



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Northrop Grumman Corporation

File: B-285386

Date: August 1, 2000

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DIGEST

Solicitation requirement that an offeror's mobile radar air traffic control units interface with a particular, previously procured data automation system, which will be provided to the awardee as government-furnished equipment, does not overstate the agency's needs or unduly restrict competition where this automation system is necessary for achieving interoperability and commonality in the civil and military air traffic control environments.

DECISION

Northrop Grumman Corporation (NG) protests the terms of request for proposals (RFP) No. F19628-00-R-0014, issued by the Department of the Air Force for the acquisition of 18 rapidly deployable and highly mobile radar air traffic control systems, known as the Mobile Approach Control Systems (MACS). NG complains that the RFP requirement that MACS interface with a government-furnished data automation system, known as the Standard Terminal Automation Replacement System (STARS), which was previously procured from Raytheon Corporation under a contract awarded by the Federal Aviation Administration (FAA) in 1996, overstates the agency's needs, thereby unduly restricting competition and precluding NG from submitting a competitive proposal.

We deny the protest.¹

BACKGROUND

The Federal Aviation Act of 1958 calls for a common civil/military air traffic control (ATC) system and places the responsibility on the FAA for oversight and control of the common system. See 49 U.S.C.A. § 40101 et seq. (West Supp. 1999). In addition, a 1988 Memorandum of Agreement between the Department of Defense (DoD) and the FAA on the future of radar approach controls in the national airspace system (NAS) states that the FAA “determines the standard for NAS equipment and ATC facilities,” and that DoD “will equip facilities providing services to civil users so that the ATC service is transparent to the user.” Agency Report, Tab 6(c), MACS Operational Requirements Document I, Mar. 16, 1999, ¶ 3.2, at 4-5. The Air Force, as a provider of air traffic control services within the national airspace system, is required to have its air traffic control facilities equipped to provide the same services as the FAA. MACS must provide air traffic control services, day and night, in all weather conditions, to military and civil aircraft, and must be “interoperable” with the civil system in order to conduct force training and to respond to crises such as domestic disaster relief. Id. ¶¶ 1.1.1, 1.1.2, at 1.

On March 1, 2000, the Air Force issued the current solicitation for the acquisition of MACS, which will be comprised of three subsystems--a surveillance subsystem consisting of an airport surveillance radar; an operations subsystem consisting of, among other items, STARS; and a precision subsystem consisting of a precision approach radar. RFP Statement of Objectives (SOO) for MACS, Feb. 11, 2000, ¶ 1.0; see also Tr. at 12.

As relevant here, STARS was one part of a joint program between the FAA (which took the lead) and DoD to upgrade and modernize the current terminal air traffic control system. Tr. at 10. As stated above, the STARS effort was awarded by the FAA to Raytheon in 1996.² STARS is a data automation system that will provide the interface for controller display of aircraft and for routing centers for flight-plan

¹ Our Office conducted a recorded telephone hearing in connection with this protest. All transcript citations in this decision (Tr. at ____) refer to the hearing transcript.

² DoD participated in the drafting of the STARS specification, the conduct of the market survey, the operational capabilities demonstration, and the selection of Raytheon for the acquisition of STARS. Tr. at 21. In addition, DoD took the lead in conducting the competitive procurement and in awarding a contract in 1996 to Raytheon for the acquisition of fixed-base radar air traffic control systems, known as the Digital Airport Surveillance Radars (DASR).

In the current acquisition, the Air Force initially intended to procure the MACS requirement by modifying Raytheon’s DASR contract; however, after other firms

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processing. Id. STARS will provide safety enhancements not currently available, such as conflict alert, which affords controllers an automated way to prevent two aircraft from hitting each other, as well as “minimum safe altitude warning,” which is an aircraft-to-ground proximity check to make sure aircraft do not fly too low and into the ground. Id. at 10-11. Under the terms of the RFP, STARS will be provided as government-furnished software and associated hardware; contractor changes to the software will not be permitted. RFP SOO ¶¶ 3.0, 3.8; Tr. at 15, 39. Further, if a firm other than Raytheon is awarded the MACS contract, Raytheon and the MACS awardee will enter into an “associate contractor agreement,” whereby Raytheon will share information regarding STARS with the MACS awardee. RFP ¶ 5.3.3.3, at L-9; Tr. at 23-24.

In describing the logistics objective, the RFP states as follows:

The Government logistics management objective is to continually refine readiness, deployability, and sustainment to provide the most cost-effective support and to ensure MACS assets are provided to the user to achieve peacetime and wartime requirements. A key element of the MACS program is to be compatible and interoperable with existing systems. Training, logistics, technical manuals, operations, and maintenance considerations are fundamental to the issue of compatibility with fixed-base systems.

The Government support objective is to maximize hardware and software commonality with the various existing air traffic control and landing systems to minimize life cycle cost. By utilizing common systems, or variances thereof, with support infrastructures, training, and technical data, already in place and developed, the MACS program is expected to realize significant cost savings over its expected 20-year life.

RFP SOO ¶ 3.4.

The RFP states that the award will be made to the offeror submitting the best overall proposal, based on an integrated assessment of (1) mission capability/proposal risk (logistics/training, risk management, systems integration, and airport surveillance radar (ASR) performance); (2) past performance; and (3) cost/price. RFP § M002.a, at M-2. (Technical evaluation factors 1 and 2 are of equal importance and each of

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expressed an interest in competing for this requirement, the Air Force issued this competitive solicitation. Memorandum of Law at 4-5.

While this protest was pending, the Air Force proceeded with the receipt and evaluation of proposals. NG did not submit a proposal.

these factors is more important than factor 3. Under factor 1, the four subfactors are listed in descending order of importance. Id.)

ISSUES AND ANALYSES

NG complains that the RFP overstates the Air Force's needs for interoperability and commonality by requiring the use of Raytheon's STARS as the data automation system interface for MACS. NG believes that this unduly restricts competition and unfairly favors Raytheon, thereby precluding NG from competing for the MACS requirement. NG argues that the Air Force is legally required to relax the RFP interface requirement to allow the use of a data automation system "functionally equivalent" to Raytheon's STARS, that is, according to NG, "the same functionality is there, but the ways of accomplishing that functionality may be different." Tr. at 42.

The Competition in Contracting Act of 1984 requires that agencies specify their needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 10 U.S.C. § 2305(a)(1)(A)(i) (1994). The determination of a contracting agency's needs and the best method for accommodating them are matters primarily within the agency's discretion. Caswell Int'l Corp., B-278103, Dec. 29, 1997, 98-1 CPD ¶ 6 at 3. In seeking full and open competition, an agency is not required to construct its procurements in a manner that neutralizes the competitive advantages some potential offerors may have over others by virtue of their own particular circumstances where the advantages do not result from government action. Mortara Instrument, Inc., B-272461, Oct. 18, 1996, 96-2 CPD ¶ 212 at 6.

Since DoD and the FAA "follow exactly the same policies, procedures, and regulations for the separation and sequencing of aircraft," the Air Force believes that "it is a major safety benefit for both [DoD and the FAA] to have a common and interoperable system." Tr. at 14. As described above, the Air Force believes that an interoperable and common air traffic control system yields safety enhancements in areas involving conflict alerts and minimum safe altitude warnings. Id. at 10-11. The Air Force's concern with safety is also evident during "interfacility handoff," that is, when an FAA airspace control center transfers control of an aircraft to a DoD airspace control center and vice-versa. During such transfer, the Air Force explains that it is important that air traffic control personnel have a seamless system where information is seen and processed in the same manner in order to ensure that aircraft can be properly identified. Id. at 16-17. The Air Force notes that if dissimilar automation systems are used, separate and unique training of personnel will be required, which could slow down "operational momentum" and "operational capability," thereby affecting mission safety and operations. See id. at 49-52.

On this record, we conclude that the Air Force has reasonably justified its decision to require STARS as the data automation system interface for MACS. We have no basis to object to the Air Force's decision, consistent with the Congressional policy that there be a common civil/military air traffic control system, to require that

STARS be the interface for MACS in order to achieve interoperability and commonality between existing radar systems in the civil and military air traffic control environments. Notwithstanding NG's position, we do not believe that the Air Force is legally required to relax its specifications and accept what NG characterizes as a functionally equivalent interface where the Air Force reasonably believes that STARS is necessary to minimize mission safety and operational risks. In any event, we point out that although afforded an opportunity to do so, NG has never meaningfully explained in its written submissions or at the hearing how its functionally equivalent system would satisfy the Air Force's needs for interoperability and commonality.³

Moreover, to the extent NG complains that the Air Force's decision to require STARS as the MACS interface unfairly favors Raytheon and affords that firm an unfair competitive advantage, we disagree. In this respect, any competitive advantage held by Raytheon in the MACS procurement is as a direct result of that firm being awarded two contracts in 1996—one by the FAA for STARS and the other by DoD for DASR. Nevertheless, the record shows that the Air Force took reasonable steps to mitigate any perceived competitive advantage in favor of Raytheon. Most importantly, the Air Force issued a competitive solicitation for the acquisition of MACS, instead of modifying Raytheon's DASR contract, when other firms expressed an interest in competing for the MACS requirement. Under the terms of the RFP, the Air Force will provide STARS to the MACS awardee as government-furnished equipment, and if a firm other than Raytheon is awarded the MACS contract, the Air Force will require Raytheon to share information about STARS under an associate contractor agreement. In our view, any remaining competitive advantage held by Raytheon in this MACS procurement is no different from that enjoyed by any

³ NG also complains that the Air Force unreasonably failed to analyze projected life-cycle cost savings associated with the requirement for a STARS interface versus a functionally equivalent interface. However, since the Air Force has reasonably justified its requirement for STARS, as discussed above, there is no requirement that the Air Force relax its specifications and accept a functionally equivalent interface, even at a possibly lower cost. See Bombardier, Inc., Canadair, Challenger Div., B-243977, B-244560, Aug. 30, 1991, 91-2 CPD ¶ 224 at 5-6.

other incumbent offeror participating in a competition for an agency's follow-on requirements, and NG has not shown otherwise.⁴

The protest is denied.

Robert P. Murphy
General Counsel

⁴ NG also asserts that it is unable to compete for the MACS requirement because the RFP's evaluation scheme emphasizes logistics/training, rather than system performance. NG maintains that this evaluation scheme is another example of the Air Force's bias in favor of Raytheon, despite that firm's alleged problems in performing the STARS requirement. While we view the weighting of evaluation factors and subfactors as largely within a contracting agency's discretion, we briefly address NG's concern.

Under the logistics/training subfactor, the RFP states that an offeror's proposed approach for incorporating the MACS equipment into existing logistics infrastructures, which includes Raytheon's STARS, will be evaluated. We believe this evaluation scheme reasonably reflects the agency's requirement for interoperability and commonality, as described above. While the subfactor at issue--logistics/training--is one of four subfactors, albeit the most important subfactor, given the weight afforded the three technical evaluation factors (mission capability/proposal risk, past performance, and cost/price), the challenged subfactor does not appear to be of sufficient weight to bias the procurement in favor of Raytheon. Further, if, as alleged by NG, Raytheon has had problems with STARS performance, under the terms of the RFP, its alleged deficient performance should reasonably be considered under the past performance evaluation factor, which is weighted equal to the mission capability/proposal risk evaluation factor. Under these circumstances, we do not believe, and NG has not established, that the evaluation scheme favored Raytheon.

In addition, in its initial protest, NG challenged the RFP requirement for an ASR demonstration (the least important subfactor under the mission capability/proposal risk evaluation factor). The agency addressed this matter in its administrative report. In its comments on the report, NG did not rebut the agency's position. Accordingly, we deem this matter to be abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520 at 4 n.2.