



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Helitune, Inc.

File: B-243617.2

Date: March 16, 1992

Carol A. Workman for the protester,
Colonel Brad Farber and Captain Gerald P. Kohns, Department
of the Army, for the agency,
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Where agency determines that an item should be procured under small purchase procedures on a sole-source basis but provides for other offerors to supply pertinent information to demonstrate ability to provide required item, agency's failure to evaluate and determine the acceptability of protester's alternate item in a timely manner denies protester a reasonable opportunity to qualify as a source and to compete for award and violates the requirement under the small purchase procedures to obtain competition to the maximum extent practicable.

DECISION

Helitune, Inc. protests the issuance of a purchase order on a sole-source basis to Chadwick-Helmuth Company for a balancer/analyzer aircraft propeller vibration control system for the C-130H aircraft under request for quotations (RFQ) No. DAHA40-91-Q-8191 issued by the Tennessee Air National Guard (ANG). The protester maintains that its quotation was not evaluated and that the solicitation was overly restrictive and did not reflect the agency's minimum needs. We sustain the protest because the record shows that the agency failed to evaluate the acceptability of the protester's alternate item.

The procurement was synopsisized in the Commerce Business Daily (CBD) on March 12, 1991, under small purchase procedures of the Federal Acquisition Regulation (FAR) as the purchase was contemplated to be under the \$25,000

threshold,¹ The CBD notice provided that a sole-source purchase order to Chadwick for its Model No. 8500C was contemplated, but it also stated that all responsible small business concerns could submit a quotation within 30 days of publication of the notice. Parties interested in the procurement were to submit information in sufficient detail to demonstrate the ability to provide the required items and services without delay. The notice described the design and operation of the Chadwick model. Quotations in response to this synopsis were due to the agency by April 12, 1991. Helitune submitted a timely response offering its Quan-Tech Model 9500 for a total price of \$15,705. This response included commercial literature describing the specifications for its model and an adaptor kit for balancing C-130H propellers. Helitune also filed a protest with our Office on April 12.

In that protest, Helitune argued that the specifications were peculiar to the design or balancing method of the Chadwick Model 8500C and were not essential or required for balancing C-130H aircraft propellers. Helitune specifically objected, among other things, to the specifications concerning the following: (1) dimensions and weight, (2) memory, (3) sensitivity, (4) frequency range, (5) fast fourier transform (FFT) frequency resolution, and (6) amplitude accuracy.

In our decision, Helitune, Inc., B-243617, July 19, 1991, 91-2 CPD ¶ 77, we dismissed the protest because Helitune's timely quotation offering an alternate item had not yet been evaluated for technical acceptability; consistent with its synopsis announcement, we expected the agency to evaluate Helitune's alternate product and either accept it or, if it found the product to be technically unacceptable, to timely detail its reasoning to the protester.

The agency states that in response to our decision of July 19, since no technical expertise was available at the Tennessee ANG, a complete copy of Helitune's quotation was forwarded to the Warner Robins Air Logistics Center C-130 Engineering Branch, which is responsible for technical assistance for items in support of C-130 aircraft. By letter dated October 15, 1991, the Tennessee ANG was informed by Warner Robins that the Helitune Model 9500 "has not been qualified by the Air Force as approved equipment for dynamic balancing of the C-130 propeller system." Warner Robins stated that the Chadwick Models 192A and 8500C

¹Small purchase procedures can be used for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed \$25,000. FAR § 13.000.

were the only balancing equipment presently authorized by it because this equipment has proven to meet the Air Force requirements through operational use and has operating procedures described in technical manuals.

By letter dated October 22, Helitune was notified by the Tennessee ANG that "the Helitune 9500 Vibration Analyzer/Balancer has not been qualified by the Air Force as approved equipment for dynamic balancing of the C-130 propeller system." Also on October 22, a purchase order was issued to Chadwick in the amount of \$21,453.50 for one balancer/analyzer system Model 8500C and shipment was made on October 24. Helitune again protested to our Office on November 4. The agency reports that due to possible grounding of assigned aircraft, the item shipment could not be suspended.

Helitune, in its current protest, maintains that a technical evaluation of its equipment was not performed and that the requirement that the procurement be competed to the maximum extent practicable and be advantageous to the government, price and other factors considered, have not been met.

Since the procurement was conducted under the small purchase procedures, which are intended to promote efficiency and economy in contracting, see FAR § 13.102, it was not subject to the full and open competition requirements of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1988). Nonetheless, the contracting officer still was required to promote competition to the maximum extent practicable. 10 U.S.C. § 2304(g)(4); FAR § 13.106(b)(1); Ultraviolet Purification Sys. Inc., B-226941, Sept. 10, 1987, 87-2 CPD ¶ 229. Although the agency envisioned a sole-source award, it synopsisized the requirement and specified in the synopsis that all responsible vendors could submit a quotation based upon the specifications. We think it obvious that in such circumstances the requirement for maximum practicable competition imposes upon the agency the duty to consider in some reasonable way the responses received. See Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2; East West Research, Inc., B-239516, Aug. 29, 1990, 90-2 CPD ¶ 178; Kitco, Inc., B-241868, Mar. 1, 1991, 91-1 CPD ¶ 238; Rotair Indus., Inc., B-224332.2; B-225049, Mar. 3, 1987, 87-1 CPD ¶ 238.

Helitune submitted a timely response to the CBD notice on April 12, 1991. The agency made no attempt to evaluate Helitune's alternate item until we issued our decision on July 19, 1991. Even then, the record is clear that a technical evaluation of Helitune's alternate item was never conducted. Although the procuring activity referred the Helitune quotation to the appropriate Air Force engineering

activity, that activity did not evaluate the Helitune product. It stated only that "Chadwick's units are proven pieces of equipment and are currently the only authorized equipment for use, or that may be procured to satisfy the requirement." In this regard, the agency itself states that the Warner Robins letter of October 15 was not intended as a technical evaluation of the Helitune proposal, but simply "was written to support the Tennessee ANG decision to local purchase the Chadwick-Helmuth equipment, not to judge the validity of the proposal."

The agency, in response to the protest, now argues that Helitune's product information was deficient because it did not include operating instructions that coincided with an applicable technical order that provides detailed maintenance procedures for the C-130H propeller, including the use of a balancer/analyzer. However, the record contains no indication that this was ever a concern to either the contracting activity or to Warner Robins. This alleged lack of operating instructions did not preclude the submission to Warner Robins, and Warner Robins never made reference to such an omission. We note, in this regard, that the protester's initial quotation included a price for an operator and service manual and offered on-site training for the equipment. If the agency believed the operation manual was necessary for its review, it should have requested it in a timely fashion. Also, as the protester points out, the fact that the technical order does not incorporate the equipment's operating procedures may not be critical, since the Warner Robins letter states that military units with appropriate training have been authorized to use the Chadwick Model 8500C even though that Chadwick model is not covered by the technical order. (Apparently, the Air Force is issuing a new publication replacing the technical order which provides the operating procedures for the Model 8500C and which has not been as widely distributed as the order.)

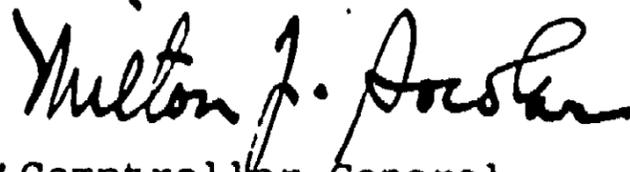
The agency further argues that the operational needs of the Air Force require having standardized equipment for the propeller balancing in light of the worldwide use of the equipment and the need for a consistent training program. While standardization requirements may justify a sole-source award, see generally Sperry Marine, Inc., B-245654, Jan. 27, 1992, 92-1 CPD _____, there is nothing in the record here which would justify limiting the competition on the basis of a requirement for standardization. For example, as stated above, the agency has not indicated that evaluation of the Helitune product necessarily would be costly or time-consuming. Insofar as we can determine from this record, it is possible that the Helitune product could have been promptly evaluated. Had such an evaluation shown that Helitune's equipment was the functional equivalent of the

approved product and did not require major changes or supplements to technical and training manuals, it is not clear why the desire for standardization would preclude acceptance of the Helitune product.

Thus, we find that the agency's failure to review and evaluate Helitune's alternate item denied Helitune a reasonable opportunity to qualify for this purchase and did not comply with the requirement for maximum practicable competition. In this regard, there is nothing in the record which indicates why the Helitune product could not be evaluated, e.g., there is no statement from the ANG or from Warner Robins that evaluation of the Helitune product would require a lengthy period of time, would be unduly costly, or otherwise was not feasible in connection with this procurement. Accordingly, on this record we cannot conclude that the agency's original sole-source determination was reasonable.

The protest is sustained.

We cannot recommend corrective action in this case since delivery has been made. We find the protester entitled to its cost of pursuing this protest and its quotation preparation costs. The protester should submit its claim for costs directly to the agency. 4 C.F.R. § 21.6(d)(1) and (2) (1991).



Acting Comptroller General
of the United States