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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Kolob Canyons Air Service

File: B-298240.2

Date: July 11, 2006

Jeff Obering for the protester.

Johnathan M. Bailey, Esq., Bailey & Bailey, PC, for Courtney Aviation, Inc., an intervenor.

Mark G. Garrett, Esq., U.S. Forest Service, for the agency.

Paul E. Jordan, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Exclusion of protester's offer from competitive range as technically unacceptable was unobjectionable where agency reasonably concluded that protester's offered planes did not meet solicitation's avionics requirements or provide sufficiently detailed plans for making planes compliant with those requirements.

DECISION

Kolob Canyons Air Service protests its exclusion from the competitive range, and the award of a contract to Courtney Aviation, Inc., under request for proposals (RFP) No. R5-06-20-001, issued by the Department of Agriculture, U.S. Forest Service, for aircraft in support of air attack operations.

We deny the protest.

The Forest Service is responsible for protecting National Forest lands from wild land fires, and also assists in protecting other jurisdictions. To ensure the efficiency and safety of aviation operations, the agency deploys tactical aircraft to serve as platforms for air attack supervisors, which coordinate the use of airspace above incidents and disasters to ensure that air operations accomplish the objectives of the incident commander on the ground. These aircraft operate in very complex environments and must provide a communication capability for multiple contacts on the ground and in the air. The RFP contemplated the award of a requirements contract for light aircraft to support this mission and to provide other flight services

for administrative purposes, including law enforcement and transport of personnel and/or cargo.

The solicitation provided for award to be made to the offeror or offerors whose conforming proposals were considered most advantageous to the government, and advised that award would be made on the basis of initial proposals. Proposals were to be evaluated on the basis of price and three capability factors--aircraft acceptability (including avionics), past performance, and maintenance. (Capability and past performance, combined, were approximately equal in weight to price.) Offerors were specifically advised that "[q]uoted aircraft must meet the minimum requirements stated in the Solicitation." RFP § M.1. Relevant to this protest, the RFP included a number of mandatory aircraft avionics requirements, including a requirement for audio control systems to monitor the six radios--three VHF-AM and three VHF-FM--to be installed in each aircraft.

Kolob and Courtney were among several offerors that submitted proposals. In evaluating Kolob's proposal, the agency determined that the current avionics configuration of Kolob's proposed aircraft did not meet the solicitation's avionics requirements, resulting in a total of 13 discrepancies, and that Kolob's proposal did not include a plan describing how the aircraft would comply with the avionics requirements. Based on this evaluation, the contracting officer determined that Kolob's proposal was technically unacceptable, and excluded it from the competitive range. Kolob thereupon filed this protest.

Kolob asserts that the exclusion of its proposal from the competitive range was improper. Specifically, while its aircraft radio package as currently configured did not meet the avionics requirements, Kolob maintains that its proposal adequately explained how all radios would be configured to meet the avionics requirements prior to the contract start.

In reviewing an agency's evaluation of proposals and subsequent competitive range determination, we will not evaluate the proposals anew in order to make our own determination of their acceptability or relative merits; rather, we will examine the record to determine whether the documented evaluation was fair, reasonable, and consistent with the evaluation criteria and with procurement statutes and regulations. See Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 3. The record here shows that the agency reasonably determined Kolob's proposal to be technically unacceptable.

The solicitation generally required that each proposal include a detailed work plan indicating how each aspect of the statement of work would be accomplished, and specifically required with regard to avionics that the proposal include a completed questionnaire, which called for provision of "photographs and narrative description of instrument panels, consoles, and antennas for all stations, or [provision of] the general layout and plan for the proposed avionics systems." RFP at 80. The agency determined that Kolob's proposal failed to provide sufficient information to

demonstrate either that its aircraft currently complied with all of the avionics requirements or how its aircraft would be made compliant.

For example, the RFP required that each aircraft have an audio control system with an audio indicator panel (ACS-296) mounted on the forward observer's instrument panel to monitor the six required radios. RFP at 34. The agency explains, in this regard, that the ACS-296 provides the necessary visual indication system to allow the monitoring of, sorting through, and responding to the high volume of radio traffic that may be received on the aircraft's six radios. Contracting Officer's Statement at 2. As noted by the agency, Kolob's proposal did not show an installed ACS-296 panel in any of the planes it proposed; rather, in its response to the avionics questionnaire, Kolob simply referred to its "attached photo of panel layout." Agency Report (AR), Tab 7, at 251. Kolob asserts that the two photographs provided clearly showed where the ACS-296 is to be located. However, neither of the photographs shows an installed ACS-296, and only one even indicates where the panel is to be installed. Moreover, as the protester concedes, neither photograph depicts any of the planes Kolob was proposing. Kolob Final Comments at 1. Furthermore, Kolob's proposal did not include an explanation of how and by what process its aircraft would be upgraded to include the ACS-296.¹ The agency concluded that Kolob's proposal failed to establish that its proposed aircraft would meet the RFP's ACS-296 requirement. This determination was reasonable.

The solicitation also required installation of various push-to-talk (PTT) switches for the radio transmitter and intercom at each observer position, including a floor mounted PTT intercom switch for the forward observer. RFP § C.4.3.2.1.F(3). The agency found that neither the photographs nor the narrative in Kolob's proposal addressed this requirement. Kolob maintains that the agency's finding was unreasonable, asserting that its proposal explained and outlined all aspects of the radio configuration; that its aircraft have the required switches; and that its proposed aircraft have been used under other Forest Service contracts with the same equipment requirements.

The evaluation in this area was reasonable. Notwithstanding the RFP requirement that offerors indicate how each aspect of the statement of work was to be

¹ Kolob asserts that it would have clarified its proposal with regard to the ACS-296 had the agency asked it about that system. However, there generally is no obligation for an agency to conduct discussions where, as here, the RFP specifically instructs offerors that award may be made on the basis of initial proposals. Colmek Sys. Eng'g, B-291931.2, July 9, 2003, 2003 CPD ¶ 123 at 7. An agency is not precluded from awarding on an initial proposal basis merely because an unacceptable lower-priced offer might be made acceptable through discussions. Integration Techs. Group, Inc., B-274288.5, June 13, 1997, 97-1 CPD ¶ 214 at 6. We find no circumstances here that call into question the agency's decision not to engage in discussions with Kolob.

accomplished, the record confirms that, as found by the agency, Kolob's proposal did not specifically address the forward observer's floor switch. In this regard, offerors are responsible for submitting an adequately written proposal, and run the risk that their proposals will be evaluated unfavorably where they fail to do so. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3. While Kolob's proposal generally indicated that it complies with "other radio requirements as outline[d] in [RFP] Section C4.3," entitled "Aircraft Avionics Requirements," Proposal § 2, this blanket statement did not meet the RFP requirement for an explanation. Likewise, the fact that Kolob's aircraft have been used under other Forest Service contracts with the same equipment requirements did not compel the agency to find its proposal acceptable here. Each federal procurement stands alone; the agency's acceptance of a proposal as acceptable under a prior procurement does not require the agency to find the proposal acceptable under the present procurement. Career Quest, Inc., B-292865, B-292865.2, Dec. 10, 2003, 2004 CPD ¶ 4 at 5-6. Thus, the agency reasonably determined that Kolob's proposal also failed to meet the RFP requirement for a forward observer's floor switch.

Since we find that the agency reasonably determined that Kolob's proposal failed to include sufficient information to establish that it met these and other avionics requirements, we conclude that the agency reasonably eliminated Kolob's proposal from the competitive range as technically unacceptable.

Kolob also challenges the award on the basis that the agency failed to account for the fact that its proposal was lower in price than the proposal submitted by the awardee. However, in view of the fact that Kolob's proposal was reasonably determined to be technically unacceptable, the protester's assertion that it should have been awarded the contract on the basis of its price is without merit; a technically unacceptable proposal cannot be considered for award, notwithstanding its lower proposed price. TEAM Support Servs., Inc., B-279379.2, June 22, 1998, 98-1 CPD ¶ 167 at 9.

The protest is denied.

Gary L. Kepplinger
General Counsel