

Formicity
1457521



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Sperry Marine, Inc.

File: B-245654

Date: January 27, 1992

Franklin G. Snyder, Esq., Latham & Watkins, for the protester.

William Veiga for Raytheon Marine Company, an interested party.

Eric A. Lile, Esq., and Thomas G. Robisch, Esq., Department of the Navy, for the agency.

John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The proposed sole-source award of a contract under the authority of 10 U.S.C. § 2304(c)(1) (1988) for navigational radar systems to be used at the Department of the Navy's Electronics Technician "A" School for instructional purposes is not objectionable where the agency reasonably determined that it needed a particular radar system that was the same as the other radar system already designated for use at the school.

2. Protest against the Department of the Navy's proposed sole-source award of contract under the authority of 10 U.S.C. § 2304(c)(1) (1988) for navigational radar systems to be used in ship overhaul and construction is sustained where the agency's justifications for the proposed sole-source award are not reasonably based or not supported by the record.

DECISION

Sperry Marine, Inc. protests the proposed sole-source award of a contract to Raytheon Marine Company under request for proposals (RFP) No. N00164-91-R-0241, issued by the Naval Supply Systems Command, Department of the Navy, for 73 Raytheon AN/SPS-64(V)9 (SPS-64) navigation radar systems and associated equipment.

We deny the protest in part and sustain it in part.

BACKGROUND

On June 7, 1991, the Navy published in the Commerce Business Daily (CBD) a notice of its intention to procure 50 Raytheon SPS-64 navigation radar systems and associated equipment, to be used at the Naval Electronics Technician "A" (ET-A) School for training purposes, from Raytheon on a sole-source basis. The CBD notice also invited responsible sources to submit offers, which would be considered by the agency.

On June 20, a justification and approval (J&A) for other than full and open competition was prepared for the 50 Raytheon SPS-64 radar systems. The J&A concluded that a sole-source award to Raytheon was justified under 10 U.S.C. § 2304(c)(1) (1988), which authorizes the use of other than competitive procedures when the items needed by the 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. The J&A noted that a market survey had not been conducted because the Navy had determined that only the Raytheon SPS-64 could meet its needs. The Navy subsequently issued the RFP for the 50 radar systems.

On September 4, the agency amended the RFP to include an additional 23 SPS-64 radar systems and associated equipment for use in ship overhaul and construction, which it synopsisized in the September 4 CBD. The J&A prepared in support of this action again referenced 10 U.S.C. § 2304(c)(1), and stated that only the Raytheon SPS-64 radar system could satisfy the agency's needs. This J&A also noted that a market survey had not been performed because of the Navy's determination that only the Raytheon SPS-64 radar system could meet its needs.

Sperry objects to the proposed sole-source award to Raytheon principally on the ground that it and other firms manufacture navigation radar systems, which it asserts meet or exceed the capabilities of the Raytheon SPS-64, and, therefore, could satisfy the Navy's needs at the ET-A School and for the ship construction and overhaul requirements.

Because the overriding mandate of the Competition in Contracting Act (CICA) is for "full and open competition" in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), we will closely scrutinize sole-source procurements under the exception to that mandate provided by 10 U.S.C. § 2304(c)(1). Eaton Corp., B-235603, Sept. 18, 1989, 89-2 CPD ¶ 238. A sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time, except where the noncompetitive situation arises from a lack of advance

planning.¹ Id. The justification must include sufficient facts and rationale to justify the specific authority cited. See Test Sys. Assocs., Inc., B-244007.2, Oct. 24, 1991, 71 Comp. Gen. _____, 91-2 CPD ¶ 367.

Based on our review of the record,² we find that the Navy has a reasonable basis for the ET-A School sole-source, but has not provided a reasonable basis for the ship overhaul and construction sole-source.

ET-A School

The ET-A School provides the introductory course in the Navy's electronic technician training. The ET-A School curriculum provides for a total of 41 weeks of instruction, of which 6 weeks are spent on the fundamental concepts pertaining to the Navy's radar systems. See Video Transcript of Hearing (VT) 9:38:20, 9:59:48. The Navy is in the process of constructing a new facility to house the school, and is revising the course curriculum to more accurately reflect the technology currently deployed in the fleet. The Navy states, with regard to that portion of instruction that relates to radar systems, that a total of 90 radar systems will be used at the school in a laboratory setting in order to provide the students with "hands-on" experience in working with the radars.

In justifying the contemplated sole-source to Raytheon, the J&A states that only the Raytheon SPS-64 can satisfy the needs of the ET-A School because: (1) the 50 radars being procured must be identical to the 40 Raytheon SPS-64 radar system training stations being transferred to the ET-A School from another school for use in training to ensure continuity of instruction; (2) the Raytheon SPS-64 radars are currently deployed on 297 ships in the fleet and the Navy considers it sound to train its personnel on the same equipment as that which they will encounter once assigned; and (3) only Raytheon has technical manuals and training materials incorporated into the Naval Training System, and the procurement of different radar equipment would require the development or acquisition of new technical manuals,

¹CICA specifically provides that agencies may not justify the use of noncompetitive procedures on the basis of a lack of advance planning. 10 U.S.C. § 2304(f)(5); TeQcom, Inc., B-224664, Dec. 22, 1986, 86-2 CPD ¶ 700.

²A hearing was held in this case in which certain of the issues raised were addressed by the parties. Our conclusions are based on the testimony at the hearing as well as the written submissions of the parties.

training materials, and various logistics related plans at an estimated cost of \$844,000.

The proposed sole-source award to Raytheon for the ET-A School's requirement is unobjectionable, since the Navy already has 40 Raytheon SPS-64 radar systems for use at the school. The Navy reasonably believes that the equipment being procured here must be identical to that which it already has for the school in order to ensure continuity and efficiency in instruction. That is, it will be disruptive to the learning process, and make instruction less effective, if ET-A School instructors have to teach the same functions or concepts to students who are working on different radar systems. VT 10:01:45. While the protester contends that the Navy cannot justify the proposed sole-source on this basis because the 40 radar systems have not yet been transferred to the ET-A School, the record indicates that the Navy has the 40 SPS-64 radar systems, fully intends to transfer them to the ET-A School, and has no other professed use for them. We find that this explanation by the Navy of why identical machines are needed for instruction reasonably supports the sole-source acquisition.³

Ship Overhaul and Construction

Fifteen of the 23 radar systems being procured here will be used in ship overhaul, with the remaining 8 being used in new ship construction. The J&A in support of this portion of the proposed sole-source award states that only the Raytheon SPS-64 can satisfy the needs of the agency because the acquisition of any other radar system would result in the unnecessary duplication of costs for logistics support, training, test and evaluation, engineering support, and ship alteration documents (SHIPALTS),⁴ which will not be recovered through competition. In its report on the protest, the Navy points to the 297 SPS-64 radar systems currently deployed in the fleet, and argues that the acquisition of a radar system other than the SPS-64 will be inconsistent with its desire to have a "standard" navigation

³We make no comment on the other reasons advanced by the Navy in justifying the sole-source.

⁴SHIPALTS are Naval Sea Systems Command approved documents that allow a configuration change to take place on a class of ships, such as the installation of different navigation radars, and consist of, among other things, detailed installation procedures, lists of equipment to be removed and installed, lists of logistics support elements, and lists of verification tests. VT 10:06:50.

radar in use on its ships to allow for the "cannibalization" of ship radar systems in times of need.⁵

A policy letter dated February 15, 1990, from the Chief of Naval Operations, regarding the acquisition and use of surface search and navigation radars, recognized the growing number of available types of these radar systems that could be used and are used in the fleet. The letter states that because of the shrinking funding for radar maintenance support, it is "no longer affordable to support the entire range of radar configurations found in the fleet today." The policy letter then designates the Raytheon SPS-64 as the only radar in its class authorized to be procured for the fleet, although it recognizes that other radars already in the fleet can continue to be used.

The protester asserts, without rebuttal, that the Raytheon SPS-64 radar systems, which were competitively procured in 1983, have in recent years been noncompetitively procured by the Navy. The record reflects no competition for this class of radar from any firm since 1983. In view of the stated Navy policy, it is the Navy's intent to continue noncompetitive awards for the Raytheon SPS-64 radar system so as to make it the standard for the fleet. The Sperry radar system, available from a General Services Administration Schedule contract, is currently deployed in the fleet, as well as a number of other manufacturers' commercially available radar systems.

Notwithstanding the desirability of a policy to standardize radar systems in the fleet to achieve savings and efficiency in logistics, CICA only permits sole-source acquisitions where authorized and justified. While we believe it is appropriate under CICA for an agency to restrict a procurement under 10 U.S.C. § 2304(c)(1) to a specified make or model where "standardization and interchangeability" are required, such a restriction must be reasonably based and

⁵Cannibalization refers to the removal of equipment from one ship to replace the inoperative equipment of another ship. The agency has failed to show that its ability to "cannibalize" radar systems will be adversely affected by the procurement of a radar system other than the Raytheon SPS-64. The agency admitted during testimony that there are a number of different radar systems currently deployed throughout the fleet, and that it has not experienced any difficulty in "cannibalization" because of this.
VT 10:27:40.

justified,⁶ See S. Rep. No. 50, 98th Cong., 2d Sess. 21, reprinted in 1984 U.S. Code Cong. & Ad. News 2174, 2194.

We find no reasonable justification for the sole-source here. The J&A only contains conclusory statements not supported by probative evidence relating to duplication of costs. There is no attempt in the J&A to justify this procurement on the basis of a requirement for standardization and interchangeability.

The J&A justification reads in pertinent part as follows:

"Substantial duplicative non-recurring costs would accrue to the Navy should a different configuration Class B radar be introduced into the Fleet via overhauls and new construction at this time. In addition to the duplicative costs for Provisioning Technical Documentation, complete Integrated Logistics Support buildup, training, test and evaluation, and engineering support, the use of any other manufacturer's equipment would require revision of the SHIPALTS for the intended users [six classes of ships]. Given the commercial nature of the [SPS-64], which has been in full production for many years, there is no reasonable expectation for recovering these costs in the future through full and open competition considering the maximum estimated out-year requirements for Class B navigation radars.

.

"In addition to the duplicative costs already delineated herein, the costs to prepare new SHIPALTS for each class of ships include the following tasks:

- (a) Ship Check to identify where equipment will be installed, any equipment which must be removed, and lay-out of compartment space;
- (b) Preparation of installation drawings, block diagrams, cable runs, and connector pin-outs for each piece of equipment;
- (c) Installation and Control Drawing for each ship; and

⁶Standardization decisions should normally be the result of competitive acquisitions.

(d) Re-identification of equipment to be removed, moved or altered by the overhaul."

During the course of this protest, the agency has not produced any documentation or other evidence (with the exception of testimony concerning the cost of preparing SHIPALTS) in support of its assertion that it will incur substantial duplicative costs if a radar system other than the SPS-64 is acquired for this application, nor for that matter has it provided an estimate as to the amount of these costs. See generally Test Sys. Assocs., Inc., supra (unsubstantiated claims of duplication of costs to the government do not justify a sole-source determination). An undocumented and unsupported statement that significant savings will result from a sole-source does not serve as a reasonable basis for limiting competition. Gulf Gas Utils. Co. et al., B-242650 et al., May 20, 1991, 70 Comp. Gen. _____, 91-1 CPD ¶ 482, recon. denied, B-242650.4, Oct. 28, 1991, 91-2 CPD ¶ 380; Lea Chemicals, Inc., 67 Comp. Gen. 149 (1987), 87-2 CPD ¶ 622.

With regard to SHIPALTS, the Navy states that it has already prepared SHIPALTS at a cost of \$20,000 per class of ship in preparation for the installation of the Raytheon SPS-64 radar systems being procured here, and that the acquisition of any other radar system would require the preparation of new SHIPALTS at a similar cost.⁷ VT 10:09:05. The record here does not establish that such costs could not be recovered through competition. It appears from the J&A prepared in support of this portion of the proposed sole-source that six classes of ships, and thus six SHIPALTS, would be affected by the procurement of a radar system other than the Raytheon SPS-64, representing a total of \$120,000 in potential "duplicative" costs for the SHIPALTS. This figure represents less than 10 percent of the estimated costs of the acquisition, as referenced in the J&A.

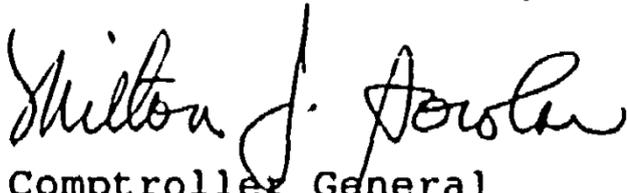
In sum, the record before us fails to show that the agency's determination that only the Raytheon SPS-64 navigation radar system could meet its needs with regard to ship overhaul and construction was reasonably based.

⁷The SHIPALTS approving the Raytheon SPS-64 only allow for the installation of the radar on a particular class of ships. They do not address the issue of whether other radars will work equally well on these ships. See infra footnote 4.

RECOMMENDATION

We recommend that the Navy delete the requirement for the 23 navigation radar systems to be used in ship overhaul and construction from the RFP, draft a solicitation that allows for full and open competition for the radar systems, and satisfy its needs for the radar systems through a competitive procurement in which Sperry and any other potential offerors are afforded an opportunity to compete. We further find that the agency should reimburse Sperry for its costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1991).

The protest is denied in part and sustained in part.

for 
Comptroller General
of the United States