

Van Soler



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: S.T. Research Corporation

File: B-233309

Date: March 2, 1989

DIGEST

1. Agency is not required to exclude a firm from a procurement because of an organizational conflict of interest where the firm did not provide systems engineering or technical direction services for the systems to be supplied and did not prepare the work statement or material leading directly, predictably and without delay to the work statement.

2. The government has no obligation to equalize a competitive advantage that a firm may enjoy because of its own particular business circumstances or because it gained experience under a prior government contract unless the advantage results from a preference or unfair action by the contracting agency.

DECISION

S.T. Research Corporation protests the participation of Argo Systems, Inc., under request for proposals (RFP) No. N00024-88-R-5528(Q), for 10 AN/WLR-1H(V) and 7 AN/WLR-1H(V)3 systems and related supplies, data and services. The AN/WLR-1H is a passive electronic support measures (ESM) system installed on board Navy ships and submarines. Its function is to receive all radio frequency signals in the environment, determine whether they are emitted by hostile or friendly sources and determine direction and probable type of platform emitting each signal.^{1/} S.T. argues that, as a result of a previous Argo contract, No. N00189-83-D-0093 (contract No. 0093), which included work on the

^{1/} The basic AN/WLR-1H system has several variations to satisfy specific installation and performance requirements. The variations are indicated by suffixes such as (V), (V)1, and (V)3.

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AN/WLR-1H system, Argo has an organizational conflict of interest and should not be allowed to compete for the production contract.

We deny the protest.

Development of the AN/WLR-1H began in 1979 with sole-source contracts with S.T., Argo and Sanders Associates, each of which produced major hardware components of the system. Under a contract which is not at issue in this protest, Argo integrated these components to form a complete system. In 1987, the Navy awarded a contract to Argo to produce four AN/WLR-1H(V)1 systems; under another contract, S.T. also delivered a complete AN/WLR-1H(V)1 system. The current competition for 17 AN/WLR-1H systems is being conducted between only S.T. and Argo because the Navy does not have procurement data sufficient for full and open competition and because Sanders has chosen not to compete. Thus, it appears that excluding Argo from the production competition would result in a sole-source award to S.T.

The production solicitation includes separate statements of work for the AN/WLR-1H(V) system and the (V)3 system. The statements cover requirements for fabrication, assembly, testing, documentation, management, field engineering services, spare parts and integration with related systems. For both systems, the contractor is to develop and revise software and provide installation racks, test plans, training materials and technical documents which describe the systems, including interface requirements. The contractor also is to provide logistics support for both systems, including a configuration management program which includes configuration control methods, audits and configuration status accounting procedures.

Since 1982, under contract No. 0093 Argo has provided services in response to task orders on a time and materials (T&M) basis related to ESM systems including various AN/WLR-1H systems. Under that contract, the Navy has issued numerous delivery orders.

S.T. first argues that the Navy should exclude Argo from the production competition because that firm provided systems engineering and technical direction on the AN/WLR-1H(V) and (V)3 systems under the T&M contract. The Federal Acquisition Regulation (FAR) § 9.505-1(a) requires that a contractor that provides systems engineering and technical direction for a system for which it does not have overall responsibility for development, integration, assembly, and checkout or its production shall not be awarded a contract to supply the system. Systems engineering is described as a

combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations and resolving technical disputes. FAR § 9.505-1(b). According to the regulation, a contractor performing these activities occupies a highly influential position in determining a system's basic concepts and supervising their execution and thus should not be in a position to make decisions favoring its own products or capabilities. Id.

S.T. maintains that the work statement of Argo's T&M contract included systems engineering and technical direction related tasks calling for Argo to develop breadboards, design, develop, test and fabricate modifications, submit prototype modifications, generate technical documentation to support ESM equipment and perform technical services to install and prepare newly installed and existing systems and equipment. S.T. states that a review of the delivery orders under Argo's T&M contract also indicates that Argo performed substantial systems engineering and technical direction on the systems to be produced under the RFP.

Under the work statement of the T&M contract, Argo was to provide a wide range of services including installation, testing, repair and maintenance, generation of field changes, engineering change proposals (ECPs) and other technical documentation, engineering field evaluations and engineering services to design, develop, test and fabricate modifications to eliminate recurring failures or deficiencies and engineering services to perform catastrophic failure analysis. It is not clear from the work statement whether under the T&M contract Argo was to perform systems engineering or technical direction tasks on the AN/WLR-1H(V) and (V)3 systems. Because of the general nature of the T&M work statement and the fact that the T&M contract required task orders on systems other than the AN/WLR-1H(V) and (V)3, we think that the determination of whether Argo performed systems engineering and technical direction work, or other work resulting in an organizational conflict of interest, can only be made by reviewing task orders related to the AN/WLR-1H(V) and (V)3 systems.

S.T. submitted a list of 44 task orders from Argo's T&M contract and contends that approximately 30 of those orders called for Argo to provide systems engineering or technical direction work or otherwise provided Argo with other significant technical or cost advantages. Most of the task

orders which S.T. states required Argo to perform systems engineering work, according to the Navy, involve routine installation, checkout and testing of AN/WLR-1H(V) and (V)3 systems using established drawings, manuals and procedures. The Navy explains that the installation of an AN/WLR-1H system involves connection of the system to a power source and antennas and, once installed, checkout of the system to assure that it is operational. Most of the work on the installation task orders was performed on board ship or at training sites so there was little opportunity for elaborate engineering or design work. Based on our review of the 44 task orders which S.T. contends involved the AN/WLR-1H(V) and (V)3 systems, we did not believe that the agency's conclusion that Argo did not perform systems engineering or technical direction work on the AN/WLR-1H(V) or (V)3 systems under the T&M contract was erroneous.

For example, S.T. alleges that task order No. 0019 involved supervising design, an element of systems engineering. Our review of that task order, however, indicates that it required fabrication of cables and installation of a AN/WLR-1H(V)3 system on the U.S.S. Iowa, including hook-up of electrical cables, and "Stage Two Testing" in accordance with a list of test procedures using government-furnished test equipment. Contrary to S.T.'s allegation, we see no evidence in this order that Argo supervised design or engaged in any other systems engineering activities.

Other task orders under which S.T. argues that Argo performed systems engineering work on the AN/WLR-1H(V) and (V)3 systems did not directly involve those systems. For instance, task order No. 0021, which S.T. says called for Argo to identify and resolve interface problems--a systems engineering task--in fact, did not call for work on the AN/WLR-1H(V) or (V)3 systems. Task order No. 0021 pertains to work performed under "Project Ginny" which according to the Navy involves modifications to existing submarine periscopes in order to accommodate a new antenna design. The only mention of the AN/WLR-1H system in task order No. 0021 is that the Project Ginny operator console is required to physically fit in the same console rack as an AN/WLR-1H(V)1 system.

We also conclude that there is no merit to S.T.'s contention that under the T&M contract Argo provided technical direction on the AN/WLR-1H(V) and (V)3 systems. In this regard, S.T. argues that under task order Nos. 0029 and 0041, Argo performed technical direction tasks such as determining parameters and resolving technical controversies. Under task order No. 0029, Argo was required to perform tests, maintenance, repair, alignment and inventory control duties

on a configuration control model AN/WLR-1H, including planned maintenance systems requirements. Argo's duties under task order No. 0029 were according to the agency based on established maintenance, test and inventory control procedures; we have no reason to conclude that Argo performed technical direction tasks under that task order.

Further, under task order No. 0041, Argo was to provide administrative and technical support during a physical configuration audit performed by the government on the AN/WLR-1H system located at Argo's west-coast facility. Argo was to provide a conference room and work space, equipment and tools, drawings, technicians to assist in disassembling and assembling the system and a clerk to assemble drawing packages and specifications and to type action items and other data. Argo's work under task order No. 0041 does not appear to have involved technical direction; rather, Argo personnel were to provide technical and clerical assistance as directed by the government's physical configuration audit team.

In sum, we have reviewed all of the task orders which according to the protester involved either systems engineering or technical direction and we find no basis upon which to disagree with the Navy's positions in this regard.

Next S.T. argues that under the T&M contract Argo provided documentation which led predictably and directly to the work statements for the production solicitation and, therefore, under FAR § 9.505-2(b)(1), Argo should be excluded from participation in this procurement. FAR § 9.505-2(b)(1) requires that if a contractor: (1) prepares or assists in preparing a work statement, or (2) "provides material leading directly, predictably, and without delay to such a work statement," the contractor generally may not supply the system or services. This restriction is intended to avoid the possibility of bias where a contractor would be in a position to favor its own capabilities. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

S.T. contends that under task order Nos. 0020 and 0022 Argo produced data which lead directly to the work statements for the production solicitation. Under task order No. 0020 concerning configuration management, Argo was to ensure that the configuration management plan for the AN/WLR-1H(V) system included the latest instructions, directions, specifications and standards. Argo was also required to evaluate documentation and data supplied under AN/WLR-1H(V)1 production contracts and resubmit a final draft of the configuration management plan, incorporating government review comments. In addition, Argo was to assemble and

collate government supplied configuration management data on the AN/WLR-1H(V)1, compare that data to the existing configuration status accounting report and update and maintain that report. Argo was required to deliver a draft and final configuration management plan, a final configuration status accounting report and database files.

Among other things, task order No. 0022 required Argo to review and provide changes to AN/WLR-1H(V)3 drawing packages as directed by the contracting officer's technical representative, incorporate government comments into, and revise the draft of, the AN/WLR-1H(V)3 configuration management plan and revise, update and prepare interim and final AN/WLR-1H(V)3 configuration status accounting summary reports.

In response, the Navy says that the work statements in the production solicitation were prepared by Navy personnel with some assistance from SWL, Inc., a firm under contract with the Navy to provide engineering and technical support for the AN/WLR-1H program. Further, the Navy says that the work statements are made up of Navy and military specification documents and data generated by S.T., Argo and Sanders related to the hardware and components developed by each firm. According to the agency, Argo did not participate in any way in compiling the work statements for the production solicitation. Additionally, the Navy maintains that task order Nos. 0020 and 0022 did not require Argo to develop work statements but merely called for Argo to assemble, collate, check and document existing technical data and information and update the configuration management plan and the configuration status accounting report.

S.T. does not allege that Argo wrote the work statements for the production solicitation. Further, the record shows that Argo was not specifically employed to assist in preparing them. Rather, it appears to us that Argo was required to update various existing drawings and configuration management documents based on government supplied data. Although, as S.T. contends, the latest configuration status accounting report, configuration management plan and other configuration and specification documents which Argo worked on are referenced in the production work statements, that firm's contribution to those documents under the T&M contract essentially was to assure their completeness by accounting for changes in the system itself and in previously created documents such as engineering ECPs and technical drawings. We do not believe that by this contribution, Argo prepared information that led "directly, predictably and without delay" to the statement of work as prohibited by FAR § 9.505-2(b)(1).

S.T. also maintains that under other task orders, Argo already performed work that is required by the production solicitation and had access to information which has not been released to S.T. and, as a result of these competitive advantages, Argo should be excluded from competing for the production contract. The protester notes for example, task order No. M23B under which the T&M contract required Argo to provide lists of interface requirements between the AN/WLR-1H(V)3 and various other systems. Under the production contract, the AN/WLR-1H(V) will interface with those same components. Referring to the interface requirements of the production solicitation, S.T. argues that Argo has a competitive advantage based on the interface work under the T&M contract. S.T. also argues that Argo has both technical and cost advantages in the production contract competition since it previously accomplished and was paid by the Navy for interface work that will be required under the production contract.

In another example, S.T. argues that Argo has technical and cost advantages as a result of work it did on task order No. 0044 under which Argo was required to perform configuration management tasks and develop technical manuals for the AN/WLR-1H(V) system. S.T. also contends that under task order Nos. 0024, 0037 and 0048 Argo had similar competitive advantages as a result of access to information which has not been released to S.T. and as a result of Argo's access to government furnished property. According to S.T., although the production solicitation says that various technical documents would be made available to offerors upon request, the Navy has not released everything the firm asked for and did not release other information in time for S.T. to use it to prepare its proposal.

In response to these contentions, the Navy generally says that all information from the earlier contract necessary to produce the required systems has been made available to S.T. and that Argo did not have access under the T&M contract to equipment and facilities beyond those necessary to perform its contract. The Navy also specifically denies that Argo has previously performed and been paid for any work called for by the production solicitation.

Based on our review of the task orders from the T&M contract, it is clear that Argo had access to significant information, equipment and facilities related to the AN/WLR-1H(V) and (V)3 systems. Further, it is probable that from this Argo gained a competitive advantage. Nonetheless, the government has no obligation to equalize a competitive advantage that a firm may enjoy because of its own particular business circumstances or because it gained

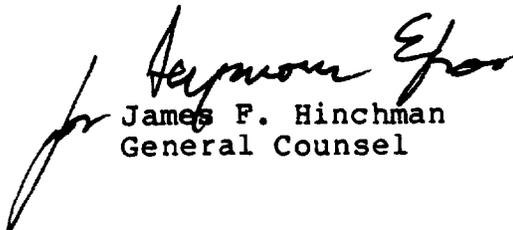
experience under a prior government contract unless the advantage results from a preference or unfair action by the contracting agency. Information Ventures, Inc., et al., B-219989 et al., Dec. 16, 1985, 85-2 CPD ¶ 668. Based on the record, we find no indication that any advantage Argo may have because of access to information under the T&M contract was a result of a preference or unfair action by the Navy. Although S.T. complains that the Navy has not released all information that was called for by the solicitation and has not released other information in a timely manner, the Navy says that it has taken steps to assure that all information and equipment necessary to produce the AN/WLR-1H systems is equally available to both firms. In any event, we note that, at this time, initial proposals have been submitted by both offerors and the technical evaluation and discussions are proceeding. To the extent that it becomes apparent during the evaluation of proposals or during discussions that information that is necessary to produce the systems has not been made available, we expect that information will be released.

To the extent that S.T. is arguing that Argo was already paid under task order No. M23B to accomplish the interface work required by the production solicitation, we do not agree. Task order No. M23B merely required Argo to provide lists of and a report on the interfaces between the AN/WLR-1H(V)3 and other systems while the production contract requires a design and engineering effort in which the contractor will integrate and interface the AN/WLR-1H systems with other systems and make necessary hardware, software and specification changes for that purpose. Further, the Navy released to S.T. the information which Argo prepared under task order No. M23B.

Finally, S.T. argues that the contracting officer failed to take the actions required by FAR § 9.504 to identify potential conflicts of interest, to respond to and avoid, neutralize and mitigate such conflicts. S.T. notes that it requested from the Navy any documents in which the Navy waived the conflict of interest prohibition and the Navy provided no such documents. S.T. maintains that the absence of written documentation of agency actions to address the conflict of interest issue indicates that the Navy failed to comply with the FAR procedures relating to

organizational conflicts of interest. Since we conclude that no organization conflict of interest exists here, there was no need to document the matter. See FAR § 9.504(d).

The protest is denied.

James F. Hinchman
General Counsel