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Decision

Matter of: Hydraulics International, Inc.

File: B-423114

Date: January 27, 2025

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Christine Milne, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of an agency's intent to issue a sole-source award to another firm is denied where the record shows that no other responsible source can meet the agency's needs without substantial duplication of cost.

DECISION

Hydraulics International, Inc., (HII) of Chatsworth, California, protests the agency's notice of intent to issue a sole-source contract to Sun Test Systems, Inc., (STS) of Huntsville, Alabama, issued by the Department of the Army, Army Materiel Command, to acquire an Aviation Ground Power Unit (AGPU) 1.1 to support aviation ground maintenance. HII asserts that the Army's intent to issue a sole-source award is unreasonable and unjustified because it could supply the agency with a product that meets its needs without substantial duplication of costs.

We deny the protest.

BACKGROUND

The Army currently utilizes a device referred to as the AGPU 1.0, which provides a power source for an aircraft while the aircraft is undergoing maintenance activities. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1-2. Since 2012, the Army has recognized a need for an improved AGPU capable of supporting

different types of aircraft, such as the AH-64 Apache, the CH-47 Chinook, and the UH-60 Black Hawk. *Id.* at 1. In January 2021, the Army issued a request for whitepapers, and subsequently a request for enhanced whitepapers, to the Aviation & Missile Technology Consortium for commercially available potential prototypes for an AGPU 1.1, with specific requirements provided in a product item description (PID). *Id.* at 2-3. The Army received enhanced whitepapers (EWPs) from five vendors, including HII, and ultimately determined that two vendors best met the Army's requirements--STS and Vendor A. *Id.* at 3. Both vendors submitted prototypes that were tested and evaluated, and the Army decided to move forward with STS's prototype of the AGPU 1.1. *Id.* at 4.

The AGPU 1.1, the first improvement on the AGPU 1.0, is a military adapted commercial item, meaning that it is a military variant of a commercially available item, adapted to meet specific military requirements. *Id.* at 2. The AGPU 1.1 provides many improvements to the functionality of the AGPU 1.0 and, in particular, provides alternating current and direct current electrical, pneumatic, and hydraulic pressure capabilities simultaneously and continuously that maintenance personnel use to service, maintain, and preflight rotary wing aircraft. *Id.* at 2; Agency Report (AR), Tab 11, PID at ¶¶ 3.7.1-3.7.3.

On March 31, 2022, HII filed a bid protest of the Army's prototype award decision at the United States Court of Federal Claims (COFC), contending that the Army misevaluated HII's whitepaper submission and challenging the Army's best-value determination. *Id.*; *Hydraulics Int'l, Inc. v. United States*, 161 Fed. Cl. 167 (Fed. Cl. 2022). In its decision denying HII's protest, the court noted the Army's determination that HII's existing commercial product did not meet the PID requirement that minimum electrical, pneumatic, and hydraulic outputs be provided simultaneously, unlike the products of STS and Vendor A. *Hydraulics Int'l*, 161 Fed. Cl. at 4. HII's EWP proposed two alternatives to address this shortcoming: (1) that the Army relax the simultaneous operation requirement; or (2) that HII redesign its unit, though HII warned that there would be an increase in technical risk and cost. *Id.* The Army rejected the first alternative and, regarding the second, determined that while HII could mitigate the technical risks, it could not mitigate the schedule risk; that is, HII's proposed timeline for redesign would require twelve months before delivery of a compliant prototype, which was too long. *Id.* The court concluded that the Army's evaluation was reasonable and upheld its best-value determination. *Id.* at 19-20.

On September 26, 2023, the Aviation Ground Support Equipment (AGSE) product lead for the Army determined that STS had successfully developed the AGPU 1.1 prototype and met all key operational requirements. COS/MOL at 5. The Army decided to award a sole-source contract to STS under 10 U.S.C § 3204(a)(1) and Federal Acquisition Regulation (FAR) section 6.302-1(a)(2)(ii)(A), based on its determination that STS was the only responsible source that could provide the AGPU 1.1 without substantial

duplication of costs unlikely to be recovered through competition.¹ *Id.* at 6. The estimated contract value is \$[DELETED]. AR, Tab 3, Justification & Approval (J&A) at 4. While it reviewed the J&A for the sole-source award, on October 8, 2024, the Army published a synopsis of the agency's intent to award the sole-source contract to STS. AR, Tab 2, Synopsis at 1. The synopsis explained that STS was the only source that "provides a three-in-one unit that includes electrical, pneumatic, and hydraulic pressure and flow to rotary wing platforms during ground maintenance. Going with another contractor would cause significant duplication of costs to the [government] that could not be recovered through competition." *Id.* at 3.

HII filed this protest on October 17 and the agency subsequently issued the J&A in support of the sole-source award decision on November 5.

DISCUSSION

HII contends that the agency inaccurately states its needs and erred in concluding that only STS could meet them. HII also contends that it and other offerors could meet the agency's actual needs without substantial duplication of costs. Though we do not address all the protester's arguments, we have considered them all and find that none provide us with a basis to sustain the protest.

The Competition in Contracting Act (CICA) mandates "full and open competition" through the use of competitive procedures in government procurements. 10 U.S.C. § 3201(a)(1). CICA, however, provides several exceptions to this requirement, including when an agency's requirements can only be satisfied by one responsible source, and no other type of supplies or services will satisfy agency requirements. See 10 U.S.C. § 3204(a)(1); FAR 6.302-1(a)(2). When an agency uses noncompetitive procedures pursuant to 10 U.S.C. § 3204(a)(1), it is required to execute a written justification and approval with sufficient facts and rationale to support the use of the cited authority. See 10 U.S.C. § 3204(e); FAR 6.302-1(d)(1). Our review of an agency's decision to conduct a sole-source procurement focuses on the adequacy of the rationale and conclusions set forth in the justification and approval; where the justification and approval sets forth a reasonable basis for the agency's actions, we will not object to the award. *MCG Energy Sols., LLC*, B-421143, Jan. 10, 2023, 2023 CPD ¶ 19 at 4.

Requirement for Simultaneous and Continuous Functionalities

¹ After STS successfully completed the AGPU 1.1 prototype pursuant to the other transaction authority (OTA) of 10 U.S.C. § 4022, the Army had planned to enter into a non-competitive follow-on production agreement with STS under this same authority. COS/MOL at 5-6. In 2021, however, section 4022 was amended to authorize such an agreement only if it was expected to cost more than \$100,000,000, and essential to meet critical national security objectives. 10 U.S.C. § 4022(a)(2)(C)(i)(II). The Army determined that the AGPU 1.1 was not essential to meet critical national security objectives and therefore decided to award STS a sole-source contract pursuant to the authority established under 10 U.S.C. § 3204(a)(1). COS/MOL at 6.

HII contends that, based on the language in the synopsis and the other evidence it offers as described below, the agency no longer requires a device that provides simultaneous and continuous functionalities, and therefore HII can meet the agency's needs with one of its own products. Protest at 4-5. HII points to the language in the synopsis that states the agency requires "a three-in-one unit that includes electrical, pneumatic, and hydraulic pressure and flow to rotary wing platforms during ground maintenance," and asserts that because this language is not joined by the requirement that these functions be performed simultaneously and continuously, it is no longer a requirement. *Id.* at 4.

HII also bases its argument on its belief that, although STS's prototype met this requirement in the original competition, it no longer does. HII's belief is based on declarations from its president and its senior design engineer, who both state that STS's AGPU 1.1 does not have the engine power to provide both independent and simultaneous operation of the electrical, pneumatic, and hydraulic pressure. *Id.*; Protest, exh. E, Declaration of HII President at 4; Protest, exh. F, Declaration of HII Senior Design Engineer at 1. HII's president also asserts that an Army engineer performed an evaluation of the AGPU 1.1 and it did not meet the simultaneous and continuous functionalities requirement. Protest, exh. E, Declaration of HII President at ¶¶ 10-11.² HII also bases this belief on a technical specifications sheet for the AGPU 1.1, provided by the AGSE assistant product lead at an Army Aviation Association of America (AAAA) meeting in May 2023, which the protester asserts does not state or demonstrate that the functionalities are provided simultaneously and continuously. Protest at 2-3; Protest, exh. B, AGPU 1.1 Technical Specifications Sheet at 1-2.

The Army responds that the requirement for simultaneous and continuous functionalities has not changed or been relaxed, and that HII's evidence does not demonstrate that the requirement has changed. AR, Tab 16, AGSE Assistant Product Lead Declaration at ¶ 13 ("Simultaneous and continuous output are a requirement that HII did not or could not meet."). As part of its response, the agency provided copies of the J&A, the statement of work (SOW), the PID, and a declaration from the AGSE assistant product lead. AR, Tab 3, J&A; AR, Tab 11, PID; AR, Tab 13, SOW; Tab 16, AGSE Assistant Product Lead Declaration.

The Army first notes that the declarations of HII's president and senior design engineer are self-serving and unpersuasive. COS/MOL at 20. The agency also states that the technical specifications sheet that HII refers to is a "data sheet" or "marketing sheet," only two pages long, prepared by STS and distributed to interested persons at the AAAA event. *Id.* The agency explains that this sheet is not an official Army document and that the PID is the source of the technical specifications, not this handout. *Id.* The agency also states that the Army engineer that HII refers to was involved in one aspect of evaluation regarding the hydraulic filters, which did fail to meet a specification, but

² The Army engineer referred to by HII's president did not submit a declaration; rather, HII's president merely states that he was told this by the engineer.

STS is currently replacing the filters. The agency explains that neither this engineer, nor any engineer in this person's department, has ever disqualified the AGPU 1.1. AR, Tab 16, AGSE Assistant Product Lead Declaration at ¶¶ 26-27.

HII responds that although the simultaneous and continuous functionalities requirement is included in the PID, the PID requirements are not the stated requirements of the sole-source award. Protester's Resp. to Req. for Add'l Briefing at 4. The protester asserts that neither the synopsis nor the SOW contain the simultaneous and continuous functionalities requirement. *Id.*

On this point, the protester is factually incorrect. The record shows that the simultaneous and continuous functionalities requirement is included in the sole-source award, as the SOW was attached to the J&A, the SOW expressly incorporated the PID and its requirements, and the PID stated several times that certain functionalities had to be provided simultaneously and continuously. The SOW states:

This Statement of Work (SOW) defines the requirements for the production, delivery, and training of the AGPU 1.1 requirements for the United States Government (USG) and Foreign Military Sales (FMS) customer are in accordance with (IAW) the Government's AGPU 1.1, SOW and *Purchase Item Description (PID)*, Attachment 001, associated product, and data deliverables.

AR, Tab 13, SOW at ¶ 1.0 (emphasis added).

The SOW further provides under section 3.2, regarding hardware to be provided, that the "Contractor shall provide the . . . customers a total of up to 202 AGPU 1.1 systems, . . . IAW [in accordance with] this SOW and *PID Attachment 001*." *Id.* at ¶ 3.2.1 (emphasis added). The PID then states the requirement for simultaneous and continuous functionalities several times. For example, the PID states that the "AGPU 1.1 shall be capable of providing independent and simultaneous [electrical power system], [hydraulic power system], and [pneumatic power system]." AR, Tab 11, PID at ¶¶ 3.2, 3.4, 3.6, 3.7.1.

HII concedes that the PID contains the simultaneous and continuous functionalities requirement (Protester's Resp. to Req. for Add'l Briefing at 4), and as the record establishes that the PID is incorporated into the sole-source award via the SOW, we find that the protester has failed to demonstrate that the agency did not include this requirement or that the agency's rationale for the sole-source award was unreasonable. *MCG, supra* at 5.

STS's AGPU 1.1

HII nevertheless argues that the agency has effectively waived the requirement because STS's AGPU 1.1 does not meet the simultaneous and continuous functionalities requirement. According to HII, STS's AGPU 1.1. is equivalent to HII's product and bases this claim on the declarations and evidence it submitted in connection with its protest. Protester's Resp. to Req. for Add'l Briefing at 5.

The J&A states that STS demonstrated its prototype's ability to provide simultaneous and continuous functionalities during the original competition in February 2021. AR, Tab 3, J&A at 6. The AGSE product lead signed a memorandum on September 26, 2023, stating that STS's prototype had been successfully completed and "met all the key operational requirements of the prototype project and sufficiently satisfied the success metrics incorporated into the AGPU 1.1 prototype OTA." AR, Tab 6, Memorandum on AGPU 1.1 Prototype Completion at 1-2. Attached to this memorandum are lists of all test data and requirements that had been met, including requirements to provide functionalities simultaneously. AR, Tab 6, Memorandum on AGPU 1.1 Prototype Completion, attach. 001 at 3-14. The AGSE assistant product lead provided a declaration in response to the protester's allegations, stating that "STS's AGPU 1.1 clearly provides multiple system (3) simultaneous outputs; this has been proven through Risk Reduction Testing (RRT) and Product Verification Testing (PVT) during performance of the OTA," and also stated that STS's APGU 1.1's "[s]imultaneous outputs were proven in RRT, PVT[,] [and] Special User Evaluations (SUE). All simultaneous and individual output combinations have been proven without exception." AR, Tab 16, AGSE Assistant Product Lead Declaration at ¶¶ 13, 24.

HII refers to all of this as "no more than conclusory statements." Protester's Resp. to Req. for Add'l Briefing at 5. We do not agree. Although the protester points again to its own expert testimony, the protester does not meaningfully or specifically respond to these documents. HII's response, however, is nothing more than a conclusory statement, which does not provide a basis to question the Army's affirmative representations that STS's AGPU 1.1 meets the simultaneous and continuous functionalities requirement. See *Marquette Elecs., Inc.*, B-262016.2, B-262016.3, Feb. 15, 1996, 96-1 CPD ¶ 98 at 5 (stating that the contracting officer's statement, the pre-award memorandum for record, the awardee's proposal, and the awardee's submissions as intervenor all established the awardee's technical acceptability, and the protester's conclusory response that it still believed, based on the record, that the awardee could not comply with the requirements, provided no basis to question the reasonableness of the evaluation). In sum, the protester does not establish that the agency waived the requirement that the AGPU 1.1 provide simultaneous and continuous functionalities. As such, this allegation is denied.

Lastly, the protester asserts that the J&A is unreasonable because there would not be substantially duplicative costs if the agency were to use the protester's or another offeror's commercially available product to meet its needs. Protester's Comments at 7-

15. However, this argument is predicated on the protester's belief that the agency no longer requires simultaneous and continuous functionalities. As we have established that the agency still requires these functionalities, we need not address the protester's arguments about the agency's estimates of duplicative costs. *FN America, LLC*, B-415261, B-415261.2, Dec. 12, 2017, 2017 CPD ¶ 380 at 5-6.

The protest is denied.

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General Counsel