



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: NI Industries, Inc., Vernon Division
File: B-223941
Date: December 15, 1986

DIGEST

1. Justification and approval which authorizes sole-source awards to government-owned contractor-operated (GOCO) facilities where it is deemed necessary to maintain the GOCO facility as an active mobilization base producer does not provide a sufficient basis for the sole-source award contemplated since the Justification and Approval contains no finding as to the particular facts and circumstances which justify the sole-source award. Since the sole-source award is improperly justified, protester is entitled to recover the costs of pursuing its protest.

DECISION

NI Industries, Inc., Vernon Division (NI) protests the sole-source award of the Army's 1986 fiscal year (FY) requirements for 103,289 M509 projectiles to the Chamberlain Manufacturing Corporation (CMC) under Basic Ordering Agreement No. DAA09-84-G-0056. CMC is the operating contractor for the Scranton Army Ammunition Plant, a government-owned, contractor-operated (GOCO) facility. The M509 projectile is a mobilization base item which the Army has acquired since 1984 from both NI and CMC under an acquisition plan that split the needed quantity between the two producers. NI argues that the Army's decision to sole source its current requirement is improper and will not serve the needs of the mobilization base because it will result in a shutdown of NI's M509 production facilities. In addition, NI contends that the Army's decision is inconsistent with its obligation to obtain competition and that the Army's justification in support of its decision is inadequate.

We sustain the protest.

The Army states that there is no longer a sufficient need for the M509 projectile to justify the maintenance of two mobilization base producers. The Army indicates that its requirement has dropped by approximately one-third from the

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168,469 units needed in FY 1985 to 103,289 units in FY 1986 and that its projected requirement for FY 1987 is only 36,000 units with no projected need thereafter. In addition, the Army states that Scranton was also producing M106 and M107 projectiles in the past which made it less important that the total M509 production quantity be awarded to Scranton. The Army indicates that because there is no current requirement for either of these two items and the need for the M509 projectile is declining, the Army found it necessary to award the entire FY 1986 M509 requirement to Scranton in order to maintain that facility as an active mobilization base producer.

NI argues that a sole-source award to Scranton is not necessary to maintain that facility since partial awards have been sufficient in the past. In addition, NI contends that the Army's Justification and Approval (J&A) for this award is inadequate. The Army here relies on a J&A prepared for a variety of FY 1986 contracts and a Statement of Applicability prepared by the contracting officer and submitted to our Office after the administrative conference on the protest. NI contends that, although the J&A states that contracts should be awarded to GOCO facilities where necessary to maintain their capability and plant capacity, the J&A does not justify the specific sole-source award contemplated here since there is no finding that the mobilization base will be served by a sole-source award to CMC.

Under the Competition in Contracting Act of 1984 (CICA), military agencies continue to have authority to conduct procurements in a manner that enables them to establish or maintain sources of supply for a particular item in the interest of the national defense, see 10 U.S.C. §§ 2304(b)(1)(B) and 2304(c)(3) (Supp. III 1985), and the agencies need not obtain full and open competition where the procurement is conducted for industrial mobilization purposes and may use other than competitive procedures where it is necessary to award the contract to a particular source or sources. Urdan Indus., Ltd., B-222421, June 17, 1986, 86-1 CPD ¶ 557. Thus, where an agency's needs are for only one mobilization base producer, a sole-source award may be made.

Under CICA, however, detailed procedures must be followed to justify the use of noncompetitive procedures. The contracting officer is required to prepare a written justification, certify the accuracy and completeness of the justification and obtain approval for the acquisition from the appropriate agency official. For example, contracts for an amount exceeding \$10,000,000 must be approved by the agency's senior procurement executive and the statute clearly states

that this authority may not be further delegated. 10 U.S.C. § 2304(f)(1)(B)(iii). Moreover, the written justification is required to include a description of the agency's needs, the rationale for utilizing noncompetitive procedures, as well as several other determinations which show that the statutory mandate for full and open competition is not applicable under the circumstances. 10 U.S.C. § 2304(f)(3). Where an award is contemplated for industrial mobilization purposes, the contracting officer's written justification must explain why it is necessary to award the contract to a particular source and it is that determination which must be reviewed and approved. 10 U.S.C. § 2304(c)(3).

We think that the J&A relied on here does not meet CICA requirements because it contains no statement of the particular facts and circumstances which would justify the sole-source award to CMC. Under CICA, the appropriate agency official is required to approve the use of noncompetitive procedures, based on specific circumstances identified by the contracting officer in the written justification. The J&A, approved by the Secretary of the Army, authorized contracting officers to make sole-source awards to a number of GOCO facilities "when applicable and when considered to be in the best interest of the Government." Also, the J&A indicates that GOCO manufacturers are to be preferred over other manufacturers. However, we see nothing in the J&A which shows that industrial mobilization needs for the M509 projectile require the Army to award a contract only to CMC. The J&A does not provide that all awards for the M509 must be made to CMC, nor does the J&A set forth any specific criteria for determining when a sole-source award would be appropriate. Thus, the only specific evidence to support the Army's sole-source award to CMC is that presented by the Army in response to this protest and there is nothing in the record which shows that these facts were considered and approved at the appropriate level as required by CICA.

Therefore, we find that the express requirements of 10 U.S.C. § 2304(f)(1) and (f)(3) have not been met and that there is no authorization at this time for the Army's sole-source award to CMC. While the facts presented by the agency in its administrative report and in the contracting officer's Statement of Applicability may ultimately provide the basis for the sole-source award, CICA requires approval, at the appropriate level, for such a determination.

Accordingly, we sustain the protest on this basis. Given the facts presented by the contracting officer, we are recommending that the contracting officer now seek approval from the appropriate agency official for the sole-source award. If that approval is not forthcoming, the contract should be

terminated for the convenience of the government. In addition, since the sole-source award is improperly justified, we find that the protester is entitled to recover the costs of pursuing its protest. See Washington National Arena Limited Partnership, 65 Comp. Gen. 25 (1985), 85-2 CPD ¶ 435.

The protest is sustained.

for 
Comptroller General
of the United States