



Decision

Matter of: Complete Parachute Solutions, Inc.

File: B-415240

Date: December 15, 2017

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DIGEST

Protest challenging agency's incorporation of certain technical standards into solicitation's specifications is denied where record shows that agency's use of those standards is reasonable and logically related to the agency's requirements.

DECISION

Complete Parachute Solutions, Inc., (CPS) of Deland, Florida, protests the terms of request for proposals (RFP) No. M67854-17-R-1200, issued by the United States Marine Corps for parachutes. CPS argues that the solicitation includes requirements that prevent it from intelligently preparing a proposal and competing on an equal basis.

We deny the protest.

BACKGROUND

The Marines currently have fielded what is known as the multi-mission parachute system (MMPS) which is a service-specific parachute system manufactured by CPS. The MMPS is nearing the end of its lifecycle, and the agency is seeking a replacement for it in this acquisition. The replacement system is known as the enhanced multi-mission parachute system (E-MMPS).

Among other things, the solicitation includes a performance specification (PSPEC) for the parachute system being acquired. Agency Report (AR) exh. 24, E-MMPS PSPEC. CPS's protest concerns the terms of that specification. In promulgating that PSPEC, the agency incorporated certain terms of another document known as the Parachute

Industry Association Technical Standard 135 (TS 135). CPS protests the incorporation of TS 135 into the solicitation's specifications.

The record shows that the agency has been in contact with industry participants, including the protester, throughout the development of its requirement in general, and the PSPEC in particular. As is germane to the protest, the record shows that the agency first advised CPS of its intention to incorporate TS 135 into the PSPEC during a vendor visit to CPS's facility in May, 2016. AR, exh. 20, CPS Vendor Visit Trip Report. In response, CPS advised the agency that it did not perform all of the testing required by TS 135 (presumably in connection with its manufacture of the MMPS, as well as in connection with its development efforts related to the E-MMPS) because the firm did not think that TS 135 compensated for differences between sport and military parachuting. Id. at 2. Instead, CPS advised the agency that it relied on the development and jumping experience of its personnel rather than on strict compliance with TS 135. Id. CPS also stated that it would evaluate how the requirements of TS 135 compared to its own efforts, and would provide the agency with information relating to what are described in the document as "exception areas" relating to strict compliance with TS 135. Id.

Subsequent to the meeting, CPS provided the agency a letter dated October 5, 2016. AR, exh. 25 CPS Letter Regarding the Applicability of TS 135 to the Agency's Needs. CPS noted that, because TS 135 was for sport jumping rather than military jumping, it did not provide for testing that took into consideration the system's compatibility with ancillary military equipment such as weapons systems, tactical vests with body armor, and K9 passenger capabilities. Id. at 1.

CPS also noted a concern relating to potential differences between the maximum airspeed for use of the parachute that TS 135 required to be "plackarded" on the parachute, and airspeeds that could be achieved during deployment at certain altitudes. CPS suggests that there is a potential risk that a user could deploy the parachute at an airspeed exceeding the maximum airspeed "plackarded" on the parachute. AR, exh. 25 CPS Letter Regarding the Applicability of TS 135 to the Agency's Needs, at 1.

CPS also expressed the view that TS 135 does not require adequate real-world use to validate the parachute's reliability. AR, exh. 25 CPS Letter Regarding the Applicability of TS 135 to the Agency's Needs, at 2. CPS identified a number of reliability factors that it considered important, including damage tolerance and body position, that were affected by differences in a parachute's design, and noted that TS 135 did not include testing for damage tolerance or, in CPS's view, give adequate consideration to the differences in parachute design between sport and military parachutes. Id.

CPS also pointed out that TS 135 had very specific requirements for opening times and distances, which were appropriate for parachutes being used at low altitudes, but were not appropriate for parachutes being used at higher altitudes. AR, exh. 25 CPS Letter Regarding the Applicability of TS 135 to the Agency's Needs, at 2. CPS expressed the view that the shorter opening times and distances specified in TS 135 could result in injury or death to a jumper at higher altitudes. Id.

Finally, CPS noted that TS 135 did not have any requirements for turbulence testing. AR, exh. 25 CPS Letter Regarding the Applicability of TS 135 to the Agency's Needs, at 2.

Subsequent to its receipt of CPS's October 5 letter, the agency released the RFP that included the final PSPEC incorporating TS 135 for certain of the parachute's parameters and requirements. The agency afforded prospective offerors two opportunities to ask questions relating to the solicitation and received a number of questions in response. CPS did not ask any questions relating to the terms of the RFP or its specifications, and did not avail itself of the opportunity to question the agency about the limited incorporation of TS 135 into the PSPEC.

Prior to the deadline for submitting proposals, CPS filed an agency-level protest challenging various aspects of the solicitation. CPS's principal concerns related to instances where the PSPEC required a particular performance parameter, but such a performance parameter was never considered in connection with the development of TS 135. For example, CPS argued that the PSPEC's "glide ratio" requirement (the glide ratio is an expression of how far a parachute travels horizontally compared to how much it drops in altitude) had apparently never been achieved with a parachute that also met all of the TS 135 requirements. Agency Level Protest, at 7. The agency denied the protest. CPS Protest, Attachment 3, Agency Letter Denying CPS's Protest. Notably, the agency pointed out that the solicitation expressly provided that, in instances where there was a conflict between the PSPEC requirements and the requirements of TS 135, the requirements of the PSPEC took precedence. Id. at 3. After its agency-level protest was denied, CPS filed the instant protest with our Office.

PROTEST

The protester argues that TS 135 is a performance specification and testing standard used in connection with the fabrication and approval of civilian sport parachutes. CPS maintains that its use in connection with the design of a military parachute such as the E-MMPS is inappropriate, principally because the E-MMPS is to be used during military deployment scenarios (for example, high altitude, high opening scenarios, high-speed scenarios, and scenarios involving the added weight associated with military jumpers carrying equipment) that were never considered when TS 135 was promulgated.

CPS also notes that TS 135, by its terms, is intended for use in connection with the fabrication and testing of reserve canopies that are to be deployed in the event of a failure of the main canopy, or alternatively, emergency parachutes to be used in life-saving circumstances. CPS argues that TS 135 was never intended to be used in connection with the fabrication and testing of a main canopy and its related components.

CPS argues as well that the design characteristics identified by the agency for what is termed a "high glide" type of parachute system are fundamentally incompatible with the

requirements of TS 135. CPS suggests that the agency is using TS 135 as a matter of administrative convenience, and should instead promulgate testing standards that are specific to its requirements, rather than rely on TS 135.¹ According to the protester, the agency has failed to demonstrate that incorporation of TS 135 into its requirements is for legitimate reasons relating to safety, and in fact, the requirements of TS 135 may will result in a less safe parachute system.

Finally CPS argues that the solicitation contemplates the award of a contract based on proposals and bid samples only, without any requirement for testing and approval of the offered products prior to award. According to the protester, the absence of any pre-award testing and approval will lead to further compromising the reliability and safety of the parachute system being acquired.

Where a protester challenges a specification or requirement, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. Air USA, Inc., B-409236, Feb. 14, 2014, 2014 CPD ¶ 68 at 3. We examine the adequacy of the agency's justification for a challenged solicitation provision 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 matters of human life and safety are involved, our Office affords considerable deference to the judgments of the agency's technical experts. See VSE Corp., B-414057.2, Jan 30, 2017, 2017 CPD ¶ 44 at 8.

On this record, we have no basis to object to the agency's incorporation of TS 135 into the PSPEC. As an initial matter, we point out that the RFP expressly prioritizes the applicability of TS 135 by providing that the PSPEC takes precedence over the terms of TS 135 in the event of a conflict. Thus, to the extent that CPS is concerned that there is inconsistency in achieving the performance parameters of the PSPEC on the one hand, and satisfying the requirements of TS 135 on the other, the RFP dictates that the performance requirements of the PSPEC take precedence.

In addition, the agency explains that it adopted certain of TS 135's requirements principally because there simply are no agreed-upon or pre-existing military or civilian standards for the fabrication and testing of this newly-developing parachute system. The agency points out that the testing standards used for the MMPS system that were developed by the Army for the predecessor system led to the existence of certain serious risks inherent in that system that called into question the merit of those testing standards for achieving the highest possible safety. The agency thus describes the

¹ The protester notes that, in developing and acquiring the MMPS--the predecessor parachute system to the E-MMPS--the agency used testing standards developed by the Department of the Army.

current situation as amounting to a “vacuum” of acceptable standards for the main canopy system.²

In light of this lack of standards, the agency explains that it adopted and modified certain TS 135 requirements due to their life-saving functionality. The agency goes on to explain that adopting reserve or emergency parachute standards provides for the highest possible margin of safety because those parachutes are designed to be a life-saving parachute of last resort. In contrast, main canopy parachutes are not intended as a life-saving parachute of last resort. The agency therefore explains that it is both reasonable and rational to adopt these life-saving standards for use on the main canopy because this will result in the safest possible parachute system.

Although CPS takes issue with the agency’s conclusion regarding the application of reserve or emergency parachute standards to the main canopy, and suggests that this will result in a less safe parachute system, the protester has produced no probative information or data to support its position. The only information in the record supporting the protester’s position (other than its pleadings submitted here) is a self-serving letter CPS sent to the agency when CPS learned that the Marines intended to incorporate TS 135 into the PSPEC. AR, exh. 25. Neither the CPS letter nor the protester’s pleadings include any empirical data to support the claims that are advanced by CPS.

In any event, CPS’s protest amounts to an allegation that the TS 135 standards will be inadequate to meet the agency’s safety requirements, and that the agency therefore needs to adopt more stringent standards--standards that have not been identified or articulated by CPS. This essentially is a protest allegation that the agency should develop a more restrictive rather than a less restrictive specification. However, the role of our Office in resolving bid protests is to ensure that the statutory and regulatory requirements for full and open competition are met, not to protect any interest a protester may have in more restrictive specifications. Engineered Electric Company d/b/a DRS Fermont, B-295126.4, June 14, 2007, 2007 CPD ¶ 111 at 4.

In the final analysis, the protester does not challenge the reasonableness of the performance and design parameters identified by the agency as reasonably necessary to meet the agency’s mission requirements. These parameters--relating to such matters as performance of the parachute system at specified altitudes and standoff distances from the target area; its capabilities in terms of loading and glide ratio; and the agency’s requirements relating to the interoperability of the system on various aircraft--

² CPS provided a document with its protest that shows that the Parachute Industry Association--the group responsible for promulgating TS 135--recently has formed a committee to promulgate a technical standard for high altitude military parachutes that will be known as TS 136. Letter of Protest, Attachment 2. The fact that the Parachute Industry Association has formed a committee to promulgate this new technical standard confirms the agency’s position that there currently is no existing technical standard for the parachutes being acquired.

are not the subject of CPS's challenge. Instead, CPS's objections are confined to application of the TS 135 standards and tests (or the absence of standards and testing requirements) in light of these performance requirements. Given the absence of defined, well-recognized standards applicable to this newly-designed parachute system, and given the agency's explanation of its actions discussed above, we have no basis to object to inclusion of certain TS 135 standards in the agency's specifications, notwithstanding that TS 135 was promulgated for use in connection with civilian sport jumping parachute systems, rather than a military application.

In addition to the considerations noted above, we point out that this is a best-value acquisition where the solicitation stipulates that technical capability is significantly more important than price, and where system safety is the most important consideration in the agency's evaluation of technical capability. RFP at 72. The RFP also advises offerors that the agency will select a vendor based on whether its proposed system "meets or exceeds" the RFP's requirements. Id. This evaluation scheme therefore is designed to reward superior system performance, and more specifically superior system safety. To the extent that CPS believes it can offer a safer system by not simply meeting the RFP's requirements, but by exceeding those requirements, we presume the evaluation of its proposal will reflect these advantages.

As a final matter, there is no basis for our Office to object to the agency's decision to rely on proposals and bid samples to make its selection decision, rather than on a testing regimen conducted either before proposals are submitted or during the agency's selection activities. The agency points out that the RFP expressly contemplates extensive first article testing of the selected design before production units will be ordered or acquired. The agency describes this as adequate to meet its requirements and ensure the safety of the selected design, and the protester has not explained why a pre-award evaluation is necessarily better than the approach taken by the agency. Once again, this appears to be an attempt on the part of the protester to narrow the field of competition, and such attempts are not cognizable under our bid protest function. Engineered Electric Company d/b/a DRS Vermont, supra.

The protest is denied.

Thomas H. Armstrong
General Counsel