



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Meteor Communications Corporation
File: B-235674
Date: September 15, 1989

DIGEST

Proposed sole-source award of a subcontract for research, development and prototype testing of software-oriented approach to upgrading meteor burst communications system is unobjectionable where the procuring activity reasonably determined that only one source could provide the required services because only that source possesses patented and proprietary software and technology which offers the potential for significantly enhanced performance capabilities with the least hardware modification.

DECISION

Meteor Communications Corporation protests the proposed sole-source award by Martin Marietta Energy Systems, Inc., of a subcontract to SCS Telecom, Inc., under request for proposals (RFP) No. CR607-87, for technical assistance in the analysis, design, and prototype demonstration and testing of certain approaches to enhancing the capabilities of the Air Force's meteor burst communications system in Alaska. Martin Marietta issued the solicitation pursuant to its prime contract with the Department of Energy (DOE), for management and operation of DOE's facility at Oak Ridge, Tennessee (including research and development in energy and engineering technologies), and in response to an interagency agreement between the Air Force and DOE under which DOE provides technical assistance in evaluating state-of-the-art alternatives in upgrading the meteor burst communications system.

We deny the protest.

In general, meteor burst communication is a method of communicating by bouncing signals off meteor trails; a meteor burst communications system requires sophisticated techniques to optimize data throughput (i.e., data transmission) since, although billions of meteor trails occur every

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day over the earth's surface, most of them provide reflectivity to the signals for only seconds or fractions of a second. The Air Force's current meteor burst communications system in Alaska, designed by the protester and installed 3 years ago as a backup to a communications system which relays data and messages through a commercial satellite, transmits radar data from long range radar stations to a control center and also provides one-way simulated voice communication from the control center to aircraft.

Martin Marietta was tasked with determining the feasibility of upgrading the existing system without extensive modifications to the system's hardware, thereby avoiding the expense and negative impact on logistics that would result from such modifications. As a first step, Martin Marietta issued a request for information (RFI) on capabilities for the research, development and prototype testing of approaches to optimizing data throughput and providing for full two-way voice communications between the control center and aircraft while minimizing modifications to existing hardware. Martin Marietta received responses to the request from Meteor and SCS. Meteor proposed a hardware-oriented approach which required the installation of at least 21 new antennae and a change in the current operating frequency bandwidth in order to carry the necessary increase in data throughput. SCS, on the other hand, proposed a software-oriented approach using SCS's patented and proprietary software and technology, which would allow greater use of current hardware and would not require a change in the current bandwidth. After review of the responses, Martin Marietta concluded that the Air Force's requirement to determine the feasibility of acquiring enhanced system performance capabilities with minimal hardware modifications could be met only by SCS's unique, proprietary software; accordingly, a justification for a sole-source award to SCS was approved and the RFP was issued on a sole-source basis to SCS. Meteor thereupon filed this protest with our Office, challenging the proposed sole-source award.

Our Office does not review subcontract awards by government prime contractors, except where the award of the subcontract is "by or for" the government. 4 C.F.R. § 21.3(f)(10) (1989). Since Martin Marietta was procuring the technical assistance for the government in its capacity as an agent under its prime contract with DOE, we will review the proposed subcontract award to determine whether it was consistent with the fundamental principles of federal procurement law as set forth in the statutes and regulations that apply to direct procurement by federal agencies.

Fairfield Mach. Co., Inc., B-228015 et al., Dec. 7, 1987, 87-2 CPD ¶ 562.

In direct federal procurements, under the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(c) (Supp. IV 1986), a noncompetitive award is permitted where the property or services needed by the agency are available from only one responsible source or a limited number of responsible sources and no other types of property or services will satisfy the needs of the agency. Since the overriding mandate of CICA is for "full and open competition" in government procurements, 10 U.S.C. § 2304(a)(1)(A), our Office closely scrutinizes sole-source procurements under 10 U.S.C. § 2304(c). However, we generally will not object to a sole-source award where the agency reasonably concludes that only one known source can meet the government's needs within the required time. See Johnson Eng'g & Maintenance, B-228184, Dec. 3, 1987, 87-2 CPD ¶ 544.

Meteor objects to the proposed sole-source award on the basis that the requirement to minimize hardware modifications was never communicated in the RFI. Moreover, Meteor questions the effectiveness of SCS's software-oriented approach, arguing that it is likely to encounter technical problems and will be more, not less, expensive than Meteor's approach. In this regard, Meteor contends that SCS will need to replace nearly all of the existing hardware and software because only Meteor has the proprietary information concerning the system's design and capabilities which it believes is necessary for successful modification of the system. According to the protester, the statement of work therefore should be rewritten to focus on specific performance criteria, rather than on a specific technical approach, and a new competitive solicitation should be issued.

DOE, on the other hand, maintains that the requirement for evaluation of the feasibility of increased system capabilities, by optimizing data throughput and providing for full two-way voice transmission, while minimizing hardware modifications, can only be satisfied through an award to SCS, since only this firm has the patented and proprietary software and technology capable of providing the necessary increased data transmission within the current operating power and bandwidth.

Based upon our review of the record, we find the determination that only SCS can satisfy the government's minimum needs to be reasonable. First, contrary to the protester's claim that the requirement for minimal hardware changes was never communicated to it, we note that the RFI clearly

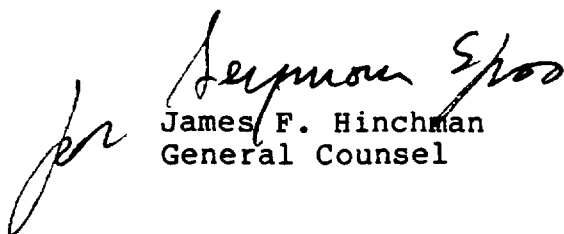
stated that system improvements, both hardware and software, were needed "while minimizing modifications to existing . . . hardware." Furthermore, it is evident that the protester fully recognized this requirement, since it stated in the executive summary of its proposal that it "fully appreciate[d] [Martin Marietta's] desire to minimize modifications to the existing . . . hardware." Since the firm nevertheless went on to propose extensive hardware changes, Martin Marietta could reasonably conclude that Meteor was unable to propose an approach consistent with the agency's requirement to minimize modifications to hardware. Further, Meteor has not indicated that it either has access to SCS's software information or has some workable substitute. Thus, the protester has failed to show that access to SCS's software is unnecessary to perform the requirement. See Johnson Eng'g & Maintenance, B-228184, supra.

Second, even if SCS's software-oriented approach perhaps may be somewhat riskier than Meteor's, as alleged by the protester, we do not believe that the government was thereby precluded from investigating an approach that offers the potential for significantly enhancing data throughput within the existing bandwidth with minimal hardware modification; indeed, again, investigation of the feasibility of this type of software approach is precisely the purposes of this contract. See Varian Assoc., Inc., B-228545, Feb. 16, 1988, 88-1 CPD ¶ 153.

Furthermore, to the extent Meteor argues SCS will encounter difficulties due to its lack of access to Meteor's proprietary system information, DOE reports, and we have no reason to question, that all information necessary for SCS to investigate and prototype a software-oriented approach properly will be available to it. Accordingly, while SCS's approach may require the replacement of some of the existing hardware, there is no indication that it necessarily would require replacement, rather than the modification, of nearly all of the existing hardware, as alleged by Meteor. In any case, we consider Meteor's argument that only it can modify the system it developed tantamount to an argument for an ultimate sole-source award to Meteor for the production of a modified system and against investigation of potential alternatives. In view of the CICA mandate for full and open competition, we have consistently refused to countenance challenges to an agency's broadening of competition. See generally JL Assoc., Inc., B-234106, Mar. 22, 1989, 89-1 CPD ¶ 295. We once again emphasize in this respect that the proposed contract is for the investigation of the feasibility of a software-oriented alternative to a hardware-oriented approach; it is not a contract for the production

and deployment of a new or modified system, and we have no reason to believe at this point that any subsequent procurement will be noncompetitive.

The protest is denied.

for
James F. Hinchman
General Counsel