

S. Jones



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Eaton Corporation
File: B-235603
Date: September 18, 1989

DIGEST

Sole-source award is unobjectionable where the agency complied with statutory requirements for written justification and publication of notice in the Commerce Business Daily (CBD) and the agency reasonably determined that the protester's proposed equipment does not meet its technical requirements and that only one source could supply the desired item.

DECISION

Eaton Corporation protests the sole-source award of a contract to King Nutronics Corporation under request for proposals (RFP) No. N00164-89-R-0510 issued by the Department of the Navy for pressure calibrators. Eaton contends that the Navy improperly determined that King Nutronics was the only responsible source capable of meeting the agency's needs. We deny the protest.

The pressure calibrators sought will comprise part of the test and measurement equipment to be used on the TRIDENT fleet. According to the Navy, over 500 types of equipment are used to support TRIDENT and the technical integrity of the fleet is dependent upon the equipment for its support and maintenance.

On March 30, 1989, the Navy published in the Commerce Business Daily (CBD) a notice of its intention to procure the pressure calibrators from King Nutronics through the use of other than full and open competitive procedures under Federal Acquisition Regulation (FAR) § 6.302-1. The notice also invited responsible sources to submit proposals. The agency issued the RFP on April 20 specifying the King Nutronics pressure calibrator as the only acceptable item.

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Two firms, including the protester, submitted proposals. The agency evaluated both and determined that neither met its needs. The rejection of Eaton's proposal was based on the agency's conclusion that it failed to meet the technical requirements in five respects and that its use would be inconsistent with the Navy's current logistics support system.

The agency's decision to make award to King Nutronics was supported by a justification and approval citing the authority of 10 U.S.C. § 2304(c)(1) (Supp. IV 1986). This provision permits a noncompetitive award where only one known responsible source or a limited number of responsible sources are available, and no other type of property or services will satisfy the agency.

The justification stated that King Nutronics is the only source for this equipment because the agency does not have sufficient data to solicit and evaluate these items and because the King Nutronics unit is the only one presently integrated into its logistics system for the TRIDENT program; that is, this model is currently described in training/operation/maintenance manuals used by the fleet, spare repair parts for this equipment are stocked, and procedures, equipment and facilities for calibration are already in place.

The justification further explains that although the agency has attempted to develop a specification suitable for use in a competitive procurement for this item the specification has not yet been finalized. It is not expected to be ready until 1991 and the current procurement is for the agency's near term requirements.

Eaton disputes the agency's justification and argues that its proposal was improperly rejected. In support of its protest Eaton has submitted a copy of a letter dated December 3, 1987, from the Assistant Secretary of the Navy for Shipbuilding and Logistics to an Eaton dealer concerning the purchase of future Navy requirements for general purpose pressure calibrators on a brand name or equal basis. Eaton also argues that it was the successful offeror in several Navy and Army procurements for pressure calibrators.

Because the overriding mandate of the Competition in Contracting Act (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), we will closely scrutinize sole-source procurements under the

exception to that mandate provided by 10 U.S.C. § 2304(c)(1). Mine Safety Appliances Co., B-233052, Feb. 8, 1989, 89-1 CPD ¶ 127. Where, however, the agency has substantially complied with the procedural requirements of 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 required CBD notice, we will not object to the sole-source award unless it is shown that there is no reasonable basis for it. Id. In sum, except in those noncompetitive situations that arise from a lack of advance planning, 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. Id.

Since the record here shows that the Navy substantially complied with the requirements for a written justification and publication in the CBD, the propriety of the agency's decision to procure the calibrators on a sole-source basis rests on whether or not it was reasonable to conclude that only one source was available. Mine Safety Appliances Co., B-233052, supra. Here, the Navy's conclusion rests on its determination that no calibrator, including that proposed by the protester, currently meets both its technical and logistics requirements.

Specifically, the technical reasons cited for the Navy's rejection of Eaton's proposed calibrator were that its unit will not make certain required measurements without the necessity of calculations, it does not provide either the required connectors or adaptors, and it does not have self test ability. Finally, the agency says that the Eaton unit is not direct connection compatible to the 3689 model calibrator.

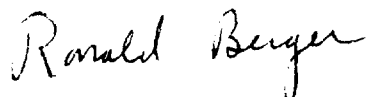
The protester states, without further explanation, that its unit does have the required connector and does have self test ability. Eaton further states that the unit it offers will measure pressure as required and that all adaptors will be supplied. It finally states that it "does seem" that its unit "could" connect with the model 3689.

We have reviewed the record, which includes Eaton's proposal, and we are unable to conclude that the Navy's evaluation of that proposal or its subsequent conclusion that Eaton was not an available source for the calibrator was unreasonable. We see nothing in Eaton's proposal which indicates that the Navy's view of Eaton's calibrators is erroneous. In this regard, we note that while the protester has stated its general disagreement with the agency's conclusion, it has not pointed out where in its proposal the

disputed technical characteristics are allegedly described. Mere disagreement without more is not sufficient to overturn an agency's technical evaluation. Allied Management of Texas, Inc., B-232736.2, May 22, 1989, 89-1 CPD ¶ 485. Thus, on this record, we simply have no basis to accept the protester's allegations.^{1/}

Finally, we agree with the agency that the December 3, 1987, letter cited by the protester in support of its argument that these items must be procured on a brand name or equal basis does not impact on this specific requirement. While the letter did indeed express the Navy's general intent to compete its requirements for general purpose pressure calibrators, that does not prevent the agency from executing a valid sole-source award under the appropriate circumstances.

Accordingly, the protest is denied.


for James F. Hinchman
General Counsel

^{1/} Since we have concluded that the agency reasonably determined that the unit Eaton proposed here would not meet its particular technical needs, we need not consider the protester's general arguments and questions concerning the validity of the rationale behind the Navy's position concerning its logistics requirements.