The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kollsman Instrument Co.

File: B-233759

Date: March 6, 1989

DIGEST

1. When agency's exercise of an option is based on an informal price analysis that considered the prices offered under the original solicitation, market stability and other factors, protest that price analysis is insufficient is without legal merit

2. Agency is not required to consult previous unsuccessful offeror during price analysis, nor is the agency required to issue a new solicitation to test the market before exercising an option merely because a previous offeror states that it would offer a lower price, when prices have already been tested in a fully competitive procurement in which the protester participated.

3. While an urgency determination was not required in order for the agency to exercise an option, the existence of a critical equipment need for outfitting ships in battlefield threat areas, in conjunction with the fact that the awardee is the only firm currently producing the item and the only firm which would not need to submit a first article prior to production provides a reasonable basis for an urgent sole-source award.

DECISION

Kollsman Instrument Co. protests an award by the Department of the Army (on behalf of the Navy) of an option to Brunswick Corp., for the purchase of 284 AN/KAS-1 chemical warfare detectors under contract No. DAAH01-87-C-A011. We deny the protest.

The basic contract was awarded to Brunswick on October 3, 1986, for 267 production units and 4 first article test units, as the result of a full and open competition in which Kollsman and Brunswick were the two offerors. Brunswick received the award at a price of $47,674 per unit for the basic quantity, and offered the same price for 304 option

units. Kollsman's offer was $61,169 per unit for the basic quantity, with an option price of $67,179 per unit. Brunswick received the award on the basis of its lower unit price for the basic quantity. The option prices were not evaluated because of the unavailability of funding; however, as indicated above, Brunswick's price advantage was even more substantial for the option units than it was under the basic award.

Kollsman contends that the price of this unit has decreased significantly since the original award, and that it could now offer the unit at a lower price than Brunswick's option price. Kollsman asserts that since the Army did not consult Kollsman about current pricing prior to exercising the option, the Army did not conduct a proper informal price analysis or market evaluation to determine that the option price is the most advantageous to the government, as is required under Federal Acquisition Regulation (FAR) § 17.207(d)(2) (FAC 84-37). In addition, since the option was not evaluated under the initial competition, Kollsman asserts that FAR § 17.207(f) prevents its exercise, absent an appropriate justification and authorization that full and open competition is not required. The Army has made such a determination under FAR § 6.302-2 (FAC 84-28), on the basis that unusual and compelling urgency resulted from a need to protect Navy ships against the threat of lethal chemicals presented by potential enemies of the United States, and only Brunswick is in a position to meet the needed delivery timetable to permit the Navy to achieve its critical ship deployment schedules. In particular, the Army found that Brunswick is the only current producer of the unit which had satisfied the first article test, and that satisfaction of the first article test by a new producer, along with gearing up for production would add more than 1 full year to the delivery schedule.

Kollsman argues that there was no urgency, that as the producer for the government of a very similar unit, the AN/UAS-12C night vision sight, Kollsman could have passed the first article test and commenced production in a substantially reduced time period and, in the alternative, that if there was any urgency, it was the result of a lack of advance planning on the part of the Army.

Our Office generally will not question the exercise of an option unless the protester shows that applicable regulations were not followed or that the agency's determination to exercise the option, rather than conduct a new procurement, was unreasonable. Automation Management Corp., B-224924, Jan 15, 1987, 87-1 CPD ¶ 61. The intent of the regulations is not to afford a firm that offered high

prices under an original solicitation an opportunity to remedy this business judgment by undercutting the option price of the successful offeror. ISC Defense Systems, Inc., B-224564, Feb. 17, 1987, 87-1 CPD ¶ 172. While it may be appropriate in certain circumstances for a contracting officer to contact all available sources to determine whether an option price is most advantageous, such a procedure is not mandated by regulation. Action Manufacturing Co., 66 Comp. Gen. 463 (1987), 87-1 CPD ¶ 518. The FAR grants contracting officers wide discretion in determining what constitutes a reasonable check on prices available in the market. Id.

Further, a contracting officer is not required to test the market by resoliciting before exercising an option merely because a competitor guarantees a lower price after the option exercise, where the option prices have already been tested in a competition in which that firm participated. Such a firm is not entitled to a second chance merely by its promise to offer a lower price. Jaxon, Inc., B-213998, July 10, 1984, 84-2 CPD ¶ 33; A.J. Fowler Corp., B-205062, June 15, 1982, 82-1 CPD ¶ 582. Accordingly, we find that the Army's decision to consider the prices under the original competitive procurement, in conjunction with its assessment that the market pricing for items of similar technology had remained stable over the past 2 years, without consulting Kollsman or testing the market, constituted a reasonable basis to determine that the option price was most advantageous to the government.

In any event, we also find that the urgency determination was reasonable. Under the Competition in Contracting Act of 1984 (CICA), an agency may use other than competitive procedures to procure goods or services where the agency's needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits proposals. 10 U.S.C. § 2304(c)(2) (Supp. IV 1986). When citing an unusual and compelling urgency, the agency is required to request offers from "as many potential sources as is practicable under the circumstances." 10 U.S.C. § 2304(e). An agency, however, has the authority, under 10 U.S.C. § 2304(c)(2), to limit the procurement to the only firm it reasonably believes can properly perform the work in the available time. Arthur Young & Co., B-221879, June 9, 1986, 86-1 CPD ¶ 536. We will not object to the agency's decision to limit competition based on an unusual and compelling urgency unless we find that the agency's decision lacks a reasonable basis. Honeycomb Co. of America, B-227070, Aug. 31, 1987, 87-2 CPD ¶ 209. We have recognized that a military agency's assertion that there is a critical

need for certain supplies carries considerable weight, and the protester's burden to show unreasonableness is particularly heavy. Abbott Products, Inc., B-231131, Aug. 8, 1988, 88-2 CPD ¶ 119.

Here, the Army complied with the statutory requirements under CICA calling for written justification for, and higher-level approval of, the sole-source action. The Army states that the units are critical to properly outfit all Navy ships operating in potential threat areas where countries possess chemical warfare weapons. The present system of transferring units between ships is considered an unacceptable alternative because of the increased danger of unit damage associated with the unit transfer, plus other operational difficulties which are posed. Accordingly, there is a critical current need for the units being acquired under the option exercise. Kollsman has not provided any credible evidence that this determination was unreasonable, or that the urgency resulted from any lack of advance planning on the part of the agency.

To the extent that Kollsman is asserting that it could, in fact, provide the units within the required time frame, the Army points out that the bulk of the delay (1 year) results from the first article test requirement, for which Kollsman concedes it is not entitled to a waiver. Regarding Kollsman's argument that this time will be substantially reduced because it produces a similar unit, the Army points out that while there are many common parts, there are significant functional differences between the two units, and there is no assurance of a shortened first article test period. In this regard, we recently considered a protest regarding these two units in which the positions of Brunswick and Kollsman were reversed. Brunswick argued that it was either entitled to a first article waiver on the AN/UAS-12C because of its experience in producing the AN-KAS-1, or, in the alternative, that it would it could substantially accelerate the time necessary for first article testing. We rejected this argument on the basis that it would require the agency to assume the risk that the offeror could successfully complete first article testing in time to meet the delivery and deployment schedule, which we

found inappropriate in view of the technical complexity of the items and the need to meet an existing battlefield threat. Brunswick Corp., Defense Division, B-231996, Oct. 13, 1988, 88-2 CPD ¶ 349. The identical considerations obtain here and require the rejection of Kollsman's argument in this respect.

The protest is denied.

for James F. Hinchman
General Counsel