



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AZTEK
File: B-229594
Date: March 2, 1988

DIGEST

Proposed noncompetitive award is not objectionable where the agency reasonably determined that only one source could supply the desired computer graphics software and the protester has not submitted a proposal, as requested, which would give agency opportunity to determine whether competitive proposals are feasible.

DECISION

AZTEK protests the proposed noncompetitive award under request for proposals (RFP) No. DAAB07-88-R-S902, issued by the United States Army Communications-Electronics Command, Fort Monmouth, New Jersey. The procurement is for the acquisition of a software package manufactured by Zenographics, Inc., for use by the Army's Intelligence and Security Command in its computer graphics system. AZTEK contends that the proposed noncompetitive award is improper because its own software package may be equal to or better than Zenographics' software for purposes of meeting the Army's requirements. AZTEK argues that the solicitation should be amended by adding a "brand name or equal" specification, setting forth the salient characteristics of the software package required by the Army.

We deny the protest.

The procurement was first synopsisized in the Commerce Business Daily (CBD) on July 9, 1987. AZTEK requested a copy of the solicitation by letter dated July 28. This first solicitation was canceled, however, after AZTEK protested that it did not receive a copy of the solicitation in a timely manner. On September 19, a new solicitation of this procurement was synopsisized in the CBD. The synopsis stated that the Army proposed to enter into a noncompetitive negotiation with Zenographics, as the only "responsible source." The synopsis also stated that, by no later than November 8, all other potential sources could submit

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proposals which would be evaluated by the Army and that "the software must directly interface with and be interchangeable with an existing computer graphics system." The Army states that it received three proposals in response to the synopsis. The three were from Zenographics itself, a retailer of Zenographics' software, and a firm that claims to be manufacturing Zenographics' software under license from Zenographics. All proposals were evaluated.

On November 5, AZTEK contacted the Army contracting officer requesting that the solicitation be amended by adding a "brand name or equal" specification allowing for competitive proposals. The contracting officer declined to do so pointing out that the Army did not possess the required technical information. The contracting officer told AZTEK, however, that it could nevertheless submit a proposal for evaluation by the agency. If that proposal proved to be acceptable and established that software other than Zenographics' could satisfy the Army's minimum needs, the contracting officer stated, then the solicitation could be amended to allow AZTEK to compete on an equal basis with Zenographics.

AZTEK did not submit a proposal as advised, but instead filed a protest with our Office arguing that the solicitation should be amended to add a "brand name or equal" specification. AZTEK, in its comments on the agency report, states that "not only do AZTEK software products meet the defined requirement, they are totally IBM/AT compatible and can provide complete compatibility, modularity and expandability . . . [and] . . . most definitely are compatible with the existing hardware." But yet, AZTEK also states that it "cannot provide the Army with sufficient information in the form of a . . . proposal as long as the Government's needs . . . are not defined [in salient characteristics]." AZTEK essentially argues that its software meets the Army's needs, but has refrained from submitting a proposal, stating that it does not know what the Army's needs are without an amendment to the solicitation setting forth the salient characteristics of the desired software.

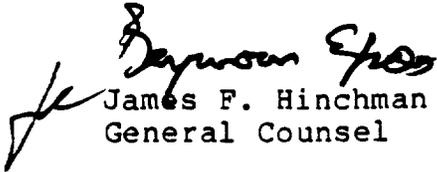
The Army states that it followed the procedures required by 10 U.S.C. § 2304(f) (Supp. III 1985) for using other than competitive procedures by publishing the CBD notice and executing a proper justification for procurement by other than competitive procedures. That justification, the Army points out, contained a valid determination that only Zenographics can meet its requirements.

Specifically, the Army states that it has developed a complex computer graphics system consisting of 21 components each of existing hardware and software items and is currently in the process of expanding this system. The Zenographics software, the Army states, is one part of this system and was originally selected based upon its compatibility with the other software used in the system. Since then, the Army adds, Zenographics software has been used to develop a standard command, control, communications, and intelligence graphics system. In addition, training programs based upon use of Zenographics' software have been implemented. Since the Zenographics software is proprietary information, the Army states that it does not possess a technical data package and does not have sufficient information available to prepare salient characteristics for use in a competitive procurement. The Army concludes that in order to ensure "interoperability of the system and compatibility of the information displays" only Zenographics' software can be used.

We closely scrutinize sole-source procurements under 10 U.S.C. § 2304(c)(1). Here, the Army complied with the procedural requirements of 10 U.S.C. § 2304(f) by advising potential offerors of its requirements in the CBD announcement and evaluating the three responses it received. Where the agency has complied with the procedures prescribed by 10 U.S.C. § 2304, we will not object to a noncompetitive award unless it is shown that there is no reasonable basis for the contracting agency's stated grounds for using that exception to CICA's requirement for full and open competition. American Systems Corporation, B-224008, Dec. 22, 1986, 86-2 CPD ¶ 697. Although, 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, 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. See, e.g., C&S Antennas, Incorporated, B-224549, Feb. 13, 1987, 66 Comp. Gen. ___, 87-1 CPD ¶ 161. Despite AZTEK's vigorous assertion that its software is equal or superior to Zenographics', the fact remains that AZTEK did not submit a proposal or even a sample copy of its software for evaluation, despite numerous opportunities to do so. We, thus,

have no basis on which to disagree with the Army's conclusion that only Zenographics' software can meet its requirements.

The protest is denied.


James F. Hinchman
General Counsel