proposals.

While the technical requirements of the RFP are substantial, we find that offerors were reasonably apprised of the requirements and were afforded the reasonable opportunity to prepare and submit proposals. The Forest Service released a draft version of the RFP and conducted an industry day forum with prospective offerors approximately 6 months in advance of the February 2015 release of the RFP. AR, Tab 12, Draft RFP; Tab 34, NextGen 2.0 Forum Notes (Sept. 18, 2014). Offerors had substantial information to begin preparing their proposed aircraft based on the draft requirements, as demonstrated by Coulson's own assertion that it has been working on the airtanker it intended to propose for the NextGen 2.0 procurement since at least November 2014. See Protest (Mar. 31, 2015) at 8. In this regard, Coulson fails to identify any material changes, or how any such alleged material

changes, between the draft RFP released in September 2014 and the initial RFP released in February 2015 prejudiced Coulson's proposal preparation.

Furthermore, the initial RFP complied with the requirements of the FAR to provide a response period of at least 30 days for the initial proposal response, which the agency subsequently extended by more than 2 weeks after issuing amendments to the RFP. We also note that at the industry forum for the release of the draft RFP, the Forest Service explicitly instructed potential offerors that the agency only intended for a "30 day bid period." AR, Tab 34, NextGen 2.0 Forum Notes (Sept. 18, 2014), at 4. As for the amendments, Coulson has not explained why the amendments represented material changes to the terms of the solicitation or what it would have done differently to enhance its proposal if the changed terms had been communicated earlier. For this reason, we conclude that the protester has not demonstrated that it was prejudiced, even if the time for proposal submission was not otherwise reasonable. See JBG/Naylor Station I, LLC, B-402807.2, Aug. 16, 2010, 2010 CPD ¶ 194 at 7; Integrity Mgmt. Enters., Inc., B-290193, B-290193.2, June 25, 2002, 2002 CPD ¶ 117 at 9-10. Under these circumstances, we find that the Forest Service provided offerors with a reasonable amount of time to respond to the solicitation.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel