



Comptroller General  
of the United States

121222

Washington, D.C. 20548

## Decision

**Matter of:** Resource Consultants, Inc.

**File:** B-255053

**Date:** February 1, 1994

Gerald H. Werfel, Esq., Pompan, Ruffner & Bass, for the protester.

Kevin M. Perkins, Esq., for CAE-Link Corp., an interested party.

B. T. Decker, Esq., Eric Lile, Esq., Department of the Navy, for the agency.

Sylvia Schatz, Esq., Stefanie G. Weldon, Esq., and Dayna K. Shah, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

A procuring agency's decision to combine several tasks to support a modification to a weapon trainer system is reasonable where agency has shown that this combination represents its minimum needs to obtain necessary systems integration and the record shows that any further breakdown of the procurement would shift the ultimate burden for successful performance from the contractor to the Navy.

### DECISION

Resource Consultants, Inc. (RCI) protests the terms of request for proposals (RFP) No. N61339-93-R-0056. The solicitation was issued by Naval Air Warfare Center Training Systems Division (which name was changed during the pendency of this protest from the Naval Training Systems Center) for modification to the Navy's weapon system trainers for P-3 aircraft. The gravamen of RCI's protest is that inclusion of Task III in the RFP unduly restricts competition and gives an unfair competitive advantage to a potential competitor. RCI contends that Task III should be deleted from the RFP.

We deny the protest.

## BACKGROUND

On August 25, 1993 the Navy issued the RFP seeking offers for a four-task contract to modify the Navy's current Weapon Systems Trainer (WST) for the P-3 aircraft by simulating the aircraft's in-flight (2F87(F)) and tactical (2F140(T)) environments. The P-3 is a four-engine, long range, land based maritime patrol aircraft whose primary mission is to conduct anti-submarine warfare and surface ship surveillance.

Task I is to be awarded on a firm, fixed-price basis commencing at the time of the contract award. Tasks II and III are for firm, fixed-price options under the basic contract and Task IV is to be performed on a time-and-materials basis by the issuance of individual delivery orders over a 60-month period from date of award.

Task I requires general nonacoustical modifications to both the hardware and software of the 2F87(F) device at specified locations. Task II requires non-acoustical modifications of the software of device 2F140(T) S/N 3, to the ALR-66B(V)3 ESM in Florida. Task III requires both acoustical and non-acoustical modifications of the hardware and software of device 2F140(T) S/N 4, to the P-3 Aircraft Update Configuration located in Maine and to relocate the trainer system to Washington state. Task IV encompasses all of the categories of effort (acoustical, non-acoustical, hardware, software) set forth in Tasks I-III.

The solicitation was amended twice. The most significant change for the purposes of this protest was issued on September 15, 1993, and modified Task III's Statement of Work, paragraph 3.6.3.1. The change deleted the requirement that the software for that task was to be used "as is" with no modification and inserted the requirement that the contractor was to use the existing software as "Baseline Software."

Proposals were due on December 1, 1993. The protest was timely filed on September 23, 1993. CAE-Link Corporation (CAE) gave timely notice that it was an interested party to this protest.

As a preliminary matter, CAE alleges that RCI is not an interested party entitled to protest under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1993), asserting that boilerplate Department of Defense "Organizational Conflict of Interest" clauses in RCI's current contract with the Navy preclude it from submitting a proposal on this procurement. The general purpose of these clauses is to prevent the

existence of conflicting roles that might bias a contractor's judgment and prevent unfair competitive advantage. Federal Acquisition Regulation (FAR) § 9.505. The FAR provision further charges each agency to examine the particular facts of each contracting situation and apply common sense, good judgment, and sound discretion in its determinations. CAE has offered no evidence to show how RCI's prior work falls within the intended scope of these clauses. We note that Navy has not indicated that it is concerned with the matter. With nothing in the record to support CAE's bare assertion of a conflict of interest and in the absence of an agency determination, we find there is insufficient evidence to conclude that RCI is not an interested party for this procurement.

RCI's protest raises the issue of whether the agency, in combining several requirements into a single solicitation, is unduly restricting competition. The protester alleges that the RFP, by "bundling" Task III with Tasks I and II, has overstated the minimum needs of the government contrary to 10 U.S.C. § 2305(a)(1) (1988) and gives CAE an unfair advantage in the procurement. We disagree.

The protester argues that the RFP seeks to combine separate and discrete tasks involving different device types, different devices, and different kinds of work which, in the past, were competed as separate procurements.

The agency explains that the two devices which are the subject of this procurement comprise a front end, or flight, portion and a back end, or tactics, portion of the simulator, which combine to form a single WST. The two ends are joined by software and hardware with common interfaces to make the WST. Five distinct training concepts are merged into one WST; flight crew training; operator part-task acoustic training; operator part-task non-acoustic training; integrated air crew tactics training; and full weapons system training. Navy states that a large amount of communications and data transmissions occur between the training devices during training. The signals are routed through a custom built interface cabinet with driver software written on both trainers. Therefore, Navy asserts, modifications to one trainer impact the capability of both trainers to operate together as one WST.

The agency states that to have separate contractors design such an integrated system, as was done in the past, imposes an unacceptable technical risk. According to the Navy's project officer, if two different contractors were to perform the various task modifications, the integration of those modifications into a single model would require still a third modification to the two configurations to form the final single configuration. Using more than one contractor

shifts the burden for the total systems integration from the contractor to the Navy, which is a fundamental change in the purpose of the procurement. In addition, the result would be a potential increase by approximately 50 percent in downtime for trainer use, which would further exacerbate the problem of current decreased trainer availability. Navy asserts that no other training vehicle exists to certify Navy Aircrews for deployment, and that military readiness would be severely compromised if coupling of these devices were degraded by separate contractors working each device or working hardware and software solutions separately. The agency contends that it is essential to its minimum needs that a single contractor be responsible for the development and implementation of an integrated system.

The Competition in Contracting Act of 1984 generally requires that solicitations include specifications that permit full and open competition, and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2305(a)(1). Since bundled or consolidated procurements combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can only furnish a portion of the requirement. We review such solicitations to determine whether the approach is reasonably required to satisfy the agency's minimum needs. See National Customer Eng'g, 72 Comp. Gen. 132 (1993), 93-1 CPD ¶ 225. Because procurements involve unique situations, contracting officers must base their decisions whether to consolidate or "bundle" certain requirements on the individual facts. Our review recognizes the uniqueness of each case. The Sequoia Group, Inc., B-252016, May 24, 1993, 93-1 CPD ¶ 405. We have upheld the consolidation of requirements where agencies have provided a reasonable basis for using such an approach. See Electro-Methods, Inc., B-239141.2, Nov. 5, 1990, 90-2 CPD ¶ 363 (agency properly combined requirements for jet engine upgrade modification kits and engineering services).

While RCI cites to Allfast Fastening Sys., Inc., 72 Comp. Gen. 149 (1993), 93-1 CPD ¶ 266, it does not explain how that decision supports its position. In Allfast, we found that a minor rearrangement in the agency's requirements would increase the level of competition, permitting the protester to compete, and still meet the agency's minimum needs. RCI does not argue that it is precluded from competing but merely speculates that another competitor may do better in one task to be evaluated. It is that task that RCI would like eliminated from the instant procurement and which the agency argues is essential to its minimum needs.

We agree with the Navy that more applicable to this procurement are our decisions of Southwestern Bell Tel. Co., B-231822, Sept. 29, 1988, 88-2 CPD ¶ 300, where we sustained a requirement to have one contractor provide a complete telecommunications system to an Air Force base to ensure military readiness; and Batch-Air, Inc. B-204574, Dec. 29, 1981, 81-2 CPD ¶ 509, where we upheld the single package concept for purchase, overhaul and installation of aircraft engines plus spare engine services for design and engineering to ensure overall integration of the tasks. More recently, we held in LaQue Center for Corrosion Tech., Inc., B-245296, Dec. 23, 1991, 91-2 CPD ¶ 577, that it was reasonable for the Navy to seek an integrated approach for solving marine corrosion problems. We find reasonable here the agency's explanation that it requires an integrated approach to the subject procurement and that this represents its minimum needs.

We are also not persuaded that CAE has an unfair competitive advantage over other potential offerors that the government must mitigate.<sup>1</sup> RCI asserts that Task III covers the "exact same work" that CAE performed for the Navy under a previous contract.

Task III requires hardware and software modifications to device 2F140(T) S/N 4 to simulate the newer sonobuoys used to track and detect submarines, which the agency states requires faster processing speeds and wider frequency bandwidths that can be simulated by the older CAE design. Noting that the AN/SSQ-53E sonobuoy system is a new technology, Navy explains that the simulation work is very complex and will require significant redesign and development or a new system design.

In addition, the agency lead engineer states that other companies have developed newer and more capable systems. He notes that the CAE acoustical generator design is an older technology using much hardware in its design while newer designs are software driven, that four other companies, which he names, have developed and delivered acoustical generators to the Navy for trainer use, and one additional company is currently under contract to modify a P-3 trainer which includes the AN/SSQ-53E sonobuoy system simulating the

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<sup>1</sup>RCI initially contended that Task III requires a contractor to perform its work on the existing software "as is" which gives an unfair advantage to CAE, the software developer. However, the agency points out, and RCI concedes, that Task III was amended, prior to the filing of this protest, to specify that the software is only the "baseline" for the work to be performed and may be appropriately changed with government approval.

newer sonobuoys. In rebuttal, RCI continues to assert that CAE is the only contractor to have supplied the Navy with an acoustical generator like the one required under Task III, Navy's statements to the contrary notwithstanding. In response, Navy has provided additional information on the capability of contractors other than CAE to develop acoustical generators for trainer use.

In our view, the record does not support the protester's allegation that CAE enjoys an unfair competitive advantage over other potential offerors. We find nothing in the record to suggest any unfair action on the part of the government in favor of CAE, nor are we convinced that CAE has an advantage over its competitors based on prior government contracts. In any case, the government is under no obligation to eliminate an advantage which a firm may enjoy because of its particular circumstances, including award of other contracts by the government, unless the advantage has resulted from unfair action on the part of the government. See Group Tech. Corp.; Electrospace Sys., Inc., B-250699 et al., Feb. 17, 1993, 93-1 CPD ¶ 150; Ferranti Int'l Def. Sys., Inc., B-237555, Feb. 27, 1990, 90-1 CPD ¶ 239.

The protest is denied.

*for*   
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Acting General Counsel