



Decision

Matter of: Potomac Electric Corporation

File: B-418908; B-418908.2

Date: October 16, 2020

Leny Chertov, Potomac Electric Corporation, for the protester.
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participated in the preparation of the decision.

DIGEST

Protest challenging a solicitation limited to only two previously approved sources as unduly restrictive of competition is denied where the protester did not submit a source approval request for the items being procured.

DECISION

Potomac Electric Corporation, a small business of Boston, Massachusetts, protests the terms of request for proposals (RFP) No. SPRDL1-19-R-0327, issued by the Defense Logistics Agency (DLA), Land Warren unit, for DC traverse electric motors. Potomac argues that the RFP is unduly restrictive in that it limits the competition to only two previously approved sources of supply. The protester also challenges the process to become an approved source, arguing it is unfair because it fails to provide a reasonable opportunity for alternative sources to become approved. Finally, the protester contends that the restrictive nature of the procurement is due to the agency's lack of advanced planning.

We deny the protest.

BACKGROUND

On August 20, 2019, DLA¹ issued a sources sought notice on the Federal Business Opportunities (FBO) website (www.fbo.gov), seeking companies interested in being approved as a source of supply for electric motors, identified by national stock number (NSN) 6105-01-462-7177.² AR, Tab 3, Sources Sought Notice at 1. The notice indicated that the technical data for the motors was not available, and that in order to become an approved source, a company would have to undergo “qualification testing and evaluation.” *Id.* The notice included a hyperlink to the source approval request (SAR) package, which included a complete set of drawings; quality system documentation; and a qualification test plan (defined as “a detailed explanation of how the offeror is going to demonstrate that his version of the part will perform as well or better than the current part.”). *Id.*; AR, Tab 4, SAR Package Requirements. The notice closed on September 10, 2019, without any company expressing interest in becoming a qualified source to produce the item. COS/MOL at 1.

Later that year, on November 26, the agency published a synopsis notifying prospective offerors of its intent to issue the RFP here, seeking 285 motors, with an option for another 285 items. COS/MOL at 1; AR, Tab 5, Synopsis at 1. The synopsis indicated that the acquisition would be limited to the two previously approved sources, Skurka Aerospace, Inc., and Kollmorgen Corporation, doing business as DBA Danaher Motion Division. AR, Tab 5, Synopsis at 2. The synopsis further instructed that any vendor interested in “becom[ing] an approved source for future buys [should] contact the Competition Management Office” *Id.* at 2-3.

On May 27, 2020, the DLA Land and Maritime Competition Advocate Office executed a J&A document, limiting the anticipated competition to the two approved sources, under the authority of 10 U.S.C. § 2304(c)(1) and Federal Acquisition Regulation (FAR) 6.302-1, based on only one responsible source, or a limited number of sources, being available to satisfy the agency’s requirements. AR, Tab 6, J&A at 1. The J&A stated

¹ DLA Land and Maritime is a major subordinate command of DLA, with its primary physical location in Columbus, Ohio. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 1. DLA Land Warren, a subordinate unit of DLA Land and Maritime, is DLA’s procuring activity, co-located with the Army Tank-Automotive and Armaments Command (TACOM) in Warren, Michigan. *Id.*

² The electric motors are used for the production of the A3 Bradley Fighting Vehicle System. COS/MOL at 1. There are only two currently approved sources for provision of those motors, Skurka Aerospace, Inc., and Kollmorgen Corp., doing business as Danaher Motion Division. *Id.* at 2. Both companies were the original equipment manufacturers (OEM) who designed and developed their motors concurrently with the development of the Bradley Fighting Vehicle System, and have been supplying those motors for the past 20 years. Agency Report (AR), Tab 9, Decl. of Bradley Electronics Engineer ¶ 4; AR, Tab 6, Justification and Approval (J&A) at 1.

that “[t]he current technical data package (TDP) . . . for the Bradley A3 Brushless Traverse Drive Motor . . . is inadequate for competitive acquisition.” *Id.* at 2.

The J&A also provided some historical perspective, noting that between 1995 and 1997, during the development of the Bradley A3 Turret, the predecessor companies of Skurka Aerospace and Kollmorgen became qualified to “manufacture and test” M2/M3A3 Bradley Brushless Traverse Drive Motors. *Id.* Additionally, the J&A explained that these two companies then “designed their own motor during development of the A3 Bradley Fighting Vehicle System,” are the “[o]nly . . . companies [that] passed all the TDP and on-vehicle tests,” and have been supplying the motors for 20 years. *Id.* As important to this protest, the J&A provided that the current TDP in the agency’s possession is “too generalized” and “lack[s] not only the proprietary internal design of each vendor’s motor, but also the specific performance specifications to enable the motor to properly function with the A3 Turret.” *Id.*

The J&A continued that “[i]n 2008, using what the U.S. Army believed to be an adequately defined TDP, the Army attempted, via Contract W52H09-08-C-0045, to develop an additional source of supply.” *Id.* However, despite “designing and producing motors that passed all of the drawing and specification requirements the Army had available at that time,” those motors ultimately “failed the on-vehicle A3 Bradley Turret rotation tests at the Bradley prime contractor’s plant.”³ *Id.* On this basis, the agency concluded that the drawing and specifications contained in the Army’s TDP were “inadequate for competitive acquisition.” *Id.*

The J&A went on to explain that due to the lack of funding, the agency was unable to either conduct an investigation and assessment of deficiencies that resulted in the motor requirements failures on the 2008 contract, or “correctly define detailed performance requirements” to update the technical data. *Id.* Thus, the J&A acknowledged that “there is currently no effort to increase competition or qualify a new source for this procurement.” *Id.*

The J&A concluded that based on the agency’s market research, there are “no other commercial or non-developmental items available to meet the Government’s need or that could be modified to meet the Government’s need that interfaces and properly functions with the hardware and software in the Turret Drive System for the A3, A3 BFIST FSA, ODS-SA and M7-SA BFIST Bradley Fighting Vehicle System.” *Id.* at 3.

³ Although not specifically mentioned in the J&A, the record reveals that the 2008 contract to develop an additional source for these motors was awarded to the protester, seeking the production of 44 motors. AR, Tab 9, Decl. of Bradley Electronics Engineer ¶ 7. After passing all the qualification tests listed in the TDP, Potomac produced 33 motors that each passed the lot acceptance tests. *Id.* However, none of those 33 motors passed testing with the A3 Bradley Vehicles. *Id.* Accordingly, none of these motors were ever issued to the Bradley units or any repair facilities. *Id.*

Finally, the J&A stated that while Potomac expressed interest in becoming an approved source, because of the lack of “adequate technical data,” the protester “would have to submit a SAR containing its own technical data along with that of an approved source and/or adequate documentation to support conformance with performance testing requirements.” *Id.* at 4.

Potomac’s Efforts to Become an Approved Source

Following the unsuccessful performance of the motors manufactured by Potomac during the 2008 contract, Potomac pursued approval of its motor through the SAR process.

On February 15, 2011, Potomac submitted SAR No. 2011-007 to the agency, seeking to become an approved supplier of the motors at issue. COS/MOL at 5; Protest, App. I at 3. After review of the SAR package, the agency identified multiple unexplained failures during various tests of Potomac’s motors, and, on February 15, 2013, formally rejected Potomac’s submission.⁴ AR, Tab 13, Rejection Notice, Feb. 15, 2013.

Potomac also submitted a second SAR package in 2011, SAR No. 2011-279, requesting approval to perform repairs on the two approved sources’ motors utilizing Potomac’s own replacement parts. COS/MOL at 5. The agency also rejected this submission on December 17, 2012, noting missing documentation, quality assurance concerns, and asking Potomac to clarify a number of issues. AR, Tab 14, Rejection Notice, Dec. 17, 2012. There is no evidence in the record that Potomac ever addressed the agency’s questions, resubmitted the SAR packages, nor any other SAR package in the following years.

After the November 2019 publication of a synopsis announcing the upcoming limited sources solicitation, on December 19, Potomac emailed the DLA contracting officer complaining about the restrictive nature of the upcoming procurement. Protest, App. A, Email to the Contracting Officer at 1-2. In a subsequent December 2019 phone conversation between the contracting officer and the protester, the protester “expressed some reservations about pursuing the SAR process again, partially due to the great expense and difficulty recouping the investment costs due to the typically infrequent orders and low quantities required for this item.” AR, Tab 8, Contracting Officer’s Response at 2.

⁴ The rejection notice outlines the specific deficiencies of Potomac’s SAR package. AR, Tab 13, Rejection Notice, Feb. 15, 2013 at 1-2. For example, Potomac’s motors did not meet the required rotation rate of 57.9 degrees per second in both the clockwise and counter-clockwise direction that is required for the A3 Bradley, and failed the vehicle Diagnostic Maintenance Software Turret Traverse Test during on-vehicle tests at the prime contractor’s testing facility. *Id.*

Limited Sources Solicitation

On June 11, 2020, DLA Land Warren issued the solicitation announced earlier in the synopsis and challenged in this protest, seeking 285 motors for use in A3 Bradley vehicles, with an option for additional 285. AR, Tab 2, RFP at 4. The RFP anticipated award of a fixed-priced contract, with price being the only evaluation factor; the RFP also advised that the procurement would be conducted under FAR parts 12 and 15. *Id.* at 66. The solicitation listed Skurka Aerospace and Kollmorgen Corp. as the approved sources of supply. *Id.* at 4.

On June 16, Potomac sent a letter to the DLA contracting officer inquiring about submitting a proposal offering its own motor, citing exceptions to particular solicitation clauses regarding alternative sources that may have pending requests for approval of their alternate part. AR, Tab 7, Potomac's Letter to the Contracting Officer at 2-3. In response, the contracting officer instructed the protester that it did not meet the requirements of the cited exceptions to submit a proposal because Potomac did not have a pending request for TACOM approval of its motor, pointing out that Potomac had not even begun the SAR approval process. AR, Tab 8, Contracting Officer's Response to Potomac at 2-3.

This protest followed.

DISCUSSION

Potomac argues that the agency failed to provide it a reasonable opportunity to become an approved source of supply for the motors, despite responding "to every notice and marketing survey referencing for this item" since 2012. Protest at 5. The protester further contends that the agency's actions reflect a lack of advance planning, because the agency for a number of years did not update the TDP for the motors. In its supplemental protest, Potomac also challenges the adequacy of the J&A. Supp. Protest at 2. We have reviewed all of the protester's allegations and find no basis to sustain the protest.

Reasonable Opportunity to Qualify

The Competition in Contracting Act of 1984 (CICA) requires agencies to obtain full and open competition in procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A). An exception to this general requirement is where there is only one responsible source, or a limited number of sources, able to meet the agency's requirements. 10 U.S.C. § 2304(c)(1); *HEROS, Inc.*, B-292043, June 9, 2003, 2003 CPD ¶ 111 at 6. This is the exception cited in the J&A here. AR, Tab 6, J&A at 1.

When a contracting agency restricts a contract to an approved product or source, and uses a qualification requirement as the basis for that restriction, it must give other offerors a reasonable opportunity to qualify. *Barnes Aerospace Grp.*, B-298864,

B-298864.2, Dec. 26, 2006, 2006 CPD ¶ 204 at 5; see 10 U.S.C. § 2319(b). However, there is no requirement that an agency delay a procurement in order to provide an offeror an opportunity to demonstrate its qualifications. *Standard Bent Glass Corp.*, B-401212, June 23, 2009, 2009 CPD ¶ 143 at 5; *Lambda Signatics, Inc.*, B-257756, Nov. 7, 1994, 94-2 CPD ¶ 175 at 4; *Advanced Seal Tech., Inc.*, B-250199, Jan. 5, 1993, 93-1 CPD ¶ 9 at 3.

Here, as noted above, the sources sought notice specifically advised potential offerors that, because technical data for the motors was unavailable, any offeror interested in becoming an approved source would have to undergo “qualification testing and evaluation,” and submit a SAR package to the agency. AR, Tab 3, Sources Sought Notice at 1. However, Potomac took no action in response to that notice. Indeed, the record shows that the notice closed on September 10, 2019, without any company expressing interest in becoming a qualified source to produce the items.

While the record indicates that Potomac communicated with the contracting officer in December 2019, complaining about the upcoming limited sources procurement, and expressing concerns about undertaking the SAR process, we find that Potomac failed to diligently pursue an opportunity to become an approved source for the motors at issue.

The record is clear that, in 2011, Potomac submitted two SAR packages, seeking to become an approved supplier of the motors, and requesting approval to perform repairs on the two approved sources’ motors using Potomac’s own replacement parts. Both of these requests were rejected by the agency due to various identified deficiencies, which the protester never corrected. The record is equally clear that Potomac did not submit any other SAR since 2011, and otherwise failed to actively pursue available opportunities to qualify, including responding to the sources sought notice published on August 20, 2019.⁵

On this record, we find no merit in Potomac’s assertion that its failure to qualify as an approved source for the motors being procured is attributable to the agency. To the contrary, the record demonstrates that Potomac was advised that it needed to clarify information, and submit a revised SAR package to become a qualified source for this part. AR, Tab 14, Rejection Notice, Dec. 17, 2012; AR, Tab 13, Rejection Notice, Feb. 15, 2013. Accordingly, under the circumstances here, this protest ground is denied. *Standard Bent Glass Corp.*, *supra*.

Lack of Advanced Planning

Next, Potomac argues that the agency failed to conduct adequate planning for this

⁵ While the protester asserts that since 2012, it “has responded to every notice and marketing survey referencing for this item,” and has “approached Bradley Program Managers in 2013, 2014, 2015, 2017, 2019,” there is no evidence in the record that Potomac ever corrected the deficiencies identified in its 2011 SAR packages, or ever reapplied to become an approved source. Protest at 5.

procurement. In Potomac's view, the fact that the agency failed to update the technical data package for a number of years is evidence of lack of adequate planning. Based upon our review of the record, we find no basis to sustain the protester's contention.

Our Office has recognized that an agency may have a proper basis for a sole-source or limited sources award where it does not possess adequate data to conduct a competitive procurement. See, e.g., *Technology Advancement Grp., Inc.*, B-417609, Aug. 8, 2019, 2019 CPD ¶ 290 at 9 (protest denied where an agency reasonably determined that only the OEM could provide the services and products required); *Coastal Seal Servs., LLC*, B-406219, Mar. 12, 2012, 2012 CPD ¶ 111 at 5 (proper basis for a sole-source award exists where adequate data is not available to the agency to conduct a competitive procurement); *Masbe Corp. Ltd.*, B-260253.2, May 22, 1995, 95-1 CPD ¶ 253 at 3-4 (sole-source award for an aircraft engine part is justified where adequate data is not available to permit conducting a competitive procurement).

However, CICA specifically provides that noncompetitive procedures may not be used due to a lack of advance planning by contracting officials. 10 U.S.C. § 2304(f)(4)(A); *Metric Sys. Corp.*, B-279622, July 2, 1998, 98-2 CPD ¶ 4 at 6; *New Breed Leasing Corp.*, B-274201, B-274202, Nov. 26, 1996, 96-2 CPD ¶ 202 at 6. We have stated that the requirement for advance planning does not mean that such planning must be completely error-free, but, as with all actions taken by an agency, the advance planning required under 10 U.S.C. § 2304 must be reasonable. *Pegasus Global Strategic Sols., LLC*, B-400422.3, Mar. 24, 2009, 2009 CPD ¶ 73 at 9; *WorldWide Language Res., Inc.; SOS Int'l Ltd.*, B-296984 *et al.*, Nov. 14, 2005, 2005 CPD ¶ 206 at 12.

Here, the protester has offered no concrete evidence suggesting that the agency's advanced planning was unreasonable, or that the agency misrepresented the lack of funding it claims prevented it from updating the technical data package. Our Office has found that an agency's decisions due to changed conditions--which may include reduced budgets--do not, generally, indicate a lack of advanced planning. See, e.g., *Magnavox Elec. Sys. Co.*, B-258076.2, Dec. 30, 1994, 94-2 CPD ¶ 266 at 4; *Arthur Young & Co.*, B-221879, June 9, 1986, 86-1 CPD ¶ 536.

In this regard, the agency explains that due to a lack of funding, it was unable to properly assess the deficiencies in its old, pre-2008 technical data package, which became clear during Potomac's 2008 unsuccessful attempt to supply these engines. COS/MOL at 4. Instead, DLA notes that the "continuing need to sustain this aging weapon system," coupled with no other vendor demonstrating a capability to satisfy the government's needs, supports limiting the competition to "the approved sources whose motors are known to perform on-vehicle that were developed and approved by the end item OEM." COS/MOL at 6. Other than expressing its general dissatisfaction, the protester provides us with no reason to find the agency's position unreasonable in this regard. As a result, we deny this protest ground.

Adequacy of the J&A

Finally, in its supplemental protest, Potomac challenges the adequacy of the J&A. Supp. Protest at 2. We dismiss the supplemental protest because the protester failed to file its comments on the supplemental agency report by the due date established by our Office.

The filing deadlines in our Bid Protest Regulations are prescribed under the authority of CICA; their purpose is to enable us to comply with the statute's mandate that we resolve protests expeditiously. See 31 U.S.C. § 3554(a); *Keymiae Aero-Tech, Inc.*, B-274803.2, Dec. 20, 1996, 97-1 CPD ¶ 153. To avoid delay in the resolution of protests, section 21.3(i) of our regulations provides that a protester's failure to file comments within 10 calendar days "shall" result in dismissal of the protest except where GAO has granted an extension or has established a shorter period. 4 C.F.R. § 21.3(i).

Here, the agency filed its supplemental agency report on August 24, 2020. Thereafter, our Office established the due date for supplemental comments as August 27. Electronic Protest Docketing System, Dkt No. 12. The protester, however, failed to file supplemental comments.

As noted above, and as the protester was advised by the acknowledgment of protest that our Office sent when the protest was filed, our rules provide that the protest shall be dismissed where comments are not submitted on time. Our regulations do not provide exceptions to the requirement to file comments on time. *California Env'tl. Eng'g*, B-274807, B-274807.2, Jan. 3, 1997, 97-1 CPD ¶ 99 at 5; see also *Aspen Consulting, LLC*, B-405778.2, Mar. 19, 2012, 2012 CPD ¶ 117 at 1-2 (protest dismissed where comments were not filed by due date); *Andros Contracting, Inc.*, B-403117, Sept. 16, 2010, 2010 CPD ¶ 219 at 3 (protest dismissed where comments were sent to incorrect e-mail addresses and thus were not filed by due date). Accordingly, the supplemental protest is dismissed.

CONCLUSION

In sum, we conclude that the record here reasonably supports the agency's decision to conduct a limited sources procurement. Potomac's protest arguments do not meaningfully refute the agency's conclusion, summarized in a properly executed J&A, that only the two previously approved OEMs could supply the motors at issue. Our review of the record demonstrates that the protester failed to actively pursue available opportunities to qualify as an approved source. Moreover, Potomac has not shown that the agency's limited sources procurement was a result of lack of adequate planning.

The protest is denied.

Thomas H. Armstrong
General Counsel