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Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: RTF Industries, Inc.

File: B-255999.2

Date: June 23, 1994

Robert T. Findley, Sr., for the protester.
Craig E. Hodge, Esq., and Robert J. Parise, Esq., Department of the Army, for the agency.
Henry J. Gorczycki, Esq., Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's determination to make a sole-source award to the only known firm that can provide a simulator satisfying the agency's requirements is not objectionable where the protester failed to submit sufficient information in response to the agency's request to show that the protester's simulator would satisfy the agency's stated requirements.

DECISION

RTF Industries, Inc. protests the intended sole-source award to Comet GmbH by Picatinny Arsenal, Department of the Army, under request for proposals No. DAAA21-93-R-0118 for M25 target hit simulators.[1]

We deny the protest.

[1]The target hit simulator is a pyrotechnic device used in the training of tank gunners. A simulator is placed near a target at which tank gunners fire nonexplosive rounds. When a target is hit, the simulator creates a flash, spark, and smoke that is visible by the naked eye for about 2 miles.

The Army first purchased the simulators from RTF in 1986. The RTF's simulators delivered had a failure rate in excess of 95 percent.[2] Subsequently, the Army attempted to modify RTF's technical data package (TDP) for the simulator to obtain a workable design. This in-house design effort failed to produce a satisfactory product.

In 1987, the Army obtained simulators from Comet to test for compliance with the Army's performance requirements. Comet's simulator proved very successful with a failure rate of less than 1 percent, and the Army subsequently contracted with Comet to fulfill the agency's requirements for simulators for training exercises during Operations Desert Shield and Desert Storm.

As a result of the success of Comet's simulator, the Army negotiated a license agreement with Comet and contracted for a government-owned TDP to allow the competitive procurement of the simulator. Comet's TDP was delivered to the Army on February 18, 1994, and is currently being evaluated for compliance with the agency's specifications. The Army anticipates that the TDP will be released in September, and future procurements for the simulator will be conducted competitively.

The current procurement is required because the agency has a requirement for simulators to support training exercises for United States and North Atlantic Treaty Organization (NATO) forces in October-November 1994, and the agency currently does not have any simulators in inventory. After conducting a market survey, the agency determined that only Comet could provide an acceptable simulator within the time requirements for supporting the scheduled training exercises.

On December 13, 1993, the Army synopsized in the Commerce Business Daily (CBD) its intent to acquire the simulators from Comet on a sole-source basis. The CBD synopsis referenced footnote 22, which gave potential sources 45 days after the date of the synopsis to submit expressions of interest showing their ability to meet the agency's stated requirements. RTF Industries submitted a letter of interest to the Army on December 15.

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[2]RTF states that the failure was not due to defective design or manufacture, but rather a result of the simulators being submerged in several feet of water during a flood after being delivered to the government. RTF further states that it offered its simulator for use in a desert environment and that the applicable solicitation did not impose requirements for simulator operation in a wet environment.

By letter of January 27, 1994, the Army requested additional information from RTF to determine the technical acceptability of RTF's simulator. Specifically, the Army identified various performance and functional requirements and requested data/test results to show that RTF's simulator met these requirements.

Instead of providing any of the requested information, RTF protested the agency's proposed sole-source award to Comet. RTF asserts that the agency's request for additional information is merely a "ploy" to permit the agency to circumvent competition requirements in its procurement regulations.

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A) (1988), a sole-source procurement is permitted where the agency reasonably determines that only one source can provide the required services. 10 U.S.C. § 2304(c)(1); Space Vector Corp., 73 Comp. Gen. 24 (1993), 93-2 CPD ¶ 273. Prior to filing a protest challenging an agency's intention to make a sole-source award, a protester must timely submit a response to the CBD notice and receive a negative agency response. See DCC Computers, Inc., 70 Comp. Gen. 534 (1991), 91-1 CPD ¶ 514; Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490. This procedure gives the agency an opportunity to reconsider its sole-source decision in light of a serious offeror's preliminary proposal, while limiting challenges to the agency's sole-source decision to diligent potential offerors. Id.

Here, RTF does not challenge the agency's stated performance requirements or the acceptability of Comet's simulator in meeting these requirements; rather, RTF asserts that the Army's request for information demonstrating the acceptability of RTF's design is merely a ruse to prevent RTF from competing for award. We do not agree. The information requested by the agency concerns the required performance and functional capabilities of the simulator, as well as the simulator's ability to withstand climatic conditions and exposure to water. Particularly given the documented performance failures of RTF's earlier design, we find reasonable the agency's request for documentation establishing the acceptability of RTF's offered simulator.

We also find no basis to object to the agency's determination that RTF had failed, because of its refusal to provide the requested information, to demonstrate the acceptability of its simulator. For example, the agency

requested information demonstrating that RTF's simulator satisfied the requirement that:

> "Water integrity shall be such that 90% minimum will function after submersion under 3 feet of water for 3 hours minimum."

Although RTF concedes that its prior simulator design failed because of its submersion in water and now argues that its redesigned simulator would withstand the "moisture problems" encountered by the Army, it provided no documentation to the agency, or to us, demonstrating that this is the case.

In sum, we find that since RTF failed to provide sufficient information, despite the opportunity to do so, to show that its simulator would satisfy the Army's current needs, the agency properly concluded that RTF could not satisfy the agency's requirements. See Amtech Sys. Corp., B-252414, June 29, 1993, 93-1 CPD ¶ 500; AGEMA Infrared Sys., B-240961, Dec. 28, 1990, 91-1 CPD ¶ 4.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel