



The Comptroller General
of the United States

Washington, D.C. 20548

Carter

Decision

Matter of: Union Natural Gas Company
File: B-224699
Date: December 5, 1986

DIGEST

1. Agency determination to acquire non-interruptible natural gas from local utility and limit competition for gas to interruptible supplies is reasonable where it is based on a market survey showing limited potential competition, and a balancing of risk of acquiring non-interruptible gas from utility and non-utility suppliers against agency's concern for potential dislocation of personnel, damage and disruption which might accompany interruption of gas supply.
2. General Accounting Office will not question an agency's determination of its minimum needs absent a clear showing that the determination is unreasonable. Protester which merely seeks to redraw request for quotations to reflect its own needs rather than those of agencies conducting joint acquisition has not demonstrated that agencies' determination is unreasonable.

DECISION

Union Natural Gas Company protests request for proposals (RFP) No. F05611-86-R-0080, issued by the United States Air Force Academy. We deny the protest.

The Academy issued this RFP in conjunction with the United States Army at Fort Carson, Colorado, to acquire interruptible natural gas supplies for Fort Carson and the Academy. Interruptible supplies are those for which alternate energy sources, such as oil, are available for the facility's use, or for which the temporary loss of supply would not result in damage or serious dislocation of personnel. The RFP contemplates a 5-year price redeterminable contract, with the proviso that if at any time the price of the natural gas being supplied, including

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transportation charges, is not at least 5 percent less than that offered by the local utility, the Academy and Fort Carson may acquire their gas from the utility. The contractor is expected to transport the gas to the Academy and Fort Carson through existing utility pipelines. The Academy and Fort Carson will continue to acquire firm supplies, i.e., non-interruptible gas (for housing, for example), from the local utility under a General Services Administration (GSA) area-wide contract.

Prior to initiating this procurement, the Academy conducted a market survey, by issuing a request for quotations, to assess the practicability of competition for all of its gas needs. Of the 11 respondents other than the local utility, 10 either suggested that the procurement be limited to interruptible gas only, did not offer to supply firm gas, or qualified their supply of firm gas for various reasons, such as the availability of transportation. Union, the remaining respondent, stated that it had sufficient gas to satisfy up to 100 percent of the requirements and included a proposed letter agreement. The proposed letter agreement, however, was equivocal regarding whether or not Union might build a pipeline and required the negotiation of provisions that would excuse performance in certain circumstances. Against these responses, the Academy weighed the local utility's extensive pipeline system and multiple alternate sources for gas and the fact that during periods of high demand, pipeline companies first curtail the capacity available to users transporting their own gas--which means that during periods of extreme cold weather, for instance, gas acquired by the Academy and Fort Carson from sources other than the local public utility might not be delivered. On the basis of this market survey, the Academy determined to continue acquiring its supply of firm gas from the local utility and limit the competition to interruptible gas.

Union states, in apparent reference to its response to the Academy's market survey, that it previously advised the contracting officer of its willingness to provide all of the natural gas requirements for these installations, including non-interruptible gas. Union contends that the contracting officer therefore was aware that there was competition available for non-interruptible gas and asserts that the RFP is improper because it does not include requirements for firm supplies for the Academy and Fort Carson. Union also contends that the RFP unfairly favors the incumbent utility by requiring transport of the gas through utility pipelines, and asserts that the contemplated term of the contract is too short to allow amortization of the capital costs of constructing a new pipeline. Union asserts that competition for

all of the requirements for these two installations could result in substantial annual savings. In short, United contests the Academy's determination not to compete for non-interruptible supplies of gas. United asks that the RFP be postponed and reissued to provide for a fixed 5-year term for all of the gas needs of these two installations, and for sufficient time for the construction of new pipeline facilities.

The acquisition of utility services by agencies of the Department of Defense (DOD) is covered generally by the provisions of Subpart 8.3 of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 8.3 (1985), except for specific provisions for which DOD has substituted its own regulation. FAR, 48 C.F.R. § 8.302(c). Under Subpart 8.3 of the DOD FAR Supplement, the regulation which DOD applies in lieu of the excepted FAR provisions is Armed Services Procurement Regulation Supplement No. 5, Revised October 1, 1974. 5 Government Contracts Reporter (CCH) para. 37,465 (Feb. 19, 1975).

Where GSA has area-wide contracts for utility services, federal agencies are required to acquire utility services under those contracts unless the agency determines that (1) more advantageous services are available from another supplier, or (2) it is in the government's interest to negotiate special rates or special services under a separate contract which departs from the published or unpublished rate schedules of the current utility service supplier. FAR, 48 C.F.R. § 8.304-2(c). In addressing the first issue, the regulations provide that:

" . . . where . . . another prospective supplier requests an opportunity to furnish the service or the Department concerned becomes aware of another potential supplier, the Department shall determine whether more than one supplier can provide the service. Where competition is found to exist, competitive solicitation of proposals shall be initiated at whatever time is considered to be most advantageous to the Government." 5 Government Contracts Reporter (CCH) para. 37,469.

This regulation vests in the DOD organization concerned the discretion to determine whether competition exists for any particular utility service.

We apply a standard of reasonableness in assessing the propriety of a sole-source award, which is closely analogous to the situation presented here as it applies to the

government's firm gas needs. We will not question an award under these circumstances unless it is shown that the contracting agency's justification for the award is unreasonable. See Arthur Young & Co., B-221879, June 9, 1986, 86-1 C.P.D. ¶ 536. In our judgment, Union has not established that the Academy's determination to limit the competition to interruptible gas was unreasonable.

As noted above, the vast majority of the potential suppliers of gas were unwilling to commit to supply firm gas, and even Union, when its proposed letter agreement was considered, was unclear about its intent to construct a pipeline and required a provision excusing nonperformance in its contract. The Academy had to balance the risk apparent in these offers against the greater certainty of continuous availability associated with acquiring firm supplies of natural gas from the local utility. Given the Academy's concern for the potential substantial disruption and expense that might accompany the personnel dislocations and damage to buildings that could result from the interruption of firm gas, we cannot conclude that the Academy's decision to continue procuring firm supplies from the public utility was unreasonable. We have specifically held that such considerations properly may be taken into account by a procuring agency in structuring a competition. Owl Resources Co., B-221296, Mar. 21, 1986, 86-1 C.P.D. ¶ 282. Union, while arguing that it should be afforded the opportunity to provide firm gas, has provided no evidence of its ability to do so without substantially increasing the risk of disruption of service. In these circumstances, we find no basis for questioning the Academy's determination that there was no practical competition for firm gas and the accompanying decision to limit the competition to interruptible gas.

With regard to the balance of Union's objections, the determination of the government's minimum needs and the method of accommodating those needs is primarily the responsibility of the contracting agency; we will not question an agency's determination of its minimum needs absent a clear showing that it is unreasonable. Ram Enterprises, Inc., B-221924, June 24, 1986, 86-1 C.P.D. ¶ 581. The Academy and Fort Carson structured the RFP to provide flexibility to take advantage of changing prices for natural gas over the life of the contract, provide savings beginning with the current heating season, and broaden the base of competition by not requiring new pipeline construction. Union, however, would have the government compromise these requirements in favor of redrawing the RFP to promote its own interests, rather than those of the Academy and Fort Carson, by requiring a delay in

implementation and a 5-year firm contract. Union's advocacy of its own interests does not establish that the agencies' requirements are unreasonable.

The protest is denied.

for Seymour E. ...
Harry R. Van Cleve
General Counsel