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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Bode Aviation, Inc.

File: B-411265

Date: June 26, 2015

Kevin Fredekind, Bode Aviation, Inc., and Martin K. Holland, Esq., Holland Law P.C., for the protester.

Elin M. Dugan, Esq., U.S. Department of Agriculture, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee did not hold a particular Federal Aviation Administration (FAA) certificate at the time of contract award is denied where FAA certification was a performance requirement, and the solicitation did not require that certification be obtained prior to award.

DECISION

Bode Aviation, Inc., of Albuquerque, New Mexico, protests the award of a contract by the Department of Agriculture, Forest Service, to Dynamic Aviation Group, Inc., of Bridgewater, Virginia, pursuant to request for quotations (RFQ) No. AG-04H1-S-15-0001 for airtanker services. Bode protests that Dynamic did not have a particular Federal Aviation Administration (FAA) certificate at the time of award and asserts that Dynamic's proposal should have been disqualified on that basis.¹

¹ In its protest, Bode also complained that the agency's source selection decision was improper because it was "based on pricing," which Bode asserted was "contrary to the selection process indicated in the solicitation." Protest at 1. The agency report responded to this allegation, pointing out that the solicitation provided for award on a best value basis; that Bode's quotation was only slightly superior to Dynamic's under the non-price evaluation factors; and that Bode's price was more than double Dynamic's price. Contracting Officer's Statement, Apr. 13, 2015, at 3-4. In its comments following receipt of the agency report, Bode states that the agency "incorrectly" characterized its protest as challenging the agency's price/technical tradeoff decision, and does not further address this issue. Bode's

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We deny the protest.

BACKGROUND

On January 20, 2015, the agency published the solicitation at issue, seeking proposals for airtankers to be used in the Forest Services' wildland firefighting mission. The solicitation provided for separate contract awards for two items, and vendors were permitted to submit quotations for one or both line items.² The solicitation further provided for award on a best value basis and established the following evaluation factors: technical capability,³ past performance and price. RFQ, at 96. Offerors were advised that the non-price factors combined were approximately equal in importance to price. Id.

Of relevance here, the solicitation's statement of work (SOW) included certain certification requirements, including the following:

Contractors shall hold a current Federal Aviation Administration (FAA) Air Carrier or Operating Certificate. Aircraft offered shall be listed by make, model, series, and registration number on the Operator's 14 CFR [Code of Federal Regulations] 135 Operating Certificate.

Id. at 17.

On or before the February 20, 2015 closing date, the agency received seven quotations for line item 2, including quotations submitted by Bode and Dynamic.⁴ Although Bode's quotation was rated slightly higher than Dynamic's under the

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Comments on AR, at 1. Accordingly, to the extent Bode's protest challenged the agency's price/technical tradeoff decision, we view that matter as having been abandoned. See, e.g., Alliance Tech. Servs., Inc., B-410307, B-410307.3, Dec. 1, 2014, 2014 CPD ¶ 345 at 3 n.2.

² Line item No. 1 sought quotations for airtankers deployed from Sierra Vista, Arizona and Wenatchee, Washington. Line item No. 2 sought quotations for airtankers deployed from Alamogordo, New Mexico and La Grande, Oregon. Agency Report (AR), Tab 13, RFQ at 5-16. Both line items contemplated contract performance beginning on April 15. Id. at 5, 11.

³ The solicitation established various subfactors under the technical capability factor.

⁴ A separate contract for line item 1 was awarded to a third vendor; Bode's protest does not challenge that award.

non-price evaluation factors,⁵ Bode's evaluated price was more than double Dynamic's evaluated price.⁶ On March 12, Dynamic's quotation was selected for award. This protest followed.

DISCUSSION

Bode refers to the FAA certification requirement in the solicitation's SOW, quoted above, and asserts that "the solicitation required bidders to have certification for the contract aircraft at the time of the bid proposal." Bode's Comments on AR at 2. We disagree.

In the absence of a solicitation requirement that offerors provide proof of qualifications or certifications prior to award, such requirements contained in a solicitation's SOW constitute performance provisions rather than preconditions for award. See, e.g., Ronsons SDVOSB P&L JV-1, B-410605, Jan. 6, 2015, 2015 CPD ¶ 1 at 5-6; Evergreen Fire & Sec., B-296510, Aug. 22, 2005, 2005 CPD ¶ 165 at 3; Central Air Service, Inc., B-242283, B-242283.4, June 26, 1991, 91-2 CPD ¶ 8 at 9; United HealthServ Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43 at 6-7. Whether an offeror complies with such qualification and certification requirements is a matter of contract administration, which we do not review as part of our bid protest function. See, e.g., 4 C.F.R. § 21.5(a); SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 6.

Here, we reject Bode's assertion that the terms of the solicitation required vendors to obtain the FAA certification prior to contract award. Specifically, the solicitation's SOW provided that "Contractors" must hold the required certificate, and nothing in the solicitation's instructions to vendors or its evaluation criteria provided that certification must be obtained prior to award. In this context, the fact that the SOW required the certificate to reflect the make, model, series, and registration number of the "aircraft offered" did not convert this performance requirement into a precondition for award.⁷ Since we reject Bode's assertion that the solicitation

⁵ Out of a total possible point score of 130 points, Bode's quotation received 114.33 points, while Dynamic's quotation received 111.14 points. AR, Tab 7, Source Selection Decision Document, at 3.

⁶ Bode's evaluated price was \$2,739,000; Dynamic's evaluated price was \$1,226,619. Id. at 4.

⁷ The record shows that Dynamic did, in fact, obtain the required certification on March 31, more than two weeks before contract performance was scheduled to begin. Agency Memorandum of Law at 2.

required vendors to obtain the FAA certification prior to award, we also reject Bode's assertion that award to Dynamic was improper.

The protest is denied.

Susan A. Poling
General Counsel