



Decision

Matter: Laboratory Systems Services, Inc.

File: B-259169

Date: February 6, 1995

DECISION

Laboratory Systems Services, Inc. (LSS) protests the Department of the Navy's decision to make award to Hewlett-Packard (HP) on a sole-source basis under request for proposals (RFP) No. N68836-94-R-0086, for services to maintain and repair HP model 5890A Gas Chromatograph and Mass Selective Detector equipment.

We dismiss the protest.

On May 4, 1994, the Navy published in the Commerce Business Daily (CBD) a notice of its intent to procure the required services on an unrestricted basis. Before issuing the RFP, however, the agency learned that the software/system support was proprietary to HP and could not be updated or used by other companies. The Navy thus prepared a Justification and Approval to procure the services on a sole-source basis on the ground that only HP could perform the work.

On August 8, the Navy published a new CBD notice indicating that only HP would be solicited. The notice also stated that note 22 applied; this note states that other interested sources may submit expressions of interest, along with information establishing their capability to perform, or proposals within 45 days of the notice, and that any information furnished will be considered solely for purposes of determining whether to compete the requirement. The RFP issued to HP required that service be performed in accordance with the original equipment manufacturer's (HP) operational and maintenance procedures, that technicians performing the services be HP certified and trained, that only HP replacement parts be used, and that current HP software and software support be available.

In an August 9 letter, LSS requested a copy of the RFP and stated that it had serviced the relevant HP equipment under other federal contracts with software support and update requirements. The Navy furnished the RFP to LSS, which then submitted a list of questions for clarification, including a statement that the requirement for HP certification of technicians appeared improperly restrictive. In a letter

dated August 29, the agency responded to LSS by stating that, as indicated in note 22, the CBD notice was not soliciting offers, and information furnished was solely for the purpose of deciding whether to compete the requirement. By letter of September 8, LSS submitted a proposal in response to the RFP. The Navy found that the proposal did not contain any information that would lead the agency to proceed on a competitive, rather than a sole-source, basis-- that is, information showing that LSS met the HP-related requirements--and awarded a contract to HP on October 20.

LSS argues that the sole-source award to HP was improper since LSS was fully capable of satisfying the Navy's requirement. LSS maintains that the Navy should have known of LSS's capabilities based on a 1991 proposal the firm submitted in response to another requirement, specific contracts for maintenance of HP equipment cited in its August 9 and 23 letters to the agency, and a copy of a Small Business Administration Certificate of Competency establishing LSS' technical capability to service HP analytical instruments.

Our Bid Protest Regulations require that protests of alleged solicitation improprieties be filed no later than the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1994). Although LSS does not cast its protest in terms of a solicitation impropriety, it is such an alleged impropriety which lies at the heart of its protest. In this regard, it is apparent from the record that LSS believes it has the capability to perform the contract notwithstanding its inability to satisfy some or all of the HP-related requirements. For example, as discussed above, the RFP as issued included a requirement for HP-trained and certified technicians. LSS never advised the agency that its technicians meet this requirement, and itself acknowledged in its August 23 letter that it does not have access to such technicians, stating that ". . . HP only trains its internal technicians in the appropriate diagnostic and repair techniques required for the subject instrumentation. . . ." Although it is clear from this same letter that LSS considers this requirement restrictive, LSS never protested the requirement, but opted instead to submit a proposal; if LSS believed that the HP training and certification requirements were not necessary and did not provide a proper basis for a sole-source award, it was required to protest on that basis prior to the closing date.

Since LSS did not challenge the RFP requirements, they remained part of the RFP. This being the case, the fact that LSS believes it is capable of performing the contract is not determinative of whether LSS was actually a viable potential offeror; as LSS never provided the agency with

information showing that it has HP-trained and certified technicians (or that it satisfied the other HP-related requirements in the RFP), the agency reasonably concluded that ISS could not meet the specific RFP requirements, and properly proceeded with a sole-source award to HP.

The protest is dismissed.



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