

DOCUMENT RESUME

02377 - [A1472478]

[Protest against Sole-Source Award of Contract]. B-188267. May 20, 1977. 4 pp.

Decision re: Iroquois Research Inst.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law I.  
Budget Function: General Government: Other General Government (806).

Organization Concerned: Environmental Protection Agency;  
Resource Planning Associates, Inc.

Authority: Alaskan Natural Gas Transportation Act of 1976, sec. 5 (15 U.S.C. 719w). F.P.R. 1-1.301-1. B-181064 (1974). B-181387 (1975). B-186679 (1976).

Institute protested the sole-source award of a study contract on the basis that other qualified competition existed. This protest was denied because the record reflects that while the agency admits the existence of possible competition, noncompetitive award was premised on the fact that only one firm could perform the study within the timeframe required by law, due to the contractor's familiarity with the work. Where the decision to contract sole-source due to public exigency is rationally founded, GAO will not object to such restriction of competition as unduly restrictive. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: D-188267**

**DATE: May 20, 1977**

**MATTER OF: Iroquois Research Institute**

P.L. I.  
Krasker

**DIGEST:**

1. Protest against sole-source award of study contract on basis that other qualified competition existed is denied where record reflects that while agency admits existence of possible competition, noncompetitive award was premised on fact that only one firm could perform study within timeframe required by Alaskan Natural Gas Transportation Act of 1976, due to familiarity with work as result of other contracts in area which generated necessary mix of environmental and economic expertise.
2. Where decision to contract sole-source due to public exigency is rationally founded, our Office will not object to such restriction of competition as unduly restrictive.

Iroquois Research Institute (IRI) protests the sole-source award for a study entitled "Risk Assessment of Alternative Alaskan Natural Gas Transportation System" (study) pursuant to request for proposals (RFP) No. WA 77-B154, issued by the Environmental Protection Agency (EPA).

On January 6, 1977, the Branch Chief, Policy Planning Division, EPA, requested that the study be accorded a priority procurement status. This request was due to the necessity of EPA to interface with concurrent work required to be performed by the Federal Power Commission (FPC), by the Alaskan Natural Gas Transportation Act of 1976, section 5, 15 U.S.C. § 719w, October 22, 1976 (act), to evaluate and recommend to the President by May 1, 1977, a transportation system for natural gas from Alaska to the contiguous states of the United States. As pertinent, section 6 of the act requires other Federal agencies to submit their recommendations on the subject, particularly with regard to information within the competence of the agency, to the President by July 1, 1977.

The EPA request for a priority procurement recounted that in November 1976 it contracted with Resource Planning Associates, Inc. (RPI), as task order No. 1 under basic ordering agreement (BOA) No. 68-01-4173, to assist in completing information on the environmental, economic and regional impact of the three transportation plans proposed to the FPC. Also, EPA contracted with the Center for Natural Areas to review existing analyses on the three proposed routes and identify the institutional framework within which each of the proposed transportation systems must pass before selection. These approaches alone ultimately proved inadequate to EPA because they worked only within the framework of the assumption used by the proponents of the plans. Therefore, the protested risk analysis study was considered necessary to assess the probability of completion of the proposed systems, as well as the environmental and economic consequences, if the original assumptions prove inaccurate.

On January 7, 1977, the Deputy Assistant Administrator for Planning and Evaluation forwarded for approval a "Justification for Non-Competitive Procurement for 'Risk Assessment of Alternative Alaskan Natural Gas Transportation Systems' Task Order No. 2 under BOA with Resource Planning Associates (68-01-4173)." The proposed contract performance period was 3 months at an estimated cost of \$50,000. The short timeframe for completion was advanced as the primary reason requiring contracting with RPI. In order to perform, a contractor must have been presently familiar with the FPC licensing procedures, the three applicants for transportation licenses, have expertise in evaluating economic and environmental issues related to Alaskan energy development and have expertise in specific analytical methodologies. EPA cited RPI's work under task order No. 1 under the BOA as providing not only the necessary familiarity, but also a concomitant cost advantage over the other four firms considered. Each of the other firms was considered deficient in at least one required discipline, so as to preclude successful completion within the required timeframe. IRI was not one of the firms considered for the study.

The justification for noncompetitive procurement was approved on January 18, 1977, and on January 19, 1977, a quick response task order was issued under the BOA. Under article IIB of the BOA, upon acceptance of the task order, RPI is required to commence work within 3 working days. RPI received the task order on January 21 and commenced work on that date.

IKI maintains that the sole-source award was not justified in light of the existence of other firms qualified to perform the work. With regard to itself, IRI notes that the RFP made the FPC hearing record the primary source of technical data to be used for the study.

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Since IRI states it is one of the main suppliers of first-source technical data in the FPC record, IRI's immediate familiarity with the subject area should have been known to EPA. Further, IRI terms the urgency of the study a "crutch," merely pretending that the need for the study first came to EPA's attention in January 1977. Also, IRI states that since its Director was in the Government office that developed both analytical methodologies required by EPA, it was well qualified to perform the work. In summary, IRI maintains that the Government was denied the benefits of competition by EPA's inaction.

In effect, IRI has raised two separate aspects of a noncompetitive procurement: (1) the availability of competition; and (2) whether the available competition can perform the required task in the necessary timeframe. Competition to the maximum practical extent is the general norm of Federal procurements. Federal Procurement Regulations (FPR) § 1-1.301-1 (1964 ed. amend 83). However, competition is required only when time of delivery will permit. Janke and Company, Incorporated, B-181064, August 29, 1974, 74-2 CPD 126. As we read the EPA position as expressed in its justification for a noncompetitive procurement, EPA is basing its actions on the time constraint, not upon the availability of competition. In fact, EPA acknowledges that other firms could perform the study, but not in the necessary 3-month timeframe.

Our inquiry when dealing with restrictions on competition is not whether they restrict competition par se, but whether they unduly restrict competition. METIS Corporation, B-181387, January 24, 1975, 75-1 CPD 44. In this regard, if the agency's time constraints are such that only one firm can meet them, our review of such a discretionary determination is confined to whether it is founded on a rational basis. Euclid Designs & Development Co., B-186679, October 7, 1976, 76-2 CPD 321. In view of the time limit imposed by the act, we believe that the decision to avoid a competitive procurement was rationally founded. In this case, the existence of the BOA provided an immediate and convenient vehicle to satisfy EPA's time problem. Indeed, it appears that the quick response provision of the BOA was specifically designed to meet just such a requirement. Also, while other firms possess expertise in either environmental or economic impact areas, to EPA's knowledge none possessed the requisite mix of disciplines coupled with the subject matter familiarity necessary to meet the time limitation. EPA states that it was aware of IRI's abilities in environmental and technical areas, but that IRI did not possess the requisite mix of subject area and economic expertise necessary. Moreover, since EPA states that the need for this study did not arise until the results of two other studies

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were received in mid-December, we cannot agree with IRI implications that the need for the study was known to EPA before that time.

Therefore, the protest is denied.

A handwritten signature in black ink, appearing to read "Philip H. ...", is written above the typed name.  
Deputy Comptroller General  
of the United States