



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: C&S Antennas, Incorporated

File: B-224549

Date: February 13, 1987

DIGEST

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through use of competitive procedures, the proposed sole-source award of a contract under the authority of 10 U.S.C. § 2304(c)(1) is not objectionable where the agency reasonably determined that only one source could supply the desired item within the governing time constraints of the procurement, and the protester's offered product had yet to be found fully compatible with the agency's particular acquisition needs.

DECISION

C&S Antennas, Incorporated (CSA) protests the proposed award of a sole-source contract to Dorne & Margolin, Incorporated (D&M) under request for proposals (RFP) No. DAAB07-86-R-D114, issued by the Department of the Army. The procurement is for the acquisition of antenna systems manufactured by D&M to be used by Cincinnati Electronics Corporation (CEC) as government-furnished equipment in fulfilling an existing contract for the supply of AN/PSC-3 and AN/VSC-7 manpack field radio sets. The radio sets in question are compact and lightweight units providing two-way communications by way of both satellite and line-of-sight modes, and are to be used by troops involved in special operations.

CSA complains that the proposed sole-source action is improper so as to deny the firm its right to full and open competition because its own antenna units are equal to or better than the D&M antennas for purposes of meeting the Army's requirements. CSA contends the agency has been remiss in performing a comprehensive, comparative technical evaluation that would establish the suitability and operational advantages of its equipment.

We deny the protest.

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BACKGROUND

The procurement was synopsized in the Commerce Business Daily (CBD) on June 9, 1986. The CBD notice provided that a solicitation would be issued contemplating a sole-source award to D&M, but also provided that, within 45 days of publication of the notice, parties interested in the procurement could submit proposals which would be evaluated by the government for purposes of determining whether a competitive procurement should be conducted. Towards the end of the 45-day period, CSA contacted the Army and expressed its interest in competing for the award, advising that it could provide an antenna system equal to or better than the D&M units at a substantial cost savings. The Army accepted CSA's offer to provide an antenna for evaluation purposes, which was delivered by CSA on August 18.

The Army began its technical evaluation of the antenna but informed CSA on September 11 that it had decided to issue the solicitation to D&M on a sole-source basis as originally contemplated because the agency could not complete the evaluation with sufficient thoroughness in time to coincide with the delivery schedule of the recently awarded radio set contract. The Army's decision stressed that only D&M's antennas had been determined to be compatible with the AN/PSC-3 and AN/VSC-7 radio sets, and further noted that the radio sets in fact were built to specifications developed as the result of successful utilization of the D&M antennas.

CSA continued its efforts to have the sole-source restriction removed and submitted an unsolicited proposal. However, the Army again responded that it could not make the procurement competitive until its technical evaluation of the CSA equipment was completed and showed that the antenna met the agency's needs under the current requirement. Nevertheless, the Army did state to CSA that it would not proceed to exercise the 100 percent quantity options under the contemplated D&M contract until it finished the testing. CSA then filed this protest with our Office.

ANALYSIS

The Army justifies its sole-source action under the authority of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(c)(1) (Supp. III 1985), which provides that a military agency may use other than competitive procedures when the needed supplies are available from only one responsible source and no other supplies will satisfy the agency's needs. This statutory provision is implemented by the Federal Acquisition Regulation, 48 C.F.R. § 6.302-1 (1986).

Because the overriding mandate of the CICA is for "full and open competition" in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), this Office will closely scrutinize sole-source procurements under the exception to that mandate provided by 10 U.S.C. § 2304(c)(1). WSI Corp., B-220025, Dec. 4, 1985, 85-2 CPD ¶ 626. Where, however, the agency has substantially complied with the procedural requirements of the CICA, 10 U.S.C. § 2304(f), calling for the written justification for and higher-level approval of the contemplated sole-source action and publication of the requisite CBD notice^{1/}, we will not object to the sole-source award unless it can be shown that there is no reasonable basis for the sole-source award. WSI Corp., B-220025, supra, 85-2 CPD ¶ 626 at 5; see also Dynamic Instruments, Inc., B-220092, et al., Nov. 25, 1985, 85-2 CPD ¶ 596. In sum, excepting those noncompetitive situations which arise from a lack of advance planning, see 10 U.S.C. § 2304(f)(5)(A); Resource Consultants, Inc., B-221860, Mar. 27, 1986, 86-1 CPD ¶ 296, a sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. Data Transformation Corp., B-220581, Jan. 16, 1986, 86-1 CPD ¶ 55.

In justifying the contemplated sole-source award to D&M, the Army stresses the fact that although the CSA antennas may have been employed successfully by other user organizations, evidence of which CSA has brought to the Army's attention, only the D&M antennas to date have been found to be fully compatible with the AN/PSC-3 and AN/VSC-7 radio sets. The Army points out that the prototype radio set employed a helical antenna, the same general configuration as the CSA antennas in question, but that the production radio sets, as now to be furnished under the CEC contract, utilize crossed-dipole antennas, which is the D&M antenna configuration. According to the Army, the reason for this change was that the D&M crossed-dipole type had been found to be less

^{1/} CSA complains that the written justification here, contrary to 10 U.S.C. § 2304(f)(1)(C) (Supp. III 1985), preceded publication of the CBD notice of the contemplated sole-source award. However, the validity of a sole-source justification is not necessarily affected because notice of that proposed action was issued after the justification had been prepared. Nothing in the record before us suggests that the Army's particular acquisition needs had changed or that it became aware of capable sources other than D&M during the intervening period. See WSI Corp., B-220025, Dec. 4, 1985, 85-2 CPD ¶ 626.

susceptible to mechanical failure during field use, especially if a parachute delivery was involved, and easier to assemble and deploy during nighttime operations. The Army notes that the AN/PSC-3 and AN/VSC-7 radio sets have specifications which expressly call for crossed-dipole, rather than helical, antennas, and states in this regard that these specifications as well as related training manuals and other support data would have to be rewritten to accommodate the use of the helical configuration.

Moreover, the Army reports that although it was willing to continue its evaluation of the CSA equipment to determine compatibility, it concluded that this process and any attendant change to the radio set specifications in the event the testing showed CSA's helical antennas to be feasible for use would extend several months beyond the delivery schedule of the radio set contract. Hence, the Army urges that even though CSA may ultimately be a potential competitor for this requirement, at the time the agency finally determined to proceed on a sole-source basis on September 11, it had no reason to believe other than that D&M was the only source that could meet its needs within the constraints of the CEC contract.

We find that the Army's stated grounds for its sole-source action are reasonable. WSI Corp., B-220025, supra. Although, as CSA points out, it is well-settled that an agency's satisfactory use of a particular product is not a sufficient basis to justify a sole-source procurement of the same product to the exclusion of other sources, 50 Comp. Gen. 209, 215 (1970), it is also well-settled that the necessity that the desired item manufactured by one source be compatible and interchangeable with existing equipment may justify restricting the competition to that single source of supply. Id. at 214. Despite CSA's vigorous assertion that its antennas have been evaluated by other organizations and have been found to be equal or superior to the D&M units in other applications, the fact remains, as clearly established by the record, that the firm's antennas have not yet been found to be fully compatible with the radio sets shortly to be supplied by CEC.

To the extent CSA complains that the proposed sole-source action stems from a lack of advance planning--significantly with regard to the alleged dilatoriness of the Army's evaluation procedures--the record does not support the assertion. See Resource Consultants, Inc., B-221860, supra. Hence, although CSA contends that the Army had rejected a much earlier offer by the firm to furnish an antenna for testing, the agency responds that CSA itself failed to keep the

appointment that had been scheduled for the purpose. Moreover, in the present matter, we note that nearly a month passed between CSA's expression of interest in the prospective sole-source procurement and its delivery of a test unit to the Army for evaluation.

Therefore, because of what we conclude were the Army's legitimate concerns regarding the employment of CSA antennas with the AN/PSC-3 and AN/VSC-7 radio sets without thorough testing, and given the timeframes of the radio set procurement, we see no basis to object to the proposed sole-source award to D&M under the authority of 10 U.S.C. § 2304(c)(1), supra, as the only presently known source of supply capable of meeting the agency's needs within the delivery schedule of the CEC contract. See Berkey Marketing Cos., B-224481, et al., Nov. 20, 1986, 86-2 CPD ¶ 596 at 8. CSA's contention that it could deliver antennas to the Army for use as government-furnished equipment under the radio set contract in a much shorter time than D&M and at a significant savings is simply irrelevant because there is nothing besides its own self-serving statements to indicate that its antennas will satisfy the Army's requirements for this particular application.

In this regard, the Army advises of preliminary evaluation results which suggest that the CSA equipment may not be adequate for the contemplated usage with respect to such factors as deployment time and stability during windy conditions. Although CSA challenges those initial findings and the manner in which they were obtained, we have no basis to enter what essentially is a technical dispute between the agency and CSA. Rather, we expect that the Army's comparative testing will be impartial and as comprehensive as the circumstances allow, and that, as the Army has stated, no options under the D&M contract will be exercised until the testing is fully completed. Of course, if the results are ultimately favorable to CSA, the option quantities should be acquired through a competitive procurement.

The protest is denied.



for Harry R. Van Cleve
General Counsel