



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: JTP Radiation, Inc.

File: B-233579

Date: March 28, 1989

DIGEST

A contracting agency has a reasonable basis for determining that the manufacturer of the only acceptable and tested antenna in its inventory is the only source that can meet its technical and schedule requirements for an interim purchase of antennas to meet operational requirements pending delivery of replacement antennas under an ongoing fully competitive procurement, where the agency reasonably finds that it must test the antenna proposed by the protester before it can approve this source and the testing of the protester's antenna cannot be completed to allow for timely delivery.

DECISION

JTP Radiation, Inc., protests the rejection of its proposal and the acceptance of the proposal of the Rantec Division of Emerson Electric Company under request for proposals (RFP) No. F04606-88-R-0594, issued by the Sacramento Air Logistics Center, California, for 12 ground-based tactical air control and navigation (TACAN) antennas providing multichannel beam systems for aircraft guidance.

We deny the protest.

The Air Force currently has 149 TACAN antennas in its inventory, 145 of which are AN/GRA-120 antennas which employ mechanical scanning systems and which were acquired around 1965. The Air Force states that the maintainability and reliability of these antennas is decreasing at an accelerating rate. Additionally, the Air Force has four OE-258 B/URN TACAN antennas, which employ electronic scanning systems and which were supplied since 1984 by Rantec, their manufacturer.

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The Air Force has identified a need to replace the AN/GRA-120 antennas, which coincides with a requirement identified by the Federal Aviation Administration (FAA) to replace its TACAN antennas. Consequently, these agencies have combined their requirements into a single procurement that is currently being conducted by the FAA. Antennas with either mechanical or electronic scanning systems are being considered in the FAA procurement. In this regard, in the Conference Report on H.R.J. Res. 738, 99th Cong., 2d Sess. (1988), which contains the appropriation funding the FAA procurement of the TACAN antennas, it is stated:

"The conferees direct that any acquisition of FAA . . . TACAN antennas shall be acquired through a competitive procurement of any low power consumption, low maintenance TACAN antenna, either electronically or mechanically scanned."

H.R. Report No. 99-1005, 99th Cong., 2d Sess. at 539 (1986).

It is our understanding that there will be extensive first article testing on the selected antenna and that award will not be made under the FAA procurement until May or June of 1989.

This protest involves what the Air Force intended to be a noncompetitive purchase of 12 OE-258 TACAN antennas from Rantec. The Air Force reports that it needs these 12 antennas to fill its interim requirements until deliveries of the replacement antennas are made under the FAA procurement. The Air Force explains that spare parts for the increasingly unreliable and unmaintainable AN/GRA-120 antennas will become unavailable by December 1989, while delivery and installation of the antennas under the FAA procurement will not occur until at least 2 years after award. Therefore, the Air Force's plan is to replace 12 existing AN/GRA-120 antennas with the 12 OE-258 antennas and cannibalize the older AN/GRA-120 antennas in order to maintain the remaining antennas of this type until the replacements are delivered.

The Air Force further reports that the OE-258 antenna is the only acceptable TACAN antenna in the Department of Defense (DOD) inventory. The Air Force reports that this antenna has been tested, is fully logistically supportable, and has been performing satisfactorily. The Air Force considered only Rantec to be the only source for the antennas because the Air Force had not purchased data from Rantec for the OE-258 antennas.

In response to an announcement of this noncompetitive procurement in the Commerce Business Daily of June 2, 1988, JTP and other firms expressed interest in submitting proposals on this requirement. Consequently, the RFP, issued on August 8, 1988, was furnished to Rantec, JTP and other interested firms.

Section M-25 of the RFP requires any offeror who was not previously identified as an approved source for this requirement to provide data and evidence that its offered product can meet Air Force requirements. Section M-25 further provides that unapproved sources would only be considered when it could be determined prior to award that the material being offered would meet the Air Force's requirements and that the decision of the contracting officer regarding the adequacy of the data would be final. The RFP listed only Rantec as an approved source.

Both Rantec and JTP submitted proposals by September 28, 1988. JTP offered its JTP-900 TACAN antenna, which has a mechanical scanning system. JTP submitted a detailed technical proposal addressing the Air Force technical and operational requirements and providing detailed data concerning the design and characteristics of the JTP-900 antenna. JTP's proposal also attached the JTP test results on the JTP-900 antenna and documented the successful operation of a JTP-900 antenna which had recently been installed for the FAA in Wichita Falls, Texas.

After reviewing JTP's proposal, the Air Force advised JTP that its proposal was rejected because the Air Force:

" . . . favors the electrically scanning antenna to the mechanical rotator antenna due to inherent problems in load balancing, deterioration of the bearings, and motor replacement. These problems are avoided with the electrically scanning antenna due to the lack of moving parts."

Although the Air Force recognized that JTP addressed these concerns by reducing the antenna weight, by using synthetic bearings and by redesigning the motor, it found "the reliability predictions have not been verified in real world operation."^{1/}

^{1/} The Air Force further stated that:

" . . . the OE-258 antenna will be used for replacement of the existing AN/GRA-120 antenna.

(continued...)

The issue before us is whether the rejection of JTP's proposal and a noncompetitive award to Rantec are proper.^{2/} Because the overriding mandate of the Competition in Contracting Act is for "full and open competition," 10 U.S.C. § 2304(a)(1)(A) (Supp. IV 1986), this Office will closely scrutinize noncompetitive procurements conducted under 10 U.S.C. § 2304(c)(1). Mine Safety Appliances Co., B-233052, Feb. 8, 1989, 89-1 CPD ¶ _____. In sum, excepting those noncompetitive situations which arise from a lack of advance procurement planning, a sole-source award is justified only where the agency reasonably concludes that only one known source can meet the government's needs within the required time. Id.; Data Transformation Corp., B-220581, Jan. 16, 1986, 86-1 CPD ¶ 55. It follows that an agency may reject a proposal on a noncompetitive procurement from an alternate source if that unapproved source does not demonstrate that it can meet the agency's technical and schedule requirements. Mine Safety Appliances Co., B-233052, supra.

1/(...continued)

The spare parts catalogued are interchangeable between these two antennas, but are not interchangeable with the JTP-900 antenna."

The protester argues that this is a nonsensical basis for rejecting its proposal since, in fact, the parts to the OE-258 and AN/GRA-120 antennas used by the Air Force are not at all interchangeable. In its report to our Office, the Air Force states it intended:

". . . to convey that the spare parts available in the DOD inventory in support of the existing OE-258 B/URN antennas would be interchangeable with the new units to be procured."

While this is a logical explanation, it certainly is not readily apparent from the language of the rejection letter.

^{2/} JTP claims that it reasonably believed the RFP was issued on a competitive basis; however, if JTP believed this procurement was fully competitive, this belief was unreasonable. The RFP clearly indicated that the procurement was "restricted" and that Rantec would receive the award unless another source demonstrated to the Air Force's satisfaction prior to award that its product would meet the Air Force's requirements.

JTP complains that the Air Force's rejection of its proposal was predicated on an unreasonable preference for antennas with electronic scanning based on a comparison of the 25-year-old AN/GRA-120 mechanical scanning antennas with the relatively modern Rantec OE-258 antennas with electronic scanning systems. In its protest, JTP responded to each of the Air Force's general concerns about mechanical scanning antennas with specific reasons why the protester believes its JTP-900 antenna will not have these problems. Indeed, JTP claims that its proposal not only demonstrated how its JTP-900 solved the identified problems, e.g., load balancing, bearing deterioration, and motor replacement, of the existing Air Force mechanical scanning antennas, but showed how its JTP-900 was substantially more reliable than the OE-258.

The record confirms that the Air Force's "preference" for electronically scanning antennas was based on certain problems it had with the circa 1965 AN/GRA-120 antennas, which had mechanical scanning systems, and that JTP's proposal addressed each of these concerns. Although we do not know whether the JTP-900 antennas can meet the Air Force requirements or if JTP actually has solved the "inherent problems" in mechanical scanning antennas identified by the Air Force, the record does suggest that TACAN antennas with mechanical scanning could meet the Air Force's needs, since this type of antenna could be selected under the FAA procurement, where both electronic and mechanical scanning antennas are being considered. Therefore, we question whether the Air Force's stated preference for antennas with electronic scanning could, in and of itself, justify this sole-source award.

Notwithstanding this preference, we find the sole-source award to Rantec is justified in light of the Air Force's testing and schedule requirements. The Air Force states that the JTP-900 antenna would have to be tested to verify its reliability since no DOD activity has tested it. In response, JTP indicates that it has already conducted reliability testing on the JTP-900, and that a copy of the test results was included in its proposal. JTP also references the successful operation of the one antenna it installed for the FAA in Wichita Falls, Texas, and notes that its proposal offered a 5-year warranty on the rotating components of its antenna.

Under section M-25 of the RFP, the Air Force may require testing before approving an alternate source, even where the RFP does not explicitly reference any testing requirements, if the data and evidence submitted by the alternate

source in its proposal do not satisfy the Air Force that its requirements will be met. See MMC/PHT Co., B-230599, May 17, 1988, 88-1 CPD ¶ 464, aff'd, July 27, 1988, 88-2 CPD ¶ 90. Moreover, the responsibility for the establishment of tests and procedures to determine product or service acceptability is within the ambit of the expertise of the cognizant technical activity. D. Moody & Co., Inc., 55 Comp. Gen. 1, 17 (1975), 75-2 CPD ¶ 1.

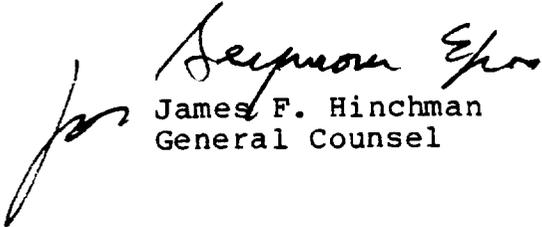
Here, as conceded by JTP, the Air Force has experienced problems with the reliability of mechanical screening antennas. Although JTP included test results on the JTP-900 in its proposal, our review indicates that this test did not specifically encompass the Air Force reliability concerns, that is, load balancing, bearings and motor replacement. Moreover, the first article tests under the FAA procurement specifically test and verify reliability before delivery and installation of the antennas. It follows that the Air Force can reasonably require no less testing here, whether it be pre-qualification or first article testing.

Since these antennas are important to proper air traffic control, we find that their reliability is a legitimate concern and that the Air Force could properly insist that the Air Force needed to test this antenna to assure that it met the Air Force's requirements. The fact that FAA is currently using a JTP-900 antenna does not necessarily mean that it meets Air Force requirements. Also, JTP's offered warranty on rotating components cannot be substituted for the Air Force's requirement that the JTP-900 antenna be tested to demonstrate compliance with the Air Force requirements. See Unisys Corp., B-231704, Oct. 18, 1988, 88-2 CPD ¶ 360.

Furthermore, the Air Force states that the 12 TACAN antennas to be purchased here are a limited quantity necessary to fulfill its interim requirements until FAA's fully competitive procurement is completed and deliveries are made thereunder. JTP does not dispute that the Air Force needs these antennas by December 29, 1989, because of the unreliability of the existing AN/GRA-120 antennas and the increasing unavailability of parts for them after that date. Moreover, since we understand award under the FAA procurement will not occur until this May or June, the replacement antennas will not be installed until the summer of 1991. The record does not indicate, nor does JTP claim, that JTP could successfully have its antenna tested by the Air Force under pre-qualification or first article tests, and still meet the required delivery date.

An agency need not delay a proposed award in order to specify precise qualification requirements to assure that unapproved sources could qualify in time to receive an award. Kitco, Inc., 67 Comp. Gen. 110 (1987), 87-2 CPD ¶ 540; Aircraft Instrument Co., B-233609, Mar. 6, 1989, 89-1 CPD ¶ _____. Therefore, we find the Air Force has a reasonable basis for determining that only Rantec can satisfy this interim requirement. See Mine Safety Appliances Co., B-233052, supra.

Accordingly, the protest is denied.

 James F. Hinchman
General Counsel