



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Minowitz Manufacturing Co.
File: B-228502
Date: January 4, 1988

DIGEST

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.

DECISION

Minowitz Manufacturing Co. protests the proposed award of a sole-source contract to Teledyne Continental Motors, General Products Division under request for proposals (RFP) No. DAAE07-87-R-A807, issued by the Army Tank-Automotive Command, Warren, Michigan for component parts for AVDS 1790 diesel engines, which are used in the M60-M88 family of vehicles. The Army restricted the procurement to Teledyne on the basis of an identified need to maintain Teledyne as a vital mobilization base producer. Minowitz argues that the mobilization base restriction is unwarranted and improperly limits competition.

We deny the protest.

The RFP, issued on September 15, 1987, sought several spare parts for the AVDS 1790 diesel engine series designed by Teledyne, including gear shafts, oil pump assemblies, cylinder heads, pistons and crankshafts. Minowitz claims that it can produce the oil pump assembly and piston parts called for in the solicitation and complains that the proposed sole-source award is improper because it excludes the firm from an opportunity to compete for the portion of the Army's requirements it is capable of fulfilling.

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The record shows that the Army executed a Justification and Approval (J&A) which was approved by the Assistant Secretary of the Army on April 27, 1987.^{1/} The J&A provides for the delivery of supplies and services for the M60-M88 family of vehicles from Teledyne in calendar year 1987-1988. The authority cited for this procurement is 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 Army's J&A found that restriction of this procurement to Teledyne is "required to preserve the eroding mobilization base for engines which power the M60-M88 fleet." The J&A noted that the imminent end of M60 and M88 new vehicle production and a declining foreign military sales (FMS) demand have reduced Teledyne's engine production rate dramatically, threatening a consequential loss of its skilled work force and vendor base. The reasons cited by the Army for other than full and open competition include its need to maintain Teledyne as a "warm production base" for AVDS 1790 engines and to avoid significant re-start costs. Based on prior procurement history, the Army, while recognizing it would have to pay a premium price in awarding to Teledyne rather than competitively procuring the items, nevertheless determined that Teledyne was an important mobilization base producer that had to be maintained. Specifically, the J&A states that the loss of Teledyne as an Army supplier would eliminate the on-line supply of major sole-source engine spares produced by Teledyne and would result in the inability of the United States Government "to support FMS customers with AVDS 1790 engines and spare components."

Minowitz argues that the information relied upon by the Army in the J&A is outdated because: 1) Minowitz has supplied pumps and pistons to the government at lower prices than those listed in the J&A (these listed prices were used by

^{1/} On November 13, 1987, an amended J&A was issued to update the required quantities of three RFP line items and to include another component spare. It should be noted that the original J&A authorized acquisitions up to \$57 million which is much higher than the estimated value of this RFP. The record shows that both the J&A and its amendment were otherwise proper in form and were approved by the appropriate authorities.

the Army in a comparative cost impact evaluation to determine the propriety of the present sole-source mobilization award and the premium that would have to be paid); 2) there are significant quantity variations for the items between the J&A and the RFP (the RFP quantities are greater); and 3) there is insufficient information on current production figures for 1987 for Teledyne to justify the proposed award (Minowitz questions whether Teledyne's production line has eroded significantly to warrant restriction of the procurement to Teledyne).

In its agency report, the Army states that Teledyne is the only tooled supplier producing the AVDS 1790 series engines and that it is its only source for camshafts, engine blocks and crankshafts for these engines. In consideration of these findings and the fact that the production base has been eroding due to continually decreasing demand, the Army set out to award a sole-source contract to Teledyne in the interests of industrial mobilization. A second source supplier for these items was determined to be unnecessary in light of the Army's plan to phase out the M60 and M88 production programs.

Under the Competition in Contracting Act of 1984, 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. Oto Melara, S.p.A., B-225376, Jan. 6, 1987, 87-1 CPD ¶ 15.

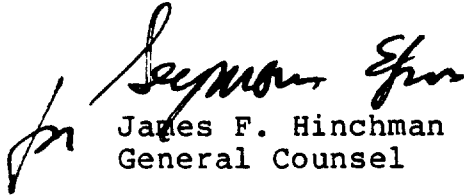
Therefore, although it is the established policy of this Office to scrutinize closely sole-source procurement actions, see Jervis B. Webb Co. et al., B-211724, et al., Jan. 14, 1985, 85-1 CPD ¶ 35, it is also our view that decisions as to the producers that should be included in the mobilization base and 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 CPD ¶ 186; Urdan Industries, Ltd., B-222421, June 17, 1986, 86-1 CPD ¶ 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 CPD ¶ 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.; NI Industries, Inc., Vernon Division, B-223990.2, June 16, 1987, 87-1 CPD ¶ 597.

The record fails to show that the Army abused its discretion here. While the protester argues that the circumstances surrounding this solicitation have changed since the J&A was approved, the fact remains that the J&A properly authorized the restriction of the present requirement to Teledyne to maintain it as a vital facility in producing engine and component parts needed for Army vehicles. Also, while there initially was a quantity variation between the J&A and the RFP, the Army issued an amended J&A which authorizes the full quantity being procured under the RFP. Further, Teledyne, as an interested party, states, and we find, that its current engine production rate for 1987 has eroded to two per day (down from seven per day in 1984) which fact was relied upon by the Army in proposing to award this contract to the firm. Thus, since the record supports the Army's finding that Teledyne's production of engines and components has significantly eroded and needs to be maintained, we find no basis to disturb the award.

Moreover, the fact that the Army is paying a premium in awarding to Teledyne is of no consequence since the interest of national mobilization preparedness is paramount. Stated differently, the fact that Minowitz could offer a lower price for some of the component parts if it were allowed to compete provides no basis to object to the Army's determination to restrict the procurement to Teledyne, since we find the restriction proper for purposes of industrial mobilization. See Oto Melara, S.p.A., B-225376, supra. Accordingly, we find that the Army has provided reasonable support for its assertion that award to Teledyne is necessary to prevent the loss of Teledyne's skilled employees and to preserve its production base in the interest of industrial mobilization. The fact that Teledyne disagrees with the Army's judgment and argues that the mobilization base would not be adversely affected if the proposed procurement was not restricted to Teledyne, does not demonstrate that the Army abused its discretion. See Urdan Industries, Ltd., B-222421, supra.

The protest is denied.


James F. Hinchman
General Counsel