

CURC.D



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Factech Corporation

File: B-225989

Date: March 26, 1987

DIGEST

General Accounting Office will not object to agency's decision to limit competition to approved manufacturers where agency's requirements are urgent and the agency does not have the technical data package needed to conduct a competitive procurement.

DECISION

Factech Corporation protests the anticipated award of a contract for gearbox housings to AVCO Corporation under Department of the Army request for quotations (RFQ) No. DAAJ09-86-Q-0875. We deny the protest.

A gearbox housing covers the gears of the T-53 engine in the UH-1 Helicopter, and also contains mechanisms that render the gears functional. In order to manufacture gearbox housings, first a casting, which results in the unfinished gearbox, is produced, and the casting then is manufactured into the functional gearbox.

The Army reports that it used to procure the gearbox housings from AVCO, the original equipment manufacturer, with Wellman Dynamics Corporation as AVCO's casting source. The last two contracts for the housings, however, were awarded on a competitive basis to Factech and another firm. During performance of its contract Factech developed a second casting source, and manufactured the housings in accordance with the specifications and the technical data package provided by the Army. Factech's finished gearbox housings would not work with the engine, however. The Army determined that the problem was that the agency's technical data package was defective, and the Army is both correcting Factech's gearboxes to make them functional and working on a revised technical data package. The housings delivered by the second firm awarded a contract also proved defective; that manufacturer has not yet delivered any functional gearboxes.

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The Army further reports that it has an urgent need for the housings. The activity uses 56 housings per month but presently has none in stock and 188 on backorder. The normal competitive procurement leadtime for the housing is 26.8 months. The Army reports that the housing is a critical part for the UH-1 aircraft and the failure to obtain the housings expeditiously will threaten the military readiness of the helicopter fleet. Consequently, based on urgency and the lack of an accurate data package, the Army initially decided to award a sole-source contract to AVCO. After that decision, however, a second manufacturer informed the Army that it produces the housings for AVCO, and that manufacturer, which also gets the castings from Wellman Dynamics, was given approved source status. The Army reports that no solicitation actually has been issued yet, but when it is only AVCO and the new source will be requested to submit offers.

Factech protests that limiting the procurement to the two firms is improper. Factech does not dispute that the gearbox housings are urgently needed, but asserts that it is capable of producing them and can guarantee delivery of the product within 18 months of award. In this regard, Factech asserts that after the Army determined that Factech's housings were defective due to the Army's defective technical data package, the firm offered to correct the deficiencies and incorporate the changes into the technical data package. Factech's alternate casting source, the protester states, stands ready to incorporate the required changes. Factech did not correct the housings, however, because the Army would not permit Factech to change the technical data package. Factech further contends that the Army itself has the knowledge needed to provide a revised technical data package for Factech to use to manufacture the housings. To support this position, Factech notes that in November of 1985, the Army evaluated the housings delivered by Factech and issued a quality discrepancy report which showed the areas in which Factech's product was defective and the precise measurement changes and drawings needed to correct the problems.

Under the Competition in Contracting Act of 1984 (CICA), an agency may use noncompetitive procedures to procure goods or services where the agency's needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits bids or proposals. 10 U.S.C. § 2304(c)(2) (Supp. III 1985). This authority is limited by the CICA provisions at 10 U.S.C. § 2304(e), which require agencies to request offers from as many sources as practicable. An agency using the urgency exception may restrict competition to the firms it reasonably believes can perform

the work promptly and properly, IMR Systems Corp., B-222465, July 7, 1986, 86-2 C.P.D. ¶ 36, and we will object to the agency's determination only where the decision lacks a reasonable basis. Aerospace Engineering and Support, Inc., B-222834, July 7, 1986, 86-2 C.P.D. ¶ 38. Here, we do not believe the Army's decision to limit competition to qualified sources is unreasonable.

Our review of the protest record shows that, as noted by Factech, the Army did send the firm a quality deficiency report in November 1985, and this report did detail the defects in Factech's housings and the changes that would be needed to correct the housings. Contrary to Factech's position, however, the quality deficiency report does not establish that the Army has sufficient information on which to base a competitive solicitation. The quality deficiency report recommendation is clear that the Army is concerned that when the housings are corrected, they still will need to be inspected to detect any further defects not discovered during the initial investigation. Thus, the report does not indicate that the Army is satisfied that the housings will be functional even after the already discovered defects are corrected. Moreover, it is the Army, not Factech, that is reworking these housings, and Factech has not provided any evidence to contradict the Army's position that the agency has not yet completed reworking the housings or revising the technical data package.

We also do not find that Factech has demonstrated that it has the knowledge and ability to manufacture functional housings. While Factech asserts that it agreed to correct the housings it delivered to the Army, there is no indication in the record that to date Factech has produced any functional housings. Moreover, the Army did return the housings to Factech once, and the subsequently-revised housings still had numerous defects remaining. In the circumstances, we do not believe the Army is required to accept Factech's assertion that it has sufficient data to provide gearboxes under the instant solicitation, and take the risk that urgently needed housings will be defective.

Since there is no dispute that the housings are urgently needed, and since the Army does not have data available to conduct a competitive procurement we find the Army's decision to limit competition to qualified sources to be reasonable. We anticipate, however, that the Army will expeditiously develop the technical data package so that future procurements can be conducted on a competitive basis. Further, in keeping with CICA's mandate for competition, we think the Army should procure no more than the minimum number of

housings needed until it can provide a technical data package to conduct a competitive procurement. The Army reports that it uses 56 housings per month; that it will take approximately 27 months until housings can be delivered under a competitive procurement; and that it presently has 188 housings on backorder, which by our calculation leaves the Army with a requirement for approximately 1700 housings. The agency, however, has not explained why it is issuing a solicitation for 2800 housings. By separate letter to the Secretary of the Army, we are recommending that the agency review its requirements to insure that the solicitation involves only the number of housings needed to satisfy the agency's minimum needs. See International Harvester Co., 61 Comp. Gen. 388, 398 (1982), 82-1 C.P.D. ¶ 459.

The protest is denied.

Harry R. Van Cleve

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General Counsel