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Decision

Matter of: Frasca International, Inc.

File: B-293299

Date: February 6, 2004

Richard L. Moorhouse, Esq., L. James D'Agostino, Esq., Leigh T. Hansson, Esq., and Natalia W. Geren, Esq., Reed Smith, for the protester.

Geoffrey D. Chun, Esq., Department of the Navy, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly consolidated requirements for pilot training with flight training devices in violation of the Competition in Contracting Act is denied, where the protester does not allege, and the record does not show, that the consolidation precluded it from having a reasonable chance for award, and thus the protester has not shown that it was prejudiced.

DECISION

Frasca International, Inc. protests the terms of request for proposals (RFP) No. N61339-03-R-0084, issued by the Department of the Navy for pilot instructors and flight training devices (FTD) to administer classroom and simulator training for the TC-12B aircraft. Frasca contends that “bundling” of the FTDs with the other training services, which were previously procured under separate contracts, contravenes the Competition in Contracting Act (CICA).

We deny the protest.

In August and September of 2003, the Navy published a “sources sought” notice and two pre-solicitation notices concerning the requirement for pilot training and two FTDs. Both small and large businesses responded to these notices, and interested firms were provided a site visit to familiarize them with the government-furnished property required to be used under the contract. At least seven small businesses, five of which were FTD suppliers, attended the site visit, and the agency visited the facilities of four FTD suppliers, including two small businesses. Frasca is one of the small business FTD suppliers that responded to the “sources sought” notice, attended the site visit, and whose facilities were visited by the Navy.

The RFP was then issued on October 6, 2003 as a small business set-aside. The RFP provided for award of a fixed-price contract for a base year of approximately 3 years and 8 months, with a first option for 1 year and a second option for approximately 4 months. Award was to be made to the offeror whose proposal was determined to be the most advantageous to the government, based on technical, past performance, and price.

The date set for receipt of initial proposals was November 12; however, past performance proposals were due by October 27 at 2 p.m. The RFP specified that proposals were to be submitted in hard copy and disk format.

At 2:01 p.m. on October 27, Frasca submitted a past performance proposal by e-mail transmission. Its proposal provided references for itself as the prime contractor who would provide the FTDs, and a subcontractor proposed to perform the training portion of the work. On October 29, the Navy notified Frasca that its proposal was rejected as untimely and would not be further considered.

On November 6, the Navy amended the RFP, making minor changes to the solicitation and extending the date for receipt of proposals (including the past performance proposal) until 2 p.m. on November 17. The Navy provided a copy of this amendment to Frasca and invited it to submit a proposal. Frasca requested an extension of time to respond to the RFP, but the Navy denied the request.

On November 17, [REDACTED] small business offerors submitted proposals. These offerors are FTD suppliers who had attended the site visit. Frasca did not submit a proposal, but instead protested to our Office prior to the RFP's extended closing time for receipt of proposals. Frasca contends that the Navy improperly consolidated the FTD requirements with the training requirements in violation of CICA.

CICA generally requires that solicitations include specifications which permit full and open competition, and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. See 10 U.S.C. §§ 2503(a)(1)(A), (B) (2000). Since bundled or consolidated procurements combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can furnish only a portion of the requirement. We review such solicitations, when they are protested, to determine whether the consolidation is reasonably required to satisfy the agency's legitimate needs. AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 16.

Although prior to this procurement the Navy had awarded separate contracts for training services and the lease of the FTDs, the agency explains that the leases were solely for the purpose of providing the FTDs as government-furnished equipment to the training contractor to conduct pilot training. When the FTD leasing contract

expired, the Navy sought to combine the two requirements. The Navy explains that this was done, in part, to make the procurement consistent with other aircraft training contracts (which combined training with FTD requirements) and because available appropriations required such an approach. It asserts that it has no independent need for the FTDs other than to use them as a “tool” for training purposes. The Navy also asserts that efficiencies will result from bundling because “the contractors can propose the proper mix of FTDs and pilot instruction that offers the best value to the Government,” as opposed to the Navy having to make such a determination under separate contracts. Agency Supplemental Report at 1 n.1.

Frasca contends that these reasons are insufficient to demonstrate that bundling was necessary to meet the agency’s needs. Rather, Frasca argues that the Navy’s reasoning merely demonstrates that the agency failed to perform adequate acquisition planning. It asserts that bundling restricts FTD suppliers like itself from participating, stating that many suppliers do not also provide the training services required by the RFP.

We need not reach the issue of whether the Navy has sufficiently justified its consolidation of the requirements because the record does not show that the protester has suffered any prejudice, even if the requirements were improperly consolidated. Competitive prejudice is an essential element of every viable protest; where the record does not demonstrate that, but for the agency’s actions, the protester would have had a reasonable chance of receiving the award, our Office will not sustain a protest, even if a deficiency in the procurement is found. ABF Freight Sys., Inc., et al., B-291185, Nov. 8, 2002, 2002 CPD ¶ 201 at 7; MCS Mgmt., Inc., B-285813; B-285882, Oct. 11, 2000, 2000 CPD ¶ 187 at 9.

Nowhere in its protest submissions does Frasca allege that the “bundled” requirements precluded it from having a reasonable chance for award. To the contrary, it identified in its response to the “sources sought” notice and in its past performance proposal two firms that it affirmatively stated it would be teaming with to provide the training portion of the work, and provided past performance information concerning one of these firms, never suggesting to the Navy that the teaming arrangements had not been finalized or that bundling was impeding its ability to compete.

Although Frasca now asserts that the teaming arrangements with these firms “did not come to final fruition,” Frasca does not contend that the discussions failed due to the bundling restrictions. Protester’s Comments at 6. Rather, it complains only that it did not have sufficient time to submit a proposal when it was provided another opportunity to compete under the amended RFP, because Frasca had discontinued discussions with its potential teaming partners when its past performance proposal was rejected in October as untimely, and the Navy had established a short deadline for proposal submissions. Thus, the record shows that

to the extent Frasca was unable to compete, it was due to the breakdown of teaming discussions caused by Frasca's untimely proposal submission, not by bundling.

In any case, we find no evidence in the record that the bundled requirements restricted competition by excluding small business FTD suppliers. Given that [RECACTED] offerors that responded to the RFP were FTD suppliers, it does not appear that competition was restricted by the Navy's consolidation of the requirements here.

The protest is denied.

Anthony H. Gamboa
General Counsel