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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Houston Air, Inc.

File: B-292382

Date: August 25, 2003

William B. Allison for the protester.

Christopher P. Terry, Esq., Department of Agriculture, 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

1. Agency properly selected higher priced, higher technically rated quotation for award where agency reasonably determined that awardee's technical advantages were worth the higher price, and protester failed to provide information required by the solicitation.

2. Under procurement conducted under simplified acquisition procedures, there was nothing improper in obtaining clarifications from the awardee and not giving the protester an opportunity to correct a major deficiency under one of the evaluation factors that rendered its quotation unacceptable under that factor.

DECISION

Houston Air, Inc. protests the award of a contract to Commander Northwest Ltd., by the United States Department of Agriculture (USDA) under request for quotations (RFQ) No. RFQ R1-03-26, to provide air tactical fixed-wing aircraft services for fire management and other missions primarily in the Northern Region National Forests. Houston challenges the reasonableness of the agency's evaluation and alleges that unequal discussions were conducted.

We deny the protest.

The USDA requires aircraft to operate as an "Air Attack Platform" for Air Tactical Group Supervisors (ATGS) conducting and directing aerial incident fire management activities. The ATGS use the aircraft as an aerial "eye in the sky" to perform fire surveillance and reconnaissance, provide input to ground fire managers, and coordinate wildfire suppression efforts. The aircraft may also be used to perform

point-to-point flights, transport passengers and cargo, and perform other missions, including training of new ATGS.

The RFQ, issued as a simplified commercial item acquisition under Federal Acquisition Regulation (FAR) Parts 12 and 13.5, provides for the award of a fixed-price contract for a base year with two 1-year options. Award was to be made “on the basis of price and other factors including past performance, weight and balance sheet based on [RFQ §]C.11b. Payload¹, experience, safety, qualifications of pilots, equipment, and maintenance.” RFQ § E.3. Contractors were to submit for evaluation a weight and balance sheet and completed questionnaires pertaining to aircraft capability, personnel, company and mechanics, aircraft avionics, safety and maintenance, and past performance. Contractors also were to provide for evaluation fixed prices on a per-hour and per-day basis during a “mandatory availability period” (either 80 or 90 days, depending on the schedule option) specified in the RFQ. The RFQ stated that quotations “shall meet, or exceed” the stated performance requirements listed in RFQ § C.11, including the minimum requirements for space for a pilot plus three passengers, and minimal restrictions on outward visibility for the front and rear seat observers; additional requirements were stated for payload, avionics, personnel, and other aircraft features.

Six quotations were received in response to the RFQ, with Houston submitting the lowest one, and Commander submitting the second lowest one.² For each questionnaire section, quotations were rated outstanding, good, fair, or unacceptable, with pluses and minuses to indicate variations within a rating; these ratings were assigned points ranging from zero points for outstanding to three points for unacceptable. The technical ratings for Houston and Commander were as follows:

¹ Section C.11.b of the RFQ specified, among other requirements, that aircraft were to have a positive rate of climb when equipped for the contract and carrying one pilot and two observers at 220 pounds each, plus fuel for 4 hours with a 30-minute reserve, and certain other performance parameters.

² Commander’s quoted price was \$788 per day, based on either the 80 or 90 day mandatory period, and \$484 per hour, based on an estimated 138 hours. Houston’s quoted price was \$715 per day and \$425 per hour, based on the same periods. As determined by the USDA, Houston’s price was \$6,570 lower for the contract base period under the per-day option. Agency Report (AR), Tab E, Houston Quotation, at 8; Tab G, Commander Quotation, at 6; Tab C.4, Contracting Officer’s Determination of Award, at 2.

	Commander	Houston
Aircraft Capability	Good +	Good
Personnel	Good	Good +
Company and Mechanic	Good +	Good
Aircraft Avionics	Outstanding	Good +
Safety and Maintenance	Good --	Good
Past Performance	Outstanding	Good --
Weight and Balance	Good	Unacceptable
Total Points	6.5	12.5

AR at 6; Tab C.1, Flip Chart Worksheets, at 5.

The USDA noted several advantages to the Commander aircraft, including a useful payload of 2,778 pounds, which was greater than Houston's payload of 2,214 pounds. Furthermore, Houston did not submit a weight and balance sheet or provide all of the information pertaining to the weight and balance factor, which led the agency to assess an unacceptable rating for this factor. The USDA noted that in a prior contract, the weight of Houston's aircraft was understated on one occasion by almost 500 pounds, which raised concern about Houston's ability to meet the weight and balance requirements of the RFQ. AR, Tab C.4, Contracting Officer's Determination of Award, at 1-2; Contracting Officer's Statement ¶¶ 55, 60.

The USDA also found advantageous the Commander aircraft's capacity to carry six passengers, and the visibility afforded passengers from specially designed bubble windows located at all observation seats. In contrast, the agency determined that Houston's aircraft could accommodate only four passengers, and contained a bubble window only for the co-pilot. The agency noted that the extra passenger seating in the Commander aircraft could be used for additional ATGS training, and the additional bubble windows permitted the ATGS trainees the same view as the ATGS to optimize the training exercise. AR, Tab C.4, Contracting Officer's Determination of Award, at 1; Contracting Officer's Statement ¶¶ 41-43, 58.

The USDA also noted that Commander had a superior avionics package, such as two Technisonic FM radios, while Houston offered only one Technisonic radio and one Northern Airborne Technologies radio. The USDA found that Houston's two-radio package would require additional training and would "complicate the air attack duties" because the two radios required different programming, and thus determined that this was a "potential safety issue." AR, Tab C.4, Contracting Officer's Determination of Award, at 1; Contracting Officer's Statement ¶¶ 44-45.

The USDA also found superior Commander's aircraft engines, which were more powerful than Houston's and, as a result, could carry a greater useful load. Commander's aircraft also contained a built-in oxygen system, which the agency noted required less training and posed fewer safety issues than Houston's portable oxygen system. Another advantage the agency noted was that Commander's aircraft

contained a “porta potty” and Houston’s aircraft did not. A number of other features in the Commander aircraft were found to “significantly add to the value” of the aircraft, including a moving map global positioning system (GPS) that could be used to map fires, multiple 110-volt outlets for use with lap top computers, portable camera ports installed in the floor of aircraft to facilitate the use of thermal photographic equipment, and an on-board satellite phone to communicate with ground forces. Contracting Officer’s Statement ¶¶ 46-54.

Additionally, the USDA found that Commander had experienced personnel and a “good pool” of pilots, “excellent” training and “very good” safety plans, “great” past performance, and a “good” weight and balance sheet. Houston was also found to have proposed good personnel, as indicated by its high rating under the pertinent factor. AR, Tab C.4, Contracting Officer’s Determination of Award, at 1-2.

Commander’s weight and balance sheet showing compliance with the minimum RFQ requirements was based on actual weights, which were even higher than the 220 pounds per person weight provided in the RFQ. The USDA requested that Commander submit a corrected weight and balance sheet based on the 220 pounds per person weight. Additionally, the USDA requested that Commander confirm which of the pilots identified in the quotation would be the primary pilot. Finally, the USDA requested safety plans and related information concerning an aircraft accident that Commander reported in the past 3 years. Contracting Officer’s Statement ¶¶ 62, 64; Contracting Officer’s Supplemental Statement at 1-2. Commander submitted information in response to these requests. Houston was not requested to submit any additional information.

Based on its evaluation of the quotations, the USDA selected Commander for award. The agency determined that based on Commander’s “aircraft, pilots, useful payload of 2,778 [pounds], capability of carrying six passengers, which will give more versatility to the aircraft, the excellent visibility of the aircraft, excellent avionics package that enhances the safety of the aircraft and dedication to training of the company . . . award to [Commander] is worth the additional cost.” AR, Tab C.4, Contracting Officer’s Determination of Award, at 1-2.

Houston protests the reasonableness of the USDA’s evaluation and selection of the higher priced quotation. As noted above, the USDA conducted this acquisition using simplified procedures, which are designed to, among other things, reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002; Sawtooth Enters., Inc., B-281218, Dec. 7, 1998, 98-2 CPD ¶ 139 at 3. Our Office reviews allegations of improper agency actions in conducting simplified acquisitions to ensure that the procurements are conducted consistent with a concern for fair and equitable competition and with the terms of the solicitation. Russell Enters. of North Carolina, Inc., B-292320, July 17, 2003, 2003 CPD ¶ __ at 3.

Houston first contends that the USDA unreasonably rated it unacceptable for failing to provide a weight and balance sheet. It argues that the USDA should have requested the sheet from Houston and that unequal discussions occurred since the agency requested a new weight and balance sheet from Commander, as well as safety plans and pilot information.

The USDA responds that the items sought from Commander were clarifications, not discussions. The agency explains that Commander had already submitted an acceptable weight and balance sheet with weights exceeding those provided for in the RFQ and still satisfied the required performance requirements; the new sheet was requested solely to reflect the lower payload using the RFQ-provided weights. As for the safety plans, the RFQ permitted the USDA to request follow-up safety information from any contractor that had an aircraft accident in the past 3 years, RFQ § B.10.a(4), and the agency states it sought this information in order to make its responsibility determination. After reviewing the information provided, the USDA determined that the accident was “off contract and weather related,” and that Commander had implemented policy changes since the accident and conducted safety training for abnormal and emergency situations, which the USDA found to be satisfactory. Identification of the lead pilot was sought in order to clarify information already provided by Commander in its quotation. In no event, the agency explains, was Commander permitted to modify or supplement its quotation. Furthermore, the information was requested after the evaluation had been completed, and the evaluation ratings did not change as a result.

In contrast, the USDA explains, Houston did not provide a weight and balance sheet, so any additional information sought would have permitted Houston to modify an unacceptable quotation. Although Houston provided some weight and balance calculations, it did not include all of the information required by Section C.11.b. of the RFQ, so unlike with Commander, the USDA was unable to evaluate whether Houston’s quotation met the weight and balance requirements of the RFQ based upon the information first provided.

Under the circumstances, we find that the USDA’s decisions to rate Houston’s quotation unacceptable under the weight and balance factor and to not conduct discussions with that firm were reasonable and not unfair. The RFQ informed offerors that award would be made without discussions, RFQ § E.1(g), and it does not appear from the record that the exchanges afforded Commander an opportunity to revise its quotation. Given that Houston failed to provide the required weight and balance sheet, which rendered its quotation unacceptable under this factor, the agency did not have to engage in discussions with Houston to enable it to remedy this deficiency. CDS Network Sys., Inc., B-281200, Dec. 21, 1998, 98-2 CPD ¶ 154 at 3.

Houston also complains that the USDA downgraded its past performance rating, based upon an erroneous weight recording in a prior contract, which Houston asserts was not its fault and did not cause it to fail contract performance requirements. The record reflects, however, that the agency took this into account,

but noted that regardless of the cause, the inaccurate understatement, coupled with the inconsistencies in the weight information provided in Houston's current quotation and Houston's failure to provide the required weight and balance sheet, caused the USDA to be concerned about Houston's ability to meet payload requirements, and resulted in a lowering of Houston's overall rating. AR, Tab C.4, Contracting Officer's Determination of Award, at 2; Contracting Officer's Statement ¶¶ 55, 60. Based upon our review of the record, we find the agency's determination to be reasonable.

Houston also argues that the USDA did not fairly consider alleged beneficial features of its aircraft, such as, for example, air conditioning, two GPS systems, three VHF communications systems, and a traffic advisory system. However, in documenting a source selection decision, an agency need not address each and every feature of a quotation, but must show only that its evaluation conclusions are reasonably based. Consolidated Eng'g Serv., Inc., B-279565.2, B-279565.3, June 26, 1998, 99-1 CPD ¶ 75 at 5. Here, we find that the USDA provides ample examples to support its determination to award to the higher priced contractor. As noted above, the USDA found a number of safety, efficiency, and cost saving advantages in the Commander aircraft. Some of these features included the additional seating capacity, better visibility from all seats, superior avionics, more powerful engines, a proper weight and balance sheet, pilot experience, and company commitment to training and safety. Although Houston disputes the agency's conclusions regarding some of these features, it has provided no evidence demonstrating the unreasonableness of the USDA's evaluation, and contrary to Houston's arguments, the evaluation record does not reflect an agency bias against it. Based upon our review of the record, we find that the USDA fairly considered Houston's quotation and reasonably selected Commander's higher priced, higher rated quotation for award.³ Russell Enters., *supra*, at 4.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Houston also argues that the USDA's failure to exercise an option under its existing contract for these services suggests bias on the part of the agency against Houston. However, an agency's decision not to exercise an option is a matter of contract administration, which our Office will not review. Jones, Rusotto & Walker, B-283288.2, Dec. 17, 1999, 99-2 CPD ¶ 111 at 4.