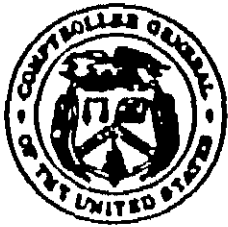


Sklarew



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

144710

Decision

Matter of: TSI Microelectronics Corp.

File: B-243889

Date: August 20, 1991

Robert Bland for the protester,
Charles J. Roedersheimer, Esq., and Vasso K. Monta, Esq.,
Defense Logistics Agency, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Contracting agency may award contract for a critical replacement part on a sole-source basis under the authority of 10 U.S.C. § 2304(c)(1) where the agency reasonably determined that only one source could provide the item since the agency does not possess or have rights in the technical data necessary for a competitive procurement and does not have the current capability to test an alternate item to ensure it will function properly in the end product.

DECISION

TSI Microelectronics Corp. protests the sole-source award of a contract to Teledyne Microelectronics under solicitation No. DLA900-91-C-0329, which was issued by the Defense Electronics Supply Center (DESC), a purchasing activity of the Defense Logistics Agency (DLA). The acquisition was for a particular microcircuit that is used in computers on the F-14 aircraft involved in navigation and weapons fire control. TSI contends that it is able to produce an alternate part, which DESC has accepted in the past, and that the agency cannot justify restricting the procurement to the original source of supply as it has done under this solicitation.

We deny the protest.

The replacement part at issue here is one of 14 microcircuits that were originally manufactured by Teledyne and for which Teledyne is currently the only approved source of supply.

The agency has technical data or design information available in varying degrees of completeness for these parts, all of which are similar in function and identical in mechanical dimensions.

DLA states in its protest report that in the mid-1980s, DESC obtained Teledyne drawings for three of the microcircuits and developed data packages in an attempt to provide for competition on these items. DESC later discovered that the limited technical data in the drawings was inadequate to describe the essential characteristics or other information necessary for manufacturing the parts.

While the agency's efforts were successful in generating competition, the new sources, including TSI, were not able to produce parts that worked properly in the end-item application. The contracts that were awarded for alternate items based on technical drawings showing compliance with the limited Teledyne data available were later terminated as the various military users found that the microcircuits furnished were not suited to their intended use and failed to meet tests for form, fit, and function. Since the parts had conformed to the requirements according to the data that were available under the solicitations, the government had to terminate these contracts for convenience rather than default and had to bear the associated costs. All alternate source microcircuits delivered under the various contracts have not been used based on the prior failures. The agency points out that the microcircuit is a vital component of the two F-14 computers in which it is utilized, and its malfunction would severely impair the operation of the computers or cause them to stop working completely, with possibly adverse consequences for the aircraft and its crew.

When a purchase request was generated for the microcircuit in December 1990, the contracting officer determined to restrict the procurement to the Teledyne part based on the insufficiency of the technical data available for the item. A justification and approval (J&A) authorizing acquisition by noncompetitive procedures was prepared, stating that the technical data available for this part does not identify the circuit schematic or the construction materials for the devices package and die and listing other types of data that would be required for the manufacture of the part. The J&A justified the proposed sole-source award under 10 U.S.C. § 2304(c)(1) (1988), which provides that an agency may use other than competitive procedures when the items needed are available from only one responsible source. The J&A was approved and signed by the DESC Competition Advocate. On January 9, a notice of DESC's intended sole-source procurement was published in the Commerce Business Daily (CBD). The CBD notice advised that the procurement was for

other than full and open competition and advised potential offerors of the opportunity to identify their interest and capability to respond to the requirement within 45 days of the notice.

On February 4, DESC issued request for proposals (RFP) No. DLA900-91-R-A163 for the Teledyne microcircuit, with a March 6 closing date for receipt of proposals. The RFP required that the part be manufactured in accordance with the specified Teledyne drawing and did not allow for an offer for alternate items.

On February 15, in response to the RFP, TSI submitted an alternate offer for its own part. TSI's offer was rejected because it did not offer the Teledyne part specified by the RFP and DESC was unable to determine the acceptability of any alternate part. Award was made to Teledyne. This protest followed.

TSI protests the sole-source procurement, contending that DESC has not provided any technical evidence of the unacceptability of TSI's alternate part and that the procurement was restricted on the basis of allegations related to other items and other contractors. The protester asserts that each item must be evaluated individually, and that the agency has failed to do so in this case.

Although 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), CICA does permit noncompetitive acquisitions in specified circumstances such as when the items needed are available from only one responsible source. 10 U.S.C. § 2304(c)(1). Elbit Computers, Ltd., 69 Comp. Gen. 591 (1990), 90-2 CPD ¶ 26. Where the agency has substantially complied with the procedural requirements of CICA, 10 U.S.C. § 2304(f), calling for the written justification or higher-level approval of the contemplated sole-source action and publication of the required CBD notice, we will not object to the sole-source award unless it can be shown that there is no reasonable basis for awarding the contract noncompetitively. Elbit Computers, Ltd., 69 Comp. Gen. 591, supra; see Turbo Mechanical, Inc., B-231807, Sept. 29, 1988, 88-2 CPD ¶ 299.

Here, DESC has complied with CICA's procedural requirements calling for the written justification and higher level approval of the contemplated sole-source action and for publication of the CBD notice. The propriety of the agency's

decision therefore rests on whether it was reasonable to conclude that only one source was available within the required timeframe. Hydra Rig Cryogenics Inc., B-234029, May 11, 1989, 89-1 CPD ¶ 442.

DESC contends that the requirement for reliable microcircuits that are fully compatible with the computer system within which they are to function can only be met by Teledyne, since this firm is the only one that has access to the complete technical drawings which are indispensable to the proper manufacture of the parts.

TSI argues that it has successfully manufactured and delivered the microcircuit at issue here in the past, and that DESC has previously agreed to test TSI's part for compatibility but has failed to do so. TSI does not contend that it has access to the original manufacturer's proprietary data to manufacture the microcircuits, but apparently asserts that no further technical information is necessary and that it can successfully produce the part based on the information DESC has already provided and TSI's experience with similar parts.

DESC admits that the Teledyne drawings that proved under previous procurements to be incomplete involved only 3 of the 14 microcircuits in the group, but states that the agency's technical personnel (and the Navy, as the engineering support activity for this part) consider the Teledyne drawings covering the entire group to be potentially deficient. The data bid package for the microcircuit at issue here is believed to have been developed under a deficient Teledyne drawing, as the others were. The technical personnel have been unable to determine exactly what data is missing from the drawings that have been supplied to the government thus far and cannot do so until complete drawings are obtained from Teledyne and evaluated.

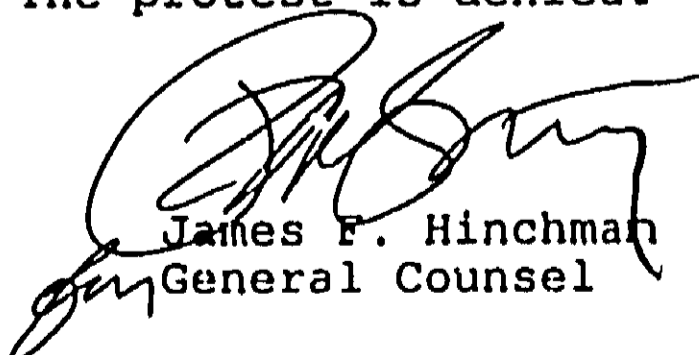
The DESC report also points out that the only way to ensure that TSI's alternate part would function as required would be for the Navy to perform some type of first article or compatibility testing. For safety reasons, the Navy is not willing to permit compatibility testing on the aircraft. However, the Navy has advised DESC that it does not have the test equipment for testing the microcircuit by itself, to ensure it will function in the end item. The Navy considered installing the microcircuit onto a number of different circuit boards, removing and reinstalling the microcircuit in a number of different locations for each of a series of tests. However, any one of these tests could result in the destruction of the microcircuit which effectively precludes complete testing on a particular microcircuit. The Navy concluded that this type of testing was neither feasible nor reliable.

We believe the agency's lack of adequate technical data and the agency's compatibility concerns reasonably support DESC's determination to restrict the competition to a single source of supply. See Fii-Coil Co., Inc., B-231768, Oct. 18, 1988, 88-2 CPD ¶ 362. We find TSI's assertions that it successfully delivered alternate microcircuits under prior procurements to be irrelevant here, given the agency's experience with this group of replacement parts, and are unpersuaded by the protester's argument that the agency should bear the burden of demonstrating any deficiency in TSI's part before it can reject it as an alternate. It is undisputed that TSI's part has never been tested successfully, and thus, its ability to function properly and to satisfy the government's actual needs has not been shown. In fact, DLA's experience has been that the alternate source microcircuits awarded to replace Teledyne microcircuits, including TSI's, have failed to work properly due to problems with the technical data available to DLA. While it is true that not all of the technical data packages for the 14 parts have been proven to be deficient, we find it reasonable for the agency to discontinue competing these items, the malfunction of which could endanger both lives and property, where its experience establishes that the product would be manufactured under a potentially defective technical data package and the agency is unable to test for performance and compatibility.

DESC is aware that the continuation of the sole-source of these items is not in the government's best interest. In March, DESC sent a letter to the Navy requesting that efforts to break the sole-source of the microcircuits be vigorously pursued. It requested that the Navy acquire a complete Teledyne data package adequate for competition, or provide an alternate method to permit proper evaluation of alternate offers.

Since TSI has not demonstrated that the Teledyne technical data is unnecessary to satisfactorily produce the part, we have no basis to question the agency's determination that only the original manufacturer could reliably produce the item. Hydra Rig Cryogenics Inc., B-234029, supra.

The protest is denied.


James F. Hinchman
General Counsel