

Miller
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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Electra
File: B-243038
Date: June 19, 1991

Craig Brooks for the protester.
Alexander P. Humphrey IV, Esq., for GE American Communications, Inc., an interested party.
Virginia G. Farrier, Esq., Defense Communications Agency, for the agency.
Behn Miller and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Although record demonstrates that limited opportunity for competition exists due to harsh environmental factors and a 90-day operational service requirement, protest that agency acted improperly in opening procurement to full and open competition rather than proceeding with its initial plan to make a sole-source award is denied where the agency's decision was based on protester's representations, after being advised of agency's stringent requirements, that it could compete.

DECISION

Electra protests the requirements of request for proposals (RFP) No. DCA200-91-R-0002, issued by the Defense Communications Agency, Defense Commercial Communications Office (DCA-DECCO), for a digital communication service between the Consolidated Space Test Center located at Onizuka Air Force Base (AFB), Sunnyvale, California, and the Thule Tracking Station located at Thule Air Base, Greenland. The RFP contemplates a firm, fixed-price contract for a 1-year base period with four 1-year options; under the RFP, the service is required to be fully operational 90 days after contract award. In its protest, Electra contends that the terms of the RFP result in a de facto sole-source procurement to GE American Communications, Inc. (GE Americom).

We deny the protest.

On August 23, 1990, DCA-DECCO advertised this requirement in the Commerce Business Daily (CBD); although the synopsis indicated that the procurement was being conducted on a sole-source basis, five contractors--including Electra--contacted the agency and expressed interest in the procurement.^{1/} On September 6, the agency's communications specialist contacted each of the five vendors to discuss the requirement; according to the communications specialist, each vendor was advised of the construction peculiarities associated with the arctic environment of the Thule site as well as the agency's intent to negotiate the requirement on a sole-source basis.

As a result of these discussions, four of the vendors decided not to compete under the RFP. Electra, however, informed the communications specialist that it still wished to submit a proposal. After a second phone call confirming Electra's interest in the procurement, the contracting officer determined that Electra's interest prevented a sole-source negotiation; after synopsising the requirement in the CBD on September 23 as a full and open competition, DCA-DECCO issued the RFP on November 9. On December 4, by amendment No. 0001, the agency indefinitely extended the RFP's original January 4, 1991, closing date; on January 9, by amendment No. 0002, the agency set the RFP's closing date for February 8.

Under the RFP, offerors were "urged and expected to inspect the site where services are to be performed"; the agency arranged for a pre-proposal site survey at both the Onizuka AFB and Thule locations. The site survey for Thule was held during the week of January 15; only Electra and GE Americom attended.

After the survey, by letter dated February 4, Electra filed an agency-level protest arguing that the solicitation was biased in favor of GE Americom, an on-site contractor who currently provides telecommunications to Greenland under several DCA-DECCO contracts; Electra also argued that several of the RFP's specifications were noncompetitive and misleading. By letter

^{1/} The synopsis in the CBD made reference to CBD Numbered Note 22, which states in part:

"The proposed contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under authority of [Federal Acquisition Regulation] [§] 6.302. Interested persons may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals."

dated February 7, relying on our decision in Information Ventures, Inc., B-240925.2, Jan. 15, 1991, 91-1 CPD ¶ 39, DCA-DECCO asserted that it was not required to equalize any physical advantage that GE Americom enjoyed as the incumbent contractor since these advantages did not result from preference or unfair action by the agency. By letter dated February 8, Electra reiterated its initial protest and challenged the agency's reliance on Information Ventures, Inc.; Electra maintained that DCA-DECCO had improperly used the terms of a sole-source solicitation in the guise of full and open competition to favor GE Americom. By letter dated February 8, the contracting officer again denied Electra's protest; on February 21, Electra filed the instant protest with our Office.

Under the RFP, the contractor is to establish a telecommunication service between the Thule J-Site in Greenland^{2/} and Onizuka AFB in California. Specifically, this requirement involves taking the signal from the patch panel at the Thule J-site and transmitting it to Onizuka AFB. It also involves reception, at that same J-site patch panel, of a signal sent from Onizuka AFB.^{3/}

The RFP states that a vendor may provide this service via satellite, microwave, fiber optic cable and/or copper cable-- or any combination of these systems. Of these three systems, a satellite system--consisting of an earth station terminal accessing an orbiting satellite--is the fastest to configure; however, because of Thule's arctic environment, DCA-DECCO concedes that the 90-day operational service date eliminates all competitors seeking to construct a new earth station.^{4/}

^{2/} The J-site is the name given to a mountain location approximately 12 miles from Thule Air Base that affords a satellite earth station the best straight line view of a satellite in a stationary orbit over the equator.

^{3/} The patch panel is a device that uses a system of plugs and jacks to enable the quick connection/disconnection of electronic equipment and/or signal lines; located in the J-site, the patch panel is the demarcation point where the vendor equipment/signal interfaces with the government equipment/signal. From this point, the government takes the vendor's signal and routes it to a fiber optic link with the Thule tracking station.

^{4/} An earth station houses the antennas, receivers, transmitters and electronic equipment needed on the ground to transmit and receive signals from an orbiting satellite; the record shows that construction of any new facilities is limited to the months of May through September.

Similarly, neither the microwave nor cable system is a viable option since each system requires a construction period well beyond the 90 days afforded under the RFP. Unlike a satellite system that can operate from one earth station, a microwave system requires construction of numerous terminals operating in a line-of-sight transmission path; similarly, cable--which must be laid underground (or underwater in this case)--requires an extensive construction period.

Although the agency agrees that construction of a new facility does not present a viable option for competition under this solicitation, DCA-DECCO argues that firms could nonetheless compete with the incumbent contractor by leasing telecommunication facilities already in existence at Thule. In this regard, DCA-DECCO contends that during the September 6 telephone discussions, Electra represented that it could perform the requirement through leasing arrangements rather than construction; according to DCA-DECCO, it decided to open the procurement to full and open competition based on Electra's proposed nonconstruction alternatives. According to Electra, however, nonconstruction alternatives were discussed only with respect to the Onizuka AFB site. Regardless of any alleged misunderstanding between the parties during their September 6 conversation, Electra--which was on notice of the agency's 90-day operational service date and the arctic environment involved--represented to the agency that it was interested in competing.

The Competition in Contracting Act, 10 U.S.C. § 2304(a)(1) (1988), mandates "full and open competition" in government procurements, to be obtained through the use of competitive procedures. Exceptions to this mandate are proper only to the extent that they are specifically authorized by statute. See 10 U.S.C. § 2304(c). Awarding a contract on a sole-source basis, as the agency initially planned here, is proper only if the agency reasonably concludes that only one source can meet the agency's needs. See 10 U.S.C. § 2304(c)(1); Technology for Communications Int'l, B-236922, Dec. 28, 1989, 89-2 CPD ¶ 603. When a sole-source award is proposed, the agency must publish notice of its intention in the CBD, and consider responses from potential competitors expressing interest in the procurement, in order to determine if the sole-source award is justified. See Federal Acquisition Regulation §§ 5.207(e)(3); 6.302-1(c)(2); 15.402(h).

Here, we find that the agency acted reasonably in deciding that, rather than proceed with its initial plan to make a sole-source award to GE Americom, it would open the procurement to competition. In challenging that decision, the protester in essence argues that the agency should have known that only GE Americom was in a position to meet the agency's needs, and on this basis should have refused to allow Electra

to compete. However, Electra itself was on notice from the publication in the CBD, its conversations with the communications specialist, and the RFP, of the agency's stringent requirements and the fact that there was a firm already in place at Thule which the agency considered capable of meeting its needs. Although the restrictive conditions at the Thule site might have been more specifically enumerated, any offeror in the business of providing communication services should have anticipated that the arctic environment would effectively prevent any new construction; risks are inherent in most procurements, and offerors are expected to use their professional expertise and business judgment in taking these risks into account in preparing their offers. See McDermott Shipyards, Div. of McDermott, Inc., B-237049, Jan. 29, 1990, 90-1 CPD ¶ 121.

Given Electra's continued expression of interest in competing, the agency reasonably concluded that Electra had determined that it could compete despite the restrictive conditions and the stringent requirements of the RFP. Under these circumstances, we find that the agency properly concluded that there was a reasonable expectation of competition and acted reasonably in giving Electra the opportunity to compete.

Electra also contends that the agency is obligated to eliminate the advantage that GE Americom has by virtue of its status as a current contractor in place at Thule by taking such steps as purchasing an unused earth station at Thule and making it available to offerors. The agency has no such obligation; a particular offeror may possess unique advantages and capabilities due to its prior experience under a government contract or otherwise and the government is not required to attempt to equalize competition to compensate for it, unless there is evidence of preferential treatment or other improper action. Information Ventures, Inc., E-240925.2, supra.

The protest is denied.


for James F. Hinchman
General Counsel