



Comptroller General
of the United States

Washington, D.C. 20548

Schatz

Decision

Matter of: ALK Associates Inc.
File: B-237019
Date: January 26, 1990

DIGEST

Sole-source award of a contract for an automated mileage software database package is unobjectionable where the agency reasonably determines that only one source can supply the desired product, since only that source holds a copyright to the mileage guides upon which the software must be based.

DECISION

ALK Associates Inc., protests the proposed sole-source award of a contract to Rand McNally-TDM, Inc., under request for proposals (RFP) No. DAEA08-89-R-0022, issued by the Department of the Army for the Army Finance Accounting Center (USAFAC) at Fort Benjamin Harrison, Indiana for the purchase and maintenance of an automated mileage software database package. ALK contends that a sole-source award is improper because its own software is equivalent in function and quality to Rand McNally's software for purposes of meeting the agency's requirements.

We deny the protest.

On June 6, 1989, the Army published a synopsis in the Commerce Business Daily (CBD) seeking sources for the competitive solicitation of a software database package. On July 19, a solicitation was issued with a closing date of September 1, which was later extended to September 15. Section C.1 of the RFP required the offerors to provide a commercially available software database package for finding freight and household goods mileages (the shortest routes), and for finding the most practical routes between (1) all military installations listed in the United States Government Mileage Guide #1, published by the Household Goods Carrier Bureau (HGCB); (2) all military installations listed in Mileage Guide #1 and all points listed in the Household Goods Carrier Bureau Mileage Guide #14, published by the

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HGCB; and (3) a minimum of 110,000 named places in the United States and Canada.

On August 8, ALK submitted a letter questioning the effect on competitions of the solicitation's references to the Mileage Guides #1 and #14 published by the HGCB, because they were copyrighted by Rand McNally; ALK questioned whether only Rand McNally therefore could perform this requirement. In response to ALK's letter, the Army obtained proof from Rand McNally of its copyright of the HGCB Mileage Guides and, in light of these rights, determined that other than competitive procedures were called for.

Accordingly, on August 30, the agency prepared and approved a Justification and Approval for procurement of the services on a sole-source basis, citing the authority of Federal Acquisition Regulation § 6.302-(1)(b)(2), implementing 10 U.S.C. § 2304(c)(1) (Supp. V 1987), which permits a noncompetitive award where only one or a limited number of responsible sources are available and no other type of property or services will satisfy the needs of the agency. On September 15, the Army issued an amendment proposing award on a noncompetitive basis to Rand McNally. On September 19, a revised synopsis was publicized in the CBD reflecting the change to a sole-source procurement. ALK thereupon filed this protest. The award has been delayed pending our decision.

ALK objects to the proposed sole-source award principally on the ground that its own software package, although based on mileage tables from sources other than the HGCB mileage guides, is substantially equivalent in function and quality to Rand McNally's software package and therefore would meet the Army's needs. ALK explains that its software package is equivalent in function to Rand McNally's, because it uses the same original data sources (state and county highway department maps) to determine distances between two points. In addition, ALK argues that the quality of its software package is in fact superior to Rand McNally's, because ALK's software has more names in its database, and its mileage tables are more current and more accurately reflect actual driving mileages. ALK concludes that the Army should set aside its proposed sole-source award to Rand McNally and amend the solicitation to allow other firms, including ALK, to compete.

Because the overriding mandate of the Competition in Contracting Act of 1984 (CICA) is for "full and open competition" in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), we will closely scrutinize sole source procurements under

the exception to that mandate provided by 10 U.S.C. § 2304(c)(1). Johnson Eng'g and Maintenance, B-228184, Dec. 3, 1987, 87-2 CPD ¶ 544. CICA requires written justification for, and higher-level approval of, the contemplated sole-source action and publication of the requisite CBD notices, 10 U.S.C. § 2304(f); where, as here, the agency has substantially complied with these procedural requirements, we will not object to a sole-source award unless it is shown not to be supported by a reasonable basis. Id. In sum, excepting those noncompetitive situations which arise from a lack of advance planning, a sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. Id.

The Army states that only Rand McNally's software package, which is based on mileage tables found in the HGCB mileage guides can satisfy its needs, because the Military Traffic Management Command (MTMC), which is responsible for the Army's traffic management, also mandates through the MTMC's Guaranteed Traffic Rules Publication (which contains rules governing the transport of goods from Air Force installations to all points in the United States) that all motor carriers transporting goods between military installations and other key locations use the mileage tables in Rand McNally's copyrighted HGCB Mileage Guides in determining the rates (prices per miles) to include in their transportation bills for costs incurred in transporting goods. Since the USAFAC then performs pre-payment audits on the transportation bills submitted by the carriers to the MTMC for the purpose of precluding motor carriers from overcharging the government for transportation costs, USAFAC must use the identical software package as MTMC uses. The Army explains that software packages which base their mileage tables on sources other than the HGCB mileage guides will not agree all the time with Rand McNally's software package on the distances between any two given points; thus if the USAFAC substituted the mileage tables from ALK's software package for the mileage tables in Rand McNally's software package, it would be impossible to reconcile the mileages used in USAFAC's audits with the mileages used by carriers in establishing their rates.

Since no source other than Rand McNally has access to Rand McNally's copyrighted mileage guides and Rand McNally is not making the guides available for use by other firms, we find the Army's determination that only Rand McNally can meet its needs to be reasonable. Although ALK argues that its software package is equivalent in function to Rand McNally's software package, we are persuaded that since ALK's mileage tables do not always agree with Rand McNally's copyrighted

HGCB Mileage Guides, which are used by MTMC, ALK's software package could not be used by USAFAC to audit transportation bills. The proposed sole-source award to Rand McNally therefore is unobjectionable.

The protest is denied.

Andrew T. Pogany
for James F. Hinchman
General Counsel