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**Comptroller General
of the United States**

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

Decision

Matter of: Diamond Aircraft Industries, Inc.

File: B-289309

Date: February 4, 2002

Peter Maurer for the protester.

Jon W. van Horne, Esq., Greenberg Traurig, for Ximango U.S., Inc., an intervenor.

Maj. Russell K. Pippin, Department of the Air Force, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misled protester into offering an unacceptable item is denied where protester relied on agency official's informal advice in response to protester's request for clarification of solicitation; offerors rely on such informal advice at their own risk.

2. Protest that agency misevaluated protester's proposal is denied where proposal offered to comply with solicitation requirements, but did not provide any information to support its statements of compliance.

DECISION

Diamond Aircraft Industries, Inc. protests the award of a contract to Ximango U.S., Inc. under request for proposals (RFP) No. F33657-01-R-0016, issued by the Department of the Air Force for dual motorgliders (aircraft), spare parts, and support equipment. Diamond complains that the Air Force misled it into offering an unacceptable product and misevaluated its proposal.

We deny the protest.

The solicitation, issued as a commercial item acquisition, provided for selection of the low-cost, technically acceptable proposal. With respect to technical acceptability, the motorgliders were to be evaluated on a pass/fail basis for the demonstrated capability to meet 14 specified minimum requirements, and for the ability to produce and deliver all requested gliders, support equipment and spare

parts by the required dates. RFP at K-4 and Attach. 2. Award was to be made without discussions. Id. at K-3.

Diamond and Ximango submitted proposals. In evaluating Diamond's proposal, the agency determined that the offered HK36T aircraft, with a 100-horsepower (hp) engine, did not meet five of the minimum technical requirements. The Air Force therefore rejected Diamond's offer and made award to Ximango based on its technically acceptable proposal.

AGENCY ADVICE

Diamond asserts that it was misled by the Air Force into submitting an unacceptable proposal. Specifically, Diamond explains that it currently produces the HK36T with an 81-hp engine, and that this model meets all the technical requirements of the solicitation. However, at the time the proposals were due, it was in the process of completing a model upgrade to the HK36T to add a 100-hp engine; Diamond expected this upgraded version to be certified in time to meet the agency's delivery requirements. Because the solicitation stated that the commercial item offered must have demonstrated capability to meet all minimum requirements, and the 100-hp version was not yet certified or in production, it was unclear to Diamond whether it could offer the 100-hp version. According to Diamond, it therefore sent an e-mail to the contracting agency to ask whether an offer of the 100-hp version would be rejected, and whether it needed to submit two offers (one for the 100-hp version and an alternate for the 81-hp version). Diamond claims that the Air Force advised that the 100-hp version would be acceptable, and instructed it to submit only one offer, for the 100-hp version. Diamond complains that, inconsistent with this advice, its offer of the 100-hp version was rejected on the basis that it did not meet all of the RFP requirements. Diamond maintains that it was misled by the agency, to its detriment, because it would have offered its fully compliant 81-hp version but for the Air Force's alleged advice. It concludes that it should be given the opportunity to offer its 81-hp version.

Oral advice that conflicts with the solicitation is not binding on the government, and an offeror therefore relies on an oral explanation of a solicitation at its own risk. Input/Output Tech., Inc., B-280585, B-280585.2, Oct. 21, 1998, 98-2 CPD ¶ 131 at 5. Here, while the response to Diamond's questions was provided in the form of an e-mail, rather than orally, the result is the same. The solicitation put offerors, including Diamond, on notice that proposals would be evaluated against stated evaluation factors, and specific requirements; if an offered model did not satisfy one or more of the RFP requirements, it would be rejected as unacceptable. No informal advice—oral, or otherwise—could change this basis for evaluation, since the advice would not amend the solicitation. If Diamond believed the RFP required clarification, it should have requested that the agency provide it in the form of an amendment so that all offerors would be competing on the same basis. We conclude that the agency's alleged advice provides no basis for questioning the rejection of

Diamond's proposal, or for reopening the competition to permit Diamond to offer a different item.

In any case, we do not agree with Diamond's interpretation of the agency's response to its questions. Specifically, whereas Diamond argues that it was told that its 100-hp version would be technically acceptable, the communications between it and the agency, on their face, do not support this claim. We see nothing in Diamond's e-mail that references the technical acceptability of the 100-hp version; rather, it discussed only whether that version would be considered to be a commercial item. Likewise, there was nothing in the Air Force's e-mail response that related at all to technical acceptability; it addressed only the question Diamond specifically raised concerning whether the model would be deemed a commercial item, with no mention of technical acceptability. While the agency's e-mail stated that "[o]ne bid will be fine," in this context, this meant only that Diamond would not have to submit a second offer to ensure that it would meet the commercial item requirement; it did not indicate that the agency would find the offer technically acceptable. Therefore, the agency's advice did not support Diamond's assumption that the 100-hp version would be found technically acceptable.

EVALUATION

Diamond takes issue with the agency's conclusion that its offer failed to establish compliance with five of the technical requirements--Federal Aviation Administration (FAA) certification, production status, payload capability, performance, and technical manuals. In reviewing a protest against a procuring agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. National Toxicology Labs., Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3. We have reviewed Diamond's arguments and find that the evaluation was reasonable.

The unacceptability of Diamond's proposal was based largely on its failure to provide sufficient information to permit the agency to determine whether the proposed aircraft would meet the RFP requirements. For example, offerors were required to demonstrate in their proposals their ability to obtain FAA certification for their proposed aircraft. RFP at 4 and Attach. 2. In its proposal, Diamond stated that the 100-hp HK36T aircraft would be certified in spring 2002, before the required delivery date under the RFP. Diamond also listed aircraft it had previously certified. The Air Force found that Diamond's proposal did not meet the requirement, and was unacceptable, because it neither offered a certified airframe/engine combination, nor included any documentation that demonstrated the ability to obtain the required certification in time to meet the required delivery schedule. Contracting Officer's Statement at 9. Diamond maintains that the information it provided, together with its extensive experience in certifying aircraft and the minor technical differences between the offered 100-hp and the 81-hp versions of the aircraft, were sufficient to establish that its proposal complied with the certification requirement.

The Air Force properly found the proposal deficient. The statements in Diamond's proposal were not accompanied by any explanation that would support the claim that certification would be timely obtained, for example, a schedule for certification, and data or an explanation to support its position that the 100-hp version was sufficiently similar to the 81-hp model that it would be certified by spring 2002. Without such supporting information, Diamond's statements amounted to no more than a blanket offer of compliance. Such blanket offers are not adequate substitutes for the detailed and complete information necessary to establish that what the offeror proposes will meet the agency's needs. Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 6. The agency was not required to accept Diamond's experience as a substitute for the RFP requirement that compliance be established in the proposal.

As another example, the solicitation required offerors to demonstrate that the proposed aircraft could meet a payload capacity of 485 pounds total useful load. RFP at K-4 and Attach. 2. The Air Force found Diamond's proposal unacceptable in this area because it simply parroted the RFP requirement and stated that the HK36T series aircraft would have a minimum useful load of 485 pounds. Diamond states that it analyzed the typical empty weight of the proposed aircraft, allowed for weight of the required installed equipment, and verified that the proposed aircraft would exceed the 485-pound requirement. Diamond states that it reasonably believed that the agency would make itself aware of available information to corroborate the statements in Diamond's offer.

While Diamond may have analyzed data to determine that the payload on its offered aircraft would meet the 485-pound requirement, Diamond did not include any information in its proposal to demonstrate this. Instead, the proposal simply stated that the offered aircraft would meet the requirement. Again, the agency reasonably found these statements by themselves inadequate to meet the requirement. As for Diamond's belief that the Air Force would seek information to corroborate the statements in Diamond's proposal, there was no requirement that the agency do so; it is the obligation of the offeror to include sufficient information in its proposal for the agency to determine whether the proposal will meet its needs. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 9.

The protest is denied.

Anthony H. Gamboa
General Counsel