

DECISION



12172 *Cunningham*
Proc I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-194470

DATE: November 30, 1979

MATTER OF: 1 Rack Engineering Company; *D 3447*
2 Deluxe-Lista Corporation *D 1577*

DIGEST:

1. Navy's need for interchangeable supply cabinets and drawers to enable efficient storing and processing of aircraft spare parts within aircraft carrier USS KENNEDY, between carrier and other carriers, and between carrier and shore installations cannot be questioned.
2. Since it is apparently impossible as practical matter to draft specification to ensure interchangeable cabinet drawers in parts supply cabinets for aircraft carrier use, Navy has
3 chosen most economically sound alternative for supplying cabinets by entering into sole-source contract with cabinet company which has supplied 87 percent of cabinets existing in Atlantic carrier fleet. Any other approach would require inefficient use of existing cabinets.
3. Since aircraft carrier reasonably needs more efficient processing of parts associated with noncompetitive contract for cabinets, Determination and Findings (D&F) supporting contract cannot be considered to apply to class of Atlantic Fleet aircraft carriers.
4. GAO cannot question contracting officer's decision finding noncompetitive contract price reasonable when compared to higher price contained in unsolicited proposal for similar items.

4 Rack Engineering Company (REC) and Deluxe-Lista Corporation (DLC) have protested the award of a Navy contract to Stanley-Vidmar Company (SVC) for "small *D 1576* version modular" cabinets and components which will be used for the storing of aircraft spare parts aboard the aircraft carrier USS JOHN F. KENNEDY. The contract

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[Protest of Contract Award Without Competition]

was awarded without competition (sole source) under request for proposals (RFP) N00189-79-R-0194. We cannot question the award for the reasons set forth below.

The Navy decided to limit competition for two main reasons: first, users of the cabinets on the KENNEDY required that the cabinets be interchangeable--drawer for drawer--with existing SVC cabinets which constitute 87 percent of the small version modular cabinets currently used in the Atlantic Carrier Force for storing nonmaintenance aircraft spare parts; second, only SVC cabinets were drawer-to-drawer interchangeable with existing SVC cabinets.

Both REC and DLC attack the Navy's main reason for requiring interchangeable drawers, namely: increased efficiency in stacking and transferring loaded and unloaded drawers of parts within the carrier, between the carrier and other carriers, and between the carrier and shore installations. The companies contend: (1) loaded drawers are not moved in practice; (2) if the drawers are moved, they will be damaged because the drawers are not designed for movement; (3) the Navy is still studying the need for requiring interchangeable SVC cabinets for future procurements, thereby contradicting the need for interchangeability in this procurement.

The Navy insists that stacked drawers have been transferred in the manner described above. As stated by the contracting officer:

"* * * Movement of drawers full of spare parts from shipboard locations for various purposes is not, as the protestor contends, unsubstantiated planning. * * *

Most recently, offload of [aviation] material from USS FORRESTAL (CV59) was accomplished in November 1978. Over 800 full spare parts drawers were removed from their cabinets, sealed, packed in tri-walled containers and shipped overland from Mayport, Florida to the [FALSC site at] Naval Air Station, Norfolk, Virginia. Less than 3 percent of the drawers shipped were received at NAS Norfolk in a damaged state. No check of the number of damaged drawers forwarded as part of the load to NAS was made prior to shipment and therefore no assessment of the actual damage sustained in transit can be made. The amount of damage, however, even if totally incurred in transit, is so minimal as to effectively refute the protestor's contention that shipment of fully loaded drawers is impractical."

Further, the Navy points to a January 1976 Naval Air Engineering Center report entitled "Modular Drawer Stowage System--Evaluation in Aircraft Carriers" which describes the cabinet drawers of the system as "inter-changeable within and between [modular] cabinets."

The companies do not dispute the facts of the USS FORRESTAL transfer other than suggesting the move is not typical and insisting the cabinet drawers were not designed for this movement. Issue is specifically taken with the Navy's reliance on Atlantic Fleet Instruction 4423.8 and the Naval Air Engineering Center report to the extent the documents are said to mandate interchangeable cabinet drawers.

Although the documents advanced by the Navy may not mandate interchangeable cabinet drawers, the documents seem to support the concept if only by inference. For example, the cited Fleet Instruction provides that "[modular cabinet] drawers shall be removed from the cabinets" for transfer purposes. Moreover, the USS FORRESTAL transfer also supports the concept even if the transfer was not carrier-to-carrier as noted by

the companies. While the Navy still may be studying the question whether interchangeable cabinet drawers should be bought in the future, we cannot view this study as undercutting the facts supporting the concept here--especially given our longstanding position that the procuring agencies' technical conclusions concerning their actual needs are entitled to significant weight. See, for example, Interstate Commerce Commission--Reconsideration, B-193693, June 11, 1979, 79-1 CPD 409.

We believe the record reasonably supports the need for interchangeable aircraft spare parts cabinets and drawers, especially given the "semi-permanent fixed installation" character of the cabinets. Given this character, it would be easier to move cabinet drawers rather than the cabinets themselves in all phases of the parts supply cycle; moreover, cabinet drawer interchangeability would allow for ease of changed parts locations without the need for changing cabinet locations. Since we cannot question the Navy's need for interchangeable cabinet drawers for the KENNEDY requirement, we now examine the question whether the Navy's decision to fill that need through the sole-source contract awarded to SVC was proper.

It is beyond question that sole-source procurements are subject to close scrutiny by our Office. Christie Electric Corporation, B-188622, December 8, 1977, 77-2 CPD 441. At the same time, we recognize the validity of sole-source contracts if the Government can satisfy its reasonable needs only through this procurement approach. See, Ailtech, Inc., B-193694, August 10, 1979, 79-2 CPD 111.

Neither company disputes the Navy's statement that 87 percent of the small version modular cabinets in use in the Atlantic Fleet Carrier Force are of SVC manufacture. Nor do the companies question the Navy's views that the only relevant modular cabinet purchase description does not contain a requirement for drawer-to-drawer interchangeability among varying manufacturers' products and that cabinet drawers are not, in fact, interchangeable among competing manufacturers' cabinets. Moreover, neither company has in any way contested a statement of record by a GSA official that:

"An interchangeability requirement could only be accomplished by redesigning, reengineering and developing definitive drawings. The manufacturers of this type commodity, accordingly, would have to completely retool for a new product and that possibility was extremely doubtful.

"If the Navy wants complete interchangeability of all parts in the cabinets, at this particular time, it would have to negotiate with one manufacturer in multiples of the number of years needed to meet that goal."

Since it is apparently impossible as a practical matter to draft a competitive specification to ensure cabinet drawer interchangeability at the present time, the most economically sound alternative would be to ensure interchangeability as the Navy has done, namely: purchasing compatible cabinets from SVC which has the greatest number of cabinets already in use on other carriers. Any other alternative would force the Navy either to discard the requirement for interchangeable drawers or to purchase cabinets from manufacturer(s) which have less than a majority (perhaps as low as 13 percent) of the modular cabinets in existing Navy use--thereby requiring the inefficient use of the SVC cabinets. Under these circumstances we think the Navy's sole-source decision cannot be questioned.

Alleged Class D&F

DLC also alleges that the Determination and Findings (D&F) supporting the contract award constitute, in fact, an improper class D&F. DLC's stand on this issue is simply that the D&F's rationale is oriented to the Atlantic Fleet Carrier Force's requirements as a whole rather than any particular facts regarding the KENNEDY. Therefore, DLC argues that the D&F really is a "class D&F"--applying to the possibility of several procurements for SVC items rather than one procurement--and is to be signed, according to Defense Acquisition Regulation (DAR) § 3-303(b) (1976 ed.), by the Secretary of the Navy or his authorized representative and not the contracting officer as was the above D&F.

The wording of the provision (DAR § 3-301(c) (1976 ed.)) concerning class D&F's stresses that the making of these D&F's is permissive, not mandatory. As stated in the DAR provision:

"* * * a class D&F may be used for a specified period only to authorize negotiation of two or more contracts for supplies or services of the same or related type. Such use is appropriate when the proposed procurements all require essentially identical justification under the same negotiation exception. * * *"

Since the language is permissive, contracting officers are not required to obtain a class D&F for a series of procurements if they otherwise can make individual appropriate D&F's.

The KENNEDY's reasonable parts supply needs are related to parts located in shore installations and other carriers. Since it seems beyond question that the KENNEDY reasonably needs the more efficient processing of parts associated with the SVC cabinets, a class D&F is not involved here.

DCAA Audit

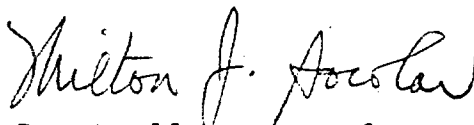
5 / DLC also contends that SVC's contract price was unreasonable and should have been audited by the Defense Contract Audit Agency (DCAA) prior to award. The contracting officer explains that she did not request the audit because she determined SVC's offer to be reasonable compared with the price offered by DLC for similar equipment under the RFP. We see no reason to question the contracting officer's explanation or her decision which found SVC's proposed price to be reasonable. See DAR § 3-801.5(b)(1) (1976 ed.). 473

Other Bases of Protest

Other bases of protest have been rendered academic by reasons of the above conclusions. Thus, all questions about RFP NOO189-79-R-0162, the competitive RFP canceled when the contracting officer properly decided only

SVC could provide the required interchangeable drawers and cabinets, are academic because we have found the Navy's noncompetitive award proper. Further, the Navy's deletion of cabinets for ship parts from the sole-source contract effectively answered the companies' objections against the procurements of these cabinets from SVC.

Protests and related claim for bid preparation expenses are denied.

A handwritten signature in dark ink, appearing to read "Milton J. Aroca". The signature is fluid and cursive, with the first name "Milton" being the most prominent.

For The Comptroller General
of the United States