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Decision

Matter of: Eclipse International Corporation

File: B-408795

Date: November 25, 2013

James H. Roberts, III, Esq., Van Scoyoc Kelly & Roberts PLLC, for the protester.
Alan Dickson, Esq., Holland & Knight LLP, for DIT-MCO International Corporation, an intervenor.

M. Lee Cording, Esq., and Barbara J. Amster, Esq., Department of the Navy, Naval Supply Systems Command, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly intends to conduct acquisition on a sole-source basis is denied where record shows that agency analyzed the capabilities of the protester's product and concluded that the product did not meet several of the agency's material requirements.

DECISION

Eclipse International Corporation, of Corona, California, protests the proposed sole-source award of a contract to DIT-MCO International Corporation, of North Island, California, by the Department of the Navy, to upgrade a preexisting DIT-MCO automatic wiring analyzer (AWA). Eclipse maintains that the agency unreasonably concluded that only DIT-MCO can meet the agency's requirements.

We deny the protest.

The agency published a justification and approval (J&A) and announced its intent to award a sole-source contract to DIT-MCO on July 8, 2013. The Navy cited as authority for its actions 10 U.S.C. § 2304 (c)(1) (2006), which permits an agency to use other than full and open competitive procedures to acquire goods or services where the agency determines that only one responsible source that can meet the agency's requirements. Agency Report (AR), exh. 1, Agency J&A at 1. Upon learning of the agency's decision, Eclipse contacted the agency in an effort to provide what it characterized as its comments on the agency's J&A. In effect,

Eclipse made an effort to demonstrate that it could meet the agency's requirements. Thereafter, Eclipse and the Navy engaged in correspondence to identify the protester's capabilities in order to determine whether the firm could, in fact, meet the agency's requirements. AR, exh. 3, E-mail Correspondence. At the conclusion of that correspondence, the Navy determined that Eclipse could not meet its requirements.

PROTEST

Eclipse maintains that it can meet the agency's requirements by providing a new AWA rather than simply an upgrade to the agency's existing AWA.¹ The protester argues principally that the Navy's decision to acquire the AWA upgrade on a sole-source basis relies on several unreasonable conclusions regarding Eclipse's capabilities. We discuss the Navy's principal considerations in its decision below.

We note at the outset that our review of an agency's decision to acquire goods or services on a sole-source basis focuses on the adequacy of the agency's rationale and conclusions set forth in its J&A. Raytheon Co.--Integrated Defense Sys., B-400610 et al., Dec. 22, 2008, 2009 CPD ¶ 8 at 6. A protester's disagreement with the agency's rationale does not provide a basis to sustain a protest; rather, the protester must show that the agency's position is unreasonable. Id.

Software Compatibility

Among the reasons identified by the Navy for its decision to issue a sole-source contract to DIT-MCO is the fact that its existing AWAs (which are manufactured by DIT-MCO) use software that is proprietary to DIT-MCO. The agency's J&A explains that the upgraded AWA, if purchased from DIT-MCO, will maintain commonality and compatibility with the agency's other AWAs. Additionally, the agency's J&A explains that the aircraft's original equipment manufacturer (OEM), Northrup Grumman Corporation, uses a DIT-MCO proprietary software known as test assistance II (TA2) software for purposes of generating test programs. The agency's J&A explains that procuring a DIT-MCO AWA allows the agency to standardize design information exchange between the agency's engineers and the OEM, and also allows the agency to use the OEM's existing data and test programs; the upgraded AWA will be able to utilize all legacy test programs previously written for the agency. AR, exh. 1, Agency J&A, at 2-3.

The Navy's J&A also notes that the agency has developed a host of customized applications and utilities that were developed around the unique hardware and

¹ This AWA is for use on E-2C and E-2D aircrafts, which are manufactured by Northrup Grumman Corporation. The AWA is used to perform complex diagnostic testing on the aircraft's components.

software architecture of the DIT-MCO AWA, and that these customized tools will not be compatible with another manufacturer's AWA. The agency estimate of the cost of duplicating these customized tools was an added consideration in deciding to procure an AWA upgrade on a sole-source basis from DIT-MCO. AR, exh. 1, Agency J&A, at 2.

The Navy's J&A goes on to explain that, in order for other manufacturers to be able to provide an AWA that is interoperable with the agency's existing hardware and software, it would be necessary for them to develop software patches and use additional hardware in order to communicate with the aircraft's software. In that connection, the agency's J&A specifically notes that the agency previously had awarded Eclipse a contract for an AWA, but that the AWA that was provided was not compatible with the agency's existing AWAs software. AR, exh. 1, Agency J&A, at 3.

Eclipse asserts that it has a software conversion tool that will allow it to easily make its AWA compatible with the agency's existing systems. However, in response to Eclipse's allegation, the agency's engineer explains that the Navy based its decision to procure the AWA on a sole-source basis from DIT-MCO, in part, because of personal knowledge of problems associated with the Eclipse software's compatibility that arose under the earlier contract awarded to Eclipse.² AR exh. 7, Declaration of the Agency's Engineer, at 3. The agency's engineer goes on to explain that Eclipse's software conversion tool is only semi-automatic and requires manual intervention for any software conversion or development effort, such that it requires manual input of much of the necessary data, and that this process would have to be performed by agency personnel. Id. at 4-5.

We conclude that the Navy's concerns associated with software compatibility and commonality among its AWAs provide a reasonable basis for its decision to award the contract on a sole-source basis. We also conclude that the agency's concern with maintaining that compatibility and commonality with the aircraft's OEM provides further support for the agency's decision. While Eclipse disagrees with the agency's position, and contends that it has what it characterizes as a straightforward conversion solution, the record supports the agency's reservations with Eclipse's conversion approach based on its actual experience. In addition, the record shows that the agency also would have to expend significant funds in order to recreate the custom tools it has developed in-house that function with the DIT-MCO AWA; Eclipse has not rebutted this conclusion on the part of the agency.

² The record includes a quality deficiency report relating to this contract showing that there were significant problems with software conversion issues. AR, exh. 6. Eclipse maintains that it has since resolved these concerns, Eclipse Comments, Oct. 9, 2013, at 7, but has provided no evidence in support of its assertion.

Latching Matrix and Random Hook-Up Capability

In addition to its concerns with software compatibility and commonality outlined above, the record also shows that there were various concerns regarding the hardware capabilities of the Eclipse product. Among those concerns was the fact that Eclipse had not demonstrated two hardware capabilities that the agency identified in its J&A as reasons for its decision to award the contract to DIT-MCO on a sole-source basis.

First, the Navy's J&A describes a requirement for four latching matrix modules. These modules are used to apply programmable power to aircraft components for relay activation and actuator extension and retraction. AR, exh. 1, Agency J&A, at 1.

Second, the agency's J&A describes a requirement for a random hook-up capability. In this regard, the agency explains that the AWA is connected to the aircraft using a series of cables, and that, with earlier models of the AWA, each connection point on the aircraft had to be matched with a particular hook-up point on the AWA. Agency Report, Sept. 27, 2013, at 8. The DIT-MCO AWA upgrade includes a feature known as random hook-up. With this feature, the cables have computer chips embedded in them which allows the cables to be hooked up randomly, without regard to the specific aircraft component or point of connection on the AWA. Id.

The record shows that the agency requested information from Eclipse regarding these (as well as other) hardware capabilities. AR, exh. 3, E-mail Correspondence, at 2, 3. Eclipse responded to the agency's request by representing that these capabilities were effectively "proprietary terms" used by DIT-MCO, but that Eclipse also offered these capabilities. Id. at 2. The agency then asked Eclipse to provide technical data to show that, in fact, it also had these capabilities. Id. at 2. The record shows that Eclipse never provided this information to the agency. AR, exh. 7, Declaration of the Navy's Engineer, at 4. Consequently, the Navy was not able to determine that Eclipse's AWA included these features. Id.

Eclipse still has not furnished this information in connection with its protest. Instead, the protester maintains that these hardware capabilities should not have to be demonstrated in its response to the agency's J&A, but need only be demonstrated during a competition in response to actual specifications. In effect, Eclipse takes the position that its unsubstantiated representations to the agency were adequate to establish a prima facie showing that it has these capabilities.

We disagree with the protester. These hardware capabilities were specifically identified by the agency in its J&A as forming, in part, the basis for its decision to acquire the DIT-MCO AWA on a sole-source basis. Since the agency specifically requested information from Eclipse relating to these capabilities in connection with

reviewing its decision regarding whether or not to conduct a competitive procurement, and since Eclipse failed to provide the information, the agency reasonably concluded based on the information available at the time of its decision that Eclipse did not offer these capabilities. We conclude that the agency's decision was reasonable under the circumstances.

Summary

As discussed in detail above, the record shows that the Navy had a reasonable basis for determining that only DIT-MCO could meet its requirements. From both a software compatibility standpoint, as well as a hardware capability standpoint, the agency reasonably concluded, based on the information available to it, that there were concerns associated with the Eclipse product. We therefore conclude that the Navy reasonably determined that a sole-source award to DIT-MCO would be appropriate under the circumstances.

The protest is denied.

Susan A. Poling
General Counsel