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Decision

Matter of: Sabreliner Corporation

File: B-288030; B-288030.2

Date: September 13, 2001

Kenneth B. Weckstein, Esq., Shlomo D. Katz, Esq., and Tammy Hopkins, Esq., Epstein Becker & Green, for the protester.

Christine S. Trafford, Esq., and John L. Rice, Esq., Miller & Chevalier, for Rolls-Royce, Corporation, the intervenor.

Vera Meza, Esq., Rachel M. Howard, Esq., and Wade Brown, Esq., Department of the Army, for the agency.

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

DIGEST

Agency's proposed award of a sole-source contract for engineering and overhaul services for helicopter engines, on the basis that only one firm is capable of meeting the agency's needs, is not reasonably based where the justification and approval prepared in support of the proposed sole-source award, other agency documentation, and the agency's submissions prepared in response to this protest as well as the testimony of the agency representatives at the hearing held at our Office in connection with this protest, are inconsistent and inaccurate.

DECISION

Sabreliner Corporation protests the proposed award of a contract on a sole-source basis to Rolls-Royce, Corporation under request for proposals (RFP) No. DAAH23-01-R-0067, issued by the Army Aviation and Missile Command, Department of the Army, for certain engineering services and the overhaul of helicopter engines.

We sustain the protest.

BACKGROUND

The T63-A-720 engines to be overhauled under the Army's proposed sole-source contract to Rolls-Royce are used in the Army's OH-58 "Kiowa" helicopter. Agency Supplemental Report (Aug. 6, 2001) at 2. The Kiowa helicopter has been in service for approximately 30 years. Hearing Transcript (Tr.) at 14. Up until the mid-1990s,

the Army had an “organic” (i.e., in-house) ability to overhaul the engines. Agency Supplemental Report at 2; Tr. at 15-16.

As part of its in-house ability, the Army maintained an “instruction manual describing the operations, procedures, and practices required to overhaul the engines.” Agency Supplemental Report at 2. This instruction manual, called a “Depot Maintenance Work Requirement” (DMWR), also listed the required tooling and test equipment to perform the overhauls. Id. The Army maintained and updated the DMWR through amendments made by its own engineers, as well as through its receipt of commercial engine bulletins from the original equipment manufacturer (OEM) of the T63 engine.¹ Tr. at 19-20. The DMWR was also used to competitively procure engine overhaul services from commercial vendors, with the last such contract being let in 1993. Agency Report, Tab B, Justification and Approval for Other than Full and Open Competition (J&A) (Jan. 2, 2001) at 4; Tr. at 24, 145-46.

The Army decided in the mid-1990s to phase out the Kiowa helicopter in 2004, and stopped maintaining its DMWR as of 1993. Tr. at 21, 144, 146, 394. The last overhauls of the engines were performed in-house in 1997 using the DMWR and available updates. Tr. 25-27, 146-47. The agency states that it needs to procure the engineering services from Rolls-Royce because the Army’s DMWR is out of date, and it needs to procure the overhaul services from Rolls-Royce because the Army has divested itself of the tooling and equipment needed to overhaul the engines.² Agency Supplemental Report at 3 n.1; Tr. at 16.

On January 13, 2001, the Army published a notice in the Commerce Business Daily (CBD) of its intention to award a sole-source contract to Rolls-Royce. The CBD referenced solicitation No. DAAH23-01-R-0067, and stated, among other things, that the contractor would be required to “furnish all depot-level labor, facilities, special tooling, test equipment, and materials for the maintenance, overhaul/repair modification” of up to 300 of the engines, and that “[t]he contractor will also upgrade Engine configuration to commercial and provide all technical data to identify the engineering changes.” Agency Report, Tab E, CBD Notice.

¹ Allison Engine Co., Inc., a division of General Motors Corp., was the OEM of the T63-A-720 engine. The Allison group was acquired by Rolls-Royce in the mid-1990s. Tr. at 139, 350. Accordingly, Rolls-Royce is in essence the OEM of the engine.

² The engineering services being acquired are to develop and obtain the data to allow field-level maintenance by the Army. Although during the course of the protest the agency indicated that it was obtaining this data to allow for depot-level maintenance and overhaul of the engine (that is, developing a document similar to the DMWR), Agency Supplemental Report at 4, the hearing testimony established that this was not the case. Tr. at 63, 77-78, 364, 402.

Shortly after the CBD notice was published, Sabreliner and two other firms requested copies of the solicitation. Contracting Officer's Statement at 1; Agency Report, Tab F, Sabreliner's Letter to Agency (Jan. 19, 2001). The agency did not respond to the firms' requests, but rather, the contracting officer continued to meet with, and receive proposals from, Rolls-Royce with the intent of awarding Rolls-Royce a sole-source contract. After receiving approval to issue a letter contract to Rolls-Royce on May 4, the contracting officer states that "it was discovered that three sources had requested a copy of the solicitation based upon the synopsis," and that "[t]his was the first time that the Contracting Officer was made aware of these requests." Contracting Officer's Statement at 1.

The contracting officer responded by providing each of the three firms, including Sabreliner, a letter stating that "a formal solicitation is not available," but providing each of the firms with a statement of work (SOW) setting forth the agency's needs. Agency Report, Tab G, Contracting Officer's Letter (May 10, 2001), attach., SOW-Overhaul/Upgrade & Engineering Services on T-63-A-720 Engines and Components. The letter and SOW were provided to each of the firms by facsimile transmission at approximately 1 p.m on May 10, with the letter informing the firms that "[a] Firm Fixed Price Proposal and supporting documentation as well as a Small Business Subcontracting Plan, if required, is due to this office [by] 10 May, 2001, 4:00 p.m." Agency Report, Tab G, Contracting Officer's Letter (May 10, 2001), at 3.

Sabreliner filed a protest with the agency on May 10, complaining, among other things, that the 3 hours the agency provided Sabreliner to prepare its proposal was inadequate, and that the proposed sole-source improperly "bundled" the engineering and overhaul services. Sabreliner asserted that it is authorized, and has the ability, to overhaul the engines, and that because of this, it should be permitted to compete for those services. Protest, Tab 2, Agency-Level Protest, at 2.

The agency states that in an effort to resolve Sabreliner's agency-level protest, it contacted Sabreliner and asked whether the protest could be resolved by providing Sabreliner with additional time to prepare its proposal. The agency states that it was informed by Sabreliner that "only a separation of the overhaul from the data requirements and the overhaul portion being solicited competitively would satisfy Sabreliner." The agency explains that it had another discussion with Sabreliner, and "agreed to further consult with the government technical personnel and have a later conference with Sabreliner." The contracting officer states that after discussing the matter with the agency's technical personnel, she determined that the agreed upon conference with Sabreliner "would not be fruitful," and informed Sabreliner on June 7 that there would be no conference. Contracting Officer's Statement at 2. Sabreliner filed its protest with our Office the following day.

PROTEST

Sabreliner protests the selection of Rolls-Royce for award of this sole-source contract on the grounds that the Army improperly determined that Rolls-Royce was the only responsible source capable of meeting the government's needs with regard to both the engineering and overhaul services. Sabreliner argues in the alternative that if the agency properly determined that only Rolls-Royce, as the OEM, is capable of performing the engineering services, the agency nevertheless lacks a reasonable basis for requiring that both the engineering and overhaul services be performed by Rolls-Royce, contending that if need be, the agency should procure the engineering services from Rolls-Royce on a sole-source basis, and then compete the overhaul services.³

ANALYSIS

Legal Standard

Although the overriding mandate of the Competition in Contracting Act of 1984 (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) (1994 & Supp. IV 1998), CICA does permit noncompetitive acquisitions in certain circumstances. 10 U.S.C. § 2304(c). One of those circumstances or exceptions to the mandate that competitive procedures be used—that only one responsible source and no other supplies or services will satisfy the agency's requirements—was cited by the Army as the authority for its proposed sole-source award to Rolls-Royce.⁴ Agency

³ As an initial matter, the agency argues that Sabreliner's protests should be dismissed as untimely because Sabreliner did not respond to Note 22 included in the CBD notice. Note 22 gives potential sources 45 days to submit expressions of interest showing their ability to meet the agency's stated requirements. Our Office generally requires that a protester respond to the CBD notice with a timely expression of interest in fulfilling the agency's requirement, and must receive a negative response as a prerequisite of filing a protest challenging an agency's sole-source decision. Magnavox Elec. Sys. Co., B-258037, B-258037.2, Dec. 8, 1994, 94-2 CPD ¶ 227 at 6. Under the circumstances here, where it turns out that the CBD did not describe the services being noncompetitively acquired (as described below) and where Sabreliner promptly responded to the CBD notice and requested a copy of the solicitation referenced in the notice, and filed its protest promptly after the agency provided Sabreliner with the SOW and informed Sabreliner that it had only 3 hours to submit a proposal, we cannot find Sabreliner's protest untimely. See id. at 7; Julie Research Labs., Inc., B-218593, Aug. 29, 1985, 85-2 CPD ¶ 246 at 2.

⁴ While there is some testimony and file documentation suggesting that some Army officials believe the requirement is urgent, the agency denies that this sole-source

(continued...)

Report, Tab B, J&A, at 2; 10 U.S.C. § 2304(c)(1); Federal Acquisition Regulation (FAR) § 6.302-1.

When an agency uses noncompetitive procedures under 10 U.S.C. § 2304(c)(1), it is required to execute a written J&A with sufficient facts and rationale to support the use of the cited authority, and publish a notice in the CBD to permit potential competitors to challenge the agency's intent to procure without full and open competition. See 10 U.S.C. § 2304(f)(1)(A), (B); FAR §§ 6.302-1(d)(1), 6.303, 6.304; Marconi Dynamics, Inc., B-252318, June 21, 1993, 93-1 CPD ¶ 475 at 5. Our Office will closely scrutinize sole-source procurements conducted under the exceptions to full and open competition authorized by 10 U.S.C. § 2304(c), with our review focusing on the adequacy of the rationale and conclusions set forth in the J&A. National Aerospace Group, Inc., B-282843, Aug. 30, 1999, 99-2 CPD ¶ 43 at 5; Marconi Dynamics, Inc., *supra*.

Agency's Failure to Justify Sole-Source Award

As explained below, the J&A and its supporting documentation, as well as the agency's submissions prepared in response to this protest and the testimony of the agency representatives at the hearing held at our Office in connection with this protest, contain so many inconsistencies and inaccuracies that they cannot reasonably justify the agency's intended award of a sole-source contract to Rolls-Royce. Specifically, the J&A inaccurately describes the overhaul services to be acquired, the dollar value of the services to be acquired, and the length of time for which the services will be needed. Additionally, the record does not support the J&A's statement that only Rolls-Royce is capable of providing either the engineering or overhaul services, and similarly, fails to support the agency's position, as reflected in the J&A and argued by the agency during this protest, that the engineering and overhaul services must be performed by the same contractor (Rolls-Royce).

Incorrect Description of Services in J&A and CBD Announcement

Section 6.303-2 of the FAR, which sets forth the required content of a J&A, states, among other things, that the J&A "shall include . . . [a] description of the supplies or services required to meet the agency's needs (including the estimated value)." FAR § 6.303-2(a)(3). The agency's J&A here is deficient in that, as conceded by the agency, the required "description of the supplies or services" is inaccurate. Tr. at 125, 138-39, 254-56, 265-67, 270-71, 332.

(...continued)

acquisition is justified on the basis of urgency. Supplemental Report at 5, n.4; attach. at 5.

Specifically, the record here includes a memorandum prepared by an Army official identifying the need for the services to overhaul the engines in question, which states that the agency “has made the decision to overhaul the T63-A-720 military engines to a 250-C20B commercial configuration as documented by the existing commercial manual. The commercial configuration would fill anticipated . . . demands.” Agency Report, Tab I, Memorandum (Oct. 2, 2000), at 1. This language describing the work to be performed as overhauling the agency’s military engines to a specific commercial configuration—the 250-C20B—was repeated verbatim in the J&A. Agency Report, Tab B, J&A at 1. Additionally, the notice published in the CBD also described the work required as overhauling the agency’s military engines to a commercial configuration, stating among other things that “[t]he contractor will also upgrade the Engine configuration to commercial.” Agency Report, Tab E, CBD Notice.

Nevertheless, the agency representatives testified at the hearing held at our Office in connection with this protest that the repeated statement that the contractor would be required to overhaul the T63 engines to a commercial configuration using the existing commercial manuals is inaccurate. Tr. at 125, 138-39, 254-56, 265-67, 270-71, 332. That is, the agency representatives testified, and the agency now concedes, that the agency’s requirement is for the T63 military engines to be overhauled to the latest T63 military configuration, rather than to the existing 250-C20B commercial configuration, rendering the J&A and CBD announcement inaccurate and thus deficient with regard to a fundamental requirement—the description of the supplies or services required.⁵

The fact that the J&A was inaccurate with regard to the description of the services required is important because where, as here, an agency proposes to award a sole-source contract on the basis that only one source can satisfy its requirements, it is required to provide other prospective sources notice of its intentions, and an

⁵ The agency argued for the first time at the hearing, and then argued in its post-hearing comments, that contractors, including Sabreliner, should have known that the J&A and CBD notice were in error in that the “input/output” national stock numbers set forth on those documents were the same, and would have been different if the agency’s intent was to have the engines overhauled from a military to a commercial configuration. Tr. at 277-78; Agency’s Post-Hearing Comments at 4-5. We disagree. As pointed out above, both the CBD notice and J&A provided narratives describing the work required as military to commercial configuration overhauls, and the agency has conceded these narratives are incorrect. Accordingly, the agency’s argument here, at best, demonstrates that the J&A was not only inaccurate as to its description of the services needed, but also internally inconsistent.

opportunity to respond to the agency's requirements. 10 U.S.C. § 2304(f); Lockheed Martin Sys. Integration-Owego, B-287190.2, B-287190.3, May 25, 2001, 2001 CPD ¶ ____ at 13. It is implicit in this that the agency adequately apprise other prospective sources of its needs, so that the prospective sources have a meaningful opportunity to demonstrate their ability to provide what the agency seeks to purchase. Lockheed Martin Sys. Integration-Owego, supra. Although CICA does not specifically address this point, the legislative history of the statute does. In this regard, the conference report states:

In situations where competition is not anticipated and solicitation packages have not been prepared, agencies shall provide potential competitors who do respond [to the CBD announcement of the agency's intent to award a sole-source contract] with solicitation packages or comparable information.

H.R.Conf. Rep. No. 98-861 at 1427 (1984), reprinted in 1984 U.S.C.C.A.N. 1445, 2115. Although there is no requirement that an agency express its needs by any particular means, the expression of the agency's needs nevertheless must be as accurate as possible and cannot be misleading. Lockheed Martin Sys. Integration-Owego, supra. Here, as noted above, the CBD notice and the J&A were inaccurate, in that they described the services required as the overhaul and upgrade of the T63 military engines to a commercial configuration.

Compounding these errors is the fact that the agency, although aware that the J&A and CBD notice were incorrect as early as February or March 2001, made no effort to correct this inaccuracy prior to Sabreliner's protest, nor during the protest in either its agency report or supplemental report. Tr. at 255. As such, our Office and the protester first became aware that the agency's actual requirement is to overhaul the engines to the most current military configuration, rather than to an existing commercial configuration, through the testimony of the agency representatives at the hearing held in connection with this protest.

Because of this, Sabreliner pursued its protest in part by arguing and submitting evidence of its ability to overhaul and upgrade the T63-A-720 military engines to a 250-C20B commercial configuration as indicated by the CBD and J&A. For example, Sabreliner provided evidence that it has performed a contract for the Department of the Navy for the overhaul and upgrade of two of its T63 engines to the 250-C20B commercial configuration, and it was agreed that one of the issues to be addressed at the hearing was Sabreliner's capabilities to overhaul and upgrade the T63 engines to the commercial configuration. Protester's Supplemental Comments, Tab 5, Procedures for T63 Overhaul/Reconfiguration. Because the agency waited until the hearing to inform Sabreliner and our Office that the J&A was inaccurate in that the agency's needs were not for the overhaul and upgrade of its T63 engines to the 250-C20B commercial configuration, but rather, were for the upgrade and overhaul to the latest T63 configuration, Sabreliner has never been afforded any real

opportunity to demonstrate its capabilities to meet the agency's actual needs. See Lockheed Martin Sys. Integration-Owego, *supra*.

Incorrect Statement of the Duration of the Sole-Source in the J&A

In support of the J&A, the agency prepared a "Technical Justification and Certification for Proposed Other than Full and Open Competitive Acquisition" (Justification Memorandum), purporting to describe why only Rolls-Royce is capable of meeting the agency's needs with regard to the engineering and overhaul services. Agency Report, Tab C, Justification Memorandum. The Justification Memorandum explains, under the heading "Action taken to remove or overcome any barriers to competition before acquisition," that because the Kiowa helicopters which require the overhauled engines will be "phase[d]-out" in 2004, and accordingly, overhauled engines will not be needed after that date, the agency does not plan to acquire or develop any data or other information on which future competitive acquisitions could be based.⁶ *Id.* at 3. This memorandum was signed on October 5, 2000 by the cognizant competition management officer, the individual responsible in this instance for determining whether the agency had a reasonable basis for proceeding with the proposed sole-source award. *Id.* at 3; Tr. at 44, 198.

The J&A, under the heading "Other Factors," repeated much of the information included in the Justification Memorandum. Specifically, under "Other Factors," the J&A stated that the proposed sole-source was reasonable, given that the Kiowa helicopters needing the overhauled engines were to be phased out in 2004, and because of this (and presumably because the proposed sole-source award to Rolls-Royce is for a 3-year contract) "it would not be in the best interest" to acquire or develop any data or other information on which future competitive acquisitions could be based. Agency Report, Tab B, J&A, at 3.

The record reflects, however, that the agency was aware as of January or February 2001 that the phase-out date of the Kiowa helicopter had been changed from 2004 to 2020. Tr. at 196. Despite being aware of this in January or February, the agency made no effort to amend either the Justification Memorandum or the J&A, nor for that matter did it correct this inaccuracy in its agency report to our Office. Rather, the agency waited until it filed its supplemental report to correct the record,

⁶ The agency supplemental report erroneously represented, in arguing that the J&A was reasonably based, that the agency would acquire through its proposed sole-source contract with Roll-Royce "data for future competitive acquisitions." Agency Supplemental Report at 4. At the subsequent hearing, agency and Rolls-Royce representatives testified that this statement was inaccurate, in that the agency will not acquire through its proposed sole-source contract with Rolls-Royce any data that will allow the agency to procure the services competitively in the future. Tr. at 63, 77-78, 364, 402.

informing our Office and the protester of “the Army’s decision to change the phase out date of the Kiowa from 2004 to 2020.”⁷ Agency Supplemental Report at 4. The importance of the change in the phase-out date for the Kiowa helicopter to any consideration of the reasonableness of the agency’s proposed sole source award of a contract to Rolls-Royce is readily apparent. As explained by the agency, because the Kiowa helicopter will be in use through 2020, the agency will continue to require overhauled engines for approximately 16 or 17 years after the current proposed sole-source contract (which is for a 3-year period) expires. Tr. at 67. Because of this, and the fact that the agency has no current plans to acquire or develop any data or other information on which future competitive acquisitions could be based, the agency concedes that it will have to continually procure the required engine overhaul services from Rolls-Royce on a sole-source basis for the next 19 years. Tr. at 67, 69-70, 72-73, 259.

We first note that there is nothing in the record that states or otherwise suggests that either the cognizant competition management officer, who signed the Justification Memorandum supporting the J&A, or the Executive Director of the Acquisition Center, who signed the J&A, was ever made aware of the change to the phase-out date of the Kiowa helicopter, or the above-discussed impact of this, which the agency now concedes could effectively result in a sole-source of the engine overhaul requirements to Rolls-Royce for the next 19 years. Tr. at 67, 69-70, 72-73. Moreover, there is nothing in the record here that justifies, in our view, the agency’s intention to award this and the follow-on contracts for the overhaul services covering the next 19 years to Rolls-Royce on a sole-source basis. See National Aerospace Group, Inc., supra, at 8 (contracting officials must act affirmatively to obtain and safeguard competition and cannot take a docile approach and remain in a sole-source situation where they can reasonably take steps to enhance competition).

Understated Value of the Sole-Source Contract in the J&A

The protester also challenges the accuracy of the dollar value of the proposed sole-source contract with Rolls-Royce as set forth in the J&A. In this regard, the J&A estimated the total value of the contract at \$27.7 million. Although the J&A anticipated the award of a 3-year, indefinite-delivery/indefinite-quantity contract, with Rolls-Royce overhauling 150 to 300 engines, the J&A provides that the estimated

⁷ The agency argues in its post-hearing comments that the Army now has a “goal” of phasing out the Kiowa helicopter in 2004, and supports this assertion with copies of post-hearing e-mail exchanges between Army personnel (which do not clearly state this). Agency Post-Hearing Comments at 3. In light of the Army’s specific statement in its supplemental report that the Army plans to phase out the Kiowa in 2020, and the testimony provided by the agency representatives at the hearing that supports this date, we give the agency’s post-hearing assertion that it now has a “goal” of phasing out the Kiowa by 2004 little weight.

\$27.7 million total value was primarily based upon Rolls-Royce overhauling 300 engines at a price of \$92,000 each.⁸ Agency Report, Tab B, J&A, at 1-2. However, as pointed out by Sabreliner, the record evidences that Rolls-Royce's proposed price for the overhaul services ranges (based upon contract year) from \$[DELETED] to \$[DELETED] per engine, so that the cost to the agency for the 300 engine overhauls will total \$[DELETED]. Agency Report, Tab J, Rolls-Royce's Revised Proposal.

The agency's response to this aspect of Sabreliner's protest does nothing to alleviate concerns that the estimates set forth in the J&A are substantially understated. First, the agency's explanation that the J&A's estimate for the overhaul services is based upon outdated data simply confirms the protester's contention. Agency Supplemental Report, attach. 1, at 3. While the agency also notes that it is still negotiating with Rolls-Royce over the final price, the fact is that the record as it is reflects a proposed price that is [DELETED] what the J&A estimates. *Id.* Finally, the agency statement that "even if Rolls-Royce's proposed unit price were the final agreed price, it would not cause the Army to exceed the total estimated value of \$27.6 million for the overhaul/upgrade work if only 150 T63[] engines are overhauled/upgraded" only addresses the protester's contention by [DELETED] upon which the J&A's estimate was based. In sum, based upon this record, the J&A failed to set forth an accurate estimate of the value of the proposed sole-source contract, as required. FAR § 6.303-2(a)(3); see Marconi Dynamics, Inc., *supra*, at 17 n.13.

Agency's Failure to Identify Documentation Justifying Sole-Source Award

The agency has also failed to reasonably demonstrate that only Rolls-Royce has the capability to perform the engineering and overhaul services required. First, with regard to the engineering services, the SOW for this requirement provides that in performing the overhauls, "[t]he following [Rolls-Royce] RR 250-C20 publications shall be utilized: 10W2 (Operations & Maintenance Manual), 10W3 (Overhaul Manual), 10W4 (Illustrated Parts Catalog) and other applicable Rolls Royce approved documentation as provided in Appendix B-8." Agency Report, Tab H, SOW, at 1. The agency concedes that the Operations & Maintenance and Overhaul manuals as well as the Illustrated Parts Catalog are commercially available, but maintains that only Rolls-Royce has the necessary proprietary data to perform the engineering services. In support of this assertion, the agency points to the statement in the SOW that the contractor must use "other applicable Rolls Royce approved documentation as provided by Appendix B-8." Tr. at 111-13.

However, when questioned during the hearing, the agency representatives conceded that there is no "Appendix B-8." That is, they admit that Appendix B-8 has not been

⁸ As indicated, the estimated price for the overhaul services accounts for the majority of the estimated total value of the contract (\$92,000 x 300 = \$27.6 million).

developed, that the agency does not have any of the documents that are to comprise Appendix B-8, and that the agency cannot, in fact, even identify what documents are to comprise Appendix B-8. Tr. at 111-13, 289-90. Although the agency representatives testified that there must be some documents proprietary to Rolls-Royce that are needed to perform the engineering services, given the agency's view that it no longer has in its possession all of the data it believes is necessary to overhaul the engines, Tr. at 293-97, this assertion, however credible, remains unsupported by any documentary evidence. Under these circumstances, the agency's assertion that only Rolls-Royce can perform the engineering services purportedly required to update the agency's data, so that the T63 engines can be successfully overhauled to the most current T63 configuration, cannot be found reasonable.

Agency's Failure to Justify Combining Engineering and Overhaul Services into a Sole-Source Contract

Despite arguing in its agency report that the overhaul services could not be separated from the engineering services, the agency represented for the first time at the hearing that it had competitively acquired the overhaul services in the past, and that it could develop data sufficient to permit the overhaul services to be competed here in 8 to 10 months at "the outside."⁹ Tr. at 24, 32, 145-46, 150-51, 157, 200-01. Specifically, the agency representatives explained that such an effort could be accomplished by updating the DMWR internally (the document it had previously used to perform the overhaul services in-house), and by entering into an engineering services arrangement with Rolls-Royce in order to obtain any information proprietary to Rolls-Royce which the agency is lacking. Tr. at 29-31, 69-70. In this regard, the agency representative testified that "[Rolls-Royce] would let the Army purchase [the data] to update [the] DMWR."¹⁰ Tr. at 69. Given that the agency

⁹ The agency argues in its post-hearing comments that, contrary to its representatives' testimony at the hearing, it would actually take longer than 10 months to update the DMWR. Agency Post-Hearing Comments at 3. In light of the specific and detailed testimony of the agency representatives at the hearing that the DMWR could be updated in 8 to 10 months, we give the agency's post-hearing assertion that it would take longer to update the DMWR little weight.

¹⁰ The agency representative's testimony here is consistent with Rolls-Royce's previous position, as evidenced by its statement to the agency made sometime prior to the filing of this protest that "Rolls-Royce is open to discuss updating the current US Army Depot Technical Manual (the Army version of the commercial overhaul manual)." Agency Report, Tab J, Rolls-Royce Responses to Agency Questions (June 7, 2001). We note, however, that, in its post-hearing comments, Rolls-Royce has provided a declaration signed by the Rolls-Royce representative, who testified at the hearing, stating that "Rolls-Royce is not inclined to sell its proprietary data to the (continued...)"

concedes that it could develop data in 8 to 10 months that would be sufficient to permit the overhaul services to be competed, we see no reason why, even if the agency were correct in its assertion that only Rolls-Royce could provide the engineering services necessary to develop that data, Rolls-Royce need also perform the overhaul services.

CONCLUSION

In sum, the J&A and its supporting documentation, as well as the agency's submissions in response to this protest and the testimony of the agency representatives at the hearing held at our Office, are so replete with errors and inconsistencies that we cannot find the agency's justification of a proposed award of a contract to Rolls-Royce on a sole-source basis reasonable.

Accordingly, we recommend that the agency first reassess whether a sole-source contract with Rolls-Royce is necessary to meet its needs with regard to the engineering services. If the agency reasonably determines that the award of a contract on a sole-source basis to Rolls-Royce is necessary for the engineering services, the agency should execute a properly reasoned and accurate J&A for the sole-source award, and properly synopsize its requirement. In addition, if, upon further review, it is the agency's position that it could develop data in 8 to 10 months that would be sufficient to permit the overhaul services to be competed among commercial vendors, and that based upon current information the agency will require overhaul services for the next 19 years, we recommend that it develop the data sufficient to permit the overhaul services to be competed, and then competitively procure the overhaul services. We also recommend that the agency reimburse Sabreliner for the reasonable costs associated with filing and pursuing this protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(f)(1) (2001). Sabreliner's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of its receiving our decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel

(...continued)

Army in order for the Army to update its DMWR." Intervenor's Post-Hearing Comments, Tab D, Declaration.