



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Coastal Seal Services, LLC

File: B-406219

Date: March 12, 2012

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Davis Young, Esq., and Stephen A. Copetas, Esq., Department of the Navy, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Navy decision to limit procurement to brand name, original equipment manufacturer part was unobjectionable where the part was component of critical ship equipment, the failure of which could have serious consequences for deployed military forces; the agency lacked technical data rights to overall system; and the agency reasonably determined, based on its review of data submitted by protester, that it lacked adequate data to conduct a competitive procurement for the part.

DECISION

Coastal Seal Services, LLC (CSS) of Lincolnton, North Carolina, protests the Department of the Navy's intent to issue purchase orders on a sole source basis to Wartsila Defense Inc., of Chesapeake, Virginia, under requests for quotations (RFQ) Nos. N40442-12-T-7153 and N40442-12-T-7154, for replacement stern tube shaft seal repair kits. CSS asserts that a requirement for brand name kits is unduly restrictive.

We deny the protest.

The RFQs, issued on December 6, 2011, announced the Navy's intent to issue a sole-source, fixed-price order to Wartsila for brand name aft stern and forward stern tube seal repair kits for T-AO class seagoing replenishment oilers USNS Big Horn (RFQ No. N40442-12-T-7153) and USNS Lenthall (RFQ No. N40442-12-T-7154), whose mission is to shuttle fuel oil and supplies to operating naval forces. Agency Report (AR) Tabs C1, C2. The Navy normally provides these seal repair kits as

government furnished material for installation during scheduled dry dock ship repair. Id.

The seals included in the repair kit are components of a more complex Wartsila 4AS stern tube sealing system, comprised of a number of interdependent components. AR at 4. In this regard, the stern tube seals are installed on either end of the propulsion shaft stern tube, which is filled with oil to lubricate the installed stern tube bearings. The rubber seal lip rides on a rotating tungsten coated seal liner to maintain a continuous seal as the propulsion shaft rotates, thereby keeping the lubricating oil in, and water out, of the stern tube. AR, Tab B, at 3-4; AR, Tab 3, Justification & Approval (J&A), at 1.

The RFQs included a class justification for the use of other than full and open competition to procure on a brand name basis stern tube shaft seals from the original equipment manufacturer (OEM), Wartsila, for all T-AO class vessels. AR, Tab 3, J&A, at 1. The RFQs established a December 13 response date. On December 6, CSS responded to both RFQs, quoting repair kits with alternative seals manufactured by Aegir Marine, and attaching letters setting forth reasons the Navy should consider the Aegir seals. The same day, CSS filed this protest with our Office challenging the brand name restriction.

As discussed below, the record reflects that the protested brand name restriction was preceded by agency consideration of whether a competitive procurement open to Aegir seals was possible. The relevant facts are as follows. During the 1990s, T-AO class oilers experienced several stern tube failures. J&A at 3. In 2000, the Navy conducted a competitive procurement of the stern tube seal system for the T-AO class vessels. The Navy ultimately found that the Wartsila 4AS anti-pollution stern tube sealing system offered the most reliable sealing system and made award to a vendor offering that system. Id.

In 2009, the Navy conducted a procurement of seal repair kits on a sole source basis. The associated J&A indicated that only Wartsila OEM seals were acceptable, due to the complexity and criticality of the seals and the unavailability of technical data on the Wartsila seals to permit evaluation of alternatives. Comments, Tab 1, J&A, July 20, 2009. CSS filed an agency-level protest, which the Navy denied. The Navy subsequently advised CSS to submit either a statement from Wartsila regarding equivalency, an independent testing report, or data sheets with a "clear and concise comparison of the two products." Comments, Tab 1, Letter, Dec. 22, 2009.

CSS subsequently provided copies of two previous studies to demonstrate equivalent or better performance by the Aegir Marine seals. Comments at 2; see AR, Tab 7, Elastomer Research Testing, Jan. 30, 2009; TNO Industrial Technology Report, Dec. 4, 2002. In February, 2010, the Navy commissioned a study of the two test reports. AR, Tab 10, Statement of Director, Engineering Field Support.

The Navy study indicated that the data in the 2002 test referenced by CSS was “not relevant,” since the formulation used for the Aegir seal changed after 2002. AR, Tab 11, Comparison of Stern Tube Seals for Propulsion Shafting Seal Systems (Comparison), Feb. 2010, at 2. As for the later 2009 study furnished by CSS, the Navy study reviewed Wartsila data and testing results which indicated that differences in the hardness durometer, elongation and seal configuration between the seals, as revealed in CSS’s 2009 study, resulted in superior operational characteristics or performance on the part of the Wartsila seal, including a significantly (three times) higher seal leakage rate for the Aegir seal. Id.; AR, Tab 10, Statement of Director, Engineering Field Support. The Navy study concluded that:

[w]hile the Aegir Marine seal may be a satisfactory replacement for the Wartsila seal, the material test data presented is insufficient to indicate that performance will be equal to that of the Wartsila seal. Data reflecting performance, particularly leakage, is necessary to form the basis of equivalency.

AR, Tab 11, Comparison, at 2. Likewise, the Navy ultimately concluded from a review of all the available data that the test reports provided by CSS did not provide sufficient information for the Navy to determine whether the Aegir seals would provide performance equivalent to that of the Wartsila seals. AR, Tab 10, Statement of Director, Engineering Field Support, at 2-3. Subsequently, in 2010, the Navy issued another sole source solicitation for stern tube seals.

The Navy reached similar conclusions in the 2011 J&A justifying the protested brand name procurement here. As an initial matter, the J&A emphasized the critical logistics support provided by the T-AO class replenishment oilers, which enable operational naval groups to remain on station without disruption to wartime operations. The J&A noted that failure of the stern tube seals could result in damage to critical ship equipment, loss of propulsion, immediate dry docking, disruption of mission readiness, and a “cascading” adverse effect on naval operations. J&A at 2-3.

Regarding the possible use of non-OEM seals, the 2011 J&A explained that when the Navy acquired the Wartsila tube seal system competitively in 2000, the agency did not acquire technical data rights or technical information pertaining to the Wartsila seals beyond general drawings. Id. at 4. The J&A indicated that this lack of manufacturing and technical information made it impossible for the Navy to evaluate and determine whether offered non-OEM replacement parts are equivalent to the OEM replacement parts and whether non-OEM replacement parts will compromise the required reliability and effectiveness of the stern tube seal system as a whole. Id. As for the studies furnished by CSS in support of its claim that its seal was equivalent, the J&A reported the Navy’s determination that the Aegir documentation was insufficient; according to the J&A, the agency still did not have

the technical information required to evaluate and determine whether the Aegir seal was equivalent to the Wartsila seal or would compromise the reliability of the stern tube system. Id. The J&A concluded that, given the critical role of the T-AO class replenishment oilers, and the importance to fulfilling that role of an effective stern tube seal system, the agency was seeking to achieve a continuation of the highest possible reliability and effectiveness by using OEM replacement components and parts in the OEM stem tube shaft seal system. J&A at 1.

In its protest, CSS asserts that the Aegir seal meets the Navy's requirements and that the brand name restriction to Wartsila seals is therefore unjustified. In this regard, CSS points to the tests conducted on the Aegir seal in 2002 and 2009, in which, it asserts, the Aegir seal was found to be equivalent to the Wartsila seal. CSS also asserts that the Aegir seal is in use on commercial ships, including ships with the specific Wartsila 4AS system used on the T-AO oilers, as well as on four Navy ships.

The Competition in Contracting Act of 1984 requires full and open competition in government procurements except where otherwise specifically allowed by the statute. 10 U.S.C. § 2304(a)(1)(A) (2006). One exception to this competition requirement is where the agency's requirements can be performed by only one or a limited number of sources. 10 U.S.C. § 2304(c)(1); Federal Acquisition Regulation (FAR) § 6.302-1. Where, as here, an agency uses non-competitive procedures it is required to execute a written J&A with sufficient facts and rationale to support the use of the cited authority. See 10 U.S.C. § 2304(f)(1); FAR § 6.302-1; Signals & Sys., Inc., B-288107, Sept. 21, 2001, 2001 CPD ¶ 168 at 9. Our review of the agency's decision to conduct a procurement under the exceptions to full and open competition focuses on the adequacy of the rationale and conclusions set forth in the J&A. Pegasus Global Strategic Solutions, LLC, B-400422.3, Mar. 24, 2009, 2009 CPD ¶ 73 at 7. When the J&A sets forth reasonable justifications for the agency's actions, we will not object to award on the basis of other than full and open competition. Turbo Mechanical, Inc., B-231807, Sept. 29, 1988, 88-2 CPD ¶ 299 at 3-4.

Here, we conclude that CSS has not shown that the agency's brand name justification was unreasonable. The record indicates that the seals in question are critical ship equipment, the failure of which could have serious consequences for deployed military forces. J&A at 2. In this regard, a military agency's assertion that there is a critical need that is related to human safety and affects military operations carries considerable weight. Eclipse Int'l Corp., B-274507, Nov. 12, 1996, 96-2 CPD ¶ 179 at 3. Underlying this policy is the simple fact that under wartime conditions, the government must procure items quickly and urgently to meet compelling military needs. Jay Dee Militarywear, Inc., B-243437, July 31, 1991, 91-2 CPD ¶ 105 at 5.

Further, the record also indicates that the Navy did not acquire technical data rights or rights to manufacturing drawings and processes, specifications, and other technical data pertaining to the Wartsila seals. As a result, the agency determined that a lack of manufacturing and technical information made it impossible for the Navy to determine whether non-OEM components and replacement parts are equivalent to the OEM components, and whether non-OEM components will compromise the required reliability and effectiveness of the stern tube seal system as a whole. AR at 10; J&A at 4. In this regard, we have recognized that a proper basis for a sole-source award exists where adequate data is not available to the agency to conduct a competitive procurement. Aerospace Eng'g and Support, Inc., B-258546, Jan. 13, 1995, 95-1 CPD ¶ 18 at 4 (sole source justified where OEM, not government, has right to engineering data for aircraft part); Masbe Corp. Ltd., B-260253.2, May 22, 1995, 95-1 CPD ¶ 253 at 3-4 (sole source for aircraft engine part justified where adequate data is not available to permit conducting a competitive procurement).

Here, CSS has not shown to be unreasonable the agency determination that adequate data was not available to conduct a competitive procurement. While CSS refers to the 2002 tests on an Aegir seal as support for its claim of equivalence to the Wartsila seal here, CSS has not convincingly rebutted the agency's determination that the earlier test was not relevant because it concerned an Aegir seal with a different formulation than the seal proposed here. See Comments at 8. Nor has the protester shown to be unreasonable the Navy's determination, based on the results of the agency's 2010 study, that the 2009 test referenced by CSS revealed differences in characteristics between the seals which resulted in superior operational performance on the part of the Wartsila seal. See Comparison at 1.

Finally, while it appears that Aegir seals have been installed in Wartsila tube seal systems, CSS has not shown the Navy to be unreasonable in concluding that significant differences in characteristics and usage bar its use here. As an initial matter, the four fleet ocean tugs cited by CSS as examples of Aegir seal installations are significantly smaller than the T-AO class oilers here, with the tugs having displacements of only 2,260 tons versus the 40,700 ton displacement of the oilers. U.S. Navy Fact File, Fleet Ocean Tugs, T-ATF; Fleet Replenishment Oilers, T-AO. The Navy discounts the significance of these installations as evidence of equivalence not only on the basis of a significant difference in size, but also because the tugs have a different, less critical mission than the oilers and, in any case, the tugs use a different stern tube seal system. AR at 8-9. As for the list provided by CSS of Aegir seals installed in Wartsila tube seal systems on commercial ships, the agency notes that none of the referenced seals appears to be the same size as the seals required for the Wartsila 4AS stern tube sealing system installed on the T-AO class oilers here. Supp. AR at 3-4. Furthermore, the agency emphasizes that CSS has furnished no operational data showing that the maintenance and replacement requirements, usage, and reliability of the Aegir seals installed in Wartsila tube seal systems on commercial ships match that

expected and required with respect to the T-AO class oilers. Id. at 4. In the absence of an adequate showing that the expected reliability of the Aegir seals will match that of the OEM seals, we see no basis to question the brand name procurement here.

In sum, CSS has not shown to be unreasonable the Navy's conclusion that it lacked adequate data to conduct a competitive procurement, and the agency's resulting determination to undertake the brand name procurement of OEM seals, especially in light of the Navy's claim that a failure of this equipment could have serious consequences for deployed military forces.

The protest is denied.

Lynn H. Gibson
General Counsel