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Report to Commanding Officer, Naval
Regional Contracting Center, San Diego

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May 1990

DEFENSE PROCUREMENT

Solicitation for Contract Support Services Limited Competition



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Dear Captain Ketts:

As requested by Senator Mitch McConnell, we reviewed the TERRIER Guided Missile Launching System (MK-10) field engineering services contract (NOO123-89-D-0120) that the Naval Regional Contracting Center Detachment in Long Beach, California, awarded to the Naval Systems Division of the FMC Corporation of Minneapolis, Minnesota, in June 1989. We have briefed Senator McConnell's staff on the results of that review. While conducting the review, factors came to our attention that indicated the need for certain actions to ensure full and open competition.

Results in Brief

The Navy's initial solicitation for this procurement restricted full and open competition, even after the Detachment amended it. The Navy eventually achieved competition for a substantial portion of the work, but only because of a potential competitor's protest. Competition advocates are responsible for challenging overly restrictive requirements in solicitations. However, Detachment procedures did not require a competition advocate review of this solicitation or its amendment. We believe that such a review could have resulted in competition being achieved before the protest.

Background

The Competition in Contracting Act of 1984, as amended (10 U.S.C. 2304 and 41 U.S.C. 253) and the implementing Federal Acquisition Regulation, with certain limited exceptions, call for full and open competition in soliciting offers and awarding government contracts. Federal agencies are required to specify agency needs and solicit offers in a manner that allows all responsible sources to compete for a contract award. The Office of Federal Procurement Policy Act requires each executive agency to appoint a competition advocate for the agency and for each procuring activity within the agency. The basic role of competition advocates is to challenge barriers to and promote full and open competition.

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Versions of the MK-10 Launching System are installed on many Navy ships. Previous field engineering services contracts for this system had not achieved competition. This report concerns one procurement of such services. During this period of contract performance, the Navy will be modifying this launching system by installing a new solid state control subsystem.

Initial Solicitation Restricted Competition

The specifications in the Navy's June 1987 request for proposal (RFP) restricted full and open competition. At least two contractors were willing and apparently able to compete for a significant portion of the work required under this solicitation. However, restrictive provisions in the RFP allowed only one contractor to qualify for any of the work.

The restrictive requirements called for engineers having knowledge of and experience with the new solid state control subsystem. At the time of the solicitation only FMC, which had designed and built the new subsystem, had personnel with such knowledge and experience.

Amended Solicitation Still Restricted Competition

In August 1987, the Detachment amended the RFP because of a complaint by Ships Missile Systems Consultants, Inc., of Louisville, Kentucky, about the restrictive requirements. However, the restrictions were not removed because of a breakdown in communications between contracting personnel in the Detachment and requisitioning personnel at the Engineering Station.

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According to Detachment officials, the Engineering Station, as the requisitioner, was responsible for establishing procurement requirements associated with technical issues. Consequently, when the Detachment received the complaint from Consultants about the restrictive requirements, its staff called the Engineering Station's contracting office and stated that if the experience requirement had to remain, the procurement would have to be processed under sole-source procedures. The Engineering Station's contracting office passed this information along to Station technical staff. The Detachment sent no document to the Engineering Station explaining the problem.

Engineering Station technical personnel told us that they had understood that the Detachment had said that the original RFP's requirement for 2 years of experience with the new subsystem was too long. Consequently, they authorized a modification to the RFP that shortened the number of years of experience required by contractor personnel. They

said, however, that they still wanted and needed people having knowledge of and experience with the new subsystem because such qualifications would be needed to adequately perform many of the work orders that would be issued under the contract.

Three contractors responded to the amended solicitation. In October 1988, the Detachment notified the responding contractors that it had awarded the contract to FMC, and it sent a proposed contract to FMC for signature. The two unsuccessful contractors were told that they lacked the necessary knowledge and experience to perform the contract. FMC did not sign the contract but asked that it be changed. Before the Detachment decided whether to accept the requested changes, Consultants protested on the basis that the restrictive requirements should have been eliminated by the August 1987 amendment to the RFP.

Requirements Split to Provide Competition

After the protest, the Navy rescinded the award decision, split the work required under the original RFP into two new RFPs, and resolicited the procurement. The first of these new RFPs covered that portion of the work under the original solicitation that did not require personnel having knowledge of and experience with the new subsystem. It was issued competitively in March 1989. Three contractors responded to the new competitive RFP. In June 1989, the Navy awarded the contract to FMC based on cost and technical competition. The second RFP covered the portion that did require such knowledge and experience. It was being processed on a sole-source basis to FMC at the time of our review.

No Competition Advocate Review of Procurement Request

According to Secretary of the Navy Instruction 4210.10, competition advocates are responsible for ensuring that opportunities for competition are not lost due to restrictive requirements. Naval Regional Contracting Center, San Diego, Instruction 4205.4, which established the Center's competition advocacy program, states that the advocates should review all noncompetitive procurement requests for possible removal of impediments to competition.

Such a review was not made of the original solicitation because it was processed as a competitive procurement, and procedures only required review of noncompetitive requests. However, since competition had not been achieved in previous MK-10 field engineering services contracts, we believe such a review should have been made.

Engineering Station contracting officials, including the competition advocate at that location, said they did not review or approve the modification to the original specifications. They said that their involvement at the time of this change might have resulted in a splitting of requirements as eventually was done after the protest by Consultants, particularly if they knew the reason behind the change. They believed that they should be involved with any modification to a solicitation that might affect the extent of competition. Current Engineering Station procedures, however, do not call for such involvement.

Recommendations

We recommend that, to promote full and open competition, you ensure that competition advocates at the Detachment review competitive procurement requests for which little or no competition has existed in the past, including changes to these solicitations.

Scope and Methodology

We conducted our work at the Detachment in Long Beach and at the Engineering Station in Port Hueneme, California. We reviewed procurement laws and regulations, examined contract files, and interviewed Navy officials and an official of one of the firms that competed for the award. We gave a draft of this report to Naval Regional Contracting Center, San Diego, officials and incorporated their comments where appropriate. These officials were in general agreement with our conclusions and recommendations. We performed this review from September 1989 to January 1990 in accordance with generally accepted government auditing standards.

We are sending copies of this report to Senator Mitch McConnell; the Officer-in-Charge, Naval Regional Contracting Center Detachment, Long Beach, California; and the Commanding Officer, Naval Ships Weapon Systems Engineering Station, Port Hueneme, California.

I would appreciate being informed of any actions you take in response to these recommendations. Please contact me at (213) 894-3812 if you or your staff have any questions. Other major contributors to this report

are Patrick S. Donahue, Assistant Director, National Security and International Affairs Division, Washington, D.C.; and Larry W. Aldrich, Evaluator-in-Charge, and D. Stephen Kauffman, Evaluator, Los Angeles Regional Office.

Sincerely yours,

George E. Grant

George E. Grant
Regional Manager