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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: T-L-C Systems

File: B-400369

Date: October 23, 2008

Sidney Earley, T-L-C Systems, for the protester.
Capt. John Cho, Esq., Department of the Army, for the agency.
Cherie Owen, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency improperly awarded fire alarm contract on sole-source basis is denied where agency has shown that immediate replacement of 51 failed fire alarms was necessary to prevent serious injury to property or loss of life, and the agency procured the only alarms compatible with the agency's current central alarm receiver.

DECISION

T-L-C Systems (TLC) protests the Department of the Army's decision to award a contract on a sole-source basis to Monaco Enterprises, Inc. for the purchase of 51 Monaco BTXF radio fire alarm transmitters. The protester argues that this contract should not have been a sole-source contract, and that the protester could have provided equal, government-approved equipment for this solicitation.

We deny the protest.

According to the Army, the fire alarm system currently installed at Fort Meade, Maryland is nearly 30 years old and is in need of replacement. Agency Report (AR), Tab 1 at 1. While the Army had determined by 2002 that the fire alarm system needed to be replaced, it did not replace the system immediately because it concluded that it wanted to test new systems. Id. After testing, the agency elected in the 2002 or 2003 to replace its existing fire alarm system with a Monaco system. Id. at 1-2; see also AR at 3.

The Monaco system selected by the Army consists of a central receiver that receives fire alerts from alarm transmitters installed in individual buildings. AR, Tab 1, at 2.

The Army reports that it tested the system for approximately 1 year, and that it also spent time calibrating the radio frequencies used by the system, a necessary procedure due to the large amount of radio traffic at Fort Meade. Id. Since it began testing and calibration of the Monaco system in 2002, the Army has installed Monaco's central receiver at the Fort's fire station and has already converted approximately 50 buildings to the new system. Id. at 1.

In May 2008, the Army decided to purchase Monaco fire alarms for an additional 97 buildings at Fort Meade, and prepared a justification and approval (J&A) memorandum to support its intended sole-source purchase. The rationale for the sole-source purchase was that Monaco is the only manufacturer and supplier--and hence the only source--of fire alarms that are compatible with the Monaco system already installed at Fort Meade. AR at 4. The agency further claims that the warranty for the Monaco system it has been installing would be voided if another manufacturer's product were introduced into the system. AR, Tab 1, at 2.

On June 11, before the J&A was approved, the prior fire alarm system in use at Fort Meade failed completely. Id. at 1. In a Memorandum for the Record, submitted as part of the agency's report on this protest, Fort Meade's Fire Chief explained that the failed system could not be repaired because replacement parts were no longer available; he also explained that the failure of the alarms presented a severe health and safety risk at Fort Meade. AR, Tab 2, at 1.

In view of the complete failure of the old fire alarm system on June 11, and the need to immediately replace the failed fire alarms, the Army awarded an emergency sole-source contract to Monaco on June 12. AR at 5. Although the original J&A that had been prepared in May 2008 sought 97 alarms from the "only responsible source" (Monaco), the Army prepared a new J&A after the June 11 failure. This new J&A justifies the purchase of these alarms as a matter of "unusual and compelling urgency." Id. In response to this protest, however, the agency decided to reduce the size of its sole-source purchase justified under unusual and compelling urgency from 97 alarms to 51 alarms--in essence, the Army decided that a J&A based on unusual and compelling urgency should only be used to cover replacement of the alarms that failed on June 11. AR, Tab 1, at 2.

The protester argues that this sole source procurement--as originally proposed, and as modified--is improper because TLC could have provided equivalent equipment had it been asked, and because, in TLC's view, the old fire alarm system could have been repaired for half the cost of purchasing the new Monaco system. Protest at 1; Protester's Comments at 1. The protester also appears to challenge the agency's original procurement of the central Monaco receiver and individual fire alarm

transmitters that the agency procured several years ago.¹ Protester's Comments at 1. As set forth below, we think the Army's sole-source award was properly justified, and was a reasonable exercise of its discretion to make such awards.

The overriding mandate of the Competition in Contracting Act (CICA) is for "full and open competition" in government procurements, which is obtained through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A) (2008). Where an agency's needs are of such an unusual and 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 bids or proposals, the agency may use noncompetitive procedures pursuant to the authority set forth at 10 U.S.C. § 2304(c)(2). All Points Int'l, Inc., B-260134, May 22, 1995, 95-1 CPD ¶ 252 at 3. This authority is limited by 10 U.S.C. § 2304(e), which requires agencies to request offers from as many sources as practicable. An agency may limit a procurement to only one firm if it reasonably determines that only that firm can properly perform the work in the available time. Lundy Technical Ctr., Inc., B-243067, June 27, 1991, 91-1 CPD ¶ 609 at 3. We will object to the agency's determination only where the decision lacks a reasonable basis. Datacom, Inc.--Protests and Request for Costs, B-274175 et al., Nov. 25, 1996, 96-2 CPD ¶ 199 at 7.

As described in the facts above, and as referenced in the J&A, immediate replacement of the failed fire alarms at Fort Meade was necessary to prevent potential loss of life and/or property due to undetected fires. In addition, despite TLC's claims to the contrary, the Army concluded that it would not be able to repair the old system, as replacement parts for that system were no longer being made. We see no basis in this record to question that judgment. Moreover, because the testing of the Monaco system had already been completed, and the Monaco central receiver had already been installed, the Army concluded that replacing the failed fire alarms with Monaco alarms was necessary to achieve compatibility within its fire alarm system. As a final matter, we note that in response to this protest the agency reasonably elected to limit the size of the current sole-source award to cover only the number of fire alarms needed to replace those that had failed on June 11.

¹ To the extent that the protester challenges the agency's original procurement of the central Monaco receiver and individual fire alarm transmitters, those allegations are untimely at this juncture. Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2008). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Given the severity of the potential harm if the government did not replace the failed fire alarms, and the fact that, under these exigent circumstances, where time was of the essence, only the Monaco alarms could be immediately installed to work with the central receiver without additional, and possibly extended, testing, we think that the agency's sole-source purchase of 51 fire alarms was properly justified, and a reasonable exercise of its discretion to justify such awards.

The protest is denied.

Gary L. Kepplinger
General Counsel