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Decision

Matter of: Rotair Aerospace Corporation

File: B-422816

Date: November 6, 2024

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DIGEST

Protest that a delivery order exceeds the scope of an underlying requirements contract is denied where the record shows that the items ordered were within the express terms of the contract, providing for the buyback of inventory, and the protester's allegations are based on facts not reflected in the record.

DECISION

Rotair Aerospace Corporation, of Bridgeport, Connecticut, protests the issuance of delivery order No. SPE4AX-24-F-Z25G to Sikorsky Aircraft Corporation, of Stratford, Connecticut, by the Defense Logistics Agency (DLA) for flight control capsule assembly units. The protester argues that the agency improperly issued the delivery order without a full and open competition for the requirement.

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

BACKGROUND

On July 1, 2015, the agency awarded a requirements contract to Sikorsky on a sole-source basis to provide a performance-based supply of consumable parts in support of previously procured Sikorsky aircrafts. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2; Agency Report (AR), Exh. 1, Contract at 2. The fixed-price contract was for a 5-year base period and one 5-year option period, and the

agency exercised the option on April 22, 2020, extending the period of performance through June 30, 2025.¹ *Id.*; AR, Exh. 2, Contract Mod. No. P00078 at 1.

In awarding the contract to Sikorsky on a sole-source basis, the agency executed a justification and approval (J&A) for other than full and open competition under Federal Acquisition Regulation (FAR) section 6.301-1. AR, Exh. 3, J&A at 3. The J&A identified Sikorsky as the only responsible source for 2,524 consumable national stock number (NSN) items supporting multiple weapons systems used by the U.S. military services or acquired in foreign military sales, including flight control capsule assembly units, NSN 1680-01-158-5779, referred to by the parties as “spring capsules.” *Id.* at 1-3.

As relevant here, the requirements contract contained a provision that allowed the agency to “delete items from the contract at any time by unilateral modification” under certain circumstances, including when the agency determines “an item to be competitive, which [means it] can be obtained from sources other than [Sikorsky], even though no alternative sources may have existed at the time of award.” AR, Exh. 1, Contract at 4. Under a “buyback” provision of the contract, if the agency unilaterally deletes items from the contract, the agency is required to “purchase residual and committed inventory up to 100 [percent] of the actual demand experienced in the 24 months preceding buyback implementation.” *Id.* at 4, 14. The contract defines “residual inventory” as inventory that Sikorsky “has on the shelf at the time of the buyback in order to support the [customer direct] requirements of the contract.” *Id.* at 4. “Committed inventory” is defined as inventory that Sikorsky “has committed with suppliers for parts in direct support of the [customer direct] requirements of the contract.” *Id.* The buyback provision also permits the agency to purchase “a higher quantity than what is contractually required depending on the circumstances for the individual item.” *Id.* at 14.

On October 10, 2023, the agency notified Sikorsky that a number of NSN items, including the spring capsule, had been identified as competitive items and would be removed from the requirements contract through a unilateral modification. COS/MOL at 3; AR, Exh. 4, Oct. 10 Email to Sikorsky at 1. The notice advised that 84 customer direct items on an enclosed list—including spring capsules—were subject to the buyback provisions of the contract and requested that Sikorsky provide documentation for the residual and committed inventory levels of these items. AR, Exh. 4, Oct. 10 Email to Sikorsky at 1. On December 4, the agency issued a unilateral modification to remove 85 items, including spring capsules, from the requirements contract and then notified Sikorsky that the agency would initiate the buyback process to purchase the inventory

¹ The requirements contract was assigned the contract number SPE4AX-15-D-9002. AR, Exh. 1, Contract at 1. Because of system limitations in accommodating such a large number of NSNs under one contract, the agency established two additional contract numbers for the purpose of issuing delivery orders under the requirements contract: SPE4A5-15-D-0018 and SPE4A5-15-D-0019. Agency’s Supp. Brief, exh. 1, Contracting Officer’s (CO) Decl. at 1; Agency’s Supp. Brief, exh. 2, Contract Mod. No. P00002 at 1.

of those items. AR, Exh. 7, Contract Mod. No. P00152 at 1-2; AR, Exh. 8, Dec. 4 Email to Sikorsky at 1.

Following a sources-sought notice issued on March 12, 2024, DLA issued a request for proposals (RFP) on April 15, seeking the delivery of 1,480 spring capsules and identifying Sikorsky and Air Industries Machining Corporation as approved sources for the requirement.² COS/MOL at 3-4; see AR, Exh. 9, Sources Sought Notice at 2-4; AR, Exh. 10, April 15 Spring Capsule RFP at 1, 5, 8-10. On May 15, Rotair filed a protest with our Office, challenging the terms of the RFP. AR, Exh. 11, May 15 Protest at 2-8. Rotair's protest of the RFP was dismissed as academic after the agency informed our Office of its intent to take corrective action. *Rotair Aerospace Corporation*, B-422589, May 28, 2024 (unpublished decision). In proposing to take corrective action, the agency stated that it would cancel the solicitation to allow for future competition should Rotair's source approval request, which was pending agency review at the time, be approved. AR, Exh. 12, May 23 Notice of Corrective Action at 1. On June 5, however, the agency notified Rotair that the engineering support activities of the Navy and the Army had rejected Rotair's source approval request. COS/MOL at 4-5. Rotair resubmitted its source approval request, which presently remains pending. Protest at 4 n.1.

On June 24, the agency issued the delivery order at issue in this protest to Sikorsky for the delivery of 2,270 spring capsules at a total price of \$3,956,859. AR, Exh. 16, Spring Capsule Order at 1-2. This protest followed.

DISCUSSION

The protester alleges that the agency improperly issued the delivery order to Sikorsky instead of issuing a competitive solicitation for the spring capsule requirement. In this regard, the protester argues that the delivery order exceeds the scope of the underlying requirements contract with Sikorsky.³ Comments at 4 n.3; Resp. to Supp. Brief at 1-2.

² When a NSN item is being procured on an other-than-full-and-open-competition basis, a vendor may become an approved source for that item by submitting a source approval request that demonstrates the vendor's competence to manufacture the item to the same or better level of quality than the current approved source or sources. See DLA Source Approval Request and Alternate Offer Guide (Nov. 2022), www.dla.mil/Portals/104/Documents/SmallBusiness/DLA%20SAR%20Guide.pdf.

³ Rotair initially alleged that the delivery order was improperly issued under a basic ordering agreement without adhering to the ordering procedures in FAR section 16.703. See Protest at 2, 5-9. In response, the agency asserted--and provided documentation showing--that the delivery order was not issued under a basic ordering agreement, but instead was issued under a sole-source requirements contract. See COS/MOL at 6; Agency's Supp. Brief, exh. 1, Contracting Officer's Decl. at 1; Agency's Supp. Brief, exh. 2, Contract Mod. No. P00002 at 1. After reviewing the agency report and subsequent filings by the agency, the protester asserts that the delivery order exceeds the scope of the requirements contract. Comments at 4 n.3; Resp. to Supp. Brief at 1-2.

The protester also argues that the agency failed to conduct adequate market research and did not follow required competitive procedures in issuing the delivery order. Protest at 8-9; Comments at 4-6; Resp. to Supp. Brief at 2-3. The protester argues that the agency issued the out-of-scope delivery order to improperly bypass competing the requirement as promised during the corrective action taken in response to Rotair's May 15 protest. *Id.*

The agency responds that the delivery order was properly issued within the scope of the underlying requirements contract and that Rotair's remaining challenges to the issuance of the delivery order are not matters for consideration by our Office. COS/MOL at 6-8. Based on our review of the record, we agree with the agency.

Our Office will generally not review protests of task or delivery orders under contracts because such matters are related to contract administration and are beyond the scope of our bid protest function. Bid Protest Regulations, 4 C.F.R. § 21.5(a); *Lasmer Industries, Inc.*, B-400866.2, *et al.*, Mar. 30, 2009, 2009 CPD ¶ 77 at 6. An exception to this rule is where, as here, it is alleged that a task or delivery order is beyond the scope of the underlying contract because, absent a valid sole-source determination, the work covered by the order would be subject to the statutory requirements for competition set forth in the Competition in Contracting Act of 1984 (CICA). *Id.* In determining whether a task or delivery order is outside the scope of the underlying contract, and thus falls within CICA's competition requirement, our Office examines whether the order is materially different from the original contract as reasonably interpreted. *Erickson Helicopters, Inc.*, B-415176.3, B-415176.5, Dec. 11, 2017, 2017 CPD ¶ 378 at 7; *Lasmer Industries, Inc.*, *supra*. Evidence of a material difference is found by reviewing the circumstances attending the original procurement; any changes in the type of work, performance period, and costs between the contract as awarded and the order as issued; and whether the original solicitation effectively advised offerors of the potential for the type of orders issued. *California Indus. Facilities Res., Inc., d/b/a CAMSS Shelters*, B-406146, Feb. 22, 2012, 2012 CPD ¶ 75 at 3. In other words, the inquiry is whether the order is one which potential offerors reasonably would have anticipated. *Id.*

Here, we find no merit to Rotair's allegation that the delivery order exceeds the scope of the underlying requirements contract. Specifically, the terms of the underlying contract simply do not support the protester's position. First, it is not disputed that the spring capsule was an item specifically included in the requirements contract until the agency removed it from the contract through a unilateral modification. AR, Exh. 7, Contract Mod. No. P00152 at 1-2. As noted above, the express contract terms allowed the agency to unilaterally remove items from the contract when the agency determines that those items could be obtained from another source. See AR, Exh. 1, Contract at 4. The contract terms also required the agency, when removing items from the contract through such a unilateral modification, to "purchase residual and committed inventory up to 100 [percent] of the actual demand experienced in the 24 months preceding buyback implementation." *Id.* at 4, 14. This buyback provision gave the agency "the unilateral right to compute the actual demand figure for the buyback process" and also permitted the agency to purchase "a higher quantity than what is contractually required

depending on the circumstances for the individual item,” with the “[f]inal buyback quantities [to] be mutually agreed upon” between the parties. *Id.* at 14. It is clear therefore that the contract, by its terms, contemplated that the agency would purchase Sikorsky’s inventory up to a quantity equaling the 2-year demand for a particular item when that item was removed from the contract in order to be competed. *Id.*

Although the protester argues that the *quantity* of spring capsule units ordered here exceeds a reasonable quantity for residual and committed inventory--as those terms are defined in the contract--and thus exceeds the scope of the contract, our review of the record provides no basis to question the agency’s calculation of the buyback quantity. Resp. to Supp. Brief at 3; Resp. to 2nd Supp. Filing at 1-3. In this regard, the record shows that the quantity of spring capsules ordered (2,270) was within the quantity of Sikorsky’s residual and committed inventory as defined by the requirements contract. Specifically, the spreadsheet used in the negotiation between Sikorsky and DLA shows that, for spring capsules, Sikorsky claimed a residual inventory of [DELETED] units and a committed inventory (under a column labeled “SAC PO Due-in”) of [DELETED] units, for a total inventory of [DELETED] units.⁴ Agency’s 2nd Supp. Filing, attach., Negotiation Spreadsheet, row 37.

The spreadsheet also shows that Sikorsky calculated the 24-month demand for the spring capsules as 2,107 units, while the agency calculated a slightly higher figure of 2,270 units. *Id.*; Early Document Production, Demand History Spreadsheet, row 778. In the May 16 email accompanying the spreadsheet, the contracting officer explained that, for each item on the spreadsheet, he “originally went with the lowest Demand number (assuming it was less than [inventory]+[due-in]) while the spreadsheet was calculated for the higher demand.” Agency’s 2nd Supp. Filing, attach., May 16 Emails at 1. The contracting officer stated that he would discuss with another agency official to “see if the higher demand number is acceptable so that we can bring in more inventory” and noted that “otherwise we may need to come up with a mutually agreeable solution (line-by-line negotiation or average).” *Id.*

On this record, we find that the agency demonstrated not only that the disputed spring capsule delivery order was issued within the scope of the express contract terms providing for the buyback of Sikorsky’s inventory, but also that the quantity ordered was calculated in accordance with the terms of that buyback provision. Specifically, the record shows that the contracting officer: considered the quantity of residual and committed inventory claimed by Sikorsky ([DELETED] units); calculated the actual demand for the item in the 24 months preceding the buyback implementation (2,270 units); considered the different demand figure calculated by Sikorsky (2,107 units); and reasonably settled on a final buyback quantity of 2,270 units. Agency’s 2nd Supp. Filing, attach., May 16 Emails at 1; Agency’s 2nd Supp. Filing,

⁴ As noted above, the contract defined “residual inventory” as inventory that Sikorsky “has on the shelf at the time of the buyback,” and “committed inventory” as inventory that Sikorsky “has committed with suppliers for parts in direct support of” the requirement. AR, Exh. 1, Contract at 4.

attach., Negotiation Spreadsheet, row 37. Based on the express terms of the requirements contract, giving the agency “the unilateral right to compute the actual demand figure for the buyback process” and providing for the purchase of “a higher quantity than what is contractually required depending on the circumstances for the individual item,” we find the contracting officer’s decision to be reasonable and fully within the scope of the contract. AR, Exh. 1, Contract at 14. In sum, nothing in the contemporaneous documentation suggests that the contracting officer’s decision to order 2,270 units of spring capsules was outside of the scope of the underlying contract.

Moreover, we find no basis to entertain the protester’s speculative claim that the quantity of committed inventory stated by Sikorsky was somehow incorrect or falsely claimed. See Resp. to 2nd Supp. Filing at 2-3. In this regard, the protester objects to the agency’s use of the 24-month actual demand as the buyback quantity because Sikorsky’s claim of [DELETED] units of committed inventory is “far outside ordinary practice” and allows the agency and Sikorsky “to avoid future competitive procurements by making up committed inventory numbers.” *Id.* at 2. Despite the protester’s incredulity, however, we do not agree that it was implausible for Sikorsky to have [DELETED] units of spring capsules “on the shelf,” while being “committed with suppliers for parts in direct support of” [DELETED] units.

First, the record shows that both the agency and Sikorsky calculated the demand for the item over the past 24 months preceding the buyback (which formed the contractual ceiling for the buyback quantity) as well over 2,000 units. Moreover, the protester asserts, in its own filings, that the spring capsule is “a part with complex testing requirements,” of which “no vendor would be able to produce, ship, and deliver” 1,480 units within 255 days of receiving an order. *Id.* at 3; Protest at 4 (describing the basis of Rotair’s protest of the agency’s April 15 solicitation for spring capsules). Under these circumstances, including the considerable lead time and testing complexities of the capsules, we find nothing “remarkable” about Sikorsky’s representation to the agency that it had committed with suppliers for parts in support of [DELETED] spring capsule units or in the contracting officer’s acceptance of that quantity as committed inventory.⁵ Resp. to 2nd Supp. Filing at 2.

In addition, we find no basis for the protester’s inference that the agency and Sikorsky colluded “to avoid future competitive procurements by making up committed inventory numbers unbounded by economic reality and lock in a source of supply through the façade of ‘buybacks.’” *Id.* Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of

⁵ While the protester also speculates that Sikorsky failed to submit supporting documentation for its committed inventory and that the agency failed to verify such documentation, we dismiss these arguments because we generally do not review matters of contract administration. Bid Protest Regulations, 4 C.F.R. § 21.5(a). Here, whether Sikorsky complied with the requirement to submit supporting documentation for committed inventory and whether the agency sufficiently reviewed such documentation are matters of contract administration. See *Erickson Helicopters, Inc.*, *supra* at 9.

inference and supposition. *Lasmer Industries, Inc., supra* at 4 n.3. Here, based on our review of the record, including the protester's arguments, we find no evidence that the agency's procurement officials were motivated by a desire to avoid future competitive procurement for the supply of spring capsules.

Finally, the protester raises a number of collateral arguments challenging the agency's issuance of the delivery order to Sikorsky. For example, Rotair argues that the agency failed to conduct adequate market research to support the spring capsule delivery order requirement and failed to follow other FAR competition requirements. Protest at 8-9; Comments at 5-6; Resp. to Supp. Brief at 2-3. However, as noted above, the issuance of a delivery order under an existing contract is generally a matter of contract administration and not for consideration by our Office except where the protester can show that the order increases the scope, period, or maximum value of the contract under which the order is issued. See *California Indus. Facilities Res., Inc., d/b/a/ CAMSS Shelters, supra*; *Exide Corp.*, B-276988, B-276988.2, Aug. 18, 1997, 97-2 CPD ¶ 51 at 4. Here, because we conclude that the challenged delivery order was properly issued within the scope of the underlying sole-source contract, the protester's remaining challenges to the delivery order are a matter of contract administration that our Office will not review. Accordingly, these remaining arguments are dismissed. 4 C.F.R. § 21.5(a); see *Exide Corp. supra*.

The protest is denied in part and dismissed in part.

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