



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Northwest Airport Management, L.P.

File: B-404098; B-404098.2

Date: January 5, 2011

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DIGEST

Protest challenging solicitation requirements as unduly restrictive of competition is denied where agency demonstrates that the challenged requirements are reasonably related to the agency's current minimum needs.

DECISION

Northwest Airport Management, L.P. d/b/a David Wayne Hooks Airport and its bidding entity Southeast Texas Aviation Resources L.P. (collectively, Northwest), of Spring, Texas, protests the terms of solicitation for offers (SFO) No. HSBP-1110-L-DA00206, issued by the Department of Homeland Security, Customs and Border Protection (CBP), to provide hangar, office, and related space to meet the operational and mission requirements of the CBP's Houston Air and Marine Branch. Northwest argued that the SFO is unduly restrictive of competition in violation of the Competition in Contracting Act (CICA) of 1984.

We deny the protest.

BACKGROUND

Northwest currently provides hangar and related space to CBP's Houston Air and Marine Branch as the incumbent lessor. CBP awarded the lease to Northwest in September 1994 and it expired in September 2009. The agency reports that it has continued to lease the protester's facility on a month-to-month basis while it seeks to obtain a long-term lease that meets the agency's current and future operational needs.

The SFO, issued on August 16, 2010, contemplates the award of a lease for approximately 50,000 contiguous square feet of space for a term of 10 years with two 5-year renewal options. SFO at 5. Offerors were informed that the agency will award the lease to the offeror whose offer conforms to the solicitation requirements and is the lowest priced. SFO amend. 1 (Sept. 16, 2010).

As it relates to this protest, the SFO includes a one and a half page attachment, entitled “Unique and Special Lease Requirements,” which informs offerors of the specific requirements that their facility must meet. SFO attach 1, Unique and Special Lease Requirements. In addition, as it relates to the protest, the SFO references a CBP Air and Marine Facility Design Standard (Design Standard). The Design Standard was to be separately provided to offerors, and, as explained by the agency, provides operational, constructional and engineering information applicable to the design of all existing, new, and rehabilitated Air and Marine facilities. AR, exh. G, Design Standard, at 1-3 (Sept. 2009), Contracting Officer Statement at 2.

Northwest filed its initial protest with our Office on September 29, generally alleging, among other things, that various SFO requirements are more restrictive than necessary to meet the agency’s minimum needs. Protest at 8. In this regard, Northwest argued that each challenged requirement “represents a higher and different standard than current CBP operations” at the protester’s facility. Id. at 9-12.

In response, the agency undertook partial corrective action by issuing amendment 2 to clarify, revise and/or update six of the unique and special lease requirements challenged by the protester. Agency Dismissal Request, exh. A, SFO amend. 2 (Oct. 21, 2010). Thereafter, on November 4, Northwest filed a supplemental protest alleging that several of the six amended requirements were unduly restrictive of competition.¹

¹ In the supplemental protest, Northwest revised and/or raised additional arguments concerning other SFO requirements that were not within the scope of amendment 2. These arguments are untimely and will not be considered since it is not apparent why they could not have been raised in Northwest’s initial protest. Our Bid Protest Regulations do not contemplate the piecemeal development of protest issues. 4 C.F.R. § 21.2(a)(2) (2010); Braswell Servs. Group, Inc., B-276694, July 15, 1997, 97-2 CPD ¶ 18 at 6-7.

DISCUSSION

Northwest principally challenges the following seven specific SFO requirements, set forth in attachment 1, as being unduly restrictive of competition:² (1) the offered facility must be a single building hangar capable of simultaneously housing three Cessna C210 aircraft; two American Euro-copter AS350 A-Star helicopters; and two Cessna C550 aircraft, *id.* ¶ 1; (2) the airport must be equipped with an instrument landing system (ILS) certified by the Federal Aviation Administration (FAA), *id.* ¶ 2; (3) the airport, runway, and ramp must meet all FAA construction standards, specifications, and design, *id.* ¶ 7; (4) the hangar is required to have motorized doors that mechanically operate, *id.* ¶ 13; (5) the offered facility must have floor drains throughout the hangar with water/oil separators, *id.* ¶ 15; (6) the lessor must include an air compressor and run a compressed air line into and throughout hangar space, with spigots/nozzles/valves, every 40 feet, with a “quick” valve exiting through all walls, *id.* at p. 2 ¶ 1; and (7) the facility provided by the lessor must be setback a distance of 50 feet from the face of the building’s exterior to the protected/defended perimeter (*i.e.*, any potential point of explosion), *id.* at p. 2 ¶ 2. Northwest takes the position that since CBP continues to use its facility under the terms of the prior lease, this demonstrates that the challenged requirements are not reasonably necessary to meet the agency’s present and future minimum needs.³

The determination of a contracting agency’s needs and the best method of accommodating them are matters primarily within the agency’s discretion. Systems Application & Techs., Inc., B-270672, Apr. 8, 1996, 96-1 CPD ¶ 182 at 3. However,

² Northwest raised numerous allegations in its initial and supplemental protests and the agency provided substantive responses to these allegations in its report. Because Northwest made no further mention of these allegations in its comments, with the exception of the particular issues specifically addressed in this decision, we consider these allegations to have been abandoned. COB EventLizenz GmbH, B-401999.2, Jan. 12, 2010, 2010 CPD ¶ 24 at 3 n.2.

³ Throughout its protest Northwest contends that the SFO requirements have been tailored to the facility operated by one of its competitors and that this was done in order to steer the award to that firm. Government officials, however, are presumed to act in good faith and a protester’s claim, such as the one advanced by Northwest, that contracting officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attributed unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Worldwide Language Res., Inc., B-297210 *et al.*, Nov. 28, 2005, 2005 CPD ¶ 211 at 4. Because Northwest has failed to establish the necessary convincing proof to support its allegations and instead relies entirely on mere inference and its own suppositions, this aspect of its protest is without merit.

where a protester challenges a specification as unduly restrictive of competition, we will review the record to determine whether the restrictions imposed are reasonably related to the agency's needs. Id.; LBM Inc., B-286271, Dec. 1, 2000, 2000 CPD ¶ 194 at 3. Where a requirement relates to national defense or human safety, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest possible reliability and/or effectiveness. COB EventLizenz GmbH, supra, at 4; Atlantic Coast Contracting, Inc., B-270491, B-270590, Mar. 13, 1996, 96-1 CPD ¶ 147 at 3. Ultimately, a protester's mere disagreement with the agency's judgment concerning its needs and how to accommodate them does not show that the agency's judgment is unreasonable. Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. Based on our review of the record, we find that the agency has adequately demonstrated that the restrictions it has imposed are reasonably related to its legitimate needs.

Northwest first objects to the SFO requirement that the offered facility must be a single building hangar. The protester complains that this requirement represents a different standard than current CBP operations under the existing lease. Protest at 9. In its view, the use of multiple hangars in reasonably close proximity, such as Northwest's present facility, should "certainly suffice." Supplemental Protest at 11.

In support of the requirement, CBP explains that locating its employees and assets in a single hangar rather than multiple hangars will provide the agency with various operational advantages. These include—the ability to quickly launch aircraft, better security against potential threats to agency employees and assets, and energy cost savings associated with powering, heating and/or cooling a single hangar. AR, exh. K, Decl. by Director of Air Operations, at 2. The agency also states that the minimum requirements established in the SFO are consistent with its Design Standard.⁴ AR, exh. G, Design Standard, at 1-3 (Sept. 2009), Contracting Officer Statement at 2.

We believe the agency has reasonably explained the bases for requiring that the offered facility be a single building hangar. Although the protester acknowledges that "there may potentially be marginal benefits" in occupying one hangar, it contends that the agency's "legitimate minimum need is simply the leasing of hangar space." Protester's Comments at 3-4. While Northwest may disagree with the agency's assessment of its needs, its mere disagreement with the agency's solicitation approach does not render the agency's determination unreasonable, particularly where the agency has identified the single hangar requirement as, in part, a matter of safety something which Northwest has not refuted. USA Fabrics, Inc., B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 5; Dynamic Access Sys., supra, at 4.

⁴ The SFO as amended incorrectly refers to the CBP Air and Marine Facility Design Standard as the CBP Air and Marine Facility Design Guide (Sept. 2009).

With regard to the requirement that the airport must be equipped with an FAA certified ILS and precision approach minimums of 200 foot ceiling and ½ mile visibility, Northwest again asserts that this “represents a higher and different standard” than the requirements of the current lease. Protest at 9. As the agency notes, the use of a precision ILS approach provides greater operational flexibility and safety for each type of aircraft currently in CBP’s fleet. According to the agency, operations presently based at the protester’s facility are limited because its C550 aircraft cannot take off or land whenever there is a cloud ceiling of less than 500 feet and one mile visibility, or both. Using certified ILS, the agency states it could operate the C550 aircraft under the less restrictive approach minimums of 200 foot ceiling and ½ mile visibility. AR, exh. K, Decl. by Director of Air Operations, at 3.

Again, Northwest has not presented any evidence, and we see none in the record, to support its assertion that the requirements at issue are not reasonably necessary to meet the agency’s needs. While it may be true that the agency’s current lease with Northwest may not include the requirement at issue, this fact by itself, does not negate the reasonably articulated advantages associated with the stated requirements and does not undermine the agency’s legitimate need to adhere to superior standards. Each procurement stands alone and an action taken under a prior procurement is not necessarily relevant to the reasonableness of the action taken under the present procurement. JRS Mgmt, B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 4.

Next, the protester complains that the requirement of the SFO that the airport, runway, and ramp meet all Federal Aviation Administration (FAA) construction standards is unduly restrictive and in excess of the agency’s minimum needs. Supplemental Protest at 12. In this regard, the amended requirements in paragraph 7 require, that

[t]he airport, runway, and ramp must meet all FAA construction standards, specifications, and design. Furthermore, the runway, taxi-way, and ramp areas must be constructed and maintained to withstand the weight of each type of aircraft currently in CBP’s fleet, including the Lockheed P-3 Orion which is presently the largest aircraft and weighs in excess of 90,000 lbs [pounds].

SFO amend. 2, at 1.

Although Northwest does not identify which of the FAA construction standards it considers unduly restrictive, CBP explains that “compliance with FAA standards could directly reduce the risk of runway incursions or other safety-related incidents.” Agency Legal Memorandum at 9. Moreover, the agency states that its reliance on FAA airport standards will ensure adequate construction of the airport, runway, and ramp to support the temporary, semi-permanent, or permanent assignment of certain aircraft in the agency’s fleet, such as the P-3 Orion, which was not part of CBP’s fleet at the time it entered into the initial lease with Northwest. Id.

Given the critical need to ensure the safety of government personnel, including both those on board the aircraft and those who will be in close proximity to the aircraft while in operation, there is no basis to object to the agency's determination that the airport, runway, and ramp should meet all FAA construction standards. As noted above, an agency may define solicitation requirements to achieve not just reasonable results, but the highest level of reliability and effectiveness where the requirement relates to human safety. Atlantic Contracting, Inc., supra, at 3. Northwest has provided nothing in its protest to suggest that the agency's needs are unreasonable.

In a similar vein, Northwest initially argued that the SFO requirement for "motorized doors that mechanically operate" with "a minimum opening height of 28 feet and a minimum opening width of 180 feet" also "represents a higher and different standard" than the current lease. Protest at 10. The agency responded to the protester's assertion, specifically noting the problems associated with manually-operated hangar doors at the Northwest facility

over the past ten years several doors have become dislodged from their tracks causing a disruption to operations, an inability to properly secure the facility, and a potential hazard to property and personnel. It has also been the experience of [agency personnel] that manually opening and closing aircraft hangar doors can lead to incidences of back strain . . . [and] once the door is moving, strenuous effort is required to stop if someone or a piece of equipment becomes an obstruction. Mechanical doors reduce the potential for personnel to become injured during hangar door operations

AR, exh. K, Decl. by Director of Air Operations, at 4. The agency also points out that these SFO requirements are similar to the standard hangar door requirements in the Design Standard. AR, exh. G, Design Standard, § 2.2.2.

In its comments responding to the agency's report, Northwest neither mentions nor rebuts the agency's explanation of the need for mechanical hangar doors because of the potential safety and security concerns encountered in the use of manual hangar doors at the protester's facility. Instead, the protester again focuses on the agency's continuing use of its facility as evidence that the mechanical hangar doors and minimum height and width required are not reasonable minimum needs of the agency. Protester's Comments at 4-5. In addition, the protester questions the agency's reliance on the Design Standard to establish the reasonableness of the challenged requirements. Id. at 6. Northwest's focus is misplaced. As we stated previously, since these requirements relate to human safety, the agency has discretion to define the lease requirements to achieve not just reasonable results but the highest level of reliability and effectiveness. Moreover, there is nothing improper in CBP's use of the Design Standard to establish the reasonableness of any of the challenged requirements where, as here, the applicable Design Standard

requirements were formulated for procurements such as this one. JLT Group, Inc., supra, at 3.

Similarly, Northwest asserts that the requirement for the hangar to have floor drains throughout with water/oil separators “represents gold-plating,” Supp. Protest, at 13, and that there is no need for compressed air lines with a quick valve exiting through all walls—according to Northwest, all that is necessary is the ability to provide compressed air in the maintenance hangar. In addition, the protester challenges the 50 foot setback requirement as simply not appropriate given that the solicited facility is not commercial office space.⁵ CBP has responded to each of these issues, explaining that the requirement for floor drains with water/oil separators stems from the need to comply with applicable environmental standards; the requirement for compressed air lines and a quick valve exiting through all walls directly impacts the continuity of CBP operations, specifically its ability to provide needed maintenance; and the 50 foot setback requirement is necessary to ensure safety of personnel and equipment. Again, Northwest has not meaningfully rebutted any of the agency’s explanations regarding the legitimacy of its stated needs, thus its challenges of these additional requirements are without merit. In sum, the agency has amply demonstrated that the challenged requirements are necessary to ensure that its current and future operational minimum needs and Northwest has failed to establish that the agency’s judgment or conclusions in this regard are unreasonable.

Finally, Northwest argues that the SFO is ambiguous with regard to the role of the Design Standard document itself. According to Northwest it is not clear whether the Design Standard reflects actual minimum requirements that must be met, or whether they simply serve as a “guide.” Protester’s Comments at 6. The basis for Northwest’s confusion in this regard stems from an August 23, 2010 e-mail in which the agency’s program manager apparently responded to questions posed by Northwest concerning the nature of the Design Standards and noted that no existing facility can meet all of the requirements of the Design Standard completely, notwithstanding the fact that the SFO indicated that the standards must be met.

The agency, however, explains that it subsequently clarified this very point on September 16, through issuance of amendment 1 to the SFO. Among other things, amendment 1 included the following provision specifying that “[t]he Design

⁵ Northwest maintains that the requirement in attachment 1 for the lessor to provide and install an air compressor is inconsistent with the section 3.3.38 of the agency’s Design Standard and thereby creates an ambiguity with respect to the terms of the solicitation. This issue was raised for the first time in the protester’s comments to the agency report, and is therefore untimely since it is not apparent why they could not have been raised in Northwest’s initial protest. Our Bid Protest Regulations do not contemplate the piecemeal development of protest issues. 4 C.F.R. § 21.2(a)(2); Braswell Servs. Group, Inc., supra.

Standards should be utilized as a 'guide' to how a facility should be designed." SFO amend. 1. The agency maintains that amendment 1 has clearly established that the Design Standard simply serves as guidance and does not establish additional specific minimum mandatory requirements beyond the unique and special requirements set forth in attachment 1 to the SFO. In our view, given the agency's clarification of the matter through its issuance of amendment 1, Northwest's contention that the solicitation is ambiguous is without merit.

The protest is denied.

Lynn H. Gibson
Acting General Counsel