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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Moog Inc.

File: B-294600

Date: November 12, 2004

Martin G. Bobak for the protester.

Victor G. Vogel, Esq., U.S. Army Materiel Command, and John W. Klein, Esq., and Laura Mann Eyester, Esq., Small Business Administration, for the agencies.

Charles W. Morrow, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation for maintenance and overhaul services of a flight safety part should not be set aside for exclusive small businesses participation is denied, where although the protester contends that the services can only be acquired from approved sources, the procuring agency states that these services need not be acquired from approved sources and where the agency has twice previously acquired these services from a small business concern under acquisitions that were set aside exclusively for small business participation.

DECISION

Moog Inc. protests the decision of the U.S. Army Aviation and Missile Command (AMCOM) to issue request for proposals (RFP) No. DAAH23-03-R-0668, for the overhaul and upgrade of UH-60 pitch trim actuators, as a small business set-aside. Moog, the original equipment manufacturer of the actuator, contends that only an approved source may perform the necessary work, and that the agency lacked a reasonable basis for setting aside the procurement because no small businesses have been approved to perform the requirement.

We deny the protest.

The RFP, issued on June 30, 2004, contemplates the award of a 5-year indefinite-delivery/indefinite-quantity fixed-price contract for the overhaul,

recapitulation, and upgrade of UH-60 pitch trim actuators.¹ The specifications require the contractor to furnish all services, facilities, labor, parts, materials, equipment, tools and data to accomplish the work in accordance with “Depot Maintenance Work Requirement” (DMWR) 1-1650-385.² See RFP §§ C-1 a. and b.

In addition, the RFP includes “FLIGHT SAFETY PARTS CRITICAL MAINTENANCE AND OVERHAUL [Quality Engineering Standard] QE-STD-2”, which obligates the contractor to meet certain minimum requirements in performing the overhaul and maintenance of the actuators because the actuator is a flight safety part (FSP).³ RFP § C-2. This standard states that “to maintain the integrity and quality of FSP, components, subassemblies, and assemblies undergoing [maintenance and overhaul], contractors providing such services are required to adhere to the requirements of this document in its entirety.” See QE-STD-2 ¶ 5.0. The standard lists several specific requirements and states that “all requirements of this document (para[graphs] 6.1 –6.7) shall be complied with by a contractor receiving a contract for [maintenance and overhaul] of FSP.” Those requirements pertain to planning, audits, critical characteristics, records, personnel, measurement and test equipment, and government furnished material.

Moog protests that AMCOM could not properly set aside this procurement for small businesses, because there are no small business approved sources for the UH-60 pitch trim actuator. In this regard, Moog argues that QE-STD-2 is a “qualification requirement” that obligates AMCOM to use only approved sources for maintenance and overhaul of FSPs, such as the UH-60 pitch trim actuator. Comments at 2. Moog bases this argument upon the fact that this standard includes a definition of

¹ The UH-60 pitch trim actuator is a flight control component of the UH-60 Blackhawk helicopter and is designed to maneuver and stabilize the helicopter when in flight. See <<http://india.moog.com/noq/%5Fprograms%5F%5Fc266>>.

² A DMWR is an existing maintenance serviceability standard for organic depot level reparables that prescribes the scope of work to be performed, types and kinds of materiel to be used, and quality of workmanship, including repair methods; procedures and techniques; modification requirements; performance parameters; and quality assurance discipline. See Logistics Dictionary, U.S. Army Quartermaster Center and School, <www.quartermaster.army.mil/ltd/logisticsdictionary.html>.

³ This standard defines an FSP (involving aircraft, components, and engine) as any part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause loss of or serious damage to the aircraft, and/or serious injury or death to the occupants. See RFP § C-2 (QE-STD-2 ¶ 4.0 a. and b).

“approved source”⁴ and requires that maintenance and overhaul contractors adhere to all the requirements of QE-STD-2.

We disagree that QE-STD-2, as included in the RFP here, is a qualification requirement that restricts competition under this solicitation to approved sources. This standard specifically identifies the requirements that the maintenance and overhaul contractor must satisfy in performing the contract work, such as planning and procedures to perform the work, inspection of critical characteristics, traceability and retention of records, certification of personnel skills, calibration of test and measurement equipment, and procedures for handling government furnished material (if provided). See QE-STD-2 ¶¶ 6.1-6.7. Source approval is not among the standard’s listed requirements, with which the contractor must comply, nor does the standard state that maintenance and overhaul contractors must be source approved to perform this work.⁵

In addition, AMCOM reports that the agency’s current policy is to require that only manufacturers of the actuator be source approved and that all sources be permitted to compete for overhaul and maintenance services for the actuator, where, as here, there is available government-owned technical data in the form of an approved DMWR to permit competition. See Agency Report (AR) at 2, Tab 3, CAPSAR at II (level of competition will depend upon the availability of government-owned technical data in the form of an approved DMWR).

Agencies are permitted to determine how best to accommodate their needs and are entitled to use relaxed specifications when they reasonably conclude that they can increase competition and meet their needs at the same time. See *Lab Prods., Inc.*, B-252452, Mar. 19, 1993, 93-1 CPD ¶ 250 at 3. Our Office generally does not consider contentions that a solicitation should be more restrictive than what an agency believes is necessary to meet its needs. Id.

⁴ QE-STD-2 defines an approved source as “a manufacturer or vendor who has satisfied, prior to contract award, all AMCOM source approval requirements as set forth in the [competition advocate’s shopping list (CASL)] to include, if applicable, engineering testing requirements (fatigue, endurance, and/or interchangeability).” QE-STD-2 ¶ 4.0 d.

⁵ Although it is true that QE-STD-2 includes a definition for “approved source,” AMCOM explains that the reason the definition of an approved source is included in QE-STD-2 is to ensure that “if in the course of performing the upgrade and overhaul, the contractor performing the overhaul requires replacement of [an FSP] component, then the component must be acquired from a manufacture/vendor that is an approved source.” See AR at 2.

AMCOM indicates that the decision here to set aside the procurement for exclusive small business participation was made because AMCOM had successfully procured maintenance and upgrade of the UH-60 actuators as a small business set-aside on two previous occasions. On each occasion, AMCOM received two or more proposals from small businesses, and award was made to a small business concern. Thus, AMCOM advises that it made the decision based on the prior procurement history, which reflected that the agency could anticipate that offers would be obtained from at least two responsible small business concerns and that award would be made at a fair market price.

Under Federal Acquisition Regulation § 19.502-2(b), a procurement with an anticipated dollar value of more than \$100,000 must be set aside for exclusive small business participation where there is a reasonable expectation of receiving offers from at least two responsible small business concerns and that award will be made at a fair market price. We generally will not question a small business set-aside determination, which is a matter within the contracting officer's business judgment, where the record shows that the evidence before the contracting officer was adequate to support the reasonableness of the conclusion that small business competition could reasonably be expected. See National Linen Serv., B-285458, Aug. 22, 2000, 2000 CPD ¶ 138 at 2.

Moog does not dispute that AMCOM has previously procured this requirement as a small business set-aside. Rather, Moog argues that AMCOM erroneously failed to acquire these services from approved sources. As noted above, we find that the RFP does not require source approval to perform these services. Moog also argues that the previous performance of these services by the small business contractor has been deficient. AMCOM disputes Moog's allegations and states that the small business has satisfactorily performed "without having any safety of flight related-problems or other significant quality issues." See Contracting Officer's Statement at 2; AR, Tab 16, Letter from AMCOM to Moog (Aug. 19, 2003) at 4. Although Moog disagrees with the agency's assessment that the small business satisfactorily performed the overhaul services, its disagreement provides us with no basis to conclude that no responsible small business could perform these services. We find that AMCOM reasonably determined that it could expect to receive offers from at least two responsible small business concerns at a fair market price, and therefore the solicitation was appropriately set aside for exclusive small business participation.

The protest is denied.

Anthony H. Gamboa
General Counsel