



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Oto Melara, S.p.A.
File: B-225376
Date: January 6, 1987

DIGEST

1. By statute, military agencies need not obtain full and open competition and may use other than competitive procedures when it is necessary for industrial mobilization purposes to award the contract to a particular source or sources. Therefore, since the normal concern of maximizing competition is secondary to the needs of industrial mobilization, decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization will be left to the discretion of the military agencies absent compelling evidence of an abuse of that discretion.
2. Allegation that protester, a foreign firm, could offer a lower price if allowed to compete provides no basis to object to agency's restriction to single domestic source to meet the needs of industrial mobilization where such restriction is not found improper.

DECISION

Oto Melara, S.p.A. (Oto), an Italian firm, protests the proposed award of a sole-source contract to FMC Corporation (FMC) under request for proposals No. N00024-87-R-5415, issued by the Department of the Navy (Navy) for the repair and overhaul of two MK 75 MOD 0 gun weapon systems. The Navy restricted the procurement to FMC to provide for an adequate industrial mobilization base. Oto argues that the mobilization base restriction is unwarranted.

We deny the protest.

FMC is currently the only mobilization base "planned producer" of the MK 75 gun weapon system under the Department of Defense (DOD) Industrial Preparedness Program. To be

designated a "planned producer," a firm must have indicated its willingness to produce specified military items in a national emergency by completing a DD Form 1519 "DOD INDUSTRIAL PREPAREDNESS PROGRAM PRODUCTION PLANNING SCHEDULE." Government production planning officials then survey the firm's facilities and negotiate a production planning schedule which is incorporated in the DD Form 1519. A firm is considered a mobilization base producer after completion and approval of its DD Form 1519. See Action Mfg. Co., B-221607.2, July 7, 1986, 86-2 C.P.D. ¶ 35. Oto is not a domestic firm and is therefore not eligible to be a planned producer. See DOD Instruction 4005.3, "Industrial Preparedness Planning," April 18, 1985, paragraph 7.

On November 19, 1986, the Navy executed a Justification and Approval (J&A) to award a contract to repair and overhaul 2 MK 75 gun weapon systems (GWS) to FMC on a sole-source basis. The authority for such action was 10 U.S.C. § 2304(c)(3) (Supp. III 1985) which allows the head of a military agency to use other than competitive procedures in awarding a contract to a particular source or sources when such action is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization. The Navy's J&A found that FMC, the exclusive domestic (United States and Canadian) licensee for the production of the Oto-designed MK 75 GWS, was the only domestic firm with the capability to manufacture and assemble a complete MK 75 GWS, and that award of the overhaul/repair work to FMC was required to preserve FMC's capability as an MK 75 GWS planned producer. The J&A noted that FMC is currently not producing any MK 75 GWS, that the Navy has no planned requirements for MK 75 GWS in the future except in the event of a national emergency, and therefore award of the overhaul/repair work to FMC was required to prevent the loss of FMC employee skills.

Oto protests that FMC is currently producing the MK 45 GWS for the Navy, that the skills required to produce an MK 75 are no different from the skills required to produce the MK 45, and therefore FMC does not need the proposed award of the MK 75 work to maintain skills already exercised by its employees in the MK 45 production. Oto notes that in 1982 the Navy determined that a mobilization base requirement did not exist for the MK 75 gun mount, and that the Navy has conducted competitive procurements for the MK 75 GWS since 1982. Oto contends that the proposed award amounts to an unnecessary subsidy.

The Navy replies that the MK 45 and MK 75 GWS's are significantly different in their firing capabilities, design philosophies, and material components, and require different skills to build and maintain. According to the Navy, the United States-designed MK 45 GWS, constructed from steel alloys, contains a standard hydraulic servo drive system for gun laying and hydraulic power for ammunition movement and control; its electronic control system is based on United States standard digital electronics. By comparison, states the Navy, the foreign-designed MK 75 GWS is an upscaled mechanically actuated machine gun with a significantly higher rate of fire than the hydraulically actuated MK 45 gun. According to the Navy, this totally different design provides automatic ammunition movement to enhance firing but also introduces assembly and testing complexity, due to the number of critical tolerances and adjustments required to ensure the system performs to specification.

The Navy notes that the MK 75 also uses an electric drive servo, an electronic control system, and predominantly aluminum components. The Navy argues that these components require machine operators and weld fabricators to acquire significantly different skills than those required for fabrication of the steel components on the MK 45. According to the Navy, when machining aluminum, operators are required to use different tool shapes and cutting speeds than when machining steel. Aluminum welding must also be performed with an aircraft type inert gas welding system as opposed to the shielded metal arc welding used for steel.

Furthermore, the Navy states that for mobilization requirements, the "planned producer" has 24 months to deliver an MK 75 and since production by Oto, an experienced contractor, requires nearly 2 years, it is doubtful that a contractor lacking current MK 75 experience could deliver a fully functional gun in less than that time period. The Navy notes that FMC took 37-1/2 months to produce the first functional MK 75 GWS under their first production contract, that FMC has not performed any MK 75 GWS production work since early 1984, and has never performed any MK 75 GWS overhaul or repair work. The Navy acknowledges that in 1982 it was not necessary to direct an award to FMC to maintain it as a mobilization base producer, but argues that does not mean the Navy does not need to maintain FMC as a potential producer of the MK 75 GWS. The Navy notes that because the last several MK 75 GWS production contracts have been awarded to Oto on a competitive basis, FMC has not performed any MK 75 GWS production work since early 1984.

In supplemental comments, Oto contends that aluminum welding should not be required in an overhaul, and that even if it were, thousands of domestic workers possess the skills needed. Furthermore, notes Oto, it has granted the United States Navy the right to buy all spares for the MK 75 GWS from any United States manufacturer without payment of royalty and, therefore, parts requiring special machining and welding could be procured from domestic sources with skilled workers and delivered to FMC for assembly.

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), supra, 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. Lister Bolt & Chain, Ltd., B-224473, Sept. 15, 1986, 86-2 C.P.D. ¶ 305.

Therefore, although it is the established policy of this Office to scrutinize closely sole-source procurement actions, see Jervis B. Webb Co. et al., B-211724, et al., Jan. 14, 1985, 85-1 C.P.D. ¶ 35, it is also our view that decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization involve complex judgments which must be left to the discretion of the military agencies. Wayne H. Coloney Co., Inc., 64 Comp. Gen. 260 (1985), 85-1 C.P.D. ¶ 186; Urdan Industries, Ltd., B-222421, June 17, 1986, 86-1 C.P.D. ¶ 557. This Office will question those decisions only if the evidence convincingly shows that the agency has abused its discretion. Martin Electronics, Inc., 65 Comp. Gen. 59 (1985), 85-2 C.P.D. ¶ 504. We limit our standard of review in such cases because the normal concern of maximizing competition is secondary to the needs of industrial mobilization. Id.; National Presto Industries, Inc., B-195679, Dec. 19, 1979, 79-2 C.P.D. ¶ 418.

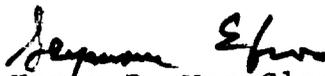
The record fails to show that the Navy abused its discretion here. The Navy has provided reasonable support for its assertion that the MK 45 and MK 75 GWS require different skills to build and maintain, and therefore award of the proposed overhaul/repair work to FMC is required to prevent the loss of FMC employee skills and to preserve FMC's capability as an MK 75 GWS planned producer. The fact that

Oto disagrees with the Navy's judgment, and argues that the mobilization base would not be adversely affected if the proposed procurement were not restricted to FMC, does not demonstrate that the Navy abused its discretion. See Urdan Industries, Ltd., B-222421, supra.

Oto also contends it is inconsistent for the Navy to assert in its report that it has no plans for further MK 75 GWS production, at the same time it is exercising an option to award five additional MK 75 gun mounts to Oto. However, as the Navy points out, the contract action Oto refers to concerns the Navy's funding of the third program year of a multi-year contract with Oto, not a new procurement. The lack of "further MK 75 GWS production" referred to in the J&A was lack of production beyond that already contracted for.

Oto also argues that it has proven to be a competitive alternative from which the Navy has enjoyed great savings, and that the Navy would save money if this procurement were also competitive. However, the fact that Oto could offer a lower price for the overhaul/repair work if it were allowed to compete provides no basis to object to the Navy's determination to restrict the procurement to FMC, since we find the restriction proper for purposes of industrial mobilization. See Urdan Industries, Ltd., B-222421, supra at 5.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel