

117068

20283

Derigay

DECISION



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

FILE: B-202202

DATE: December 15, 1981

MATTER OF: Frequency Engineering Laboratories
Corporation

DIGEST:

Agency decision to issue a sole-source order for spare electronic modules for an electronic navigation beacon is not unreasonable when: the awardee is also, under a related contract, charged with development and production of a new version of the beacon; the order requires the modules to be fully compatible and interchangeable with the older version of the beacon; the baseline specifications of the new version are still being changed because of the ongoing development process; the agency lacks a complete technical data package suitable for competitive procurement; and time constraints require that the interchangeable modules be available as soon as possible after development of the new version of the beacon.

Frequency Engineering Laboratories Corporation (FEL) protests the procurement procedures used by the Department of the Army, Communications and Electronics Materiel Readiness Command (CERCOM), in awarding an order for spare parts for the AN/TRN-30(V) radio navigation beacon to Gould, Inc. (Gould), under Delivery Order No. 0008 and Basic Ordering Agreement (BOA) No. DAAB07-80-G-6401. For the reasons set forth below, this protest is denied.

The spare parts which are the subject of this contract consist of various quantities of 27 different types of electronic modules for the AN/TRN-30(V), the new version of which is now being developed and will be produced under contract No. DAAK80-79-C-0304 by Gould. CERCOM has decided that the spare modules in question must be compatible and interchangeable with both the new version of the AN/TRN-30(V) under

development and with the earlier version which is currently in the field; however, CERCOM explains that only "one way interchangeability" is involved--that is, the modules from the items to be developed under contract -0304 are to work in the earlier version, but "the converse would not necessarily be true." This earlier version was produced under contract No. DAAB07-74-C-0260 by Hoffman, Inc. (now Gould).

CERCOM has supported its decision to award a sole-source contract for the spare electronic modules to Gould on the following grounds:

- (1) The "baseline" specifications of the AN/TRN-30(V) are currently in a state of flux because of the large number of engineering change proposals (ECP's), both proposed and anticipated, under Gould's current contract. This means that "an unknown number of modules [of the earlier version] will not be identical physically or for support purposes to the modules [of the new design]."
- (2) The baseline specifications of the new version will not be final until Gould has successfully completed first article testing and its electronic component modules have been demonstrated to be compatible and interchangeable as replacement parts for the equivalent modules in the version currently in the field.
- (3) The Army anticipates that the total of AN/TRN-30(V) units which will ultimately be fielded (including both old and new versions) will number no more than 200. Based on this small number of total units, CERCOM has concluded that the Army's logistics system cannot support two different versions of the unit.
- (4) As a result of its decision not to obtain delivery of spare electronic modules until the new interchangeable modules are produced, it

is essential that the spare modules be produced as rapidly as possible since nearly half of the units in the field are nonfunctional due to a lack of spare parts.

(5) The lack of firm specifications--including a comprehensive technical data package--for modules which both conform to the new design and which are compatible with the version in the field makes the order for these spare electronic modules unsuitable for competitive procurement.

(6) Because the baseline specifications for the new version are still being developed and because the modules under that contract are required to be compatible and interchangeable with the earlier version, Gould is in a "position to minimize both the technical and logistical risks" associated with the required early delivery of the spare modules. For any company other than Gould, a "much greater technical risk ensues which might preclude ordering of parts with the corresponding probability of a considerably later delivery schedule."

FEL primarily bases its protest on the assertion that it is fully capable of producing compatible and interchangeable electronic modules within the same time and at no greater technical risk than that undertaken by Gould. Indeed, FEL claims that it is already a "qualified producer" of the electronic modules for the AN/TRN-30(V) because of a contract which it received for the production of the earlier version of these units.

FEL also states that any changes which Gould has made to the baseline specifications FEL used under its contract have been submitted to CERCOM for approval. Accordingly, FEL contends that CERCOM does have available whatever design changes have been made or proposed by Gould. These ECP's, FEL submits, could serve as an adequate basis for CERCOM to establish the technical specifications needed for a competitive procurement.

CERCOM notes that the earlier FEL contract has been terminated and that FEL's contract units did not pass first article testing. CERCOM also points out that many of the changes proposed by Gould are still under review and have not been finally incorporated into the contract specifications. Further, nearly 160 more ECP's which are anticipated under the contract have not yet been submitted by Gould and are still under development. Thus, the Army insists it is not possible to have a competitive procurement for this requirement.

FEL's most significant argument, though, is that the ECP's which CERCOM claims have resulted in a "fluid baseline" for the specifications of the AN/TRN-30(V) either do not affect at all or at best affect peripherally the 27 electronic modules which are the subject of this disputed order. In support of this, FEL has submitted its own analysis of the ECP's which have recently been proposed or incorporated into the Gould contract. FEL's analysis concludes that of the 151 ECP's in the Gould contract, only 17 have any potential impact on the 27 electronic modules under this contract. FEL further contends that, of those 17 ECP's which might affect the modules, the changes involved are simple and could be easily accomplished by FEL with no additional risk to the interchangeability or compatibility of the modules.

In a point-by-point rebuttal, CERCOM disputes FEL's analysis of the impact of the ECP's upon the electronic modules under this contract. In essence, CERCOM argues that until all ECP's arising under this contract have been approved and incorporated into the baseline specifications, it will not be possible to determine their combined effect on interchangeability between the new and old versions.

CERCOM states that only by a trial and error testing and development process which parallels Gould's program to develop the new version of the AN/TRN-30(V) will Gould simultaneously be able to integrate the needed changes into the new version of the modules and do them in such a way as to insure compatibility and interchangeability with the existing units. In light of the urgency of the need for spare modules in the field

and the above procurement history, CERCOM states that Gould is in the best position to develop and produce these interchangeable and compatible electronic modules in the shortest possible amount of time and with the least technical risk of any company.

Analysis

Our decisions have held that agency decisions to procure on a sole-source basis must be adequately justified and are subject to close scrutiny. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. Such decisions, however, will be upheld if there is a reasonable basis for them. As we stated in Ampex Corporation, B-191132, June 16, 1978, 78-1 CPD 439:

"[We have] recognized that noncompetitive awards may be made where the minimum needs of the Government can be satisfied only by items or services which are unique; * * * where time is of the essence and only one known source can meet the Government's needs within the required timeframe * * * where only a single source can provide an item which must be compatible and interchangeable with existing equipment * * *; and where only one firm could reasonably be expected to develop or produce a required item without undue technical risk * * *."

In all such cases, the burden of proof is with the protester to affirmatively demonstrate that the actions of the agency were unreasonable under the circumstances at the time the decision was made, particularly where, as here, complex technical issues are involved. Vega Precision Laboratories, Inc., B-191432, June 30, 1978, 78-1 CPD 467. Further, a "military agency's assertion that there is a critically urgent need for certain supplies carries considerable weight in this type of case, and the burden on the protester to show the unreasonableness of the agency's position can be a particularly heavy one in such circumstances." See Vega Precision Laboratories, Inc., supra.

Applying these principles, we conclude that FEL has not met the requisite burden of proof so as to affirmatively demonstrate that CERCOM's actions in awarding a sole-source order to Gould were unreasonable.

Initially, CERCOM's decisions that the spare modules under this contract should be compatible and interchangeable with both the AN/TRN-30(V) version currently in the field and the version under development and that the Army cannot logistically support two different versions of the item are discretionary agency decisions defining minimum standards for these items. In our view, FEL has not shown that these decisions are unreasonable.

Further, given the above facts, we cannot conclude that FEL has shown that the Army was in a position to competitively procure the order for these spare modules given: (1) the changing baseline specifications of the AN/TRN-30(V); (2) the resulting lack of an adequate technical data package suitable for a competitive procurement; (3) the Army's assessment, which we cannot question, of the technical risk involved in placing an order for the modules with any company other than Gould; and (4) the critical need for the rapid delivery of the spare modules in question.

As to FEL's argument that it should be seen as a qualified producer for the spare modules because of its earlier contract, we cannot question the Army's position that since FEL's contract was terminated because of first article failure, FEL's "[earlier version] modules are suspect"; thus, this circumstance does not suggest that FEL is a "qualified producer" of the "new configuration" modules to be procured.

Finally, we note the Army's stated intention to "move towards competitive acquisition of the AN/TRN-30(V) system at the earliest possible time" once a "validated technical data package [is obtained under] Gould's current contract."

Accordingly, we can find no basis upon which FEL's protest can be sustained. Protest denied.

for Milton J. Fowler
Comptroller General
of the United States