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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: RBC Bearings Incorporated

File: B-401661; B-401661.2

Date: October 27, 2009

James T. Layton, for the protester.

Niketa Wharton, Esq., Defense Logistics Agency, for the agency.

Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of a sole-source contract award justified on the basis of urgency is sustained where the protester's pursuit of source approval to compete for purchases of helicopter swashplate bearings for more than 9 years, combined with continuing requirement for these parts, show that the urgent need to limit competition here was caused by a failure of advance planning.

DECISION

RBC Bearings Incorporated, of Trenton, New Jersey, protests the proposed sole-source award of a contract for 33 sets of duplex bearings, identified by national stock number (NSN) No. 3110-01-094-6792 to Sikorsky Aircraft Corporation, of Stratford, Connecticut (or to its supplier, Kaydon Corporation, of Muskegon, Michigan) by the Defense Logistics Agency (DLA) under request for proposals (RFP) No. SPM4A5-09-R-0679. The bearings are a critical safety item, used in the swashplate assembly of the UH-60 Black Hawk helicopter. RBC argues that the sole-source procurement is improper.

We sustain the protest because the record shows that the need for this sole-source procurement, and RBC's ineligibility to compete, has been caused by the agency's failure to conduct advance planning.

BACKGROUND

This protest relates to RBC's efforts over almost 10 years to become a second approved source for Black Hawk helicopter swashplate bearings. In simple terms, two swashplates join the main rotor to the top of the main fuselage of a helicopter; the lower swashplate is stationary, while the upper swashplate rotates. Duplex ball

bearings, known as the swashplate bearings, allow the upper swashplate to rotate in response to torque from the engine.

RBC argues that the delay in granting its request for source approval undermines DLA's justification for limiting the procurement to the original equipment manufacturer (OEM) of the Black Hawk (Sikorsky) or to the OEM's supplier (Kaydon). For its part, DLA argues that it has taken appropriate steps to allow RBC to pursue source approval, but since RBC is not currently an approved source, the sole-source procurement is proper. As explained in greater detail below, after RBC filed its protest, DLA revised the requirement from 33 bearings to six, and again directed award to the OEM, based on urgency. RBC also protested the revised procurement.

DLA has provided a detailed history of RBC's efforts to supply Black Hawk swashplate bearings, relevant portions of which are set forth below.¹ In February 2000, RBC submitted a source approval request to the agency, seeking to become an approved supplier of Black Hawk swashplate bearings. RBC's request used the then-current version of the technical specifications, "Revision E". DLA reviewed the request, and forwarded it to the engineering support activity for the swashplate bearings, the United States Army Aviation and Missile Life Cycle Management Command (AMCOM).

In August 2000, AMCOM disapproved the source approval request because the OEM, Sikorsky, had proposed a new "Revision F" of the technical specifications. According to DLA, the proposal of a new technical specification revision caused the "Revision E" version of the swashplate bearing to be classified as "inactive for new procurement."

Notwithstanding this representation, in April 2001, DLA awarded a contract to Kaydon for 85 swashplate bearings, based on "Revision E" of the specifications. RBC protested that contracting action to our Office. DLA took corrective action by agreeing not to exercise an option under the contract with Kaydon, and by appointing DLA's chief of technical oversight as a "champion" to pursue a new source approval request for RBC. Our Office dismissed RBC's protest based on the corrective action. Roller Bearing Co., B-287584, July 5, 2001.

In August 2001, RBC submitted a new source approval request, based on the "Revision F" specifications. From September to December 2001, AMCOM reviewed the swashplate bearing to determine the impact of the changes.

¹ Except where noted, the following chronology was synopsisized from DLA's supplemental agency report. See generally Supplemental (Supp.) Agency Report (AR) at 2-5.

In December 2001, the OEM, Sikorsky, proposed a new revision to the specifications, "Revision G." Given that "Revision G" of the specifications caused "Revision F" to be considered obsolete, AMCOM abandoned the effort to approve RBC's "Revision F" source approval request, and advised RBC of that decision in January 2002. RBC sought, and was granted, a meeting with AMCOM authorities, and the agency agreed to keep the source approval request open and to allow RBC to update its request once the OEM's "Revision G" changes were approved.

In May 2002, AMCOM posted a notice on fbo.gov, stating that the agency intended to award a sole-source 5-year performance-based logistics (PBL) contract to Sikorsky, to provide "technical, engineering and logistic services and . . . 100% of the parts and material" used in overhauling and repairing UH-60 Black Hawks at Corpus Christi Army Depot. In December 2002, AMCOM awarded the PBL contract to Sikorsky. AMCOM posted a notice of the contract on the AMCOM Acquisition Center website, describing the contract as an unspecified "aircraft & airframe structural components" contract. Also in December 2002, AMCOM informed RBC that it could proceed to update its source approval request for "Revision G."

In August 2003, RBC learned from documents released in a Freedom of Information Act request that swashplate bearings were included in the sole-source PBL contract with Sikorsky, and the company again protested to our Office.² We dismissed RBC's challenge to the PBL contract as untimely filed, and also noted that RBC was not an interested party to protest the PBL contract because even if AMCOM approved RBC to provide the swashplate bearing, RBC was not able to provide the other required Black Hawk parts and associated logistics required by the PBL contract. Roller Bearing Co., B-292718, Nov. 17, 2003, at 3.

At approximately the same time (i.e., in July and August 2003), AMCOM advised RBC that additional tests would be required to validate its inspection procedures. One year later, in August 2004, DLA transferred the authority for managing the swashplate bearing to AMCOM.

In January 2005, AMCOM notified RBC that its source approval request was conditionally granted, pending completion of several additional requirements--most significantly a 200 hour endurance test, updates to the source approval request, and RBC's responses to a revised process for validating RBC's inspection procedures. Ten months later, in October, AMCOM again advised RBC of more additional requirements for testing the bearings. In December, RBC responded with a test plan. The following March, AMCOM requested that RBC update its test plan, and in June

² Although DLA states that this protest was filed in July 2003, our Office's files show that RBC filed its protest on August 15, 2003, and our Office resolved it in a decision dated November 17. Roller Bearing Co., B-292718, Nov. 17, 2003.

2006, RBC again submitted a revised test plan. Afterward, AMCOM again requested additional revisions.

Finally, in September 2007, DLA purchased three swashplate bearings from RBC for testing, which were delivered in March 2008. RBC advises our Office that it was told testing of its bearings would begin in August of that year. Supp. Protest, attach. 1, at 3.

Despite the plan to proceed with testing, in August 2008, AMCOM again issued a sole-source solicitation for 75 bearings to be purchased directly from the OEM. After RBC objected, AMCOM canceled that solicitation. Supp. Protest, attach. 1, at 3. Also during August of that year, AMCOM transferred management of the Black Hawk swashplate bearing back to DLA.

In December 2008, DLA justified yet another sole-source award to Kaydon (the OEM supplier) for 20 swashplate bearings on the basis of unusual and compelling urgency. DLA states that it did not publicize the procurement on the grounds that the time needed to publicize the procurement would cause serious injury to the government, which is an exception to the publication requirements applicable to sole-source procurements authorized by FAR § 5.202(a)(2).

Two months later, in February 2009, DLA issued another sole-source solicitation for 86 swashplate bearings. RBC explains that when it filed an agency-level protest, DLA canceled that solicitation. Supp. Protest, attach. 1, at 3.

In May 2009, DLA initiated discussions with RBC and AMCOM about testing RBC's bearing, which required scheduling access to a Sikorsky test stand. Notwithstanding these discussions, DLA synopsised another sole-source procurement of additional swashplate bearings from Sikorsky on May 6. On June 12, DLA issued the solicitation for 33 bearings at issue in this protest. The bearings were referred to as "Revision H" bearings, and Kaydon and Sikorsky were identified as the only known sources for these bearings.³ The estimated contract value was \$452,496. AR at 1.

This protest followed. During the course of this protest, additional facts arose that are relevant to our decision.

First, in the agency report filed on this protest, DLA advised that it was taking corrective action in response to the protest by limiting the procurement to only six bearings. The revised procurement approach was accompanied by a justification document, dated July 31, which concluded that unusual and compelling urgency justified the sole-source procurement. See AR at 2; AR exh. D, Justification for Other

³ The record is not clear when Sikorsky proposed, or AMCOM approved, Revision H, although it is mentioned as early as August 2002. While we note the issue, our decision is not materially affected by this ambiguity.

than Full and Open Competition, July 31, 2009, at 1. The record here shows that DLA has a backlog of six bearings.

On August 27, RBC objected to DLA's proposed corrective action, arguing that DLA's claim of urgency was caused by a failure to conduct adequate planning for future competitive procurements despite years of effort by RBC to achieve source approval. RBC argued that a failure to plan should not provide a valid basis for justifying an urgent requirement.⁴

In a conference call with the parties, our Office explained that we considered RBC's objection to be a supplemental protest, and we requested that DLA file a supplement to its earlier report.⁵ DLA also informed our Office that the agency would proceed with the six-bearing procurement based on a finding that urgent and compelling circumstances that significantly affect interests of the United States did not permit waiting for the decision of our Office concerning the protest. See 31 U.S.C. § 3553(d)(3)(C)(i)(II) (2006). That contract for six bearings was awarded to Kaydon at a price of \$107,112. Supp. AR at 5.

In September 2009, DLA advised RBC that it would be required to bear the costs of testing its bearings, which the agency estimated at \$250,000. DLA explains that its projected demand for the bearings would be 33 units per year and, on that basis, the cost of testing would not be recouped through any anticipated savings. DLA also advised that, since RBC is not a small business, the agency is not legally authorized to pay the costs of testing RBC's bearings, notwithstanding any statements by the agency in the past representing that it would pay those costs. Supp. AR at 7 (citing 10 U.S.C. § 2319).

⁴ 10 U.S.C. § 2304(f)(4)(A) provides that an agency may not enter into a contract using limited competition "on the basis of the lack of advance planning . . ."

⁵ DLA argues that RBC's objection to the revised justification, which we viewed as a supplemental protest, should be dismissed as untimely. We disagree. In this regard, DLA--in an attempt to convince RBC to withdraw its protest before the agency submitted its report to our Office--advised RBC that the agency was changing its basis for justifying this sole-source procurement from only one responsible source will satisfy the agency's requirements (relying upon FAR § 6.302-1) to unusual and compelling urgency (relying upon FAR § 6.302-2). On December 19, DLA determined that an urgency justification would only apply to six bearings, and announced that change on December 20 in the agency report. Here, we do not view the withdrawal discussions as having any effect on RBC's original protest challenging the sole-source procurement and the failure to allow RBC a reasonable opportunity to qualify as an approved source for the bearings.

In subsequent filings, RBC contends that DLA has significantly underestimated the demand for these bearings. In this regard, RBC contends that the size of the Black Hawk fleet, the average annual flight hours per aircraft, and the usable lifespan of the bearing, show that a reasonable projection of the annual demand for these bearings would be approximately 879, not 33. Supp. Protest at 3. Accordingly, RBC argues that continued demand for swashplate bearings is predictable, and should have been anticipated by the agency with better planning.

DISCUSSION

The Competition in Contracting Act of 1984 (CICA) requires that an agency obtain full and open competition in its procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A). Exceptions to this general requirement are provided in the statute where (among other enumerated exceptions) there is only one responsible source able to meet the agency's requirements, 10 U.S.C. § 2304(c)(1), or the requirement is of unusual and compelling urgency, 10 U.S.C. § 2304(c)(2). Since DLA took corrective action in response to the initial protest here—and thus no longer justified this procurement on a conclusion that there is only one responsible source for these bearings—the remaining issue in this protest is DLA's reliance on urgency to justify its reduced requirement for swashplate bearings.

As RBC points out, CICA mandates that noncompetitive procedures may not be used because agency contracting officials failed to perform advance planning. 10 U.S.C. § 2304(f)(4); HEROS, Inc., B-292043, June 9, 2003, 2003 CPD ¶ 111 at 6; New Breed Leasing Corp., B-274201, B-274202, Nov. 26, 1996, 96-2 CPD ¶ 202 at 6; TeQcom, Inc., B-224664, Dec. 22, 1986, 86-2 CPD ¶ 700 at 5. Our Office has recognized that the requirement for advance planning does not mean that such planning must be completely error-free, but, as with all actions taken by an agency, the advance planning required under 10 U.S.C. § 2304 must be reasonable. Barnes Aerospace Group, B-298864, B-298864.2, Dec. 26, 2006, 2006 CPD ¶ 204 at 4-5.

In addition, when a contracting agency restricts a contract to an approved product or source, and uses a qualification requirement, it must give other potential sources a reasonable opportunity to qualify. Lambda Signatics, Inc., B-257756, Nov. 7, 1994, 94-2 CPD ¶ 175 at 4; Advanced Seal Tech., Inc., B-250199, Jan. 5, 1993, 93-1 CPD ¶ 9 at 3; see generally 10 U.S.C. § 2319(b). Failure to act upon a potential offeror's request for approval within a reasonable period of time deprives the requester of an opportunity to compete and is inconsistent with the CICA mandate that agencies obtain full and open competition through the use of competitive procedures. Lambda Signatics, Inc., *supra*; Advanced Seal Tech., Inc., *supra*; see also Freund Precision, Inc., B-223613, Nov. 10, 1986, 86-2 CPD ¶ 543 at 3-4, *aff'd*, Freund Precision, Inc.--Recon., B-223613.2, May 4, 1987, 87-1 CPD ¶ 464 (protest sustained where agency failed to evaluate protester's alternate product for unreasonable period of time); Rotair Indus., Inc., B-232702, Dec. 29, 1988, 88-2 CPD ¶ 636 at 3 (protest sustained where agency unreasonably delayed processing of source approval request).

In our view, the actions of DLA and AMCOM chronicled above have unreasonably deprived RBC of an opportunity to compete for a contract to provide these bearings. While we do not question the urgency or necessity of obtaining the six bearings at issue here, we nevertheless conclude that DLA has failed to adequately plan for a requirement that was foreseeable and therefore the agency has failed in its statutory duty to perform adequate advance planning and to promote competition. In this regard, we view the earlier sole-source solicitations (some of which were canceled, possibly as a result of RBC's objections) as confirming the foreseeability of a continuing requirement for significantly larger quantities of swashplate bearings than are covered by this procurement. In the face of these continuing requirements, RBC has sought source approval from DLA or the Army since February 2000—i.e., for almost 10 years prior to the date of this decision. We think these facts amply establish a failure to conduct adequate and reasonable advance planning, as required under CICA. 10 U.S.C. § 2304(f)(4). Thus we conclude that the sole-source procurement here is not properly justified.

RECOMMENDATION

As noted above, DLA informed our Office that it has proceeded with award of a contract to Kaydon for six bearings, based on a determination that urgent and compelling circumstances that significantly affect the interests of the United States did not permit waiting for the decision of our Office concerning the protest. As a result, our recommendation does not address this award; instead, we recommend that DLA make an expeditious and good faith effort to complete any further reviews needed to ascertain whether RBC can be permitted to compete for future efforts to procure these bearings.

As part of those efforts, we also recommend that DLA assess the requirement for Black Hawk swashplate bearings and make a reasonable projection of the agency's annual needs. Based on that projection, we recommend that DLA make a determination of whether to bear the costs of testing RBC's bearings, consistent with the requirements of statute and regulation.⁶

We recommend that, until DLA and AMCOM complete consideration of RBC's source approval request, future procurements of these bearings be limited in quantity to the minimum amount needed to ensure that the maintenance of the Black Hawk helicopter fleet is not impaired.

We also recommend that RBC be reimbursed the costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2009). The

⁶ At this time we express no view on the outcome of that assessment, or whether the agency's discretion is restricted by statute or regulation.

protester's certified claim for costs, detailing the time spent and the cost incurred, must be submitted to the agency within 60 days after receiving this decision.

The protest is sustained.

Lynn H. Gibson
Acting General Counsel