



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Decision

Matter of: Core Systems

File: B-411060

Date: April 30, 2015

Jorge I. Hernandez, Esq., Law Offices of Jorge I. Hernandez, for the protester. Brendan F. Ward, Esq., Scott E. Miller, Esq., and Ana F. Smith, Esq., Department of the Navy, Space and Naval Warfare Systems Command, for the agency. Brent Burris, Esq., and Jennifer Westfall McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly restricted competition to specific brand and model of computer server is denied where agency reasonably determined that no other product could undergo required testing and approval process in sufficient time to meet agency's needs.

DECISION

Core Systems, of Poway, California, protests the terms of request for quotations (RFQ) No. N66001-15-T-7320, issued by the Department of the Navy, Space and Naval Warfare Systems Command for ruggedized computer servers manufactured by Crystal Group, Inc., of Hiawatha, Iowa. The protester argues that the RFQ's brand-name requirement improperly restricts competition.

We deny the protest.

BACKGROUND

The RFQ, issued on January 13, 2015 as a small business set-aside, sought 45 Crystal model RS265G servers and 20 Crystal model RS375T servers for use in Navy submarines, with delivery to be made within 6-8 weeks of award.¹ RFQ at

¹ On September 17, 2014, the Navy issued a solicitation for the same brand-name requirement at issue here, which Core protested. Agency Legal Memorandum at 4. As a result of that protest, the agency cancelled the solicitation, prepared a revised (continued...)

1-3. The RFQ was issued pursuant to Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items, and FAR Part 13, Simplified Acquisition Procedures, and contemplates the issuance of a fixed-price purchase order to the firm submitting the lowest-priced, technically acceptable quote. Id. at 1-2.

The RFQ was accompanied by a J&A which provides that the agency requires the identified Crystal server models because they are an integral component of the Navy's submarine local area network (SubLAN) program of record.² Agency Report (AR), Tab 4, J&A, at 1. As described in the J&A, the SubLAN is part of the agency's common computing environment strategy, the purpose of which is to standardize the hardware and software used throughout the Navy's submarine fleet, thereby simplifying the processes for logistics, troubleshooting, training, repairs, and upgrades. Id. The J&A further provides that "[t]he use of identical IT [information technology] components throughout the SubLAN system is essential to the Government's requirements and thereby precludes the consideration of products manufactured by another company." Id.

The J&A explains that while the Crystal server models at issue have been procured and installed throughout much of the Navy's submarine fleet, several submarines have yet to have the servers installed. Id. at 4-5. The J&A further provides that the servers are mission essential upgrades for these submarines, and are scheduled to be installed during 2015. Id. at 4. The J&A also notes that because the entire SubLAN system is nearing end-of-life, the Navy does not anticipate procuring these server models again, and instead will use full and open competition to procure the system that will replace the SubLAN.³ Id. at 5.

In addition to the agency's standardization strategy, the J&A justifies limiting competition to the specified Crystal server models on the basis that no other servers can be tested and approved for use in the Navy's submarine fleet in sufficient time to meet the agency's 2015 installation schedule. Id. at 3-4. In this regard, the J&A notes that there are numerous environmental qualification tests (EQTs) that the Crystal servers have successfully undergone, and which any new server would be

(...continued)

justification and approval for other than full and open competition (J&A), and issued the RFQ that is the subject of the instant protest. Id.

² SubLANs provide the network infrastructure and services for all existing command, control, communications, computers and intelligence applications aboard the Navy's submarines, including navigation, tactical command, shipboard information, and non-tactical data processing. Agency Legal Memorandum at 2.

³ Although the protester argues that the agency will use Crystal servers in the system that will replace the SubLAN, this argument concerns future procurements that are not the subject of this protest.

required to pass before it could be installed on a Navy submarine.⁴ Id. at 2-3. Further, the J&A estimates that to test and approve an alternative server model would take approximately 18 months. Id. at 3. As such, the J&A concludes that no servers other than the already-approved Crystal servers can meet the agency's needs. Id. at 4.

Prior to the closing time for receipt of proposals, Core timely filed this protest.

DISCUSSION

Core does not challenge the Navy's need for a standardized IT system throughout its submarine fleet; rather, the protester argues that the Navy's decision to restrict competition to the specified Crystal server models is improper because Core can manufacture identical servers. Protester's Comments at 7; Protester's March 31 Supplemental (Supp.) Filing, at 3-4. As such, Core argues that the Navy can achieve its goal of using the same servers in all of its submarines without limiting competition to just Crystal servers. Id. The protester also contends that the agency greatly overestimates the amount of time it would take Core to have its own servers tested and approved for use in the Navy's submarine fleet. Protester's April 20 Supp. Filing, at 4-7. For the reasons discussed below, we find these arguments unpersuasive.

The RFQ was issued pursuant to FAR subpart 13.5, which allows agencies to use simplified procedures for the acquisition of commercial items of less than \$6.5 million.⁵ See § FAR 13.500(a). Procurements conducted under simplified

⁴ Core questions whether the testing required by the Navy in fact reflects a valid agency need, as the record shows that in the past, Crystal servers have been installed in Navy submarines prior to undergoing the EQTs. Protester's April 20 Supp. Filing, at 6. However, the fact that the agency did not require servers to have passed the same EQTs in prior procurements has no bearing on whether this is a valid requirement of the instant solicitation. See Northwest Airport Mgmt., L.P., B-404098, B-404098.2, Jan. 5, 2011, 2011 CPD ¶ 1 at 5. As discussed below, the protester has failed to show that the agency's testing requirements are unreasonable.

⁵ The protester's argument that the agency improperly split purchases of the Crystal servers into multiple procurements in order to stay below the \$6.5 million threshold is without merit. The agency explains that it has an active contract under which it has previously purchased Crystal servers as well as other items, but that it is unable to use that vehicle to procure the 65 servers at issue due to the maximum ceiling of the contract. Agency's April 14 Supp. Filing, at 6. We find that this explanation does not indicate any intent on the part of the Navy to divide its requirements so as to utilize simplified acquisition procedures. See MTB Group, Inc., B-295463, Feb. 23, 2005, 2005 CPD ¶ 40 at 5 (denying protest that agency improperly split

(continued...)

acquisition procedures are exempt from the statutory requirement to obtain full and open competition; instead, contracting officers are required to promote competition to the maximum extent practicable. 10 U.S.C. § 2304(g)(3); FAR §§ 13.104, 13.501(a). Accordingly, the issue here is whether the agency, in preparing the RFQ, specified its needs and solicited quotations in a manner designed to obtain competition to the maximum extent practicable and included restrictive provisions only to the extent necessary to satisfy the agency's needs. American Eurocopter Corp., B-283700, Dec. 16, 1999, 99-2 CPD ¶ 110 at 3-4. In reviewing a challenge to the agency's determination of its needs, we defer to the contracting agency, which is most familiar with its needs and how best to fulfill them, and we will question that determination only where it is shown to have no reasonable basis. Id.

The protester contends that if the Navy would provide firms with more information about the design of the Crystal servers, Core could manufacture identical products. Protester's March 31 Supp. Filing, at 2-3. The Navy responds that it is unable to provide the information firms would need to manufacture servers identical to the Crystal models because the agency did not procure the necessary technical data rights. Agency's April 14 Supp. Filing, at 1. The protester disputes this claim, noting that under the applicable regulations, the agency must have obtained at least the rights to form, fit, and function data, which would be sufficient for Core to produce identical servers. Protester's April 20 Supp. Filing, at 2 (citing Defense Federal Acquisition Regulation Supplement subpart 227.7102-1(a)(1)). Based on the record submitted to this Office, it is unclear whether the agency has the right to disclose the information that would be necessary for another firm to manufacture servers identical to the Crystal models. We need not decide this issue, however, because, as discussed below, the agency reasonably determined that given the length of time required to have a server tested and approved for use on Navy submarines, no servers other than the identified Crystal models could be delivered to the agency in sufficient time to meet its needs.

As discussed above, the RFQ was issued on January 13, 2015 and the Navy plans to install the servers, which the agency considers to be mission essential upgrades, during 2015. Given the agency's estimate that it would take approximately 18 months to test and approve a new server for use on its submarines, we find that the Navy reasonably concluded that it would not be possible for it to accept servers other than the already-approved Crystal models and still meet its installation schedule. Indeed, even if the Navy had provided firms the technical data needed to produce identical servers (assuming the agency had the necessary data rights to do so) in September of 2014 when the agency first issued a solicitation for the

(...continued)

requirements where record showed that agency's intent was not to avoid competition requirements).

requirement, a firm with non-Crystal servers would not have had enough time to have its products tested and approved for installation during 2015.⁶

The protester also disputes the agency's estimate of the time needed to have its servers qualified for use in the Navy's submarine fleet. Protester's April 20 Supp. Filing, at 4-7. In this regard, Core contends that because many of the EQTs require only a few hours to conduct, it could complete the necessary testing in well under one month. Id. The record reflects, however, that the testing and approval process requires significantly more than simply conducting the EQTs. Under the Navy's testing protocol, prior to conducting the numerous required tests, a testing plan must first be developed and approved by the Navy. AR, Tab 11, Crystal Server EQT Plan and Report, at 1-10 (test plan for structure-borne noise, airborne noise, temperature, and shock); AR, Tab 12, EMC Test Procedures and Report, at 1-53 (test plan for electromagnetic compatibility). Then, once the testing is completed with successful results, lengthy, detailed reports describing the test results are prepared. AR, Tab 11, Crystal Server EQT Plan and Report, at 11-86 (test report); AR, Tab 12, EMC Test Procedures and Report, at 54-342 (test report). Those reports must then be reviewed and approved by Navy officials. AR, Tab 12, EMC Test Procedures and Report, at 54. Contrary to the protester's assertions, the record reflects that this entire process requires several months, not weeks, to complete. See AR, Tab 11, Crystal Server EQT Plan and Report, at 11, 63 (reflecting a finalized report dated approximately 10 months after shock testing was conducted, not including time required to prepare testing plan). Moreover, the agency explains that in addition to the EQTs mentioned in the J&A, the Navy must also conduct testing on the servers related to systems integration and information assurance, as well as update the technical data packages for its submarine fleet to reflect the approval of a different server model. Agency's March 25 Supp. Filing, at 1. In sum, on this record, we have no basis to conclude that the agency acted unreasonably when it estimated that it would take approximately 18 months for a server to be fully tested and approved for use in the Navy's submarine fleet.

Core also contends that the extensive testing required by the Navy to qualify another server model for use on its submarines is unnecessary, given that any such server would have an identical design and use the same commercially available components as the Crystal servers currently used. Protester's March 31 Supp.

⁶ In its initial protest, Core contended the agency's requirement for the specific Crystal server models at issue reflects a lack of advance planning, given that the agency has known for several years how long it would take to test and approve another server. Protest at 7-8. The agency responded to this argument in its report and the protester did not take issue with, or otherwise seek to rebut, the agency's response in its comments. Under such circumstances, we view this argument as abandoned. Earth Res. Tech., Inc., B-403043.2, B-403043.3, Oct. 18, 2010, 2010 CPD ¶ 248 at 6.

Filing, at 4-5. The protester's argument, however, amounts to nothing more than disagreement with the agency's determination of its needs, and provides no basis to sustain the protest. As discussed above, our Office will generally defer to the contracting agency's assessment of its needs, unless it is shown to have no reasonable basis. In this regard, we note that even if a firm were to manufacture servers with the same design and components as the Crystal products, it is reasonable for the agency to seek to ensure that the servers, as manufactured by that firm, will properly function in the Navy's submarines. We further note that the servers at issue are integral components of the Navy's SubLAN system, which is used in critical submarine functions, including navigation and tactical command, and that the testing requirements thus relate to both national defense and human safety. As a consequence, the agency has the discretion to define the solicitation requirements to achieve not just reasonable results, but the highest possible reliability and effectiveness. See AAR Airlift Group, Inc., B-409770, July 29, 2014, 2014 CPD ¶ 231 at 3.⁷

The protest is denied.

Susan A. Poling
General Counsel

⁷ In addition to the arguments addressed above, Core raises other contentions including whether the Crystal servers at issue have passed the required EQTs. We have fully considered all of the arguments raised by the protester and conclude that they provide no basis to sustain the protest.