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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Crane & Company, Inc.

File: B-297398

Date: January 18, 2006

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Michael J. Davidson, Esq., Department of the Treasury, Bureau of Engraving and Printing, for the agency.

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DIGEST

Agency's solicitation for distinctive currency paper is defective where it provides for the award of a contract with a 6-year term in violation of 31 U.S.C. § 5114(c), which limits contracts for currency paper to periods of not more than 4 years.

DECISION

Crane & Company, Inc. protests the terms of request for proposals (RFP) No. BEP-06-0001, issued by the Department of the Treasury, Bureau of Engraving and Printing (BEP), for the procurement of "distinctive currency paper." Crane principally argues that the RFP provides for the award of contracts which are 6 years in length, in violation of 31 U.S.C. § 5114(c) (2000), which, according to Crane, limits the total length of contracts for distinctive currency paper to not more than 4 years. Crane further argues that the solicitation improperly discriminates against Crane, the incumbent contractor.¹

We sustain the protest.

¹ Crane withdrew several other grounds of protest based on changes to the solicitation implemented by the BEP.

BACKGROUND

On September 9, 2005, the BEP issued the RFP inviting firms to submit proposals to furnish all facilities, labor, and materials to provide distinctive currency paper for the printing of U.S. currency in accordance with requirements set forth in the RFP, including specific security features. RFP at 21. The RFP provides for the award of up to two indefinite-delivery/indefinite-quantity (ID/IQ) contracts and, depending on the award scenario, discussed below, the award or awards will be for a contract period of either 4 or 6 years. Specifically, the RFP provides for the manufacture of three distinct types of currency paper, with varying security features: (1) type I paper, which utilizes distinctive fibers as its security feature and is used for printing \$1 and \$2 notes; (2) type III, which is for printing new currency design 1996 series \$5 and \$100 notes with security features consisting of a watermark, embedded denomination specific thread, and distinctive fibers; and (3) type IV, which is for printing 2004 series \$10, \$20, \$50 and \$100 notes, and provides for the same security features as found in type III paper. Contracting Officer's Statement at 1.

Section B of the RFP provides for seven different potential award scenarios, and depending on the award scenario selected, can result in a contract for a period of either 4 or 6 years. Scenarios I and II are limited to manufacturing the BEP's currency paper requirements for program years 1 through 4, with a total contract period of 4 years. Scenarios III through VII, in contrast, provide for a 24-month mobilization period during program years 1 and 2, followed by a 4-year manufacturing period during program years 3 through 6, with a total contract period of 6 years. RFP at 2. These scenarios would allow firms without the current ability to meet the agency's immediate need for paper in years 1 and 2, to "gear up" for production during the 24-month mobilization period. *Id.* All award scenarios other than award scenario I provide for split awards of the currency paper requirements between two separate lots to two separate offerors. The RFP explains that if the government makes a single award, it will be made under award scenario I, consisting of lot 1 only, and that if the government elects to make "an award to two separate offerors", only one of the award scenarios (illustrated in the table below) will be awarded. *Id.* The RFP further indicates that "[i]f an offeror proposes on Scenario I, Lot 1, in order for the proposal to be considered, the offeror must propose on all award scenarios." *Id.*

In its report on the protest, the BEP sets forth the following table illustrating the various award scenarios:

Scenario	Lot	Type I	Type III	Type IV	Type I	Type III	Type IV	Type I	Type III	Type IV
		Program Years 1 and 2			Program Years 3 and 4			Program Years 5 and 6		
I	1	A-100%	A-100%	A-100%	A-100%	A-100%	A-100%			
II	2	A-30% year 1	A-100%	A-100%		A-100%	A-100%			
	3	B-70% year 1/ 100% year 2			B-100%					
III	4	A-100%	A-100%	A-100%	A-70%	A-100%	A-100%			
	5	mobilization period			B-30%			B-30%		
IV	6	A-100%	A-100%	A-100%	A-50%	A-100%	A-100%			
	7	mobilization period			B-50%			B-100%		
V	8	A-100%	A-100%	A-100%		A-100%	A-100%			
	9	mobilization period			B-100%			B-100%		
VI	10	A-100%	A-100%	A-100%			A-100%			
	11	mobilization period			B-100%	B-100%		B-100%	B-100%	
VII	12	A-100%	A-100%	A-100%	A-50%	A-100%	A-100% (\$10/\$50)			
	13	mobilization period			B-50%		B-100% (\$20)	B-50%		B-100% (\$20)

Contracting Officer's Second Statement at 2.²

As noted above, the mobilization periods are designed to allow firms unable to start production in years 1 and 2 an opportunity to compete. In addition, the mobilization periods provide offerors with time within which to satisfy any required "first article" testing requirements. In this regard, the RFP requires offerors to submit a 100,000-sheet material sample for each type of paper included in their proposal. While "identical" samples are preferred, the RFP allows firms to submit a

² In amendment 5 to the RFP, dated January 13, 2006, the agency added a requirement for "Type V" paper for the "Next Generation" \$100 note, for 100 percent of the agency's requirement for years 1-4. Agency Letter of Jan. 13, 2006, at 1. This change to the solicitation is not at issue in the protest and has no bearing on the outcome. In addition, the table submitted by the agency has been updated in part to reflect changes in award scenarios II and VII caused by amendment 5.

“representative” sample, which is defined as “a material sample produced at an alternate facility using the same or similar equipment as a proposed facility and does not contain distinctive security features.” RFP at 74. If award is made to a firm submitting a representative sample, the RFP provides that the awardee will be required to submit first article material samples for government approval prior to the placement of delivery orders. According to the RFP, the first article samples must conform to the requirements set forth in the specifications and must be produced at the same facility and on the same equipment as production material in performance of the contract; however, the RFP expressly states that first articles “are not part of the production quantity.” RFP at 43.

Under the first article approval clause set forth in the RFP, an awardee with a first article requirement must deliver for government approval at least 200,000 sheets of each paper type for which representative samples were submitted during the proposal evaluation phase within 730 calendar days (24 months) from the date of contract award—the length of the mobilization period under lots 5, 7, 9, 11, or 13. RFP at 53. If the first article samples are not approved, or the contractor fails to deliver any first article on time, the contractor shall be deemed to have failed to make delivery within the meaning of the default clause of the contract. *Id.* Moreover, the RFP explains that if a contractor has a 24-month mobilization period and the first article is approved prior to the end of its mobilization period, delivery orders will not be issued until the end of the full mobilization period—the beginning of program year 3. RFP at 43. Further reinforcing the 4-year ordering period limitation, the RFP expressly provides that “[t]he total contract ordering/manufacturing period for any contract award shall not exceed four years.” RFP at 2. However, if the first article is approved, a contractor “[m]ay deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing.” RFP at 54.

ANALYSIS

At the outset, we recognize that this protest arises as a direct result of the BEP’s effort to increase competition for its purchase of currency paper.³ Contracting Officer’s Statement at 1. For more than 125 years the United States has purchased virtually all of its paper for printing currency from a single supplier, Crane.⁴ In an

³ The Government Accountability Office (GAO) has addressed the BEP’s efforts to obtain competition for currency paper in two reports: (1) Currency Paper Procurement: Competition Unlikely Under Current Conditions (GAO/GGD-98-181, Aug. 28, 1998) (henceforth “1998 Report”); and Currency Paper Procurement: Additional Analysis Would Help Determine Whether a Second Supplier Is Necessary (GAO-05-368, Apr. 29, 2005) (henceforth “2005 Report”).

⁴ See Protest at 3 and Agency’s 2nd Report at 1. See also 2005 Report at 1.

effort to reduce barriers to competition for the procurement of currency paper, the BEP issued the subject solicitation to allow for the award of a contract with a 2-year mobilization period in addition to a 4-year ordering period, potentially resulting in the award of a 6-year contract.⁵

Crane asserts that, that no matter how well intentioned, the BEP's approach to increasing competition by allowing for the award of a 6-year contract under Lots 5, 7, 9, 11, or 13, is in direct violation of 31 U.S.C. § 5114(c), which, in relevant part, states as follows: "The Secretary [of Treasury] may make a contract for a period of not more than 4 years to manufacture distinctive paper for United States currency and securities."⁶ (Emphasis added.) Crane further contends that the RFP unfairly discriminates against Crane in two respects. First, the RFP unfairly requires Crane to propose for all award scenarios, while permitting other offerors to pick and choose among the various award scenarios and lots. Protest at 14. Second, the RFP limits Crane to a 4-year contract, while extending to other offerors the possibility of receiving a 6-year contract. Protest at 15.

The principal issue in this case concerns a matter of statutory interpretation, specifically, whether the RFP, which provides for the award of a 6-year contract, violates 31 U.S.C. § 5114(c).⁷ It is well established that "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6, 147 L. Ed. 2d 1, 120 S. Ct. 1942 (2000). See Caminetti v. United States, 242 U.S. 470, 485 (1917) ("Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion."). We believe that the plain language of section 5114(c) resolves the protest here.

⁵ It appears that in providing for a 6-year contract period, which includes a 2-year mobilization period, the BEP was seeking to address specific barriers to competition identified in the 1998 GAO report cited above. In that report, GAO noted that, according to some paper manufacturers, a 4-year contract length for currency paper is insufficient to recover necessary capital investment and that the start-up periods set forth in prior BEP currency paper contracts (which were substantially less than 2 years) were too short. See 1998 Report at 9, 22, 27, 28-29, 32, 45-46.

⁶ As originally enacted, the statute read as follows: "The Secretary of the Treasury is authorized, in his discretion, to enter into a contract for the manufacture of distinctive paper for a period not to exceed four years." Act of July 1, 1916, ch. 209, 39 Stat. 277.

⁷ In light of our decision sustaining the protest on this ground, we need not address the remaining issues raised by Crane.

The relevant portion of section 5114(c) expressly provides that the BEP may enter into a contract “for a period of not more than four years” for the manufacture of currency paper. The RFP provides for the award of a currency paper contract with a total period of 6 years. The BEP argues that while the RFP allows for the award of contract for a period of 6 years, such an award does not violate section 5114(c) because the manufacturing period of such a contract would be limited to 4 years, and that the additional 2 years are merely a mobilization period, rather than a manufacturing period. The agency’s argument, however, does not comport with the limiting language of section 5114(c), which modifies the length of the contract period, not the period of any specific activity under the contract. The phrase in section 5114(c)–“to manufacture distinctive paper for United States currency and securities”–simply describes the type of contract whose term is limited to a 4-year period.

Moreover, we note that contrary to suggestions by the BEP, during an applicable mobilization period, the awardee will likely be engaged in the manufacture of currency paper. Specifically, the contractor would be manufacturing specific quantities of currency paper (200,000 sheets) to the extent it is required to pass first article testing requirements for types I, III, or IV paper. The conclusion that contractors are engaged in manufacturing currency paper during the mobilization period is further supported by the fact that the RFP permits a contractor to use paper produced during the mobilization phase for first article approval to satisfy government orders during the ordering phase of the contract, provided that the paper meets required specifications and has not been destroyed during testing. RFP at 54.

The BEP alternatively argues that the 4-year limitation in section 5114(c) does not apply to its purchase of currency paper because it is purchasing the currency paper using “no-year” funds under the agency’s revolving fund appropriation established by 31 U.S.C. § 5142 (2000). Agency Report at 4. In reaching this conclusion the BEP argues that section 5114(c) must be understood in light of the agency’s funding at the time of enactment. When Congress enacted section 5114(c) in 1916, the agency was funded by annual appropriations, and, absent specific authority to enter into multiyear contracts, it was unable to enter into contracts for requirements in excess of one fiscal year.⁸ According to the agency, the effect of section 5114(c) thus was to

⁸ Because multiyear contracts cover requirements or needs of more than one fiscal year, an agency may engage in multiyear contracting only where the agency has (1) no-year funds or multiple-year funds covering the entire term of the contract or (2) specific authority. Cray Research, Inc. v. United States, 44 Fed. Cl. 327, 332 (1999); 67 Comp. Gen. 190, 192 (1988); B-171277, Apr. 2, 1971 (multiyear contract permissible under no-year trust fund). An agency may enter into a multiyear contract with fiscal year appropriations (or for a term exceeding the period of

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authorize the agency to enter into multiyear contracts for the purchase of currency paper (albeit limiting the period of such contracts to 4 years), notwithstanding the fact that the agency at the time was funded by annual appropriations.

In 1951, however, Congress enacted the provision now codified at 31 U.S.C. § 5142, which created the Bureau and Printing Fund—a “revolving fund”—with the result that the BEP’s funds were now to be available without fiscal year limitation.⁹ According to the BEP, by creating a revolving fund with funds available without fiscal year limitation, the effect of section 5142 was to relieve the BEP from the restrictions tied to annual appropriations—including the general prohibition against multiyear contracting absent specific authority.¹⁰ Thus, the BEP argues, enactment of section 5142, as a practical matter, obviated the need for the specific multiyear contract authority set forth in section 5114(c) to enter into multiyear currency paper contracts.¹¹ Consequently, according to the BEP, section 5114(c) would only apply if

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availability of a multiple year appropriation) only if it has specific statutory authority to do so. See 71 Comp. Gen. 428, 430 (1992); B-259274, May 22, 1996.

⁹ The legislative history of the fund indicates that it was intended to provide “a revolving fund method of financing the operations of the [BEP], placing all operations of the Bureau on a completely reimbursable basis.” H.R. Rep. No. 81-2541 (July 13, 1950). Absent statutory authority to the contrary, all funds received for use of the United States must be deposited into the Treasury as miscellaneous receipts. 31 U.S.C. § 3302(b). An exception to this requirement is a revolving fund, created by statute, under which receipts may be credited directly to the fund and are available, without further appropriation by Congress, for expenditures to carry out the purposes of the fund. See 69 Comp. Gen. 260, 262 (1990); see also GAO, Principles of Federal Appropriations Law, vol. 1, 3rd ed., GAO-04-261SP at 2-17 (Washington, D.C.: Jan. 2004). Moreover, 31 U.S.C. § 5142(a)(2) affirmatively states that the amounts in the fund “remain available until expended,” thus clearly indicating that the funds remain available for obligation for an indefinite period, without fiscal year limitation—a “No-year appropriation.” See GAO, Principles of Federal Appropriations Law, vol. 1, 3rd ed., supra, at 2-14.

¹⁰ As explained in note 8, supra, because multiyear contracts cover requirements or needs of more than one fiscal year, an agency may engage in multiyear contracting only where the agency has no-year funds or multiple-year funds covering the entire term of the contract, or specific authority.

¹¹ In support of its argument, the agency cites a GAO appropriations law decision, Bureau of Customs and Border Protection-Automated Commercial Environmental Contract, B-302358 (Dec. 27, 2004), for the proposition that because the agency is not relying on the authority of section 5114(c) to conduct the procurement, it is not bound by the statute’s 4-year limitation. The decision in Bureau of Customs and Border Protection, however, is inapposite. In that case, the principle issue was

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Congress were to: “(a) create an annual appropriation for distinctive currency paper, and (b) require BEP to finance its acquisition of distinctive currency paper with that one-year appropriation.” Agency Report at 5.

In our view, the agency’s position, that the application of section 5114(c) is limited solely to those circumstances where the agency is using annual funds, is inconsistent with the plain language of the statute. Section 5114(c) states that the BEP may enter into “a contract for a period of not more than four years” and is silent as to the type of funds to which it applies. Nowhere else, whether in section 5142 or any other statute, has Congress indicated that the plain words of section 5114(c) are limited by implication or otherwise.¹² See Sturges v. Crowninshield, 17 U.S. 122, 202, 4 Wheat. 122, 4 L. Ed. 529 (1819) (“It would be dangerous in the extreme to infer from extrinsic circumstances that a case for which the words of an instrument expressly provide, shall be exempted from its operation”). Thus, there is no valid basis to infer from either section 5114(c) or section 5142 that Congress meant to limit the applicability of the 4-year contract period limitation for distinctive currency paper to situations where the agency uses annual appropriations to fund the contract.

In sum, we conclude that the solicitation is inconsistent with 31 U.S.C. § 5114(c) to the extent that it contemplates the award of contracts for a period of more than 4 years.¹³

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whether a contract issued by the agency was an ID/IQ contract or a multiyear contract for the purpose of determining the correct amount to record as the agency’s obligation under the contract. It did not address the question of whether specific statutory authority defining the reach of an agency’s contractual authority can be limited by implication, as suggested by the agency.

¹² We also note that there is no legislative history in connection with the enactment of the provisions set forth in 5114(c).

¹³ We recognize that the effect of the statutory language may be anticompetitive, but, as explained in our decision, we have no choice but to follow the plain language of the statute. Our understanding of the statute’s impact here is consistent with GAO’s reports, which have noted the anticompetitive effect of the statute. Thus, in the 1998 report, GAO advised Congress that it “may wish to consider lengthening the 4-year limit” provided by 31 U.S.C. § 5114(c) in order “[t]o assist the Secretary in obtaining competition from domestic sources.” 1998 Report at 9, 48. GAO’s 2005 report similarly advises Congress that the 4-year limit on the length of currency paper contracts set forth in 31 U.S.C. § 5114(c), a “barrier[] to competition,” is a “legislative provision[] that would require congressional action to change.” 2005 Report at 9-10.

As a final matter, we address the agency's contention that Crane has failed to establish prejudice as a consequence of the solicitation defect. According to the BEP, the only harm suffered by Crane as a result of allowing for the award of a 6-year contract is the possibility of increased competition, which does not constitute the type of prejudice necessary to sustain a protest.

Prejudice is an essential element of any viable protest and even where the record establishes a procurement deficiency, we will sustain a protest on this basis only where it results in competitive prejudice to the protester. See Johnson Controls World Servs., Inc., B-285144, July 6, 2000, 2000 CPD ¶ 108 at 3; Hughes Missile Sys. Co., B-272418 *et al.*, Oct. 30, 1996, 96-2 CPD ¶ 221 at 14; A-1 Postage Meters and Shipping Sys., B-266219, Feb. 7, 1996, 96-1 CPD ¶ 47 at 4. Here, Crane affirmatively maintains that it "is not concerned at all with how many bidders pursue this RFP." Crane's Submission on Prejudice at 3.¹⁴ Rather, Crane argues, in part, that by providing for the award of a contract with a 2-year mobilization period under lots 5, 7, 9, 11, and 13—and thereby providing for the award of a contract with a 6-year term in violation of 31 U.S.C. § 5114(c)—Crane is placed at a competitive disadvantage in competing for these lots *vis-à-vis* firms that actually require a mobilization period. Crane maintains that because the assets and facilities necessary to produce currency paper are highly specialized and cannot be redeployed to other markets or products, and because, as the incumbent contractor, Crane has already invested in the necessary assets for the manufacture of currency paper, its normal pricing would be increased as a result of considering the cost of maintaining this specialized equipment and operations idle during the mobilization period; Crane does not need a mobilization period and the RFP expressly would preclude the BEP from placing orders under the contract in advance of the expiration of the mobilization period.¹⁵ We conclude that the harm articulated by Crane presents a sufficient showing of prejudice in the context of its allegation that the terms of the solicitation are in violation of the express statutory provision limiting currency contracts to periods of not more than 4 year.

¹⁴ At the request of our Office, Crane further addressed the question of its prejudice in connection with the allegation that the solicitation violates 31 U.S.C. § 5114(c).

¹⁵ The agency suggests that Crane's facilities would not remain idle if the BEP were to award Crane a mobilization lot because the agency would be forced to issue Crane a sole-source contract for the first 2 production years, given that the agency does not expect any firm other than Crane to submit an offer on a lot for the first 2 years of production. See Second Agency Report at 12. The agency's contention is premised on an assumption about the result of a competition which has yet to occur and is therefore speculative, particularly in light of a solicitation which on its face seeks full and open competition for all award scenarios and lots.

RECOMMENDATION

We recommend that the agency amend the solicitation in a manner that is consistent with 31 U.S.C. § 5114(c). We also recommend that the agency reimburse the protester's reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2005). The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel