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Decision

Matter of: RELM Wireless Corporation

File: B-405358

Date: October 7, 2011

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Howard B. Rein, Esq., The Department of the Navy, and Sam Q. Le, Esq., Small Business Administration, for the agencies.

Cherie J. Owen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not an interested party where, as here, even if the protest is sustained, the protester will be ineligible for award under the remaining terms of the solicitation.

DECISION

RELM Wireless Corporation protests the terms of request for proposals (RFP) No. N68335-11-R-0043, issued by the Department of the Navy, for a very high frequency-high band trunked simulcast land mobile radio system (VHF-HB LMR) for the U.S. Capitol Police. RELM contends that the agency has improperly bundled its requirements and that the agency has not shown that the consolidation is justified.

We dismiss the protest on the basis that the protester is not an interested party.

The RFP, issued on May 31, 2011, seeks a contractor to provide four components of the VHF-HB LMR system: infrastructure components, voice logging recorders, dispatch system consoles, and subscriber units. The RFP comprises 83 pages, including tables of requirements for the entire system, as well as requirements applicable only to certain components of the system.

As relevant here, attachment 1 to the solicitation, which sets forth general requirements to which the entire system must conform, informs offerors of the system requirements for "Over the Air Programming" (OTAP). RFP at 75.

Specifically, the RFP states that “[t]he proposed system shall have OTAP capabilities to enable making software changes to mobile and portable subscriber units. This feature applies to both trunking and conventional systems.” Id. The RFP also requires that subscriber units be able to “continue to operate normally during the OTAP process.” Id. Further, the RFP requires that “OTAP shall not change the subscribers [sic] encryption key.” Id.

The agency explains that OTAP allows the Capitol Police to control all software and firmware upgrades and changes to information stored on the subscriber units. AR at 3. OTAP also allows for users to control software settings and changes in access to resources (such as information and personalities stored on the subscriber units). Such changes can be made as often as required, based on changing assignments of the Capitol Police, and can be made over the air, at any time of the day, from a central location. AR, Tab 3, Statement of Technical Evaluation Team Leader, at 2. The requirement for OTAP was a requirement from the beginning of the procurement process. Id.

RELM is a manufacturer of subscriber units. Protest at 2. After issuance of the solicitation, RELM contacted the agency and requested that the OTAP requirement be removed so that RELM could compete for the requirement. In its e-mail, RELM suggested that the agency “do a cost analyzes [sic] on the savings RELM can provide and what OTAP is actually going to Cost [sic] the government/taxpayer by buying a more expensive radio with OTAP.” AR, Tab 8, RELM E-mail to Agency, June 28, 2011, at 2. The agency did not grant the protester’s request to remove the OTAP requirement.

Eventually, RELM filed this protest challenging the agency’s decision to combine its requirements for all four components of the system into one procurement. RELM contends that the requirements are improperly bundled into an all-or-none requirement that violates both the Competition in Contracting Act and the Small Business Act. Protest at 2. RELM did not protest the RFP’s requirement that the system have OTAP capability.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2000 & Supp. IV 2004), only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2011). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party’s status in relation to the procurement. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. Courtney Contracting Corp., B-242945, June 24, 1991, 91-1 CPD ¶ 593 at 4. A protester is not an interested party where it would not be eligible to receive a contract award were its protest to be sustained. International

Training, Inc., B-272699, Oct. 2, 1996, 96-2 CPD ¶ 132 at 2. A protester is not an interested party to challenge the terms of a solicitation, even if the protest is sustained, if it is clear that the protester will be ineligible for award under the remaining terms of the solicitation. See Air Transport Ass'n, B-278621, Feb. 19, 1998, 98-1 CPD ¶ 56 at 3.

We find that RELM has failed to establish that it is an interested party to pursue this protest. RELM has not challenged the RFP's requirement that all applicable components of the system must have OTAP capability and, as explained below, RELM does not have the ability to provide subscriber units with OTAP capability.

RELM contends that it is an interested party to pursue this protest because, if it is successful in this protest, it can provide subscriber units that have the same "functionality" as OTAP. Protester's Response to GAO's Questions, Aug. 30, 2010, at 3. Specifically, the protester contends that it can achieve OTAP functionality in two ways--via a cloning cable or a cloning cube.¹ Protester's Response to GAO's Questions, Aug. 30, 2010, attach. A, Declaration of RELM's President, at 2. To use the cloning cable, a source radio must be connected to the target radio using a cable; then "with a few simple keystrokes," data transfer is achieved through the cable. Id. To use the cloning cube, the cube must be connected to each individual radio to read the radio's memory contents or write data onto the target radio. Id.

The agency argues, and we agree, that OTAP is self-defined as the capability to send programming over-the-air. Agency Supp. Response, Sept. 4, 2011, at 2. In contrast, both of RELM's OTAP alternatives require that each individual target radio be physically connected to either a cable or a memory drive to transfer data to the radio. Id. at 2-3. This process would need to be repeated with each individual radio until all of the subscriber units for a particular special assignment have been reprogrammed. Id. at 3. When any particular special assignment comes to an end, the Capitol Police would then have to reverse the process to place the radios back into their original state, so that the Police could conduct their regular duties. Id.

The agency explains that RELM's programming functionality is almost the same functionality that exists without OTAP--instead of taking a storage device or a cable and master radio into the field to "clone" other radios, the Capitol Police could take a small laptop into the field and achieve the same results. The agency stresses that the purpose of OTAP is not to touch each subscriber unit in order to reprogram them, nor to require police officers to know how to program subscriber units, as RELM describes here. Rather, OTAP provides the ability to reprogram subscriber units over the air in order to eliminate the need for the Capitol Police to spend working hours trying to reprogram them and to allow the flexibility and quick response to

¹ The agency explains that a cloning cube is essentially a flash drive. Agency Supp. Response, Sept. 4, 2011, at 2.

reprogram subscriber units when a need arises. Id. Therefore, we conclude that the ability to reprogram subscriber units by connecting them to a cable or a flash drive would not satisfy the RFP's requirement for over-the-air programming.

Because RELM cannot provide OTAP capability, RELM would not be eligible to receive a contract award even if its protest were to be sustained and the requirements of the RFP were broken into separate components. Accordingly, RELM is not an interested party to pursue this protest.

The protest is dismissed.

Lynn H. Gibson
General Counsel