



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delco Electronics Corp.

File: B-244559

Date: October 29, 1991

Michael P. McGory, Esq., for the protester,
John A. Dodds, Esq., Department of the Air Force, for the
agency,
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Agency reasonably selected a firm, fixed-price type contract with fixed-price production options for the replacement of three fuel savings advisory components for aircraft, since the solicitation does not require the development of new technology and circumscribes risk within an acceptable degree of certainty.
2. Supply contract that contains production quantities for 5 option years following a 42-month basic period for first article testing and approval does not violate regulation establishing that the total of the basic and option quantities for supply contracts shall not exceed the requirement for 5 years without proper authorization under agency procedures.

DECISION

Delco Electronics Corp. protests request for proposals (RFP) No. F34601-91-R-29321, issued by the Department of the Air Force, for the replacement of three Fuel Savings Advisory System components in the KC-135 aircraft tanker. The RFP provides for the acquisition, on a firm, fixed-price basis, of six first articles per component with production quantities for 5 option years. Delco claims that the RFP is defective because the requirement for firm, fixed-prices, including options, exposes offerors to unreasonable risk and because the particular options in the RFP violate applicable regulations.¹

¹The Air Force initially claims that Delco is not an interested party eligible to maintain a protest since it did not submit a proposal on the RFP. However, since Delco timely protested the terms of the RFP prior to the closing

We deny the protest.

The scope of work under the RFP requires contractors to replace three components of the KC-135 Fuel Savings Advisory System, namely, the Fuel Management Computer, the Integrated Fuel Management Panel, and the Fuel Savings Advisory Computer. The RFP describes the manufacture of each replacement component with performance and design specifications, and engineering drawings. The protester supplied the components on the KC-135 aircraft to be replaced by this RFP.

The basic period of the RFP requests firm, fixed-prices for six first articles per component. The RFP states that the items produced for the first articles tests may not be shipped as part of the production quantity until they have been approved by the agency. The RFP establishes production requirements for 5 separate option years on a firm, fixed-price basis. The RFP solicits prices for graduated quantities of production units and designates a specific quantity within each option period to serve as the basis for evaluating the option prices. The RFP lists cost and reliability as the factors for award evaluation purposes.

Delco first challenges the use of a firm, fixed-price contract, in particular the use of fixed-priced options for the production quantities, to acquire these replacement components, claiming that this approach imposes an unreasonable risk upon offerors. The protester argues that the use of a firm, fixed-price contract violates Federal Acquisition Regulation (FAR) § 16.103(b), as the risk involved in manufacturing the components cannot "be predicted with an acceptable degree of certainty." In this regard, Delco argues that this contract is actually a development contract, rather than the supply contract indicated by the Air Force, and that Department of Defense (DOD) policy discourages the use of fixed-price options on development contracts.

In the conduct of negotiated procurements under the Competition in Contracting Act of 1984 (CICA), the head of a defense agency "may enter into any kind of contract that he considers will promote the best interests of the United States." 10 U.S.C. § 2306(a) (1988). FAR § 16.103(a) commits the selection of the appropriate contract type to the sound judgment of the contracting officer, and we will

date for receipt of proposals and requests as relief that the Air Force amend and resolicit the RFP, Delco is an interested party eligible to protest under our Bid Protest Regulations. Information Ventures, Inc., B-241641, Feb. 14, 1991, 91-1 CPD ¶ 173.

not disturb such a determination unless it is unreasonable. United Food Servs., Inc., B-220367, Feb. 20, 1986, 86-1 CPD ¶ 177; Southwest Marine, Inc., B-204136, July 20, 1982, 82-2 CPD ¶ 60. The regulations set forth several factors the contracting officer should consider in selecting the contract type, including the type and complexity of the contract requirements, FAR § 16.104. Where the risks involved are minimal or can be predicted with an acceptable degree of certainty, FAR § 16.103(b) requires the use of firm, fixed-price contracts.

Here, we find that the contracting officer reasonably based his selection of a firm, fixed-price contract, including the fixed-price options, on the criteria set forth in FAR § 16.104 after determining that the replacement of the three components as to form, fit, and function did not require the development of new fuel management technology, but only an application of existing technology that is readily available in the commercial market place. The agency has identified several sources that produce this type of system, and several vendors have apprised our Office that the specifications are sufficient to allow for a fixed-price contract with fixed-priced production options.²

Delco, however, specifically asserts that the alleged difficulty of integrating the new components with existing hardware of a potentially different development generation makes the use of a fixed-price contract impracticable. According to Delco, an offeror cannot reasonably predict whether its technical proposal will meet the interface requirements without complete access to the aircraft. Delco has submitted an in-depth critique of the riskiness of the specifications.

The agency has persuasively responded to each of the technical risk concerns expressed by Delco. We note that the design specifications for each component reference the existing system to clarify interface requirements, and the engineering diagrams and tables provide specific information on such things as connector designations, pin assignments,

²The fact that the components must be designed with regard to form, fit, and function or that first articles must be approved prior to the exercise of the options does not make this a research and development contract or mandate the use of a cost reimbursement contract, as contended by the protester. For example, first article testing may be required whenever a contractor has not previously furnished the product to the government. FAR § 9.303(a). Thus, the DOD policy directive upon which Delco relies, discouraging the use of fixed-price options on development contracts, is inapplicable.

input/output functions, circuitry and engine pressure. From our review, we find the RFP does not present a degree of risk that precludes the use of a fixed-price contract.³ In any case, an agency is not prohibited from offering to competition a proposed contract imposing substantial risk upon the contractor. J&J Maintenance, Inc., supra.

Delco next argues that the particular option provisions in the RFP violate FAR § 17,204(e), which provides that "[u]nless otherwise approved in accordance with agency procedures . . . the total of the basic and option quantities shall not exceed the requirement for [5] years in the case of supplies." This RFP provides a 42-month period for first article testing and approval, followed by 5 option years of production requirements, resulting in a total contract length of 7 1/2 years. Delco interprets FAR § 17,204(e) to forbid supply contracts that exceed 5 years.

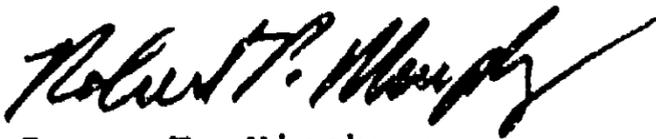
We disagree. FAR § 17,204(e) forbids the basic and option "quantities" in supply contracts from exceeding "the requirement" for 5 years; this provision does not prohibit the basic and option periods on supply contract from exceeding 5 years, as the regulation limits service contracts. The total option quantities under the present RFP represent the agency's 5-year requirement in accordance with the regulation. Although the RFP requires the supply of first articles as a prerequisite to the possible exercise of the options, we think first articles cannot reasonably be viewed as part of the agency's basic 5-year requirement, as contemplated by the regulation, since in essence they are simply preproduction test samples used to ensure that the production quantities for the Air Force's 5-year need are conforming. See Fidelity Techs. Corp., B-232340, Nov. 23, 1988, 88-2 CPD ¶ 511. In this regard, the RFP prohibits shipment of the first article units as part of the production quantity until they have been approved by the agency.

The protester also argues that the government should not be able to exercise later year options if it does not exercise earlier options, a possibility which the RFP permits. There is no regulation (nor has the protester cited any authority) that requires such sequential exercise of options. Nor has Delco shown that the challenged option procedures represent an unreasonable risk on the contractor. Thus, we find no basis to question this aspect of the RFP.

³We note that Delco, as the supplier of the existing components to be replaced by this RFP, would seem to have a considerable advantage over other offerors as to the interface requirements affecting performance. J&J Maintenance, Inc., B-244366, Oct. 15, 1991, 91-2 CPD ¶ ____.

Delco finally argues that the solicitation's use of options violates FAR § 17.202(b) (2), which states that inclusion of an option is normally not in the government's interest when, in the judgment of the contracting officer, an indefinite quantity or requirements contract would be more appropriate. In the present case, the government reasonably determined that an indefinite quantity or requirements contract was inappropriate because of the need to test and approve first articles before the exercise of the production options.

The protest is denied.


for James F. Hinchman
General Counsel