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Decision

Matter of: Unitron LP
File: B-406770
Date: August 14, 2012

Cynthia Malyszek, Esq., Malyszek & Malyszek, for the protester.
Barry Spilka, Esq., Aviation Ground Equipment Corporation, for the intervenor.
Karin S. Wiechmann, Esq., Department of Navy, Naval Air Systems Command, for the agency.
Brent Burris, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Sole-source award of a follow-on contract for highly specialized equipment is unobjectionable where the agency reasonably determined that award to any other source would likely cause unacceptable delays in fulfilling the agency's requirements.

DECISION

Unitron LP (Unitron), of Dallas, Texas, protests the Department of the Navy's proposed award of a sole-source contract to Aviation Ground Equipment Corporation (AGE), of Freeport, New York, for up to forty Static Frequency Converters (SFCs), used to supply electrical power to aircraft during ground maintenance operations.

We deny the protest.

BACKGROUND

In April 2006, the Navy awarded Contract N68335-06-D-0013 to AGE for the design, development, and manufacture of up to 369 mobile SFCs. Agency Report (AR) at 2. The SFCs are trailer-mounted, modified commercial items, used to power military aircraft during ground maintenance operations. Id. Pursuant to this contract, the AGE SFC underwent substantial testing by AGE and the Navy to establish that the design met the required specifications and was suitable for its

intended use. Id. Three hundred and thirty SFCs were procured under this contract and are currently deployed in the field. Id.

Following the expiration of AGE's original contract, the Navy identified a need for up to forty additional SFCs. Id. On April 19, 2012, the Navy posted synopsis N68335-12-R-0144, stating its intent to negotiate on a noncompetitive basis with AGE for the procurement of up to forty SFCs to meet its Mobile Maintenance Facilities power requirements. AR, Tab E, Static Frequency Converter Synopsis, at 1. The synopsis provided the electrical conversion requirements and noted that the SFC sought was a "ruggedized aircraft power supply tested in the harshest environments." Id. The synopsis stated that the Navy intended to procure the items under the authority of 10 U.S.C. § 2304(c)(1) (2006) and Federal Acquisition Regulation (FAR) § 6.302-1, which authorize the use of other than competitive procedures when items required by an agency are available from only one responsible source or a limited number of responsible sources, and no other product will satisfy the agency's needs. Id. The synopsis also noted that the Navy "does not own current data, drawings, or other specifications to permit full and open competition" for the required SFCs. Id.

On April 27, Unitron responded to the Navy's April 19 synopsis, asserting that its commercially available SFC model could be modified to meet the Navy's needs and requesting that the Navy use full and open competition to fulfill the requirement. AR, Tab C, Letter from Unitron to Navy, April 27, 2012, at 1. On May 8, 2012, the Navy responded to Unitron, stating that award to a source other than AGE "would result in unacceptable cost, schedule, logistics, and programmatic risks" and render the Navy unable to meet its production schedule for the SFCs. AR, Tab B, Letter from Navy to Unitron, May 8, 2012, at 1. In its response, the Navy advised Unitron that it would cost approximately \$1.7 million to "compete and qualify" a second SFC source (including costs for "development, testing, logistics data, spare parts and training"). Id. The Navy also indicated that it would take approximately two years to compete and qualify a second source. Id. As such, the Navy concluded that "award to any other source would result in substantial duplication of cost to the Government that is not expected to be recovered through competition, as well as unacceptable delays in fulfilling the agency's requirements." Id.

The Navy also prepared a draft Justification and Approval (J&A) in support of its acquisition of SFCs using other than full and open competition. AR, Tab K, J&A. The J&A reiterated the Navy's position that without the data, drawings, and specifications for the AGE SFC, it would take up to \$1.7 million and approximately two years to compete and qualify a new SFC. Id. at 1. The J&A indicated that these estimates were based on the actual costs and time incurred to bring the AGE SFCs into operation under the original contract. Id. The Navy also contends that, in addition to the two years required to compete and qualify a new SFC, it would be an additional year before the Navy would actually receive production units. AR, Tab M, Declaration of Integrated Project Team Leader for the Mobile Facilities Program,

June 18, 2012, at ¶ 4. Based on the rate of failure of the equipment the SFCs are replacing, however, the Navy requires receipt of production units within 12-18 months. Id. According to the Navy, failure to meet this production schedule “would result in the Mobile Maintenance Facilities being without power and unable to complete their mission, which is to repair all repairable components of Marine aircraft.” AR at 3.

DISCUSSION

The Competition in Contracting Act (CICA) mandates “full and open competition” in government procurements obtained through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A). CICA, however, provides several exceptions to this requirement, including when an agency’s requirements can only be satisfied by one responsible source. 10 U.S.C. § 2304(c)(1); FAR § 6.302-1.

As noted above, the Navy has invoked its authority under 10 U.S.C. § 2304(c)(1) and FAR § 6.302-1, maintaining that AGE is the only available source of the required SFCs. More specifically, the Navy contends that the sole-source is permissible under FAR § 6.302-1(a)(2)(ii), which expressly provides for the noncompetitive procurement of “a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof” from the original source where the agency determines it is likely that: (1) award to another source would result in substantial duplication of cost to the government which is not expected to be recovered through competition; or (2) competition would result in unacceptable delays in fulfilling the agency’s needs. FAR § 6.302-1(a)(2)(ii).

In challenging the agency’s sole-source determination, Unitron posits that the required SFCs are not considered to be a major system or highly specialized equipment and that the agency’s application of FAR § 6.302-1(a)(2)(ii) is therefore misplaced. Protester’s Comments at 6. Given that the SFCs are specially modified items used to power military aircraft in harsh environments, and Unitron offers no support for its view that such items are other than highly specialized equipment, we have no basis to question the agency’s determination in this regard. See Magnavox Electronic Systems Co., B-258076.2, Dec. 30, 1994, 94-2 CPD ¶ 266 at 4 (finding that electrical units “specially developed for the sole purpose of permitting two-way transmissions of data” between bombs and airplanes were highly specialized equipment).

Unitron also challenges the findings in the Navy’s draft J&A¹ that award to any source other than AGE would likely result in substantial duplication of cost to the

¹ Unitron disputes the procedural adequacy of the draft J&A prepared by the Navy, noting that it is undated and unsigned and was not posted with synopsis

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government that is not expected to be recovered through competition and unacceptable delays in fulfilling the agency's requirements. AR, Tab K, J&A, at 2. Because either basis is sufficient to justify the sole-source award to AGE under FAR § 6.302-1(a)(2)(ii), and, as discussed below, we find that the Navy reasonably determined that acquisition from any source other than AGE would likely cause unacceptable delays, it is not necessary to address the question of duplication of costs.

As discussed above, the Navy estimated it would take approximately two years to compete and test a new SFC, and an additional year to produce the forty units needed. AR at 3. The Navy based this estimate on the time required to obtain the AGE SFCs under the original contract. *Id.* Unitron, however, contends that the Navy overestimates the amount of time required to competitively procure SFCs from a new source.

According to Unitron, it is unnecessary for the Navy to require five First Article units for testing--as was provided for under the original contract--because two tests are "traditionally" more than sufficient to conduct qualification and testing. Protester's Comments at 7, 10. Unitron, however, offers no facts or rationale for its view that the level of testing previously found necessary by the Navy for this type of equipment is overstated. As such, we have no reason to find unreasonable the Navy's estimates regarding First Article testing requirements.²

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N68335-12-R-0144, which provided notice of the Navy's intent to negotiate a sole-source procurement with AGE. *Id.* at 2, 5. FAR § 6.303-1(a) provides that a "contracting officer shall not commence negotiations for a sole source contract . . . or award any other contract without providing for full and open competition unless the contracting officer" properly executes the required J&A. Since the Navy has yet to actually negotiate or award a sole-source contract for the required SFCs, there is no requirement that the agency have completed the J&A at this juncture. See AUTOFLEX, Inc., B-240012, Oct. 16, 1990, 90-2 CPD ¶ 294, at 3 n.1. Likewise, the Navy was not required to include a final J&A with its synopsis of the contemplated sole-source. See Barnes Aerospace Group, B-298864, B-298864.2, Dec. 26, 2006, 2006 CPD ¶ 204 at 7 (noting that agencies undercut their credibility when they issue J&As on the basis of one available source before receiving responses to a presolicitation notice); FAR §§ 5.207; 6.305(a).

² Unitron also uses the same argument regarding the appropriate level of First Article testing to dispute the Navy's finding that it would incur substantial duplication of costs if it were to procure the SFCs using full and open competition. This argument is unpersuasive with regard to duplication of costs for the same reason we find it unpersuasive as to unacceptable delays.

Likewise, Unitron argues that a manufacturer of SFCs such as itself could meet the Navy's 12-18 month production schedule for 40 units. Id. at 9-10. In this regard, Unitron estimates that it could provide First Article deliveries for testing in no more than 6-8 months, that field testing would take an additional 2 months, and production units could be delivered (at a rate of 5 per week) within 6 months. Id. We do not find Unitron's assertions in this regard persuasive.

First, Unitron's own estimates indicate that it would have difficulty providing the required SFCs within the Navy's timeframe. Assuming 6 months for First Article deliveries, field testing for 2 months, and 7 months for production of all 40 units, yields a total time of 15 months, which does not include the time required to compete and award the contract--a process which took approximately 6 months when awarding AGE's initial contract. Id. Second, and more importantly, regardless of what timeframes Unitron asserts are possible, such unsupported contentions do not demonstrate that the Navy's estimate--based on actual experience in procuring the same equipment--is unreasonable.³

The protest is denied.

Lynn H. Gibson
General Counsel

³ Unitron also contends that the Navy's sole-source notice was inaccurate because it did not reflect the Navy's changed requirements to modify the SFCs for the Joint Strike Fighter F-35 and because it failed to indicate that the requirement was set aside for small business concerns. Protest at 10-11; Protester's Comments at 3-4, 8. Both of these contentions are without merit. As explained by the Navy, the procurement at issue is for forty SFCs with the same specifications as those provided under the original contract--i.e., not for SFCs modified to meet the power requirements of the F-35. AR at 2. Further, the procurement at issue does not modify the original contract. Rather, it will result in a new follow-on contract to be procured noncompetitively on the basis that there is only one responsible source. As a consequence, there was no requirement for the Navy to identify the procurement as a small business set-aside.