



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

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Decision

Matter of: Litton Computer Services

File: B-256225.4; B-256225.5

File: July 21, 1994

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DIGEST

Proposed sole-source award for enhancement and
implementation of automated aircraft maintenance management
system under the authority of 10 U.S.C. § 2304(c)(2) (1988)
is unobjectionable where protester's responses to Commerce
Business Daily notices consisted of minimal information and
firm's experience was with a system differing substantially
from the required system, which therefore failed to
establish that the firm could meet the agency's
requirements, and as a result the agency reasonably
determined that only the developer of the original system
had the necessary extensive system knowledge and experience
to effectively accomplish the required tasks for the
technically complex system within the stringent
9-month time frame imposed by statute.

DECISION

Litton Computer Services protests the intended award of a
sole-source contract to Dynamics Research Corporation (DRC)
under a solicitation issued by the Department of the
Air Force for development, implementation, operation, and
support of the Tactical Interim CAMS¹ and REMIS¹ Reporting

¹CAMS, the Core Automated Maintenance System, is a base-
level maintenance information system developed by the Air
Force.

System-92 (TICARRS-92), a centralized worldwide automated maintenance support system for F-15, F-16, and F-117A aircraft. The protester primarily challenges the sole-source determination.

We deny the protest.

BACKGROUND

TICARRS-92 is an enhanced composite of two computer information systems--TICARRS-87 and the Smart Data System (SDS)--both developed by DRC under contract to the Air Force. TICARRS-87 was and continues to be used to support the Air Force's F-16 and F-15 aircraft. SDS, which contained enhancements to TICARRS-87, was used in conjunction with the F-117A aircraft until 1992, when the aircraft was declassified and was switched to CAMS. Although TICARRS-92 software, incorporating the SDS enhancements, has been developed by DRC, its fielding has been limited to a 6-week operational assessment, beginning in March 1993, for F-15 aircraft at one base. The procurement here is essentially for a number of enhancements to correct perceived functional deficiencies in TICARRS-92 software, discovered lacking during the assessment, as well as overall implementation of the system.

Although the Air Force originally had no plans to enhance or implement TICARRS-92, having chosen to continue using CAMS/REMIS, it was directed to do otherwise by Congress after studies of CAMS/REMIS found performance and data integrity problems. In the 1994 Department of Defense Appropriations Act, enacted on November 11, 1993, Congress directed the Air Force to reestablish TICARRS-92 for certain aircraft and discontinue CAMS/REMIS as follows:

"Provided, that \$15,500,000 shall be used only to operate, maintain, and enhance the Tactical Interim CAMS and REMIS Reporting System (TICARRS-92): Provided further, that TICARRS-92 be reestablished with direct maintenance data input, as the supporting information system for at least one wing of the F-15, F-16, and F-117A aircraft by no later than 31 May 94: Provided further, that TICARRS-92 be reestablished with

²(...continued)

²REMIS, the Reliability and Maintainability Information System, is the Air Force's central data base for CAMS data. It was developed by Litton, after award of a competitive contract in September 1986, and continues to be operated and maintained by the firm. While CAMS and REMIS are sometimes referred to jointly as a single information system, CAMS/REMIS, they are in fact two systems.

direct maintenance data input, as the supporting system for all F-15, F-16, and F-117A aircraft no later than August 31, 1994: Provided further that none of the funds appropriated or otherwise made available under this Act shall be used to operate maintain or otherwise support an automated maintenance management system for F-15, F-16, and F-117A aircraft other than TICARRS-92 after August 31, 1994."

Pub. L. No. 103-139, 107 Stat. 1418, 1422 (1993).³

In order to meet the August 31, 1994, statutory deadline for reestablishing TICARRS, the Air Force determined that it was necessary to begin work immediately in two phases--phase I for system definition and planning and phase II for system development, implementation, and operation. On December 3, 1993, the Air Force issued a delivery order for phase I to DRC. This phase I delivery order, No. 0006, was issued under an existing contract (No. F33600-90-D-0360) with DRC which included TICARRS-87 operation and maintenance.

Concerning phase II, on November 24, 1993, the Air Force published a notice in the Commerce Business Daily (CBD) of its intent to negotiate a sole-source contract with DRC. The CBD notice cited 10 U.S.C. § 2304(c)(1) (1988), implemented by Federal Acquisition Regulation (FAR) § 6.302-1, which authorizes other than full and open competitive procedures when the needed supplies or services are available from only one responsible source and no other type of supplies or services will satisfy the agency requirements. However, the initial CBD notice did not include standard note 22, which advises that the government intends to negotiate with only one source; provides parties with a 45-day period in which to identify their interest and capability to respond to the requirement or to submit proposals; and states that based on the information received, the government will determine whether to conduct a competitive procurement. To remedy this, on December 1, the Air Force published a revised CBD notice which added note 22 to the previous notice, thus giving parties until January 15 to submit responses.

By letter dated December 7, Litton requested a copy of the phase II solicitation for TICARRS-92. Litton stated in the

³While the agency has requested Congressional approval of an extension of the August 31 deadline, no extension has been granted and under current law if the deadline is not met funds will not be available for a maintenance support system for F-15, F-16, and F-117A aircraft.

letter that it "note[d] with interest the government's intent . . . to negotiate a sole-source award" for TICARRS-92; it requested that the Air Force instead consider using full and open competitive procedures for the procurement. Litton claimed that "as the developer of the REMIS system . . . [it] has the necessary skills and subject matter expertise to operate, maintain, and enhance the TICARRS system."

The Air Force, by letter dated December 28, furnished Litton a copy of the SOW, which included agency requirements for TICARRS-92 development, implementation, operations, and support in specific areas, including software, hardware, and telecommunications. The Air Force advised Litton in the letter that since it "[could not] conduct a competitive acquisition and comply with the congressionally mandated implementation dates," it "intend[ed] to use other than full and open competitive procedures for this effort under FAR § 6.302-2 [i.e., unusual and compelling urgency] (and not FAR § 6.302-1, as originally synopsized)." The Air Force stated, however, that "[a]fter successful compliance with the [fiscal year 1994] congressional mandates regarding TICARRS-92, the Air Force intends to follow all statutory and regulatory requirements in awarding any following TICARRS requirements."

On January 13, 1994, after receiving the SOW, Litton filed its initial protest with our Office challenging the propriety of the intended sole-source award to DRC and the Air Force's failure to solicit Litton. In support of its protest, Litton submitted an affidavit from its REMIS program director concerning the firm's knowledge of REMIS, as an indication of the firm's ability to implement TICARRS-92.

On February 4, 1994, the Air Force finalized the written justification for use of other than competitive procedures, as required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(f). The agency concluded that award to DRC was justified under 10 U.S.C. § 2304(c)(2), implemented by FAR § 6.302-2, which authorizes other than competitive procedures when the agency need for supplies or services is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits proposals. According to the justification, if TICARRS-92 is not fully implemented by the August 31, 1994, statutory deadline, the Air Force will be precluded by statute from expending appropriated funds for the current TICARRS system or any other automated maintenance management system for the affected aircraft; without an operating maintenance management system, explained the agency, serious injury would result to the readiness and sustainability of

the Air Force's combat aircraft. The Air Force determined that DRC, the original system developer, is the only firm with the "extensive system knowledge and experience" needed "to effectively accomplish the tasks given the congressionally mandated system implementation schedule, which required reestablishment of TICARRS-92 by August 31, 1994. According to the Air Force, this knowledge and experience includes an in-depth understanding of the overall TICARRS system and particularly its large and complex data base design, application software design, communications equipment configuration, worldwide communications network operation, and required data system interfaces. The justification indicated that while other companies might be capable of performing the requirements, it would take a minimum of 9 months for competitive source selection and 6 more months for an alternate source to achieve the requisite performance level and accomplish the required tasks, which would exceed the 9 months allowed by statute for completing the entire project. Consequently, the Air Force concluded that due to the statutorily imposed deadlines, the time required to solicit and evaluate an additional offeror, and the time required to enable another offeror to become capable of meeting the Air Force's requirements, it was not practicable to request an offer from any source other than DRC.

On February 18, Litton submitted a technical and price proposal to the agency for the TICARRS-92 Phase II development, implementation, and operation requirement. The agency rejected Litton's proposal as late since it was submitted after the 45-day period provided for responses in the CBD notice, i.e., January 15, 1994.

SOLE-SOURCE PROCUREMENT

Litton argues that either of the two submissions it made before January 15--its December 7 letter to the agency or its January 13 affidavit, attached to its protest filed with our Office and copied to the agency--established the firm's capability to meet the agency's needs, and thus demonstrates that the agency lacked a reasonable basis for the sole-source procurement. We disagree.

An agency may use other than competitive procedures to procure goods or services where its needs are of such an unusual or compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits proposals. 10 U.S.C. § 2304(c)(2); see also FAR § 6.302-2(a)(2). When citing an unusual and compelling urgency, the agency is required to request offers from "as many potential sources as is practicable under the circumstances." 10 U.S.C. § 2304(e). An agency, however, has the authority under

10 U.S.C. § 2304(c)(2) to limit a procurement to the only firm it reasonably believes can properly meet its needs within the time available. Abbott Prods., Inc., B-231131, Aug. 8, 1988, 88-2 CPD ¶ 119. We will not object to an agency's determination to use other than competitive procedures unless we find that the agency's decision lacks a reasonable basis. Id.

Under the circumstances of this case, where the requirement involved a large and complex data base design, application software design, communications equipment configuration, worldwide communications network operation, and data system interfaces, we think it was incumbent upon Litton to provide specific technical information as to its knowledge and experience with these areas of the TICARRS system in order to establish that it would be able to perform the required software enhancements and implement the system, concurrent with providing on-site technical support, at the 68 worldwide operational locations within the stringent mandated time frame. See Mine Safety Appliances Co., B-233052, Feb. 8, 1989, 89-1 CPD ¶ 127. In essence, the agency determined that only an offeror which was thoroughly familiar with these areas of the TICARRS system, such as DRC, could perform the requirements within the available time. However, Litton's December 7 and January 13 submissions gave no indication of the firm's capabilities in these areas of the TICARRS system.

Litton's December 7 letter to the agency expressed interest in the procurement, but it gave no specific indication of the firm's capability to meet the agency's TICARRS-92 requirements. Rather, the letter merely included the general claim that Litton "as the developer of the REMIS system has the necessary skills and subject matter expertise to operate, maintain, and enhance the TICARRS system." As for the 5-page affidavit, furnished with its January 13 protest, this included only a brief general description of CAMS/REMIS (stated in the affidavit as taken from an Air Force brochure), a brief listing with one- or two-sentence descriptions of seven tasks Litton believed necessary to meet the agency's requirements, and general statements concerning Litton's knowledge of the CAMS/REMIS systems as follows:

"Litton would be in a unique position to effect [the] enhancements within TICARRS-92 by reason of the knowledge it has amassed regarding the Air Force user functions which Litton has had to support through CAMS and REMIS. In its design, development, testing, implementation, operations and maintenance of REMIS since 1986 . . . Litton's program management and engineering personnel have had to address, analyze, grapple

with, and resolve literally hundreds, if not thousands, of questions and potential and actual conflicts regarding system interfaces and the needs of Air Force weapon system users for obtaining timely, accurate and comprehensive maintenance data.⁴ Notwithstanding any advantage DRC might have with respect to its knowledge, as system designer, of peculiarities within the operation of TICARRS-92, Litton's in-depth knowledge of Air Force user needs places it in an even better position than DRC to expedite Air Force efforts to duplicate CAMS/REMIS functionality within TICARRS-92."

While the affidavit referred to Litton's experience with REMIS, a system that performs some of the same types of functions as TICARRS, it gave no specific indication how knowledge of a system differing from TICARRS would enable the firm to meet the agency's TICARRS requirements here. Indeed, the affidavit acknowledges that Litton has no knowledge of the peculiarities of the operation of the TICARRS system. In sum, the two submissions made by Litton gave no indication that the firm had any specific knowledge or experience with the TICARRS system itself.

Litton maintains that, even without the firm's December 7 and January 13 submissions, the agency had "detailed knowledge" of the firm's capabilities as the developer and operator of REMIS, which should have been sufficient to establish the firm's capability to perform the TICARRS requirements within the allotted time. Moreover, Litton contends that the agency had only to consider the firm's February 18 TICARRS-92 proposal to establish the firm's capabilities. The agency does not dispute that a contractor with Litton's REMIS experience could acquire the capabilities to perform the TICARRS-92 requirement, but contends that here there was insufficient time within the mandated schedule to accommodate learning curve time which would be necessary for a firm, such as Litton, not thoroughly familiar with the TICARRS system.

We see no indication in the record that the firm's REMIS expertise in itself was sufficient to establish the capability to perform the TICARRS-92 requirement within the

⁴While the affidavit also indicated that Litton "designed and developed" CAMS, the record indicates that CAMS was in fact developed by the Air Force. As indicated in Litton's subsequently submitted proposal, Litton's CAMS experience was apparently limited to "work on the maintenance of current CAMS software" and "the development of interfaces between CAMS and REMIS."

allotted time, given the major differences between the two systems. For example, in terms of the general complexity of the data base design, the record indicates that TICARRS uses a central or "network-hierarchical" type data base architecture, which is "generally used for high transaction-rate systems," and is "complex to design and maintain, and once defined, [is] difficult and time-consuming to change." Institute for Defense Analyses (IDA) Paper P-2863, August 1993, V-35. In contrast, the REMIS system developed by Litton uses a "relational type of data base" which "[is] not as fast [as the network-hierarchical type], but [is] easier to maintain, expand, and change, and [is] somewhat easier to use in terms of accessing and reporting different aspects of the data base records." Id., V-35. In terms of functions, those performed by TICARRS are more numerous than those performed by REMIS; TICARRS accomplishes the CAMS base level functions in addition to the centralized REMIS functions designed by Litton. Further, TICARRS uses different hardware, software, and communications from that used by REMIS, and for which Litton has not claimed expertise. Additionally, TICARRS uses an application code not used by REMIS and for which Litton has indicated no detailed knowledge.

Given these major differences between the REMIS and TICARRS systems, we see no indication that Litton's REMIS expertise would enable the firm to perform the TICARRS-92 requirement within the expedited time frame required here, which precluded learning curve time. Consequently, based on Litton's lack of specific TICARRS knowledge and experience, we believe that the agency reasonably concluded that only DRC, which had extensive knowledge of and experience with the system as its developer, could meet the government's needs within the stringent time frame mandated by Congress.

As for Litton's February 18 TICARRS-92 proposal, by the time it was submitted, the agency already had considered the protester's expressions of interest in the procurement, knew of the firm's REMIS experience, and had executed the justification for use of other than competitive procedures. Given these circumstances and the urgent time frame of the procurement, we believe the agency reasonably declined to consider Litton's further proposal submission. Thus, we find the proposed sole-source award reasonable.

CONFLICT OF INTEREST

Finally, Litton alleges that DRC prepared the TICARRS-92 specifications. Litton believes that DRC's work would give it a competitive advantage in the phase II procurement, and concludes that therefore, DRC should be excluded from the TICARRS-92 phase II procurement on the basis of an organizational conflict of interest under FAR § 9.505.2.

The Air Force, on the other hand, maintains that the specifications were in fact developed by the agency.

We need not decide whether DRC assisted the Air Force in defining its requirements, since even if that were the case, the FAR organizational conflict of interest provision cited by the protester is not applicable to the sole-source procurement here. The FAR's organizational conflict of interest provision restricts contractors from providing systems, major components of the systems, or services in cases where a contractor has assisted the government in defining its requirements by preparing or assisting in the preparation of a work statement "to be used in competitively acquiring [the] system or services." FAR § 9.505-2(b)(1). This provision is intended to avoid the possibility that the contractor, by virtue of its special knowledge of the agency's future requirements, would have an unfair advantage in the competition for those requirements. See FAR § 9.505-2(b); see Pragma Corp., B-255236 at al., Feb. 18, 1994, 94-1 CPD ¶ 124. Here, however, because the procurement is sole-source, FAR's conflict of interest provision has no applicability.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel