

DECISION



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

FILE: B-216914.2 **DATE:** June 17, 1985

MATTER OF: Pacific Sky Supply, Inc.

DIGEST:

GAO denies protest alleging that agency failed to comply with Public Law No. 98-72 requirement that intent to place noncompetitive orders under a basic ordering agreement be synopsized in the Commerce Business Daily where a spot check indicates that the orders were in fact synopsized except in cases where the urgency exception was properly invoked.

Pacific Sky Supply, Inc. protests the allegedly improper actions of the San Antonio Air Logistics Center, Kelly Air Force Base, Texas, in issuing 32 delivery orders for aircraft engine parts to General Motors Corporation, Allison Gas Turbine Operations (Detroit Allison). The orders, placed in August and September 1984 against Detroit Allison's basic ordering agreement (BOA), No. F34601-83-G-0276, were for T56 engine components applicable to the C130 aircraft.

We deny the protest.

Pacific Sky contends that the synopsis and approval requirements of Public Law No. 98-72 were not met, stating that its personnel did not see any notices in the Commerce Business Daily (CBD) before the noncompetitive orders were placed.

Public Law No. 98-72 amended section 8(e) of the Small Business Act to enhance small business competition by improving access to procurement information. See 15 U.S.C. § 637 (Supp. I 1983). The section requires that a proper notice be published in the CBD for all procurements of \$10,000 or more (with certain exceptions). In the case of a BOA, notice of an intent to place an order must be published at least 30 days before competition is foreclosed. 15 U.S.C. § 637(e)(2). Agencies are prohibited from commencing negotiations on a sole source contract until at least 30 days after the publication of a proper

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notice of intent to contract. 15 U.S.C. § 637(e)(4) further states that before negotiating a sole source contract of more than \$1,000,000 (in fiscal year 1984), the head of the procuring activity or his deputy must approve such a contract; in addition, the contracting officer must evaluate all responses to the CBD notice.

Pacific Sky questions whether these approval requirements were met and argues that the contracting officer could not have evaluated responses unless the intent to place the orders had been properly synopsisized. The protester also contends that the Air Force's waiver of the synopsis requirements for eight of the orders on the basis of urgency was improper because of the long period of time, i.e., up to 2 years after award, permitted for delivery.

The Air Force responds that it complied with the statute and applicable sections of the Federal Acquisition Regulation, 48 C.F.R. §§ 5.201-5.203 (1984). Synopses for 24 of the proposed orders were transmitted to the CBD between August 8, 1983 and August 10, 1984; this exceeds the statutory time requirements. The agency states that the remaining eight orders were not synopsisized because of urgency, an exception permitted by 15 U.S.C. § 637(e)(1)(B). In addition, according to the Air Force, sole source approvals were obtained for all awards of more than \$1,000,000; two of the orders did not require such approval, since the purchase request estimates were less than this amount.

The Air Force has provided us with a random sample of the CBD notices published between June and August 1984. This sample shows the following synopses published:

<u>Order No</u>	<u>Date Synopsis Transmitted</u>	<u>Date Published</u>	<u>CBD Page No</u>	<u>CBD Issue No</u>
SA69	June 1, 1984	June 11	38	PSA-8605
SA75	June 20, 1984	June 29	23	PSA-8619
SA54	June 21, 1984	July 2	18	PSA-8620
SA68	June 21, 1984	July 2	18	PSA-8620
SA79	July 26, 1984	Aug. 3	14	PSA-8643
SA67	Aug. 6, 1984	Aug. 21	13	PSA-8655

Based upon this information, it appears that the Air Force did in fact comply with the synopsis requirements of

Public Law No. 98-72. In the absence of any evidence to the contrary, we find no basis to question the Air Force's compliance with regard to 24 of the protested orders. We can only conclude that Pacific Sky failed to see the CBD notices, some of which appeared as much as a year before the awards, and mistakenly concluded that they had not appeared.

As for Pacific Sky's contention that the Air Force improperly invoked the urgency exception for the remaining eight, the record shows that the Air Force did so only after considering such factors as administrative lead time, production lead time, inventory levels, pipeline time, flying hour programs, and maintenance schedules. The contracting officer states that support of T56 engine components is of extreme concern to the major commands and that to ensure continuity of support, they had requested contractual coverage at the earliest possible date. Pacific Sky has made only general allegations concerning the 2 years allowed for delivery and has not refuted the Air Force's arguments as to the actual lead times. Under these circumstances, we find no basis to question the Air Force's determinations of urgency for the eight orders.

Pacific Sky finally contends that it should have been awarded two orders that allegedly would have resulted in a substantial savings to the Air Force. We note, however, that all T56 engine components are assigned acquisition method codes indicating that only approved sources can be considered for award. Since Pacific Sky is not an approved source (and according to the Air Force has not submitted sufficient data to permit approval), the firm could not have been awarded a contract for any of the components covered by the protested delivery orders. We note that Pacific Sky is fully aware of the approved source requirement and that the firm has on several occasions been found nonresponsive for failure to provide sufficient data to enable the Air Force to qualify it. See Pacific Sky Supply, Inc., B-215189, et al., Jan. 18, 1985, 64 Comp. Gen. ___, 85-1 CPD ¶ 53.

The protest is denied.

Harry R. Van Cleve
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General Counsel