



United States Government Accountability Office
Washington, DC20548

Comptroller General
of the United States

Decision

Matter of: Pemco Aeroplex, Inc.

File: B-310372.4

Date: May 2, 2008

David R. Hazelton, Esq., Roger S. Goldman, Esq., Kyle Jefcoat, Esq., Benjamin Wei, Esq., and Andrew Stein, Esq., Latham & Watkins LLP, for the protester.

Brent G. Curtis, Esq., and Kenneth C. Kitzmiller, Esq., Department of the Air Force, for the agency.

Rand L. Allen, Esq., Paul F. Khoury, Esq., Scott M. McCaleb, Esq., Kara M. Sacilotto, Esq., William J. Grimaldi, Esq., and Nicole P. Wishart, Esq., Wiley Rein, LLP, for The Beeing Company, an intervenor.

Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency's actual requirements have materially changed from those stated in a solicitation under which a competition was recently conducted is dismissed where agency representative responsible for translating operational requirements into contractual requirements has submitted declaration stating that the agency has not yet made any determination regarding potential changes to the contract requirements.

DECISION

Pemco Aeroplex, Inc.,¹ protests the terms of solicitation No. FA8105-05-R-0014, under which a contract was awarded to Boeing Aerospace Operations to perform programmed depot maintenance (PDM) for KC-135 aircraft. Pemco asserts that recent developments indicate that the Department of the Air Force's actual requirements regarding PDM for KC-135 aircraft are materially different than the terms of the solicitation under which the offerors recently competed, and maintains

¹ We understand that Pemco is now doing business as Alabama Aircraft Industries, Inc. Since the protester refers to itself as Pemco, our decision does the same.

that the solicitation should be revised, and the competition reopened, to permit offerors to submit proposals for what Pemco asserts are the Air Force's actual requirements.

We dismiss the protest.

BACKGROUND

On February 29, 2008, the agency selected Boeing for award of a contract to perform PDM on KC-135 aircraft.² On March 11, Pemco filed a protest challenging that source selection decision; the merits of the March 11 protest are currently being considered by this Office, and we will subsequently issue a decision regarding that matter.

On March 21, Pemco filed this supplement to its March 11 protest, maintaining that, during program management review meetings (PMRs) conducted by the Air Force on March 11-12,³ the Air Force "announced two significant, material changes to the KC-135 PDM program – a change in the expected quantity of aircraft undergoing contractor PDM and a potential change in the PDM cycle."⁴ Pemco Protest, Mar. 21, 2008, at 4.

More specifically, with regard to the quantity of aircraft to be serviced under the contract, Pemco notes that the solicitation advised offerors that the agency's "best estimated quantity" (BEQ) of aircraft to be serviced under the contract was 24 per year. Nonetheless, Pemco asserts that, at the recent PMRs, the Air Force "announced . . . an increase in the expected number of aircraft undergoing contractor PDM each year from 24 to 36."⁵ Protest at 4. With regard to Pemco's

² As the parties are aware, the agency initially awarded the contract to Boeing on September 10, 2007; thereafter, Pemco filed a protest challenging that action. On December 27, 2007, this Office sustained Pemco's protest, recommending that the agency perform cost realism and risk assessments regarding particular aspects of Boeing's proposal. The agency's February 29, 2008 source selection decision was made after reviewing our December 27 decision and recommendations.

³ The agency states that PMRs are conducted periodically to assess the performance of maintenance activities on the KC-135 aircraft, and to discuss relevant future plans.

⁴ PDM on KC-135 aircraft is currently performed both by the Air Force itself at Tinker Air Force base (frequently referred to as "organic" PDM) and by an outside contractor or contractors (until recently, the outside contractor work was divided between Boeing and Pemco). PDM is currently performed on a 5-year cycle.

⁵ Neither Pemco's protest, nor its subsequent response to the agency's motion to dismiss, identifies who allegedly made the announcement or, other than generally
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protest alleging a “potential change in the PDM cycle,” Pemco asserts that, at the PMRs, the Air Force “announced a pilot program to change the PDM schedule of the KC-135 aircraft from the current five year maintenance schedule to a new four/eight year schedule.” Id. at 5.

In response to Pemco’s March 21 protest, the Air Force submitted a declaration from Col. James J. Nally, Commander, 827th Aircraft Sustainment Group, Tinker Air Force Base, whose responsibilities include “translating operational requirements [for the KC-135 fleet] into contractual requirements.” Declaration of Col. Nally, Mar. 31, 2008, ¶ 1. With regard to the quantity of aircraft to be serviced, the declaration states:

Pemco’s assertion that the Air Force’s PMR presentation announced a change in the number of aircraft expected to undergo contract PDM is incorrect. The number of PDM aircraft planned for both organic and contract PDM remains unchanged. The total KC-135 PDM aircraft per year (organic and contract) is estimated at 72-78. The Best Estimated Quantity for the contractor remains at 24 aircraft per year as stated in the solicitation.

Id. ¶ 3.

With regard to Pemco’s allegation of a “potential change in the PDM cycle,” the declaration states:

The Air Force has not changed from the current five-year PDM cycle. The four/eight-year maintenance concept is an on-going study and will be evaluated using a structured systems engineering approach to determine if this model is feasible. This evaluation will focus on a sample of 13 prototype aircraft to be inducted into the Tinker organic maintenance line beginning in FY09. This prototype effort is necessary to support the Air Force decision to remain with the current five-year PDM cycle or switch to an alternative maintenance concept. All the data necessary to make this decision will not be available until FY14. Until the study and prototyping is complete and the data fully evaluated, the requirement for contract PDM to support a five year cycle will not change.

Id. ¶ 4.

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referencing the PMRs, when and under what circumstances the announcement was made.

As a general rule, in considering a protest based on the protester's view of what a procuring agency's actual requirements are, or should be, this Office will accept an agency's representations regarding its actual requirements and its statements of how it intends to fill them. See, e.g., Serv-Air, Inc., B-258243.4, Mar. 3, 1995, 95-1 CPD ¶ 125 at 3-4. Specifically, we have applied this policy in situations where an agency is considering a particular course of action, but has not yet reached a conclusion regarding how it will proceed. ITT Elect. Sys., Radar Sys.-Gilfillian, B-299150 et al., Feb. 2, 2007, 2007 CPD ¶ 19 at 2-3. Until the agency has made a decision regarding a potential change in contract requirements, a protest based on the protester's anticipation of the agency's subsequent course of action is speculative and premature. Lockheed Martin Aeronautics Co., B-298626, Nov. 21, 2006, 2006 CPD ¶ 177 at 7-8.

Here, as discussed above, the agency has unambiguously stated that Pemco's factual allegations regarding changes to the contract requirements are not accurate, and that, to the extent the agency has considered, or is considering, the type of changes on which Pemco's protest is based, no decision has been reached. On this record, Pemco's protest is premature.⁶

The protest is dismissed.⁷

Gary L. Kepplinger
General Counsel

⁶ In the event the agency subsequently pursues a course of action consistent with Pemco's factual allegations, Pemco may re-submit its protest for this Office's consideration. Our statement in this regard should not be construed as an advance ruling regarding any relevant issue presented by such subsequently-filed protest.

⁷ In its protest submissions, Pemco also asserts that Boeing had "advance knowledge" of what Pemco asserts are the agency's changed requirements. Since, as discussed above, we have dismissed the protest on the basis of the Air Force's representations that its requirements have not changed, we will not further consider Pemco's protest that Boeing had knowledge of the alleged changes.