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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

82-1 cpd 308

FILE: B-205273

DATE: April 5, 1982

MATTER OF: MET Electrical Testing Co., Inc.

DIGEST:

Protest against a sole-source contract award is denied where the contracting agency's conclusion that the awardee is the only firm which can complete the contract within the required time frame, due to its possession of the required testing equipment and expertise, has not been shown to be unreasonable.

MET Electrical Testing Co., Inc. protests the award by the Consumer Product Safety Commission (CPSC) of a sole-source contract to Underwriters Laboratories Inc. (UL). The procurement is for testing and analysis of ground fault circuit interrupters. We deny the protest.

CPSC justifies the sole-source award on the basis that only UL has the unique test equipment needed to perform the work in the required time frame. CPSC states that the test equipment in question was developed by UL under a prior contract with CPSC. Although CPSC has that equipment in its possession, it is in continual use by the agency's engineering laboratory and is therefore unavailable for use as Government-furnished equipment. UL, however, retained the test equipment prototype and employs the engineers who were involved in its development, and thus can start work immediately. According to CPSC, any other contractor would have to duplicate the existing test equipment and become proficient in its use, an approach which would be quite costly and which is in any event unacceptable because of the time it would involve. CPSC states that the work must be completed within the time set forth in UL's contract (ten months) so that the results will be available in time to allow CPSC to make recommendations for revisions to the National Electrical Code by November 1982.

B-205273

2

MET argues that it could have duplicated the necessary equipment and conducted the testing and analysis within the required time frame. It therefore contends that the requirement should have been procured competitively.

We have recognized that a sole-source award is justified where time is of the essence and only one known source can meet the Government's needs within the required time frame. Design and Evaluation, Inc., B-193128, June 28, 1979, 79-1 CPD 466. This includes situations where the awardee possesses special expertise gained from prior contract performance which will facilitate meeting the Government's requirement within the necessary time. Science Applications, Inc., B-197099, May 20, 1980, 80-1 CPD 348.

In our view, MET has not met the burden of establishing its case. Although MET states that it could duplicate the test equipment and perform the testing and analysis within the required time frame, it has provided no support for this assertion. We cannot conclude that the agency's conclusion was unreasonable merely on the basis of an unsupported assertion. See EMI Medical Inc., Ricker Corporation, B-195487, February 6, 1980, 80-1 CPD 96. Consequently, we find no basis to question CPSC's conclusion that no other firm could duplicate the test equipment, become proficient in its use, and conduct the testing and analysis in the same time it would take UL to perform the testing and analysis alone.

In its comments on CPSC's report to this Office, MET also argues that the agency should have required UL to make the prototype test equipment available for use in a competitive procurement. MET contends that the prototype was developed with Government funding and therefore that it is Government property.

The record contains no documentation concerning the ownership rights in the prototype test equipment used to design and manufacture the test equipment delivered to the agency under the prior contract. It is, therefore, not at all clear that the Government can legitimately offer the prototype test equipment in UL's possession as Government-furnished equipment. It further appears that if any claim of Government ownership exists, CPSC has not asserted it. Under these circumstances, we cannot conclude that a sole-source justification premised in fact on UL's possession and proficiency in the use of the only equipment available to perform the required testing within the necessary time frame was unreasonable.

B-205273

3

The protest is denied.

for *Milton J. Fowler*
Comptroller General
of the United States