



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Frontier Engineering, Inc.

File: B-252408

Date: June 24, 1993

Connie Gibson for the protester.

Laura E. Arnold, Esq., Department of the Air Force, for the agency.

Jeanne W. Isrin, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed where (1) record does not demonstrate that protester suffered competitive prejudice from awardee's allegedly improper use--in performing a software capability demonstration--of a system it had furnished under a contract with another agency, and (2) in any case, awardee's use of the equipment appears unobjectionable since nothing in solicitation prohibited offerors from proposing to use such equipment.

DECISION

Frontier Engineering, Inc. protests the award of a contract to SeaSpace Corporation under request for proposals (RFP) No. F04701-92-R-0003, issued by the Department of the Air Force, Space and Missile Systems Center, for the design and fabrication of a pre-production Meteorological Satellite Small Tactical Terminal (STT) for the Defense Meteorological Satellite Program (DMSP).¹

We dismiss the protest.

The RFP contemplated the award of two contracts for the design, development, and fabrication of one enhanced STT unit. One contract was to be awarded as a small business set-aside, assuming sufficient interest, and the other under full and open competition. Only the set-aside contract is at issue here.

¹The STT unit is intended to provide multi-service tactical forces with a lightweight, portable weather terminal that receives, processes, displays, and stores meteorological satellite data without relying on surface communications.

The RFP provided for proposals to be evaluated on the basis of evaluation factors for Integrated Product Development (IPD), which was most important, and cost. The most important subfactor under IPD was the results of a required capability demonstration, during which offerors were required to demonstrate that their systems were capable of receiving, processing, and displaying various types of meteorological satellite data on a platform with an UNIX-based operating system using a government-furnished tape of DMSP data. The RFP, however, did not otherwise specify or discuss the type of equipment that might be used in the capability demonstration, the availability or use of government-owned equipment for the demonstration, or the location of the demonstration. According to the Air Force, the purpose of the capability demonstration was to assure that the winning contractors had software mature enough to permit a meaningful competition for a subsequent production contract, which had severe budgetary and time limitations.

Prior to the October 5, 1992, closing date for receipt of initial proposals, SeaSpace requested approval from contracting officials to use "live" DMSP data for the capability demonstration, stating that its proposed STT was very similar to an existing system, its "TeraScan" system, that it was under contract to deliver to the Army in October 1992. (According to SeaSpace, its "TeraScan" system is its basic commercial product, which was wholly developed by the firm and has been commercially sold since 1987.) Subsequently, SeaSpace also requested that the demonstration be held at White Sands Missile Range, New Mexico, where its system was to be delivered to the Army. The Air Force disapproved its request to use "live" data, but approved conducting the demonstration at White Sands so long as SeaSpace obtained permission from the Army.

Five proposals from small businesses were received, including those of SeaSpace and Frontier. SeaSpace's proposal included a letter from the Army granting approval for SeaSpace to use its system to be delivered to the Army and the use of the White Sands facility for the capability demonstration. As part of the evaluation process, capability demonstrations were conducted in accordance with the solicitation's instructions; SeaSpace's capability demonstration was held at White Sands. Each offeror was provided with a tape of DMSP data for use during the demonstration, but no other Air Force property. Source selection officials ultimately determined that the system proposed by SeaSpace offered the best overall value to the government for the small business set-aside award and on December 11, made award to SeaSpace.

Frontier maintains that SeaSpace was improperly allowed to use government-owned equipment for its capability

demonstration, while Frontier was left to put together "makeshift" equipment at its own expense. Frontier claims this gave SeaSpace an unfair competitive advantage, and states that, had it known of this arrangement, it would not have incurred the costs of submitting a proposal.

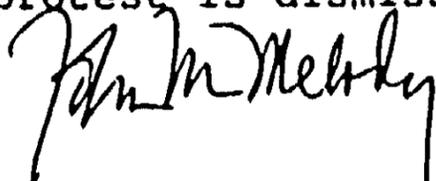
Frontier has neither alleged nor shown that any of the several failures in the demonstration of its software--which included a failure to process the DMSP data--were attributable to its "makeshift" hardware, and could have been avoided had SeaSpace's system been made available to it. Furthermore, it is evident from the evaluation record that the agency found significant weaknesses in Frontier's proposal unrelated to the hardware used in its demonstration. For example, the evaluators considered it a major deficiency that, in a procurement seeking relatively mature software, most of the major software programs proposed by Frontier were developmental items, most software functions were not discussed, and Frontier had "vastly underestimated" the required new and modified lines of code that would be necessary for it to deliver a conforming system. In addition, the agency found Frontier's proposal to be deficient with respect to software reuse process and analysis. As a result, Frontier's proposal was evaluated as high risk. In contrast, the agency found no deficiencies in SeaSpace's proposal and evaluated it as only moderate risk. In particular, agency evaluators determined that SeaSpace's software was well structured, and that little modification would be required to go from the prototype to an operational system.

Competitive prejudice is an essential element of a viable protest, and where no competitive prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. See Latins American, Inc., B-247674, June 15, 1992, 92-1 CPD ¶ 519; Anament Labs., Inc., B-241002, Jan. 14, 1991, 91-1 CPD ¶ 31. Given the significant relative strengths of SeaSpace's proposal, and Frontier's failure to allege or show that its demonstration deficiencies would have been eliminated by use of SeaSpace's system, it does not appear that Frontier would have been in line for award had it used the SeaSpace system. We therefore find no evidence that Frontier was prejudiced by SeaSpace's use of its previously furnished system.

In any case, we see nothing improper in SeaSpace's use of its previously furnished system. The solicitation was silent as to the equipment offerors were permitted to use in the demonstration; it did not prohibit offerors from using certain equipment and did not require offerors to use a "makeshift" system assembled solely for purposes of the demonstration. Absent some restriction in this regard, we

see no reason why offerors, on their own initiative, could not propose to use any equipment (using an UNIX-based operating system) which they believed would best demonstrate the capabilities of their proposed software. Indeed, according to the Air Force, a number of the offerors proposed using equipment in their demonstrations which was directly related to other government contracts.

The protest is dismissed.



John M. Melody
Assistant General Counsel