



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of:

Pacific Sky Supply, Inc.

File:

B-227113

Date:

August 24, 1987

DIGEST

1. Contracting agency reasonably conducted a sole-source procurement for a critical aircraft part with the original equipment manufacturer (OEM) where it lacked detailed technical data necessary to evaluate or test alternates, and the protester failed to submit sufficient data to show it manufacturers an equivalent part or previously manufactured the part for the OEM.

2. Contracting agency's consideration of protester's data to determine whether competition is available for supply of item being procured on a sole-source basis does not involve the application of a prequalification requirement under 10 U.S.C. § 2319, where the agency has no testing or qualification standards because of a lack of technical data for the item.

DECISION

Pacific Sky Supply, Inc., protests the refusal of the Warner Robins Air Logistics Center, Department of the Air Force, to determine that Pacific Sky was an available source to supply certain aircraft propeller blade bushings being procured on a sole-source basis from Hamilton Standard. The bushings are for C-130 aircraft. Pacific Sky has been attempting to obtain approval as a source since June 1986. Originally seeking approval as the manufacturer of an equivalent part, Pacific Sky was rejected because the Air Force lacked sufficient technical data to evaluate any source and had to rely on approval by the original equipment manufacturer,

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Hamilton Standard. Pacific Sky subsequently sought approval as a previous supplier to Hamilton Standard, but could not sufficiently show that it in fact had produced and supplied the bushings to that firm. The protester basically argues that the Air Force improperly failed to approve Pacific Sky for competition, and has failed to establish reasonable qualification standards for approving sources other than Hamilton Standard.

We deny the protest.

The Air Force executed a sole-source justification, as required by 10 U.S.C. § 2304(f) (Supp. III 1985), on Nov. 6, 1986, citing the unavailability of sufficient technical data and Hamilton Standard's proprietary rights to technical data as not permitting competition. While Hamilton Standard subsequently released its rights to certain technical data, the Air Force maintains it still lacked adequate detail to develop specifications or to evaluate alternates.

The Air Force had a notice of the intended sole-source procurement published in the Commerce Business Daily (CBD) on November 13, 1986. The notice stated that the bushings were available from one source only and also cited a standard CBD note to the effect that other potential sources could submit information concerning their capability to supply the bushings for the purpose of the Air Force's determining whether to conduct a competitive procurement. Another note explained that the procurement involved spare parts being procured from the prime equipment manufacturer or its actual supplier, and that others proposing to manufacture the parts must either: 1) show it satisfactorily manufactured the part for the government or the prime equipment manufacturer; or 2) submit such complete and current engineering data to demonstrate the acceptability of the part. Publication of the notice and the Air Force's consideration of responses also was statutorily required. 42 U.S.C. § 416 (Supp. III 1985); 10 U.S.C. § 2304(f)(1)(c).

For the purpose of qualifying under the second alternative above, Pacific Sky submitted information for evaluation, including an engineering drawing and evidence that the Federal Aviation Administration approved the design. In December 1986, the Air Force denied Pacific Sky's request for approval as an available source. Later, Pacific Sky offered the bushing itself for evaluation. In meetings with the Air Force, it ultimately became apparent that the Air Force considered itself to lack sufficient information to evaluate or test an alternate item, and that to qualify as an available source Pacific Sky would have to show it had manufactured the part for Hamilton Standard. Pacific Sky then submitted copies of an order issued by a Hamilton

Standard affiliate to Pacific Sky for the bushings. The Air Force was unable, however, to confirm that Pacific Sky manufactured the bushings supplied under this order and some question exists as to whether Pacific Sky supplied surplus parts. In April 1987, the Air Force again denied Pacific Sky's request for approval.

The agency issued a purchase order for bushings on January 22, 1987 with a February 23 closing date. Hamilton Standard has not submitted a quotation.

An agency may limit competition for the supply of parts if doing so is necessary to assure the safe, dependable and effective operation for military equipment. B.H. Aircraft Co., B-222565 et al., Aug. 4, 1986, 86-2 CPD ¶ 143. Where, as here, the agency has substantially complied with the procedural requirements for a written sole-source justification and publication of a CBD notice, we will not disturb the agency's determination to conduct a sole-source procurement unless that decision is shown to be unreasonable. See C&S Antennas Inc., B-224549, Feb. 13, 1987, 66 Comp. Gen. ___, 87-1 CPD ¶ 161.

The Air Force reports that the bushings are a critical part of the propeller system and that failure could lead to loss of propeller control and disengagement of the propeller from the aircraft. Each bushing contains intricate spline teeth that must properly mesh with the micro adjustment ring which fine tunes positioning of the propeller blade. According to the Air Force, the Hamilton Standard drawings lack information about the part's dimensions, finishes, and materials, including spline tooth data. The drawings also fail to detail the inspection and testing criteria. The Air Force contends that without such data, it cannot develop specifications for a competitive procurement or evaluate other manufacturers' bushings.

These factors supports the need to limit competition to the original equipment manufacturer except where another source makes a strong showing that it can furnish an acceptable equivalent item. See B&H Aircraft Co., B-222565 et al., supra. Given the Air Force's lack of necessary data to evaluate or test an alternate, the agency also reasonably determined that the information Pacific Sky submitted to demonstrate the acceptability of its part was insufficient. We note the Air Force might have reached a different conclusion had Pacific Sky demonstrated extensive satisfactory performance of the part, in addition to the engineering and other data it submitted. The data submitted by Pacific Sky, however, was for an unproven item, notwithstanding Federal Aviation Administration of the design. Even if the design were identical to that of the

Hamilton Standard bushing, we think the agency reasonably could be concerned that manufacturing methods could result in unacceptable deviations from the prescribed dimensions or in latent weaknesses relative to the specified part. See B.H. Aircraft Co., B-222565 et al., supra.

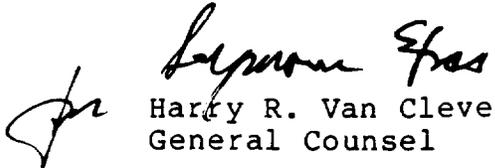
As regards Pacific Sky's attempt to show it had satisfactorily manufactured the part for the prime equipment manufacturer, a reasonable question existed, based on the evidence showing only that Hamilton Standard had ordered the part from Pacific Sky, as to whether Sky actually newly manufactured and delivered the part. Since the Air Force's inquiries to Hamilton Standard indicated that Pacific Sky had provided surplus Hamilton Standard parts and Pacific Sky has not shown otherwise, we find the Air Force reasonably refused to approve Pacific Sky's request for approval as a supplier to Hamilton Standard.

We do point out, however, that the Air Force has an obligation to take reasonable action to develop specifications that permit full and open competition, 10 U.S.C. § 2305(a)(1)(A), which means that all responsible sources are permitted to compete. 41 U.S.C. § 403(7). Where, through advance planning, the agency can devise first article testing requirements or prequalification standards that permit competition without substantial risk to the government, the agency must do so. See Freund Precision, Inc., B-223613, Nov. 10, 1986, 66 Comp. Gen. _____, 86-2 CPD ¶ 543, TeQcom, Inc., B-224664, Dec. 22, 1986, 86-2 CPD ¶ 700. While Pacific Sky has been attempting to gain consideration as an available source since June 1986, the record fails to indicate the practicability of developing precise standards under which Pacific Sky may compete, or to detail any efforts by the Air Force to develop such standards. Thus, while the record does not show that the agency has improperly precluded Pacific Sky from the opportunity to compete, we believe the agency should explore the feasibility of developing and implementing first article testing requirements or precise prequalification standards that will promote full and open competition.

The protester argues that this procurement already involves a prequalification requirement that fails to comply with 10 U.S.C. § 2319(b) which requires, among other things: a written justification for such a requirement; that the requirement be specific and not unduly restrictive; and that the offeror be provided a prompt opportunity to demonstrate its ability to meet the requirement. A prequalification requirement within the scope of 10 U.S.C. § 2319 is a requirement for testing or other quality assurance demonstration that must be completed by an offeror before the award of a contract. 10 U.S.C. § 2319(a). In this case,

there is no testing or other quality assurance demonstration that is required. The very basis for conducting a sole-source procurement was the lack of data from which to devise such a requirement. Thus, we do not believe the Air Force has failed to comply with 10 U.S.C. § 2319.

The protest is denied.


Harry R. Van Cleve
General Counsel