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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lea Chemicals, Inc.

File: B-228809

Date: December 23, 1987

DIGEST

Agency's justification for a sole-source procurement is inadequate where the record does not demonstrate that agency had any reasonable basis for concluding that sole-source awardee was the only responsible source capable of meeting the agency's needs.

DECISION

Lea Chemicals, Inc. protests the rejection of its offer under request for proposals (RFP) No. DABT59-87-R-0074, issued by the United States Army at Fort Lee, Virginia for a 1-year requirements contract to supply the Fort with water treatment chemicals for its boilers and cooling towers.

We sustain the protest.

The solicitation, which stated that it was issued on a sole-source basis to Vestal Laboratories, was for six different types of water treatment chemicals. Lea's proposal in the amount of \$21,302 was rejected primarily because it was based on chemicals it manufactured rather than the required Vestal products. Award was made to Calgon Vestal Laboratories at a price of \$29,947.

In essence, Lea argues that its chemicals will perform as well as those specified in the solicitation and maintains that there can be no justification for procuring water treatment chemicals, which are commercially available from a number of firms, on a sole-source basis.

The Army states that Lea's proposed chemicals were unacceptable for use in its boilers and cooling towers. The agency explains that Lea's proposed chemicals are unacceptable because they are based on a "Bureau of Mines Standards" type of treatment for the boilers and a "phosphonate system" for the cooling towers. The agency

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states that Vestal's "polymer-type" system is better and cheaper. In this regard, the Army assures us that it will cost more than \$3 million per year in equipment conversion costs, recalibration costs, and additional fuel, water, and labor costs if Lea's chemicals are used rather than Vestal's.^{1/}

On the other hand, the protester states that the agency's cost figure is much too high and that, with just some minor changes in the agency's maintenance procedures, Lea's chemical can be used effectively and inexpensively.

We think that the protester has not shown that the agency's requirements for a "polymer-type" treatment system are clearly unreasonable. See Soletanche, Inc., B-227032, June 26, 1987, 87-1 CPD ¶ 636. Nevertheless, for the reasons specified below, we find that the Army has failed to demonstrate a reasonable basis for its conclusion that Vestal is the only responsible source for the type of products required.

The Army prepared a written justification for the sole-source procurement pursuant to 10 U.S.C. § 2304(f)(1) (Supp. III 1985). It concluded that a sole-source award to Vestal was justified under 10 U.S.C. § 2304(c)(1), which authorizes use of other than competitive procedures when the items needed are available from only one responsible source and no other product type will satisfy the agency's needs. Our Office will scrutinize closely sole-source procurement actions. See NI Industries, Inc., Vernon Division, B-223990.2, June 16, 1987, 87-1 CPD ¶ 597.

According to the justification and to the requiring activity's written request upon which that justification was based, Vestal had been working with Fort Lee's engineering and housing staff for 18 months as a supplier and adviser in the improvement of its water treatment systems for cooling

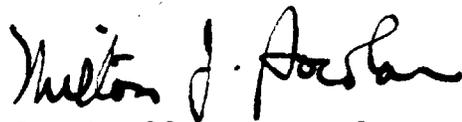
^{1/} The agency argues that the protest is untimely because the protester knew that the agency intended to conduct a sole-source procurement from the face of the solicitation and the protest was not filed until after the closing date for submission of initial proposals., Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987). We do not agree. The record shows that the agency sent solicitations to eight sources on its bidder's list and that it evaluated and rejected the offers it received from four sources other than the awardee. Therefore, the protester is, in essence, objecting to the rejection of its proposal, and the protest, which was filed within 10 days of the protester's receipt of its rejection notice, is timely. 4 C.F.R. § 21.2(a)(2).

towers and boilers. As a result of that effort, the agency projects significant potential savings using Vestal's "polymer-type" chemical treatment systems. However, nowhere is it stated that Vestal is the only source for "polymer-type" chemicals capable of producing these savings. There is also no suggestion that Vestal's chemicals are in any way proprietary. Indeed, the request document states, without explanation, that "[a]dditional chemicals procured after the requested supply is exhausted could be on a competitive basis. . . ."

The record here simply does not demonstrate that the Army had a reasonable basis for its conclusion that Vestal is the only responsible source for chemicals which will meet the agency's minimum needs. As outlined above, the initial request and the justification never even discuss, much less establish, that Vestal's "polymer-type" chemicals are unique. Audio Intelligence Devices, B-224159, Dec. 12, 1986, 66 Comp. Gen. _____, 86-2 CPD ¶ 670. Further, the fact that the agency is impressed with Vestal's chemicals and thinks their use will result in significant savings does not support the agency's position that no other product can meet the agency's needs.

Thus, we find that the agency has not adequately justified its sole-source award to Vestal. We therefore recommend that the agency reassess its needs and either execute a justification for its sole-source procurement from Vestal which is consistent with the statutory requirements, or terminate its contract with Vestal and conduct a competitive procurement for the items needed. In addition, since an improper sole-source award has been successfully challenged, we find that Lea is entitled to recover the costs of filing and pursuing the protest. See Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1987); Washington National Arena Limited Partnership, 65 Comp. Gen. 25 (1985), 85-2 CPD ¶ 435.

The protest is sustained.

for 
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