



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED DECISION

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Matter of: Mnemonics, Inc.

File: B-261476.3

Date: November 14, 1995

John R. Kancilia, Esq., Landman, O'Brien, Riemenschneider & Kancilia, for the protester.

Stuart B. Nibley, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for E-Systems, Inc., an interested party.

Craig E. Hodge, Esq., and Gary Theodore, Esq., Department of the Army, for the agency.

Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Although the Competition in Contracting Act of 1984 mandates that contracting agencies obtain full and open competition in their procurements through the use of competitive procedures, the proposed sole source award of a contract under 10 U.S.C. § 2304(c)(1) is unobjectionable where the agency reasonably determined that only one source could supply the critically required items within the time constraints of the procurement.

DECISION

Mnemonics, Inc. protests the Department of the Army's proposed sole source award to E-Systems, Inc. under request for proposals (RFP) No. DAAB07-95-R-S999, for three-channel Joint Tactical Terminal (JTT) radio equipment which transmits intelligence information by means of satellites and airborne relays to combatants on the ground.¹ Mnemonics essentially contends that the agency improperly

¹The JTT was formerly known as the Commanders Tactical Terminal (CTT) which was originally a single channel model. The two items principally at issue here are the JTT/H3 device (three channel receiver and one channel transmitter) and the JTT/H-R3 (three channel receiver). The CTT and JTT equipment must interface with (that is, receive data from and/or transmit data to) the Tactical Reconnaissance Intelligence Exchange System (TRIXS) as well as several other military communications networks.

determined that the firm could not meet its minimum needs within the required time constraints and unreasonably concluded that E-Systems was the only responsible, capable, and timely source.

We deny the protest.

GENERAL BACKGROUND

On May 9, 1995, the Army placed a synopsis in the Commerce Business Daily (CBD) that announced a proposed sole source award to E-Systems for the procurement of Low Rate Initial Production (LRIP) JTT equipment. The synopsis announced a contemplated quantity of 17 JTT/H3 and 2 JTT/H-R3, with spares, training devices and services for depot maintenance and integration support. A firm, fixed-price contract was announced with initial deliveries required 12 months after contract award. Two options were also announced for 33 JTT/H3 in fiscal year 1996 and 22 JTT/H3 and 36 JTT/H-R3 in fiscal year 1997. The CBD synopsis stated that the agency's sole source procurement was premised on the lack of complete functional specification and network interface control documents for the JTT suitable to conduct a competitive procurement. The proposed sole source procurement was authorized by a Justification and Approval for Other than Full and Open Competition (J&A), signed by the Assistant Secretary of the Army.

The Assistant Secretary, in the J&A, stated as follows

"A sole source award is deemed necessary since complete network Interface Control Documents (ICD's) suitable to sustain a competitive procurement are not available. Complete functional definition of the CTT interface with the networks, were not purchased on prior CTT contracts because the functional performance of the CTT, the networks and the interface were being changed. There are no feasible acquisition alternatives other than sole source to E-Systems, ECI Division, that can achieve the accelerated fielding requirements. E-Systems, by virtue of its role as the developer of the CTT single channel system, two channel CTT/H-R and three channel Hybrid Systems, has acquired unique capabilities and in depth knowledge about program interoperability requirements with the multiple users and intelligence broadcast networks system security requirements, and other technical capabilities required to produce the CTT Hybrid Systems. No other contractor has ever built equipment or produced a radio that is interoperable with the Tactical Reconnaissance Intelligence Exchange System (TRIXS) network. TRIXS is the high accuracy, time sensitive data which is generated by the GRCS, Air Force U2-R, and Story Teller/EP-3 systems."

The Assistant Secretary, in the J&A, noted that Mnemonics's previous interest in the procurement was rejected because the firm does "not meet the TRIXS network interoperability requirement."

The CBD synopsis contained note 22 which provides that firms interested in submitting a proposal or an expression of interest in the proposed procurement should do so within 45 days of the date of the publication of the CBD synopsis. On June 22, the protester submitted a timely expression of interest to the agency pursuant to note 22. On July 11, Mnemonics received a response from the agency stating that the firm had not demonstrated the capability to successfully perform the requirements of the JTT program principally because the protester would be unable to timely develop the JTT TRIXS function within the required delivery schedule. In the meantime, the agency issued the RFP to E-Systems. This protest followed.

ANALYSIS

Because of the overriding mandate of the Competition in Contracting Act of 1984 (CICA) for full and open competition in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), our Office will closely scrutinize sole source procurements under the exception to that mandate provided by 10 U.S.C. § 2304(c)(1). Mine Safety Appliances Co., B-233052, Feb. 8, 1989, 89-1 CPD ¶ 127. Where, as here, however, the agency has substantially complied with the procedural requirements of CICA, 10 U.S.C. § 2304(f), calling for written justification for and higher-level approval of contemplated sole source action and publication of the required CBD notice, we will not object to the sole source award unless it can be shown that there is not a reasonable basis for it. Id. In sum, excepting those noncompetitive situations which arise from a lack of advance planning, 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. Data Transformation Corp., B-220581, Jan. 16, 1986, 86-1 CPD ¶ 55.

Criticality of the Delivery Schedule

The protester argues that the agency made an "invalid determination" that accelerated delivery of JTT equipment is required with deliveries beginning in 1 year.²

²The protester relies on two Congressional Committee Reports to argue that Congress only authorized the agency to acquire the original and older CTT equipment rather than the advanced JTT equipment. For example, one report refers to the "CTT's capabilities" and states that the "CTT is an integral part of the Army's (continued...)

In response, the agency has provided evidence, un rebutted by the protester, that essential military requirements necessitate an expedited delivery schedule. For example, the JTT, which will interoperate with TRIXS, is needed for the Guardrail Common Sensor (GRCS), an airborne system which is fielded and operational in the United States, Europe, and Korea; for the Joint STARS Ground Station Module, which is an intelligence and targeting data processing and dissemination system; and for monitoring of hostile enemy actions in North Korea and in the DMZ (the JTT equipment must be available in December 1995). The JTT equipment is also needed for similar requirements, such as the Joint Tactical Ground Station, the Patriot system, and the Airborne Reconnaissance Low Electronic Warfare sensor platform, and other critical military intelligence processing systems. We conclude that the record supports the agency's stated critical need for this equipment within the time schedule of the RFP.

Capabilities of the Protester

As stated above, the protester's note 22 submission was principally rejected because of the agency's technical concern about the protester's ability to meet the TRIXS requirement.³ As relevant here, the protester has submitted an affidavit from a technical expert. The expert states that original C5 specifications (containing actual

²(...continued)

high priority effort." H.R. Rep. No. 562, 103d Cong., 2d Sess. (1994). The other congressional committee report, H.R. Rep. No. 138, 104th Cong., 1st Sess. (1995), states as follows: "The Committee believes that rapid procurement and fielding of this receiver will improve tactical intelligence support to operational forces and allow the community to move forward with the development of the logical functional basis for the future Joint Tactical Terminal (JTT)." The protester argues that the committees' various references were to "CTT" and not to a "JTT" (which allegedly was only to be procured in the "future") and that "[t]he agency is attempting to bootstrap a [Congressional] justification for the continued design and development of the JTT through a Congressional authorization of the CTT." We reject these arguments. The agency has presented to our Office the written military plans the agency submitted to Congress, before the name JTT came into use, which shows that Congress was fully aware of the agency's plans to acquire JTT equipment. Thus, as the agency states, the terminologies of "CTT" and "JTT" appear to have been used interchangeably by the Congressional committees. We therefore find no merit to this argument.

³We note here that the agency's concern is not that the protester is incapable of successfully developing and producing equipment compatible with the TRIXS network. Rather, the agency's technical experts do not believe the protester can accomplish this complicated task within the short time frame of this procurement.

computer software source codes) were created for the CTT and that the software which performs on the processor in the JTT is "substantially the same software as is contained in the CTT." If given access to the CTT C5, a competent contractor, such as Mnemonics, "can transport that software on to its own hardware design and have the full capability to operate with TRIXS [with] minor modifications to the software."⁴ It is on this basis that Mnemonics believes that it can successfully perform the requirements within the short time frame.

Both the agency and the interested party have presented substantial technical evidence refuting Mnemonics's assumptions. The agency states as follows

"Deleted."

E-Systems explains that it added significant functional features to the processor software which provides an Airborne Relay Terminal, not present in the CTT, which allows the JTT to be placed on an airborne platform and perform TRIXS network relay functions. The JTT software also interfaces with a high-powered host (required for TRIXS) which is a "completely new interface when compared to the CTT host interface" and represents "another significant development effort." E-Systems further states that "[p]orting the CTT software from a MC68000 processor (used by CTT) to a MC68040 processor (proposed by Mnemonics) would create additional technical and developmental difficulties. Additionally, E-Systems states as follows

"A major omission in Mnemonics' discussion of using the CTT software . . . is one of testing. Even when software is written so that it can be reused, the effort associated with retesting approximately [deleted]lines of ADA/assembly code is quite large. Also, the testing required for product delivery requires expertise in the detailed functional requirements, not just the software implementation. . . . To reverse engineer the detailed requirements from the C5, in time to support the software development and test efforts, is unrealistic."

Based on this record, we think the agency made a reasonable technical determination that serious technical doubts existed as to whether Mnemonics could timely deliver the critical equipment under the expedited delivery schedule. We find nothing in the record to show that the agency's position regarding the necessary software changes is incorrect, or that the agency abused its technical judgment in making this determination and the resulting determination that award to E-Systems, on a sole source basis, was appropriate given the exigencies of the circumstances. In short, we think the agency reasonably determined that the scope of the software

⁴The protester states that this C5 exists and is numbered R140599.

changes necessary to make the CTT C5 function on the JTT presented an unacceptable technical risk inherent in the protester's proposed technical approach. The agency states that it will competitively acquire this equipment (and solicit Mnemonics) with a projected date for the "full and open" award by December 1996.

Mnemonics raises numerous additional arguments which we find to be without merit. The protester first argues that the solicitation contained options for Demand Access Multiple Assignment (DAMA) requirements which were not authorized by the J&A. In response, the agency has deleted these options from the solicitation. The protester also objects to the presence of any options in the solicitation as "not in the government's best interest." In response, the contracting officer states that "[n]o option quantities on the subject sole source acquisition will be procured subsequent to the award of the competitive procurement unless necessary to fulfill documented urgent requirements which can only be satisfied through exercise of the option." In view of this explanatory statement, we find no merit in the protester's objection to inclusion of the options. The protester next argues that the J&A did not authorize the procurement of two JTT/H-R3 units for the base period. The agency acknowledges this clerical error and will resubmit a corrected J&A to the Assistant Secretary of the Army. The protester also argues, in its comments, that the sole source procurement was the result of lack of advance planning. This allegation is untimely. See 4 C.F.R. § 21.2(a)(2) (1995). Finally, the protester argues that the agency is improperly using production funding for a developmental effort. The agency explains that this is a production effort and the record does not show otherwise.

The protest is denied.

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