

**DECISION**

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

**FILE:** B-218296 **DATE:** July 3, 1985  
**MATTER OF:** Microcom Corporation

**DIGEST:**

Sole-source award justified by agency on public exigency basis is not unreasonable where the awardee was the only known qualified source for the items being procured, the supply of items would be exhausted in 6 months, production lead time was 6 months, and technical data that would permit competitive procurement had not yet been delivered to the agency.

Microcom Corporation protests the sole-source award by the Department of the Air Force of a letter contract, No. F09603-85-C-0534, to Aydin Corporation, Vector Division. Microcom contends that it should have been given an opportunity to compete with Aydin-Vector for the production of 1,024 telemetry packs for the AIM-9/P missile (known as the Sidewinder). We deny the protest.

As background, we point out that telemetry collectively includes (1) the measuring of certain quantities such as pressure, speed or temperatures, (2) translating those quantities into message format, and (3) transmitting the message to another point and decoding it. Communications Standard Dictionary (1983); Webster's Third New International Dictionary (1971). As additional background, the record indicates that there are three variations of the AIM-9 telemetry pack, identified by the letter suffixes L, M, and P. In November 1984, before the protested procurement, the Air Force notified Microcom by letter that it had been qualified as a source for the AIM-9/L and M telemetry packs. The agency further stated that data for the P model was not yet available, but that once it became available, Microcom would be given an opportunity to qualify as a source for it, although a first article would be required. The Air Force explains that at the time of this procurement, Aydin-Vector had contractually agreed to provide the data to permit competition for manufacture of the telemetry packs but had not yet delivered it to the agency.

032482

On December 22, 1984, a notice of the Air Force's intent to conduct sole-source negotiations with Aydin-Vector was published in the Commerce Business Daily (CBD) under category 14, entitled "Guided Missiles." It was captioned as follows: "SPARES, APPL TO AIM-9/P MISSILE consisting of telemetry pack." The body of the synopsis included part numbers, national stock numbers, and quantities. The synopsis referred to CBD numbered notes 22 and 33; these notes, which are published on the first working day of each week, indicated that the procurement was to be negotiated on a sole-source basis with the only qualified source for the item, i.e., Aydin-Vector. The Air Force awarded a letter contract to that firm on February 27, 1985. The protest was filed on March 11.

Initially, the Air Force contends that the protest is untimely because it was not filed by January 15, 1985, the date for commencement of negotiations given in the CBD notice of the intended sole-source procurement. In its protest, however, Microcom argues that the use of the term "spares" in the synopsis caption was misleading to potential offerors and deviated materially from past Air Force synopses, which had been captioned "TELEMETRY PACKS" without the inclusion of the term "spares." Because of this, Microcom concludes that it cannot be charged with constructive knowledge of the procurement. Since it did not actually know of it until publication of an article in the March 4, 1985 issue of Electronic News, Microcom argues that its protest was timely.

The Air Force acknowledges that the caption of the synopsis at issue was different than those previously published in the CBD. The agency maintains, however, that it contained the same information as the previous synopses. Additionally, the agency maintains that the term "spares," as used in the December 22 notice, was correct since the telemetry packs are replenishment parts, i.e., spare telemetry packs for the AIM-9 missile. Nevertheless, we will consider Microcom's protest on the merits since the wording of the synopsis might have misled the protester as to the subject matter of the protest.

In determining the propriety of a sole-source award, the standard this Office has applied is one of reasonableness; unless it is shown that the contracting agency's justification for such an award is unreasonable, we will not question it. Engineering Research, Inc., B-180893, Sept. 12, 1974, 74-2 CPD ¶ 161. We have recognized that a

sole-source award is justified where time is of the essence and only one known source can meet the government's needs within the required time frame. MET Electrical Testing Co., Inc., B-205273, April 5, 1982, 82-1 CPD ¶ 308. Also, we have consistently held that where adequate data is not available to an agency to enable it to conduct a competitive procurement within the necessary time frame, we will not take exception to an award to the only firm that the agency believes is capable of producing the item. Pioneer Parachute Co., Inc., B-190798 et al., June 13, 1978, 78-1 CPD ¶ 431. Further, a military agency's assertion that there is a critical need for certain supplies carries considerable weight, and the protester's burden to show unreasonableness is particularly heavy. The Willard Co., Inc., B-199705, Feb. 18, 1981, 81-1 CPD ¶ 102.

Here, the Air Force justified its decision to award a sole-source contract for the P telemetry packs on the basis that the public exigency did not permit the delay incidental to formal advertising. The agency reports that all available packs would be consumed by July 1985 and the production lead time for new packs is 180 days, so that it was necessary to negotiate with the only known qualified source. According to the agency, even if the technical data had been available, the urgency of the requirement was such that time would not permit qualification of a new source and the necessary first article testing. The agency contends that the failure to make telemetry packs available would have resulted in serious degradation of the weapons system.

Microcom does not challenge the agency's assessment of the urgent need for the requirement. Instead, the protester argues that there was a lack of planning and that Microcom was ready to demonstrate the acceptability of a Microcom-built P telemetry pack.

The record indicates that the exigency was not the result of a lack of planning, but of a lack of technical drawings needed to qualify other sources. The Air Force's contract with Aydin-Vector required delivery of the drawings, but the firm had not yet delivered them; the due date had been changed from July 1984 to February 1985. The protester argues that a separate qualification for the P-model pack was not necessary, alleging that there are only minor differences between it and the models for which Microcom was already qualified. Microcom also states that it is "a proven producer for the Navy," but does not supply evidence that it is a qualified source for the Navy for the

31612

B-218296

P telemetry pack. The protester has not satisfied its burden of proof on this point. Therefore, we will not question the technical judgment of the agency since the protester has not shown that its conclusions are arbitrary. See Hoffert-Marine, Inc., B-202879, Oct. 20, 1981, 81-2 CPD ¶ 321.

Microcom also contends that the Air Force has made no showing of urgency as to the entire procurement and that the portion of the procurement for which urgency cannot be justified should be subject to competition. However, there is no indication in the record that the entire quantity of packs procured were for other than current needs. Accordingly we find no basis for the protester's suggestion that the procurement should have been divided.

As for future procurements of the telemetry packs, the Air Force advises that Aydin-Vector delivered the technical data for the AIM-9/P packs to it on April 30; therefore, we anticipate that procurement of these packs will be competitive in the future.

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel