



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Hill Aerospace and Defense

File: B-242895

Date: June 18, 1991

David A. Ringnell, Esq., Smith & Smith, for the protester. Millard F. Pippin and Charles T. Felder, Esq., Department of the Air Force, for the agency. Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency's noncompetitive award of a contract for longeron repair kits for F-5 type aircraft is proper where (1) the record indicates that only one source had been approved to supply the requirement and no additional sources could be approved in sufficient time to meet the agency's immediate requirements; and (2) the protester had only submitted its technical package for source approval at about the time the immediate requirement arose, despite being apprised of the requirement 6 months earlier.

DECISION

Hill Aerospace & Defense protests the issuance of noncompetitive delivery order No. SA08 under contract No. F04605-91-G-0035 with Northrop Corporation by the Department of the Air Force, San Antonio Air Logistics Center, Kelly Air Force Base, Texas, for three types of upper longeron repair kits.

We deny the protest.

The Air Force's requirement for upper longeron repair kits developed from a problem that occurred in December 1986 when the cockpit longeron on an F-5F broke in flight destroying the aircraft and crew.^{1/} The Air Force subsequently grounded from service other F-5 aircraft after inspections revealed similar cracking in the upper cockpit longeron on these

^{1/} Longerons are the side-pieces of the fuselage of an aircraft.

aircraft. In order to eliminate the problem, on March 10, 1987, the Air Force issued a delivery order under an existing engineering services contract with Northrop (the manufacturer of the aircraft) for repair, durability, and damage tolerance assessment of the cockpit longeron on the F-5E and F-5F aircraft. Under the delivery order, certain upper longeron repair kits, identified as RK0363A, RK0364A, and RK0365A, were developed and various quantities of the latter two kits have been acquired. The Air Force reports that all work under this delivery order will not be complete for another year.

As part of the continuing effort to repair the F-5E and F-5F upper cockpit longeron, the Air Force published notices of the proposed award of additional sole-source contracts to Northrop for 98 RK0364A and 43 RK0365A longeron repair kits in the Commerce Business Daily (CBD) on December 18, 1989, and March 12, 1990, respectively. The notices stated that Northrop was the only approved source for these items. The notices invited potential responsible sources to submit offers and advised that no government furnished drawings and specifications were available for these items.

Based upon the level of interest expressed by unapproved sources, the Air Force, instead of proceeding with sole-source procedures, issued request for proposals (RFP) No. F41608-90-R-69085 on June 12, 1990, for the RK0364A and RK0365A kits, as well as for 37 RK0363A kits. The RFP contained a standard Air Force clause that informed potential offerors that offers from firms not previously identified as sources for the requirement would only be considered if it could be determined prior to the award that the offeror's item met the Air Force's requirements. The RFP's initial closing date was July 16, which was subsequently extended to August 31 and September 28 due to various problems in the specifications. On September 7, the Air Force extended the closing date indefinitely.

In mid-October, the Air Force was apprised that allied countries were dissatisfied with the delay in fulfilling their urgent/emergency requirements for longeron repair kits. Therefore, on October 19, the Air Force canceled the RFP and advised that routine requirements would be obtained under a future solicitation. Just prior to the cancellation, on October 16, Hill furnished the Air Force with a detailed technical data package and requested approval as a source for these longeron kits. On January 22, 1991, the Air Force issued delivery order SA08 to Northrop for 27 RK0363A, 41 RK0364A, and 42 RK0365A repair kits to fulfill urgent/emergency requirements of certain allied foreign

countries.^{2/} Hill protested on February 8 after it learned of the sole-source order.

The Air Force first asserts that the protest is untimely because the requirement for the kits and the agency's intent to make a sole-source award to Northrop were published in the CBD in December 1989 and March 1990, and Hill did not identify its interest in competing for the requirements within the required 45-day period.

A protester is required to respond to such notices within the 45-day period before we will consider its protest of the sole-source award. See DCC Computers, Inc., B-244149, May 29, 1991, 91-1 CPD ¶ ____; Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490. The purpose of this rule is to give the agency an opportunity to consider an offeror's preliminary proposal in order to decide whether to open a procurement to possible competition, while allowing only serious potential offerors to challenge the agency's sole-source decision. Here, the requirement advertised in the CBD was opened to possible competition through the issuance of an RFP that sought alternate sources. Hill's protest here is not that the Air Force failed to seek competition for the requirement announced in the CBD notices. The firm complains of a subsequent decision of the agency to procure on a sole-source basis what the Air Force describes as an immediate requirement for a smaller quantity of the kits. Under the circumstances, we see no reason why Hill's protest, filed shortly after it learned of the sole-source award, should not be treated as timely.

Hill argues that the sole-source award was improper for two basic reasons. First, Hill contends that the agency has not promptly processed its application for source approval. Second, Hill contends that the current sole-source situation was created by the Air Force's lack of advance procurement planning.

The overriding mandate of the Competition in Contracting Act is for full and open competition. 10 U.S.C. § 2304(a)(1)(A). Except in those noncompetitive situations that arise from a lack of advance procurement planning, however, a sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within

^{2/} The justification for the sole-source award cited 10 U.S.C. § 2304(c)(1) (1988), which authorizes noncompetitive procedures when the property or service is available from only one responsible source or a limited number of sources and no other type of property will satisfy the needs of the agency.

the required time. Donlee Precision, B-235782, Sept. 21, 1989, 89-2 CPD ¶ 262. We find the award here justified.

Hill's contention that the Air Force was dilatory in processing its source approval application is based solely on Hill's not having heard anything from the Air Force in response to its October submission for source approval. In this regard, Hill asserts that the Air Force did not promptly notify it of the "status" of its qualification effort, and states that it would have promptly responded in a satisfactory manner if it had been informed of any deficiencies in its technical data package.

In response, the Air Force states that it has not been dilatory. It reports that it has continued to evaluate the acceptability of Hill's technical qualification package since October, but, because the kits are "safety of flight" items, the technical review conducted on unapproved sources must be very comprehensive. The Air Force reports that Hill has been neither approved nor rejected, but after an initial evaluation, Hill was requested, in February, to provide certain additional information. The Air Force states that when Hill furnishes this information, 8 weeks will be needed to complete the evaluation.

Based on our review of the record, we do not find that the Air Force has been dilatory in evaluating Hill's technical qualification package. We have no evidence that Hill's request for source approval is not being properly processed. Also, we note that Hill did not make any effort to qualify as a source until October 1990, even though the Air Force published these requirements in the December 1989 and March 1990 CBD announcements as required by 10 U.S.C. § 2319(d)(1)(A), and the RFP, issued on June 12, expressly advised potential offerors that only qualified sources could receive the award. Hill has provided no evidence for why it did not act more expeditiously. The law is clear that an agency need not delay a procurement solely to allow a potential offer to obtain approval as a source. See 10 U.S.C. § 2319(c)(5).

Alternatively, Hill claims that the sole-source order was caused by a lack of advance planning by the Air Force in developing additional sources to meet the longeron repair kit requirements. For example, Hill notes that while the initial order for these items was issued in 1987, the Air Force has yet to obtain the necessary technical data from Northrop to qualify other potential sources.

The record indicates that Air Force found it necessary to noncompetitively procure the kits in October to fulfill an immediate requirement of certain allied countries that had F-5E and F-5F aircraft which were grounded pending repair. A primary reason that this acquisition had not been completed earlier (on a noncompetitive basis) was the agency's attempts to develop additional sources through the issuance of the RFP rather than because of a lack of advance planning. See Donlee Precision, B-235782, supra, at 3. As indicated below, the Air Force might have more quickly completed the developmental effort for these kits and obtained detailed drawings. Nevertheless, the record does not establish that the allied countries' needs identified in October are not legitimate, nor is there any evidence that any other source for the longeron repair kits could have been qualified at that time. Hill had only just submitted its technical package when this requirement arose, even though requests for alternate sources had been solicited as early as December 1989.

A procuring agency may, as here, limit competition for the supply of parts if doing so is necessary to ensure the safe, dependable and effective operation of military equipment. Lambda Signatics, Inc., 69 Comp. Gen. 495 (1990), 90-1 CPD ¶ 518. Since Hill had not obtained approval as a source (and we have no way of determining whether it is qualified to meet this requirement), and in view of the critical nature of this item, we do not find that the Air Force acted unreasonably in noncompetitively procuring a limited number of kits from Northrop.

The protest is denied.

While the agency's sole-source determination in this case had a reasonable basis, the Air Force has not explained why Northrop has not provided technical data to the agency that would facilitate full and open competition for the supply of the longeron repair kits. The agency states that detailed drawings will not be available for approximately a year. However, the initial 1987 purchase order with Northrop gave the Air Force the right to these drawings 6 months after receipt of the order. We have brought this matter to the Air Force's attention so that it can take such action as it finds appropriate.


James F. Hinchman
General Counsel