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Decision

Matter of: Northrop Grumman Technical Services, Inc.

File: B-406523

Date: June 22, 2012

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Kevin P. Mullen, Esq., Charles L. Capito, Esq., and Ethan E. Marsh, Esq., Jenner & Block LLP, for Gulfstream Aerospace Corporation, the intervenor.

Col. Mark S. Teskey, Lt. Col. Paul E. Cronin, Amanda M. Willis, Esq., and Italia A. Carson, Esq., Department of the Air Force, for the agency.

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DIGEST

1. Consolidation of requirements for contractor logistics support for the C-20 and C-37 aircraft requiring 5 years of fixed-price flying hour rates is reasonable, where the agency determined that consolidation will result in significant cost savings and operational efficiencies.
2. A solicitation for aircraft logistics support is not unduly restrictive of competition or inconsistent with customary commercial practices, where the record supports the agency's market research identifying its requirements and mitigating risk to offerors.

DECISION

Northrop Grumman Technical Services, Inc., of Herndon, Virginia, protests the terms of request for proposals (RFP) No. FA8106-11-R-0001 issued by the Department of the Air Force for contractor logistics support for the C-20 and C-37 aircraft. Northrop Grumman contends that the solicitation unduly restricts competition and deviates from customary commercial practices.

We deny the protest.

BACKGROUND

The C-20 and C-37 aircraft are militarized versions of commercial business jets manufactured by Gulfstream Aerospace Corporation. The C-20 aircraft is a variant of Gulfstream's GIII and GIV business jets, which have been in use since 1980. See Agency Report (AR), Tab 5.2, Performance Work Statement (PWS), at 4-7; www.gulfstream.com/news/history. The newer C-37 aircraft is a variant of Gulfstream's GV and G550 business jets, which have been in use since 1995.¹ Id. The C-20 and C-37 aircraft, for which the RFP seeks logistics support, are primarily used by the military services to provide worldwide airlift support for the Vice President, Cabinet-level dignitaries, senior military leaders, and other government executive officials.² AR, Tab 5.2, PWS, at 4. Northrop Grumman is the incumbent contractor providing logistics support to the Air Force for the C-20 aircraft, and Gulfstream is the incumbent contractor for the C-37 aircraft. AR at 59.

Pre-Solicitation Planning

Between December 2006 and November 2010, the Air Force issued four requests for information (RFI), soliciting industry's views with regard to consolidating the contractor logistics support for the C-20 and C-37 aircraft and related issues.³ See, e.g., www.fbo.gov, Special Notice, Dec. 20, 2006; Sources Sought Notice, Nov. 9, 2010. As relevant here, the Air Force asked potential offerors for their views regarding the consolidation of the C-20 and C-37 logistics support requirements, the length of the contract, the time required to phase in the new contractor at the beginning of the contract, and the type of contract that should be awarded. Id.

The Air Force received 44 responses from 26 companies, 14 of which claimed to have experience with Gulfstream aircraft. See generally AR, Tabs 6.1a-6.5h. For example, one contractor, which stated that it had experience with Gulfstream aircraft, noted in 2007 that the GV and G550 aircraft (upon which the C-37 aircraft are based) were "so new that the aircraft are mostly still under warranty and so therefore there is little field experience. However, between now and 2012, we

¹ The C-20 aircraft was first deployed by the Department of the Navy in 1983; the C-37 aircraft was first deployed by the Air Force in 1998. Naval Air Systems Command C-20 Gulfstream Fact Sheet, www.navair.navy.mil; U.S. Air Force Fact Sheet: C-37A, www.af.mil/information/factsheets.

² The RFP will also support C-20 aircraft used by the U.S. Marine Corps and the Navy. AR, Tab 5.2, PWS, at 4.

³ An additional RFI containing questions specifically for small businesses was posted in June 2010. See www.fbo.gov, Modification/Amendment Notice, June 24, 2010.

anticipate seeing GV aircraft start to arrive in our facilities” and further stated that the company saw no disadvantages to combining the logistics support for the C-20 and C-37 aircraft. See AR, Tab 6.1c, [Deleted] Response, at 3, 4. Northrop Grumman informed the agency in January 2010 that because of the similarity of the airframes, the aircraft have “very nearly the same” supplier base and would result in savings from economic order quantities and reduced turnaround times for repairs. See AR, Tab 6.2e, Northrop Grumman Response, at 3.

With regard to the anticipated length of the contract, some contractors stated they could accurately estimate prices for 7 years; others suggested including an economic price adjustment clause for periods beyond 5 years. See, e.g., AR, Tab 6.1s, [Deleted] Response, at 3; Tab 6.1c, [Deleted] Response, at 4; Tab 6.2b, [Deleted] Response, at 6.

The Air Force conducted an economic analysis to examine the costs and benefits of consolidating the C-20 and C-37 logistics support requirements based in part on industry responses to the RFI. AR, Tab 8.1, Economic Analysis. In January 2011, the Air Force concluded that, based on the information provided by industry responses to the RFIs and the Air Force’s economic analysis, consolidation of the two requirements would result in cost efficiencies resulting in an average of [Deleted] percent cost savings.⁴ The Air Force also identified increased efficiencies in the areas of contract management and field maintenance capabilities, as well as efficiencies and savings from combined or co-managed contractor operated and maintained base supply. See AR, Tab 8, Consolidation Determination and Findings (D&F), at 4-7.

In March 2011, the Air Force conducted an industry day, which was attended by 16 potential offerors. AR, Tab 12, Market Research Report, at 8. The Air Force provided a draft PWS and informed potential offerors of the agency’s intended acquisition strategy for the procurement. Contracting Officer’s (CO) Statement at 5. Attendees were informed, among other things that the Air Force planned to provide a 90-day phase-in period at the beginning of the contract. The agency also stated that the \$39 million inventory of C-37 spare parts was owned by the incumbent and would not be transferred to the next contractor. AR, Tab 9, Industry Day Slides, at 13, 16. Attendees were given the opportunity to ask the Air Force questions concerning the planned acquisition, which the Air Force subsequently addressed. See AR, Tab 17.1, Industry Day Questions/Answers.

In August and September 2011, the Air Force provided draft versions of the solicitation and further responded to questions from industry regarding this procurement. As a result of industry’s input, the Air Force made a number of

⁴ The Air Force estimates that the consolidated requirement will cost roughly \$[Deleted] million. AR, Tab 78, Independent Government Estimate.

revisions to the solicitation. CO's Statement at 5. Although the Air Force initially provided 24 months of C-37 parts usage data, it later obtained an additional 10 months of usage data from Gulfstream, which the agency provided to assist offerors in estimating their costs. See id. at 14-15. The Air Force also obtained Gulfstream's agreement to allow offerors access to Gulfstream's computerized maintenance program (CMP) database, which contains maintenance data on each aircraft by tail number for all maintenance actions, including part removals and installations that have been completed since the aircraft were placed in service.⁵ Id. at 36-37. In addition, the Air Force purchased over \$10 million in C-37 parts (1,241 different part numbers) that the agency intended to provide to the logistics support contractor as government furnished property. Id. at 18, 34.

As relevant here, the draft PWS required an agreement with the original equipment manufacturers (OEM) to obtain the approved data and technical support needed to maintain the C-20 and C-37 airframes, engines, accessories, and systems at a level that would ensure that Federal Aviation Administration (FAA) airworthiness certification is retained.⁶ See Draft PWS, Aug. 1, 2011, ¶ 1.3.10. In September 2011, Gulfstream informed all prospective offerors that, although Gulfstream would not establish exclusive agreements with any offeror, Gulfstream would continue its "existing policy of providing aircraft [OEM] technical support, over-the-counter sales of parts and supplies, engineering support and aircraft maintenance services in accordance with our standard commercial terms and conditions, established policies and commercial prices." AR, Tab 19, Gulfstream Letter of Intent.

Issuance of the RFP

The Air Force issued the RFP on December 13, 2011, under the commercial item acquisition procedures of Federal Acquisition Regulation (FAR) Part 12. The solicitation provides for the award of an indefinite-delivery/indefinite-quantity contract for full and partial logistics support for the C-20 and C-37 aircraft for a base period and four option years.⁷ RFP at 5, 6. The aircraft are assigned to main

⁵ The CMP database is a tool created by Gulfstream to allow commercial customers to obtain data needed to plan, forecast, track and manage scheduled and unscheduled maintenance requirements. This tool allows customers to determine, manage, and track part usage and cost. See Intervenor's Comments, exhib. 1, Decl. of Gulfstream Government Contracts and Trade Compliance Director, at 3.

⁶ This section of the PWS is unchanged in the final PWS. See AR, Tab 5.2, PWS, ¶ 1.3.10.

⁷ Full contractor logistics support includes all aircraft maintenance and personnel, materials and inspections, launch and recovery of aircraft, management of all government-owned spares and support equipment through a contractor operated and maintained base supply system; repair and overhaul of all repairable spares at
(continued...)

operating bases at Andrews AFB, Maryland; Hickam AFB, Hawaii; Marine Corps Base Kaneohe Bay, Hawaii; MacDill AFB, Florida; Ramstein Air Base, Germany; and Naval Air Station Sigonella, Italy. See AR, Tab.5.2, PWS, at 5-7.

As relevant here, the base period includes a 90-day phase-in period, during which the awardee, the incumbent contractor, and the agency would complete a joint inventory of the contractor operated and maintained base supply system/main operating bases and depot facility, to include all parts, support equipment, and furniture. AR, Tab.5.2, PWS, ¶ 1.2.2.5. Additionally, the contractor is required to “insure the method of supply support for C-20 and C-37 is in place” prior to the end of the phase-in period. Id., ¶ 1.2.2.8.

The solicitation identifies three evaluation factors: technical, past performance, and price. The RFP provides that proposals would first be evaluated as acceptable or unacceptable under the technical factor. Offers that were determined to be technically acceptable would then be the subject of a best value tradeoff on the basis of past performance and price. RFP amend. 6, append. K, Instructions to Offerors, at 7.

With regard to price, the RFP provides 268 contract line items (CLIN), for which offerors are required to provide fixed prices or fixed labor rates.⁸ As relevant here with respect to the CLINs seeking flying hour rates by aircraft tail number, offerors were instructed to provide a fixed price for all materials, parts, components, subscriptions, and manual/publications updates to provide maintenance and supply support at each aircraft site to meet mission capability and dispatch reliability requirements, unless specifically excluded.⁹ See, e.g., RFP at 31.

(...continued)

FAA certified repair stations; maintenance and repair of all support equipment; aircraft paint; engine/auxiliary power unit repair and overhaul. AR, Tab.5.2, PWS, at 4. Partial contractor logistics support will be provided only at Andrews Air Force Base (AFB), Maryland, and does not include organizational level maintenance, inspections, and personnel; or launch and recovery of aircraft. Id. at 5.

⁸ The RFP provides CLINs for each service’s phase-in period, main operating base maintenance, contractor operated and maintained base supply system, depot inspections, C-37 engine maintenance, C-37 engine maintenance over and above work, flying hour rates by aircraft tail number, and fixed hourly labor rates for over and above work. See RFP at 7-169.

⁹ Supply support requires the contractor to identify, procure, stock, store, and issue common and peculiar spare parts, components, consumables, and bench stock for the aircraft, aircraft systems, engines/auxiliary power units, and peculiar test/support equipment. AR, Tab 5.2, PWS, at 4.

To meet the mission capability requirements for the C-20 and C-37 aircraft, the PWS requires the contractor to maintain sufficient range and quantity of inventory at each location. AR, Tab 5.2, PWS, at 4-5, 9. However, the RFP does not specify the quantity or types of parts required for the inventory.

Prior to the RFP's closing time for receipt of proposals, Northrop Grumman protested to our Office.

DISCUSSION

Northrop Grumman complains that the RFP is unduly restrictive of competition because it requires a "sufficient inventory" of C-37 parts, fixed-price flying hour rates, and a 90-day phase-in period. At the heart of this complaint is that the Air Force should not consolidate the logistics support for the C-20 and C-37 aircraft, based upon the protester's apparent belief that only Gulfstream can reasonably perform the C-37 aircraft logistics support. Northrop Grumman also complains that the pricing and phase-in requirements deviate from customary commercial practices, and asserts that Gulfstream's position as original equipment manufacturer and incumbent on the C-37 logistics support contract create an impermissible organizational conflict of interest.

We have considered all of the protester's arguments and, although we address only the more significant ones, find that the agency's consolidation of the C-20 and C-37 logistics support is supported by the record, and that the solicitation is not unduly restrictive of competition or inconsistent with commercial practices. We also find that Northrop Grumman's complaint of an organizational conflict of interest has no merit.

Consolidation of Requirements

As noted above, between December 2006 and November 2010, the Air Force investigated the consolidation of logistics support requirements for the C-20 and C-37 aircraft. See, e.g., www.fbo.gov, Special Notice, Dec. 20, 2006; Sources Sought Notice, Nov. 9, 2010. The agency sent RFIs to potential contractors asking their views as to possible cost savings or operational efficiencies that could be achieved by consolidating. The agency also conducted its own economic analysis to consider possible benefits of consolidating the requirements. See AR, Tab 8.1, Economic Analysis. From the RFI responses it received and its own analysis, the Air Force found that consolidation of these requirements would achieve significant cost savings and operational efficiencies. For example, the Air Force found that it would save more than \$[Deleted] million by consolidating the requirements. See AR, Tab 8, Consolidation D&F, at 5. The agency also found that consolidation would result in significant operational efficiencies through a streamlined and centrally controlled inventory system, centralized depot scheduling, and increased

field maintenance capabilities. Id. at 5-6; see also AR at 65-66. The Air Force also considered whether comparable benefits could be achieved under other alternative contracting approaches, including the approach advocated by Northrop Grumman in its protest (that is, award separate contracts for the aircraft). The Air Force concluded that none of these other approaches would provide the same level of cost savings or operational efficiencies. See AR, Tab 8.1, Economic Analysis, at 14.

The Competition in Contracting Act of 1984 (CICA) requires that solicitations generally permit full and open competition and contain restrictive provisions only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2305(a)(1)(B)(ii) (2006). Because bundled or consolidated procurements combine separate and multiple requirements into one contract, they have the potential for restricting competition by excluding firms that furnish only a portion of the requirement; we therefore review challenges to such solicitations to determine whether the approach is reasonably required to satisfy the agency's needs. See 2B Brokers et al., B-298651, Nov. 27, 2006, 2006 CPD ¶ 178 at 9; Pemco Aeroplex, Inc., B-280397, Sept. 25, 1998, 98-2 CPD ¶ 79 at 8-9. An agency may consolidate or bundle requirements where the agency reasonably determines that consolidation will result in significant cost savings or efficiencies. B.H. Aircraft Co., Inc., B-295399.2, July 25, 2005, 2005 CPD ¶ 138 at 7.

Here, the record supports the agency's determination that consolidation of the logistics support requirements for the C-20 and C-37 aircraft will result in significant cost savings and operational efficiencies. Although Northrop Grumman believes that these requirements should not be consolidated, it does not show, or even argue, that the Air Force will not achieve the substantial cost savings and significant operational efficiencies identified by the agency in its market research and economic analysis. As a result, we see no basis for concluding that the Air Force's approach unreasonably consolidated these requirements.

Restriction on Competition

Northrop Grumman also challenges a number of the RFP's terms as being unduly restrictive of competition. Specifically, Northrop Grumman contends that spare parts for the C-37 aircraft are generally not available from sources other than Gulfstream, unlike for the older C-20 aircraft. Protester's Comments at 3. The protester contends that, as a result, the solicitation's requirements to establish a spare parts inventory "of sufficient range and quantity" to meet the required mission capability requirements, to provide fixed-price flying hour pricing for 5 years, and to transition within 90 days unduly restricts competition, where only Gulfstream can provide required quantities of C-37 parts and has refused to provide adequate pricing for the parts. Id. at 3.

The Air Force disputes that the RFP's requirements are unduly restrictive of competition. Specifically, the agency disagrees that Gulfstream is the only source for C-37 parts and that potential offerors have not been provided with sufficient information to provide fixed-price flying hour pricing. AR at 19. With respect to the 90-day phase-in period, the Air Force notes that it conducted extensive market research to determine an appropriate transition period for this contract. AR at 32. The agency reports that most respondents to the October 2010 RFI stated that 90 days would be sufficient.¹⁰ Id.

Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. See Total Health Resources, B-403209, Oct. 4, 2010, 2010 CPD ¶ 226 at 3. We will examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 7. A protester's mere disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. Exec Plaza, LLC, B-400107, B-400107.2, Aug. 1, 2008, 2008 CPD ¶ 143 at 5.

Sufficient Inventory

Northrop Grumman's contention that the RFP's requirement for "a sufficient inventory" of C-37 parts unduly restricts competition is based upon its view that only Gulfstream can provide the required quantities of C-37 parts and that Gulfstream "has refused to provide adequate pricing." Protester's Comments at 4. In this regard, Northrop Grumman maintains that [Deleted] percent of the parts of the C-37 aircraft (based on value of the parts) are controlled by Gulfstream and must be procured from Gulfstream. Id. at 12.

As an initial matter, the Air Force argues that, although the solicitation requires the contractor to provide a sufficient quantity of parts to meet mission capability requirements, the solicitation leaves it to the discretion of each offeror to determine according to its supply strategy what constitutes a "sufficient quantity." Supp. AR at 3. The Air Force states in this regard that an inventory of parts would generally be built up over time as there is no requirement in the solicitation to have a complete inventory on hand by the end of the phase-in period, as the protester apparently believes. Id.

¹⁰ Although the Air Force did not expressly raise the point that a 90-day overlap of incumbent and awardee contractors would be less expensive than a 180-day overlap, we note that some of the RFI respondents cited that rationale for recommending a 90-day phase-in period. See e.g., AR at 32-33.

The Air Force also disagrees with Northrop Grumman's contention that the RFP required the contractor to acquire C-37 parts from Gulfstream or that Gulfstream is the only source for these parts.¹¹ AR at 17, 19. The Air Force states that the only requirement pertaining to Gulfstream was for the awardee to establish agreements with the OEMs (e.g., Gulfstream) to obtain approved data and technical support, and to ensure that mission capability requirements are not impacted by an inability to obtain data or support from the OEMs. AR at 18-19 citing Tab 5.2, PWS ¶ 1.3.10. In this regard, the Air Force notes that Gulfstream has issued a letter of intent stating that Gulfstream will continue its existing policy of providing technical support, over-the-counter sales of parts and supplies, engineering support, and aircraft maintenance services in accordance with its standard commercial terms and conditions. AR at 25.

Here, the Air Force explained that the mission of the C-20 and C-37 aircraft--to provide "safe, comfortable, reliable, worldwide air transportation with robust communications capabilities for the Vice President, Cabinet members, [various combatant commands], and other high-ranking U.S. and foreign government officials"--is a "no-fail mission" that requires aircraft to maintain a high mission capable status at each location. AR at 12, 13. To satisfy this mission capability rate, the RFP requires that the contractor maintain sufficient inventory. Although Northrop Grumman asserts that the requirement for sufficient inventory unduly restricts competition, the protester has not shown that the requirement is not reasonably necessary to meet mission capability rates. Moreover, we think the Air Force's claimed need for these requirements is reasonably apparent from the record.

We also agree with the Air Force that the solicitation does not require contractors to stock a specific amount of inventory of C-37 parts, but rather leaves it to the discretion of the offerors to determine the appropriate amount and variety of parts to

¹¹ The Air Force found that C-37 parts were available from multiple vendors and resellers. AR at 25. In this regard, the agency notes that Northrop Grumman's own research indicated that some smaller vendors have access to C-37 parts, even if not in large quantities. Supp. AR at 7. Furthermore, the Air Force states that certain high risk parts, such as the engines, are not included in the flying hour CLINs and that the agency had purchased 5,737 parts (1,241 different part numbers) for the C-37 valued at over \$10 million to mitigate some of the risks. Id. at 8; CO's Statement at 18. With regard to Northrop Grumman's insistence that [Deleted] percent of the value of C-37 parts are controlled by Gulfstream, the agency states that while Gulfstream may be the only supplier of some large dollar value parts, those parts are not replaced with great frequency. In addition, the agency explained that its review of usage data showed that [Deleted] percent of the most commonly used parts on the C-37 are not proprietary to Gulfstream. Supp. AR at 9; Supp. CO Statement at 12.

meet the mission capability requirements. With regard to Northrop Grumman's contention that C-37 parts must be purchased from Gulfstream and therefore the requirement is unduly restrictive, the record does not support the protester's position. That is, the record indicates that suppliers other than Gulfstream can supply some of the C-37 parts. The Air Force and Gulfstream identified third-party sources for C-37 parts, see CO's Statement at 25; Intervenor's Comments, exhib. 1, Decl. of Gulfstream Government Contracts and Trade Compliance Director, at 6, and Northrop Grumman acknowledged that some parts are available, albeit not in the quantities it wants to establish its inventory. Protester's Comments at 1, 8, attach. A, exhib. 5, [Deleted] Response, at 18 ("[Deleted] currently owns and stocks nearly \$40 million in aircraft spare parts, including items applicable to the Gulfstream G-V/G-VSP/G550 aircraft."). Moreover, the Air Force purchased over \$10 million in C-37 parts (1,241 different part numbers) which the agency intends to furnish the logistics support contractor as government furnished property to reduce risk.

We conclude that the fact that other suppliers cannot provide parts in the quantities that Northrop Grumman would like does not render the requirement unduly restrictive. In any event, even if all of the C-37 parts must be purchased from Gulfstream, that alone does not support the protester's position. Northrop Grumman has not demonstrated that Gulfstream will not sell it C-37 parts if Northrop Grumman wins the contract, nor has Northrop Grumman demonstrated that in its past and current dealings with Gulfstream with respect to the C-20 that it has been unable to obtain the parts needed.¹² In this regard, Gulfstream expressly stated that it would provide technical support, over-the-counter sales of parts and supplies, engineering support and aircraft maintenance services in accordance with its standard commercial terms, conditions, prices and established policies. AR, Tab 19, Gulfstream Letter of Intent. Moreover, one of Northrop Grumman's potential suppliers praised Gulfstream's ability to expeditiously provide parts, stating the Gulfstream has the "very best service and support record in the industry," and was willing to ship parts overnight anywhere in the world. Protester's Comments, attach. A, exhib. 16, [Deleted] Response to Northrop Grumman, at 1-2.

Fixed-Price Flying Hour Rates

Northrop Grumman also contends that the requirement that offerors provide fixed-price flying hour rates for 5 years is unduly restrictive of competition. Northrop Grumman argues that the Air Force provided insufficient data to permit offerors to

¹² Although Northrop Grumman argues that Gulfstream has been unwilling to provide fixed prices for parts for the length of the contract, we do not find Gulfstream's reluctance to relieve Northrop Grumman of all risk to be evidence of Gulfstream's unwillingness to sell parts to support the contractor logistics support program.

estimate fixed-price flying hours for 5 years. Protest at 26. Northrop Grumman asserts that 5 years of data repair turnaround times, acquisition lead times, mean time between repairs in addition to pricing are needed to develop a fixed-price flying hour rate. Id.

The Air Force argues that Northrop Grumman is incorrect in its assertion that offerors were provided insufficient information to develop pricing for the fixed-price CLINs. The Air Force obtained from Gulfstream and provided to offerors 34 months of usage data by total quantity, date, location, and aircraft tail number. CO's Statement at 9. The Air Force further disputes Northrop Grumman's complaint that 34 months of data is insufficient to develop flying hour pricing. The Air Force states that the Air Force Materiel Command Manual 23-1, Requirements for Secondary Items, requires 24 months of data to develop flying hour prices. AR at 21. Moreover, Gulfstream gave offerors access to its proprietary CMP database, which provided maintenance data on each aircraft by tail number for all maintenance actions, including part removals and installations, that were completed since the aircraft were placed in service. The Air Force also argues that Northrop Grumman did not access the technical library at Tinker AFB, which contained the minimum equipment lists,¹³ floor plans, paint drawings, and other unique manuals, and thus did not avail itself of all of the data available to develop its fixed-price flying hour rate. AR at 23; CO's Statement at 10.

As Northrop Grumman acknowledges, a fixed-price contract is suitable for acquiring commercial items when the contracting officer can establish fair and reasonable prices at the outset, such as when there is adequate price competition; available cost or pricing information permits realistic estimates of the probable costs of performance; or performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a fixed price representing assumption of the risks involved. FAR § 16.202-2. Moreover, as discussed above, FAR Part 12 specifically directs agencies to use fixed-price contracts, or fixed-price contracts with economic price adjustment, for the acquisition of commercial items. FAR § 12.207. A fixed-price contract places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively. FAR § 16.202-1.

The agency has determined that it can obtain fair and reasonable prices through adequate price competition. Moreover, although Northrop Grumman disagrees that the probable costs of performance can be realistically estimated, the record shows otherwise. As the Air Force noted above, the Air Force Materiel Command Manual

¹³ The minimum equipment list explains what systems are required for mission capability and establishes dispatch and return to service requirements when onboard equipment is inoperative. CO's Statement at 10.

23-1 prescribes 24 months of data to develop flying hour rates; here, offerors were provided 34 months of data. See AR, Tab 31.2, C-37 Contractor Logistics Support Usage Report, Jan. 1, 2009 - Oct. 31, 2011. Offerors were also able to review complete maintenance data for each aircraft by tail number in Gulfstream's CMP database. CO's Statement at 10. Gulfstream also provided budgetary pricing for many parts, and parts resellers have some parts, even if they cannot provide them in the quantities that Northrop Grumman would like. Although Northrop Grumman argues that budgetary pricing is insufficient for its needs, given Northrop Grumman's experience in the industry and with Gulfstream in particular, we find that Northrop Grumman has not adequately explained why this level of data is insufficient.

Underpinning the protester's arguments is its complaint that the solicitation provisions are rendered restrictive of competition or inconsistent with commercial practices because of the actions of Gulfstream, the OEM for both the C-20 and the C-37 aircraft. In this regard, Northrop Grumman argues in various ways that Gulfstream's status as OEM and its unwillingness to provide fixed price quotations on C-37 parts has unduly restricted competition. However, we note that an agency is not required to equalize a competitive advantage that a firm may enjoy--or a disadvantage it may experience--because of the firm's particular business circumstances, where that advantage or disadvantage does not result from a preference or unfair action by the government. RMI, B-405409, Oct. 20, 2011, 2011 CPD ¶ 224 at 4. Moreover, here, the Air Force attempted to mitigate some of Gulfstream's advantage by obtaining 34 months of usage information from Gulfstream, increasing the supply of government furnished C-37 parts, and obtaining access to Gulfstream's CMP database for offerors to determine maintenance needs. Additionally, to the extent that Northrop Grumman argues that Gulfstream refuses to provide it with discounted prices or fixed prices, we note that this is a matter between private parties and is not for consideration under our bid protest function. See Electro-Methods, Inc., B-215841, Mar. 11, 1985, 85-1 CPD ¶ 293 at 5.

Contrary to Northrop Grumman's contentions, there is no legal requirement that a solicitation be drafted so as to eliminate all performance uncertainties; the mere presence of risk does not render a solicitation improper. Aalco Forwarding, Inc., et al., B-277241.8, B-277241.9, Oct. 21, 1997, 97-2 CPD ¶ 110 at 22-23. Offerors have the responsibility, in offering on a fixed-price contract, to project costs and to include in their proposed fixed prices a factor covering any projected costs increase; risk is inherent in most types of contracts and offerors are expected to allow for that risk in computing their offers. Master Sec., Inc., B-232263, Nov. 7, 1988, 88-2 CPD ¶ 449 at 3; Kings Point Mfg. Co., Inc., B-220224, Dec. 17, 1985, 85-2 CPD ¶ 680 at 4. Any uncertainty as to the ultimate availability of spare parts amounts to a business risk that, under the circumstances, all offerors must accept. Starr Sys., B-237955.2, Apr. 24, 1990, 90-1 CPD ¶ 412 at 4.

90-Day Phase-in Period

Northrop Grumman's argument that the RFP's 90-day phase-in period is insufficient and restrictive of competition is based upon the protester's contention that Gulfstream will not provide the firm with fixed prices, or a guaranteed specific delivery time, for the parts. Protest at 31. Specifically, Northrop Grumman states that Gulfstream informed the protester that Gulfstream would require 30 days to provide a fixed price for any large list of parts. Northrop Grumman also states that Gulfstream refused to provide guarantees for a specific delivery time for the parts. Id. Northrop Grumman argues that, given Gulfstream's refusal to cooperate, Northrop Grumman would have to wait 30 days to obtain a fixed price before ordering C-37 parts and would have no assurance of obtaining the parts within the 90-day phase-in period to establish the required spare parts inventory. Id. Northrop Grumman asserts that a 180-day phase-in period is "customary and appropriate" for contractor logistic support contracts of this size and complexity. Id.

The Air Force responds that Northrop Grumman's arguments are based upon the erroneous assumption that the RFP requires the contractor to fully stock an inventory of parts by the end of the 90-day phase-in period. AR at 34. The agency states that the RFP in fact requires the awardee, the incumbent, and the government to complete a joint inventory and ensure the method of supply support is in place by the end of the 90-day phase-in period, but does not require the awardee to completely stock a full inventory at that time.¹⁴ Id. The Air Force also explains that the RFP provides a performance-based work statement, which allows offerors to determine the appropriate method of meeting the C-20 and C-37 aircraft mission capability requirements. The agency states that although establishing a complete inventory of parts by the end of the phase-in period is an option, offerors were free to propose other methods of meeting the mission capability requirement. Id. at 34-35. In this regard, the Air Force points out that one of the suppliers (that Northrop Grumman had contacted) proposed a phased approach to providing the inventory. Supp. AR at 4. Moreover, the Air Force points out that Northrop Grumman's response to an RFI stated that "for a fleet of this size and distribution, a 90-day Phase-in is sufficient."¹⁵ AR at 32 citing AR, Tab 6.4h, Northrop Grumman Response, at 7.

¹⁴ The Air Force explains that the "method of supply support" refers to the way a particular contractor, based on the level of risk it is willing to assume, decides to ensure parts are supplied as necessary. For example, the method of supply support can include decisions on how many parts to keep in stock, where to buy parts, and how to move parts. Supp. CO Statement at 14.

¹⁵ We find unpersuasive Northrop Grumman's explanation that in October 2010 it believed that a 90-day phase-in period was reasonable because Northrop Grumman was unaware that Gulfstream would not provide fixed pricing or a

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We find that Northrop Grumman has not demonstrated that the Air Force's requirement for a 90-day phase-in period was unreasonable. We agree with the agency that the solicitation requires the awardee, together with the government and the incumbent contractor, to complete the joint inventory of the contractor operated and maintained base supply system, main operating bases, and depot facilities. We also agree that the RFP requires the awardee to ensure the method of supply support for C-20 and C-37 aircraft is in place by the end of the phase-in period. See AR, Tab 5.2, PWS §§ 1.2.2.5, 1.2.2.8. While the PWS generally requires the contractor's inventory to be "of sufficient range and quantity to meet the performance measurements defined in this PWS," it also makes clear that it is the responsibility of the contractor to determine the spares inventory necessary to meet C-20 and C-37 mission capability requirements. See id., PWS at 4-5, 9. Moreover, the Air Force made clear to potential offerors that the government was not requiring a specific inventory investment, but would evaluate the method proposed to meet the RFP's performance based objectives. AR, Tab 17.10, Q&A No. 10, Dec. 13, 2012, at 2. Although Northrop Grumman argues that, as a practical matter, the requirement to have inventory "of sufficient range and quantity" implicitly requires a full or substantial inventory of spare parts, Protester's Comments at 4-5, we agree with the agency that such a strategy is not the only strategy available to offerors. We also note that, although Northrop Grumman and its consultant contend that 180 days is more appropriate and less restrictive of competition than 90 days, neither have provided any data to support this contention.¹⁶

Commercial Practices

Northrop Grumman also contends that the requirements for a 90-day phase-in period, fixed-price flying hour pricing, and the lack of an economic price adjustment clause are inconsistent with customary commercial practice. See Protester's Comments at 11-12.

In procurements involving the acquisition of commercial items, such as here, FAR § 12.301(a)(2) requires that contracts "shall, to the maximum extent practicable, include only those clauses . . . [d]etermined to be consistent with customary commercial practice." Market research should address, among other things,

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guaranteed delivery time for parts. As the incumbent on the C-20 aircraft, Northrop Grumman has had to purchase parts from Gulfstream in support of that program and would be familiar with Gulfstream's general pricing and delivery policies.

¹⁶ Although Northrop Grumman's consultant supports Northrop Grumman's argument for a transition period of 180 days, he also expresses doubt that 180 days would be sufficient. See Protester's Comments, attach. B, Decl. of Consultant, at 2.

customary practices, and should include publishing formal requests for information, conducting pre-solicitation meetings with potential offerors, and reviewing prior contracts. See FAR § 10.002(b). Here, we find from our review of the record that the protested requirements are not inconsistent with customary commercial practices.

With respect to the 90-day phase-in period, the record shows that the agency issued RFIs and obtained the input of industry, including Northrop Grumman, and none objected to a 90-day phase-in period.¹⁷ AR at 51-53. The Air Force also reviewed six other Air Force contractor logistics support contracts for a variety of aircraft awarded between 2005 and 2011, and all six included a phase-in period of 90 days or less.¹⁸ AR at 53. Northrop Grumman contends, however, that the RFI responses are invalid because they occurred two years before the RFP was issued and speculates that the respondents were unaware of the “closed supply chain” and Gulfstream’s refusal to provide “meaningful support.” Protester’s Comments at 19. Northrop Grumman also argues that the other contractor logistics support contracts were not relevant because the individual circumstances of those aircraft differ from that of the C-37, where the original equipment manufacturer is the primary source of parts. Id. Northrop Grumman’s consultant states that the aircraft to which the Air Force looked to determine the appropriateness of requiring a 90-day phase-in period were older aircraft with a robust and established aftermarket for parts and therefore are not suitable examples for comparison. Protester’s Comments, attach. B, Decl. of Consultant, at 3.

We find that Northrop Grumman has not demonstrated that the 90-day phase-in period is not consistent with customary commercial practice. Although the protester speculates that the industry respondents to the Air Force’s RFI were unaware of Gulfstream’s position in the market vis-à-vis the C-37 aircraft contractor logistics support, the record does not support this speculation.¹⁹ We also find unpersuasive

¹⁷ One respondent stated that 90-120 days would be optimal. AR, Tab 6.4f, [Deleted] Response, at 5. Another respondent, experienced in supporting Gulfstream aircraft, indicated that a program of this size should not require more than 120 days “in any scenario” but that the government could likely require 90 days without significantly increased costs. AR, Tab 6.4d, [Deleted] Response, at 13.

¹⁸ As the intervenor points out, four of these contracts were awarded under FAR Part 12 commercial item procedures. Intervenor’s Comments at 18.

¹⁹ Of the 8 respondents, 6 (including Gulfstream) had experience supporting Gulfstream aircraft, and therefore arguably were aware of the resources available to support the C-37. For example, one respondent that has 10 years of depot experience on the commercial variants of the C-20 and C-37 indicated that 90 days would be sufficient. AR, Tab 6.4e, [Deleted] Response, at 3-4. Another respondent with extensive experience on C-20 contractor logistics support recognized

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the opinion of Northrop Grumman's consultant that the prior contracts that the Air Force reviewed in determining customary commercial practice do not represent the same circumstances as present with respect to supporting the C-37 aircraft.

With respect to the fixed-price flying hour CLINs, Northrop Grumman presents multiple arguments for why the RFP requirement for 5 years of fixed-price flying hour rates is inconsistent with customary commercial practice. Protest at 37. We have considered all of the protester's arguments and conclude that they have no merit. Northrop Grumman challenges the agency's responses from industry with regard to CLIN type, arguing that the industry responses suggesting the use of time-and-materials CLINs is dispositive that the use of a fixed-price flying hour CLIN is not customary commercial practice. Protester's Comments at 14. Additionally, the protester's consultant stated that, although fixed-price flying hour rates are used in the commercial aviation sector, they would not be used under the circumstances envisioned by the RFP because the OEM controls the parts market. Id., attach. B, Decl. of Consultant, at 4.

FAR Part 12 directs agencies to use fixed-price contracts, or fixed-price contracts with economic price adjustments, for the acquisition of commercial items. FAR § 12.207. While Northrop Grumman points out that some of the RFI respondents suggested using time-and-materials CLINs, government policy disfavors the use of time-and-materials contracts. Time-and-materials contracts are to be used when no other contract type is suitable.²⁰ Id. Northrop Grumman has not demonstrated that use of a fixed-price CLIN under these circumstances is unsuitable.

Northrop Grumman also argues that under customary commercial practice, prices are fixed for one year, and an economic price adjustment is included for the later years. Protest at 41. We will only question a decision regarding the use of an economic price adjustment clause where it is shown to be arbitrary or capricious. Kings Point Mfg. Co., Inc., B-220224, Dec. 17, 1985, 85-2 CPD ¶ 680 at 4. We note that, although FAR Part 12 favors the use of fixed-price contracts, or fixed-price contracts with economic price adjustments, economic price adjustment clauses are not mandatory. See FAR § 12.207. Moreover, the Air Force relied on the results of

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Gulfstream's advantages with respect to the C-37 as early as 2007, but nonetheless in October 2010 stated that 90 days would minimize the risk associated with combining two contracts and transitioning multiple sites. See AR, Tab 6.1n, [Deleted] Response, at 3; Tab 6.4b, [Deleted] Response, at 4.

²⁰ In this regard, the GAO report, DEFENSE CONTRACTING: Improved Insight and Controls Needed over DoD's Time-and-Materials Contracts, [GAO-07-273](#), June 29, 2007, highlighted some of the risks of time-and-materials contracts, such as the lack of incentive to control costs.

its market research to conclude that inclusion of an economic price adjustment would not be necessary to be consistent with customary commercial practices. In this regard, some of the RFI responses to Air Force questions concerning the ability to forecast prices for 7-10 years suggested that an economic price adjustment clause would be appropriate beyond the 5th year. See e.g., AR, Tab 6.2b, [Deleted] Response, at 6; Tab 6.1m, [Deleted] Response, at 3, 9; Tab 6.1c, [Deleted] Response, at 4. Here, the total contract period, including options, is 5 years. Additionally, the six contractor logistics support contracts awarded between 2005 and 2011 that the Air Force reviewed had a minimum 5 year period of performance and did not contain an economic price adjustment clause. AR at 56.

In sum, Northrop Grumman has not demonstrated that the Air Force deviated from customary commercial practices with regard to this procurement.

Organizational Conflict of Interest

During the course of this protest, Northrop Grumman raised numerous arguments which the Air Force addressed but the protester did not rebut. Instead, in several instances, the protester chose to “incorporate by reference and reiterate” its original protest grounds. See Protester’s Comments at 2. We have considered the protester’s and agency’s arguments and, in the absence of any rebuttal by the protester, find the agency’s arguments persuasive. One example of this involves Northrop Grumman’s argument that Gulfstream’s position as original equipment manufacturer on the C-37 and its performance of the incumbent C-37 contractor logistics support contract creates an organizational conflict of interest (OCI) based on unequal access to information. Protest at 31-32.

As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR §§ 9.505(b); CapRock Gov’t Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 25. It is well settled that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract—either as an incumbent contractor or otherwise; further, the government is not necessarily required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. CACI, Inc.--Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10; MASAI Techs. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8. The existence of an advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. Council for Adult & Experiential Learning, B-299798.2, Aug. 28, 2007, 2007 CPD ¶ 151 at 6; Government Bus. Servs. Group, B-287052 et al., Mar. 27, 2001, 2001 CPD ¶ 58 at 10. Likewise, the advantage of an original equipment manufacturer is one that

the government is not required to mitigate. See Halifax Eng'g, Inc., B-219178.2, Sept. 30, 1985, 85-2 CPD ¶ 559 at 3.

Here, Northrop Grumman in essence complains that Gulfstream gained a competitive advantage as a result of its experience as the incumbent on the prior C-37 logistics support contract and as the original equipment manufacturer. It, however, has not identified any evidence of preferential treatment or other improper action on the part of the Air Force that would create an OCI under such circumstances.²¹ Moreover, the Air Force has sought to mitigate Gulfstream's competitive advantage by obtaining from Gulfstream, and providing to offerors, 34 months of usage data by total quantity, date, location, and aircraft tail number. The Air Force also obtained access for offerors to Gulfstream's CMP database of maintenance data, including part removals and installations that have been completed since the aircraft were placed in service. CO's Statement at 9, 36-37. In addition, the Air Force purchased a quantity of C-37 parts which it will furnish to the logistics support contractor as government furnished property. Id. at 18, 34. On this record, we see no basis to accept Northrop Grumman's ultimately undefended assertion that the Air Force improperly ignored an unequal access to information OCI.

The protest is denied.

Lynn H. Gibson
General Counsel

²¹ We note that Northrop Grumman arguably obtained its own competitive advantage based on its experience as the incumbent contractor for C-20 logistics support.