

10/2/85

DECISION



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

FILE: B-219997

DATE: September 25, 1985

MATTER OF: Advanced Electronic Applications, Inc.

DIGEST:

1. When, at the time sole-source justification was made, contracting agency had every reason to expect that contract would be performed as anticipated, justification was valid and was not rendered invalid when events did not materialize under the contract as parties expected.
2. Compliance with contract performance obligation concerns a matter of contract administration which is the responsibility of the procuring activity, not GAO.

Advanced Electronic Applications, Inc. (AEA), protests that contract N68786-85-C-3012, awarded by the Department of the Navy to Technical Systems Group (TSG), should be terminated and resolicited on a competitive basis.

We dismiss the protest pursuant to section 21.3(f) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), because, based upon information provided by the Navy, it is clear that the matter is not for our consideration.

The subject contract is a firm, fixed-price supply contract for seven training systems, including among their components "environmental communications simulators (ECS)." The contract specifications provide that the ECS shall be specified AEA model numbers "or equivalent." Salient features are stated for an equivalent ECS.

The Navy reports that the contract was awarded on a sole-source basis because TSG alone possessed one of the key components of the training system and the only known capability of meeting the required operational date. The Navy also reports that it had discovered from a market survey it made that AEA was the only manufacturer that had a readily available ECS capable of meeting the training system requirements. Further, the Navy states that AEA had granted TSG an exclusive licensing agreement to market the ECS to the government.

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After award of the contract, negotiations between AEA and TSG for a subcontract for AEA to furnish the ECS failed when AEA refused to agree to progress payments and to certain Federal Acquisition Regulation clauses. As a result, TSG terminated the negotiations for the subcontract. TSG has proposed to the Navy, and the Navy has accepted, an offer of an equivalent ECS.

Now, because the negotiations between AEA and TSG have failed, AEA contends that the sole-source justification has become invalid and that there should be a competition for the program instead of allowing TSG to perform.

However, a sole-source justification is not rendered invalid by subsequent events. At the time the justification was made, the Navy had every reason to expect that the contract would be performed as anticipated and, thus, the justification was valid at that time. While events did not materialize as the parties expected, the contract as awarded did provide for the utilization of equipment "equivalent" to that of AEA as an alternative to AEA equipment. Compliance with the contract performance obligation concerns a matter of contract administration which is the responsibility of the procuring activity, not our Office. Container Products Corporation, B-218556, June 26, 1985, 85-1 C.P.D. ¶ 727. Since we have concluded that the protest is not for our consideration, it is not necessary to address the Navy's argument that the protest is untimely.



Robert M. Strong
Deputy Associate General Counsel