



The Comptroller General
of the United States

Washington, D.C. 20548

Letter - PL-I

Decision

Matter of: Cerberonics, Inc.
File: B-225626, B-225627
Date: April 30, 1987

DIGEST

1. The interim extensions of two contracts about to expire pending awards under competitive follow-on procurement is justified where ongoing, critical services otherwise would be interrupted and only the incumbent contractors can meet the government's needs within the 4-month timeframe covered by the extensions.
2. Allegation that award of 4-month interim contract extensions pending competitive procurement was necessitated by agency failure to conduct proper advance planning is without merit, where the record shows that agency did in fact begin planning a competitive acquisition more than 1 year before existing contracts' scheduled expirations.

DECISION

Cerberonics, Inc., protests the Department of the Navy's extension of the performance period for contract No. N0019-84-D-0082 and for contract No. N0019-84-D-0117. Cerberonics contends that the extensions amount to improper sole-source awards of new contracts and challenges the propriety of the Navy's justifications issued in support of the extensions.

We deny the protest.

The contracts were awarded in 1983 pursuant to a 3-year omnibus procurement of various types of logistics services for naval fleet support activities. The solicitation divided the required services into five groupings or lots. Advanced Logistics Management, Inc. (ALM), received the award (contract No. N0019-84-D-0082) for the Lot I work, which consisted of "Requirements Integration" for aircraft and weapons systems to ensure that the overall integrated system of hardware and logistics support fulfilled the operational mission of the Navy's fleet. Information Spectrum, Inc. (ISI), received the award (contract No. N0019-84-D-0117) for the Lot II work of "Resource

038756

Analyses," involving the determination of the short-term and long range alternatives to aircraft and weapons systems currently supporting the Navy's fleet.

Cerberonics submitted an offer for only the Lot III work, "Program Assessment," which involved technical analyses in evaluating the integration of logistics tasks to ensure the smooth transition of new weapons systems into the Navy's fleet. Lot III was canceled, however, pending an investigation of a suspected compromise to the integrity of the offers submitted for the work. Subsequent to the cancellation of Lot III, the Navy reevaluated its needs on the remaining lots and amended the awarded Lots I and II contracts to increase the work to be performed under them. In August 1985, a scaled down Lot III contract was awarded on a sole-source basis to Cerberonics.

It became apparent to the Navy toward the end of fiscal year 1986 that a final acquisition plan for competitive procurement of its logistics services requirements, which had been in the planning stage since 1985, could not be completed before the expiration of the contracts awarded to ALM and ISI, so the Navy decided to extend the performance periods of the two companies' contracts through September 30, 1987. The Navy published notices of its intent in the October 23, 1986, edition of the Commerce Business Daily (CBD), and received detailed responses from Cerberonics and other companies in the industry indicating a strong interest in competing for the work. The Navy therefore reassessed its decision to extend the ALM and ISI contracts through September 1987 and, on November 3, 1986, canceled the notices.

The Navy then identified logistics support services within Lots I and II that could be postponed for several months until competitive awards could be made, and determined what level of effort would be necessary to support the remaining urgent and essential tasks; work at this level of effort would be accomplished through extending the contracts of ALM and ISI. On December 30, the Navy published new CBD notices stating the Navy's intent to increase by a "minimal amount" the ongoing level of effort in the contracts of ALM and ISI in order to provide for the continuation of essential services until competitive awards of follow-on services were made. Shortly after publication of this notice, Cerberonics protested to our Office.

Cerberonics contends that the December 30 notices are a disguised attempt by the Navy to meet substantially the same needs that the agency contemplated in the canceled October 23 notices and at the same time avoid the express prohibition in the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(f)(5)(A) (Supp. III 1985), against making noncompetitive awards on urgency grounds because of a failure to conduct proper advance procurement planning. Cerberonics alleges that the justifications supporting the interim extensions of the ALM and ISI contracts show that the Navy has gone substantially beyond providing for the performance of only critical services. Cerberonics points out in this regard that the justifications show that the extensions will provide, over a period of only a few months, an additional level of effort of 74 manyears for ALM and an additional 112 manyears for ISI, nearly the same levels of effort that these two companies had been providing over a 1-year period. Cerberonics further points out that the additional work is worth \$4 million and \$6 million for ALM and ISI, respectively. Cerberonics estimates the critical effort for the two contracts at only one-third of the manyears being added to the contracts. Cerberonics also asserts that there are large areas of overlap in the work to be performed under the three lots, and that, as the Lot III contractor, it is fully capable of performing much of the work covered in the sole-source extensions of the Lot I and II contracts.

While, as a general rule, procurements must be conducted on a competitive basis, noncompetitive awards are permitted in certain circumstances. In this regard, sole-source acquisitions may be authorized where only one known source can meet the agency's actual needs within the required time. 10 U.S.C. § 2304(c); WSI Corp., B-220025, Dec. 4, 1985, 85-2 C.P.D. ¶ 626. We also have held that the award of a contract extension on a sole-source basis is justified where ongoing, necessary services otherwise would be interrupted and only the incumbent can meet the government's needs within the required timeframe. Resource Consultants, Inc., B-221860, Mar. 27, 1986, 86-1 C.P.D. ¶ 296. We find this standard met here.

It is sufficiently clear from the record that the ALM and ISI contracts were extended solely to avoid disruption to critical on-going work. The work is for objective engineering analyses to meet existing delivery requirements under foreign military sales of aircraft and weapons

systems; to assess on-going support efforts in integrating certain new aircraft and airborne systems into the operation of the fleet; and to resolve critical support problems relating to the safety and operational readiness of avionics systems in some of the Navy's existing aircraft. The Navy states that, contrary to Cerberonics' argument, these engineering services essentially involve direct hardware system logistics support, and thus do not overlap the "indirect or program planning support" services that Cerberonics has provided under Lot III.

Even assuming that Cerberonics could perform some of the engineering support work covered by the extensions, the record clearly shows that it would take the company some time to become familiar with the details of the work; Cerberonics itself concedes that there would be a 3-week to 1-month learning curve in order for it to understand fully what performance efforts would be required. Further, the Navy indicates that, because the quality of the engineering and technical advice is the most important element in performing this work, if Cerberonics were to do the interim work it would take the Navy a significant amount of additional time to review the qualifications of all of the key personnel Cerberonics would substitute for ALM's and ISI's key personnel. We think the Navy reasonably determined that this gap in critical services would be unacceptable and that, all factors considered, only ALM and ISI, and not Cerberonics, could perform the critical logistics support services on Lots I and II within the interim 4-month timeframe.

Cerberonics' statistical argument that the interim work must exceed critical needs because the new level of effort is nearly identical to the previous 1-year effort is unpersuasive. The level of effort estimates are simply ceilings on the amount of work to be performed, not statements of the amount or type of work that actually will be performed during the interim period. As for whether the extensions are limited to critical work, the Navy has provided us with detailed statements as to the nature of the work and why uninterrupted performance is critical to the fleet. The Navy states, for example, that the F-18 aircraft has severe landing gear problems which must be resolved under the Lot II contract to permit continued operation of the aircraft during carrier operations in early 1987. Cerberonics has furnished nothing which would lead us to question the critical nature of this work.

We also do not agree with Cerberonics that the contract extensions were necessitated by the Navy's failure to conduct advance planning as contemplated by CICA. The Navy began identifying its long-term fleet support services requirements, and preparing a consolidated acquisition plan for logistics support services, in 1985. The plan was restructured throughout 1986 to reflect certain technical changes in the performance tasks under the three lots, resulting in 12 contract competitions (consolidated from an initially planned 20) anticipated during 1987. At the same time, major policy decisions were made by the Secretary of the Navy's office on cost savings that could be realized through a more efficient fleet support operation. As a result, the Navy decided to implement a core logistics support capability in-house.

Therefore, while the Navy's planning efforts ultimately fell short of enabling the Navy to initiate a new procurement coinciding with the completion of the ALM and ISI contracts, it is clear that the Navy took substantial action in attempting to conduct a timely competitive procurement. We do not consider the Navy's extension of the contracts pending a competitive procurement to have been based on a lack of advance planning.

Cerberonics' protest is denied.

for Seymour E. Fox
Harry R. Van Cleve
General Counsel