



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Phoenix Technical Services Corporation

File: B-274694.2

Date: March 12, 1997

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DIGEST

1. Procuring agency's decision to combine engineering support services for various electrical and avionics systems primarily on the C-130 and the C-141 aircraft is reasonable where agency has shown that the combination represents its minimum needs to obtain necessary systems integration.
2. Protest that procurement for various engineering support services should have been set aside for exclusive small business participation is denied where the record shows that the contracting officer did not abuse his discretion in determining that there was not a reasonable expectation of receiving proposals from at least two responsible small business offerors.

DECISION

Phoenix Technical Services Corporation protests the terms of request for proposals (RFP) No. F09603-96-R-13361, issued by the Department of the Air Force for avionics engineering services at Warner Robins Air Logistics Center (ALC). The solicitation is for engineering support services for various electrical and avionics systems primarily on the C-130 and the C-141 aircraft, otherwise known as the electrical/avionics systems engineering support (EASES) program. Phoenix, a small business concern, challenges the agency's combining various engineering services into one requirement as unduly restrictive of competition and maintains that the procurement should be set aside for exclusive small business participation.

We deny the protest.

BACKGROUND

The agency has previously procured electrical and avionics engineering support services for the C-130 and C-141 aircraft at the Warner Robins ALC by entering into sole source contracts under a basic ordering agreement with Arinc Research Corporation, which is not a small business. The agency established the EASES program to provide the government with access to highly qualified engineers with the wide variety of expertise required to support electrical and avionics systems from more than one vendor. The EASES solicitation at issue is structured to allow award of up to five indefinite delivery, indefinite quantity (IDIQ) contracts to firms who will then compete for individual task orders. Once a firm is successful in obtaining an IDIQ contract, and then receives a task order for a specific project, that firm will organize and manage a project team to work with minimal government interaction.¹

The EASES program primarily involves engineering support for electrical or avionics modification programs which requires expertise in many different areas such as aircraft power systems design and analyses, aircraft structural modifications and analyses, and real-time software design and analyses. In addition to the expertise required to support modification programs in general, specific programs often involve state-of-the-art designs in radar systems, aircraft instruments, and aircraft display systems. Along with the support of modification programs, the EASES program includes requirements to support independent studies, analyses, C-130 production aircraft, test programs, and special modification programs.²

On June 30, 1995, the agency published a synopsis of the solicitation in the Commerce Business Daily (CBD) and received 50 inquiries in response. In July, the Warner Robins Small and Disadvantaged Business Utilization (SADBU) Office initiated a market survey to assess the capability of the potential offerors to meet the government's requirements. Respondents to the market survey were asked to identify and describe their experience in five broad categories of requirements that would be part of the EASES program and describe their experience in performing technical evaluations of the design and integration for the eight primary systems

¹The statement of work (SOW) states that the project team "shall be capable of performing the project without government interaction except for: coordination of related activities; and, approval of plans, procedures, reports and documents generated by the project team."

²Support for the 339th test squadron, which performs test flights at the conclusion of repairs or modifications, was also included in the EASES solicitation.

found on most aircraft.³ The agency received 21 responses to the market survey, including 2 from firms eligible for contract awards under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), 3 from other small disadvantaged firms, 5 from small businesses, and 11 from large businesses. The responses to the market survey were evaluated by engineers from the C-130 and the C-141 programs and a representative from the agency's SADBU Office. Of the nine small business respondents to the market survey, four potential offerors were considered capable of performing more than 50 percent of the work; however, of these four, only one--TCS Design and Management Services--was identified as capable because it had experience in all of the basic areas.

Based on the foregoing, the contracting officer determined that the RFP should not be issued as a total small business set-aside. On December 8, the Small Business Administration (SBA) procurement representative at Warner Robins appealed the contracting officer's decision to the Head of Contracting Activity at Warner Robins, who denied the appeal and upheld the contracting officer's decision. The SBA then appealed to the agency head and on May 22, 1996, the Under Secretary of the Air Force denied the appeal, but directed that the solicitation be issued as a partial small business set-aside in which 50 percent of the value of the EASES program would be set aside for small business.

The agency conducted a pre-solicitation conference on September 24.⁴ On November 19, the agency issued the RFP as a partial small business set-aside, with a closing date of December 2, which was subsequently extended to December 3. On December 2, Phoenix filed this protest in our Office arguing that the agency improperly "bundled" its various engineering support requirements in the EASES RFP and maintaining that the EASES requirements should be set aside exclusively for small businesses.

The agency received 11 proposals by the proposal due date, 6 from large businesses, and 5 from small businesses.⁵ The rates offered by the lowest-priced, technically acceptable small business offerors are approximately 30 percent higher than the rates offered by the two lowest-priced, technically acceptable large

³The eight primary aircraft systems are communications systems, navigation systems, radar systems, flight director/autopilot systems, aircraft instruments and display systems, cockpit management systems, aircraft lighting systems, and aircraft power systems.

⁴Phoenix initially protested the agency's decision not to issue the solicitation as a total small business set-aside before the solicitation was issued. This protest was dismissed by our Office as premature.

⁵Phoenix did not submit a proposal in response to this solicitation.

businesses. The agency has withheld making any awards under this solicitation pending the outcome of this protest.

DISCUSSION

Combining The Contract Requirements

Phoenix argues that the agency has improperly "bundled" its requirements for engineering support services for the C-130 program and the C-141 program. In short, Phoenix asserts that the agency should compete its requirements under several different solicitations to permit participation by companies with experience performing some, but not all, of the solicitation requirements.

The agency responds that the aircraft systems supported by this procurement are totally integrated and, as a consequence, even when a contractor is given a project that involves only a single system, the contractor must complete the required modifications and then perform an assessment on how the modifications will affect the other aircraft systems. Thus, each contractor must have expertise in all of the systems to be supported under this contract, and a contractor with knowledge and experience concerning only one system would pose an unacceptable technical risk which could be "potentially disastrous." Video Transcript (VT) 11:10.

The Air Force further explains that in designing the EASES solicitation, it explored the options of individually competing each task as it arose, competing each task by system categories, (i.e., radar systems, navigation systems), or separately competing each function of the EASES requirement (i.e., test programs, software requirements), but concluded that such separate competitions were not realistically possible. The agency noted that in the past it procured support services for individual flight tests, but concluded that the quality of the services received were not uniformly up to the required professional standards. The agency points out that there is a very short time period in which action must be taken after a necessary modification is identified and states that procuring the EASES requirements by the various divisions outlined above would shift the burden for total system integration from the contractors to the agency, requiring a coordination effort that would simply exceed the capability of its seven-person contracting office. VT 11:19.

The agency also states that it considered making only one award for all of the EASES requirements, thereby ensuring the integrity of the integrated systems and eliminating coordination problems. The agency noted that it currently has essentially this situation in its contract with Arinc, and that the disadvantages associated with this approach are that it makes the agency too dependent on a single contractor and provides no competition or back-up source for the services.

In short, the agency determined that procuring the engineering support services from multiple contractors, each of which is capable of supporting all aircraft systems, will reduce costs while preserving the integrity of the integrated systems, potentially increase future competition, and provide the agency with alternative sources for these services. The agency states that under the EASES requirement as it is currently formulated, a contractor will perform a project from start to finish, including all system integration calculations, and the agency only has to coordinate these various projects among the EASES contractors.

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(a)(1) (1994), generally requires that solicitations permit full and open competition, and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. Since consolidated procurements combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can only furnish a portion of the requirement. We review such solicitations to determine whether the approach is reasonably required to satisfy the agency's minimum needs. National Customer Eng'g, 72 Comp. Gen. 132 (1993), 93-1 CPD ¶ 225. Because procurements involve unique situations, contracting officers must base their decisions whether to consolidate certain requirements on the individual facts. The Sequoia Group, Inc., B-252016, May 24, 1993, 93-1 CPD ¶ 405. We have upheld the consolidation of requirements where agencies have provided a reasonable basis for using such an approach. See Titan Dynamics Simulations, Inc., B-257559, Oct. 13, 1994, 94-2 CPD ¶ 139 (agency properly combined requirements for pyrotechnic simulators with laser-based training devices); Resource Consultants, Inc., B-255053, Feb. 1, 1994, 94-1 CPD ¶ 59 (agency properly combined several tasks to support a modification to a weapon trainer system).

Here, for the reasons advanced by the agency above, we believe the agency reasonably combined its requirements for various engineering support services for the C-130 program, the C-141 programs and the 339th test squadron. In light of the integrated nature of the systems being supported and the agency's legitimate concerns in maintaining the integrity of these systems, we find reasonable the agency's determination that severing the contract requirements could negatively affect the safety of the aircraft. In this instance, we also conclude that the agency reasonably considered the capability of its contracting office when it structured this RFP. In appropriate circumstances, the agency's staffing resources can and should be properly considered in fashioning contracts that will satisfy the government's minimum requirements at the lowest reasonable cost considering the nature of the property or services procured. The Sequoia Group, Inc., supra.

Total Small Business Set-Aside

Phoenix contends that this RFP should be exclusively set aside for small businesses because there are a number of small business concerns capable of performing this contract. Phoenix also contends that the Air Force did not undertake a reasonable effort to ascertain the capabilities of the small businesses that expressed an interest in this solicitation. Specifically, Phoenix argues that the agency should have asked proposed offerors in the market survey how they would "supplement their technical skills by learning or subcontracting."

The agency notes that this is the first time it has attempted to competitively procure these various engineering support services; previously these services were obtained by entering into sole source contracts under a basic ordering agreement with one large business. The agency states that the market survey respondents were given credit for engineering experience on any of the eight primary aircraft systems, regardless of the type of aircraft involved. VT 11:30. However, in order to be determined capable of performing the EASES requirements, the agency required that respondents have experience in all of these basic areas because of the integrated nature of the C-130 and the C-141 systems to be supported.

Of the nine small business respondents to the market survey, only one potential offeror, TCS, was identified by evaluators as capable. TCS was determined to have experience in 95 percent of the basic requirements and, more importantly, to have experience in all of the basic areas through its work on helicopters. The other small business respondents to the market survey were found not to be capable of performing the EASES requirements because they each lacked experience in several of the basic areas.

The agency then explored whether the small businesses that were found incapable of performing the EASES requirements could become capable by subcontracting out the work in the areas in which they lacked experience. The agency determined that a prime contractor could not become "capable" by subcontracting out basic areas in which it had no experience. The agency concluded that the prime contractor must have some "basic competency" in an area before it could subcontract out the work in that area, so that the prime contractor would know the steps that the subcontractor must perform, the level of general knowledge and level of detail required, and have an understanding of what the subcontractor must produce as a result of the effort. VT 12:22.

Therefore, after reviewing the market survey responses the contracting officer determined not to set this RFP aside exclusively for small businesses because there was only one responsible small business.

Thereafter, the agency received proposals on the EASES RFP and found that the rates offered by the lowest-priced, technically acceptable small business offerors are

approximately 30 percent more than the rates offered by the two lowest-priced, technically acceptable large businesses.⁶ The contracting officer states that the rates proposed by small businesses are unreasonably high and, therefore, had the solicitation been set aside for small businesses, the set aside would have been withdrawn.⁷

A procurement must be set aside for exclusive small business participation when there is a reasonable expectation of receiving offerors from at least two responsible small business concerns and award will be made at a fair market price. FAR § 19.502-2(b) (FAC 90-43). A contracting officer must make reasonable efforts to ascertain whether it is likely that offers will be received from at least two small businesses with the capabilities to perform the work. Espey Mfg. & Elecs. Corp., B-254738.3, Mar. 8, 1994, 94-1 CPD ¶ 180. An agency's determination concerning whether to set a particular procurement aside basically involves a business decision within the broad discretion of contracting officials, and our review generally is limited to ascertaining whether those officials have abused that discretion. FKW Inc., B-249189, Oct. 22, 1992, 92-2 CPD ¶ 270.

The record establishes that the contracting officer did not abuse his discretion in issuing the RFP as a partial set-aside, rather than as a total small business set-aside. In light of the fact that the basic systems on the C-130 and the C-141 are completely integrated, the agency reasonably required each offeror to have "basic competency"

⁶The contracting officer determined that rates proposed by small businesses are higher because they are paying higher rates for their proposed subcontractors. VT 13:56.

⁷A contracting officer is authorized to withdraw a set-aside before award based upon a determination that award to a small business concern would be detrimental to the public interest, because, for example, the award would be made at more than a fair market price. Federal Acquisition Regulation (FAR) § 19.506.

in each of the key areas. The information available to the contracting officer indicated that only one small business met that requirement; it therefore provided a reasonable basis for the decision not to set aside the entire procurement.⁸

The protest is denied.

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⁸The contracting officer's determination that the "rule of two" did not obtain here was confirmed by the proposals received in response to this solicitation as the agency determined that it cannot make award to any of the small business offerors at a reasonable price. Further, because the information obtained as a result of the evaluation of proposals provides a basis for the withdrawal of the partial set-aside, we fail to see how Phoenix was prejudiced by the contracting officer's determination not to conduct the procurement as a total small business set-aside.