



The Comptroller General  
of the United States

Washington, D.C. 20548

*Gilhody*

## Decision

Matter of: MMC/PHT Company

File: B-230599

Date: May 17, 1988

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### DIGEST

Agency decision to limit competition to the only known qualified source is proper where agency does not have sufficient time to qualify a new source.

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### DECISION

MMC/PHT Company (PHT) protests the Department of the Air Force's award of a noncompetitive contract, No. F42600-88-C-1304, to Texstar Incorporated, to supply electronic drawer containers. PHT, which submitted a proposal to supply the containers, contends that the Air Force failed to give its proposal fair consideration and lacked an adequate basis for the award to Texstar. We deny the protest.

On November 4, 1987, the Air Force published notice in the Commerce Business Daily (CBD) of its intent to negotiate a sole-source contract with Texstar, the only known responsible source. On December 4, the Air Force issued a restricted request for proposals (RFP) to Texstar, stating a closing date of January 6, 1988, for 240 containers.

The RFP contained the following clause:

"M.25. EVALUATION OF PROPOSALS SUBMITTED BASED UPON DATA NOT PROVIDED IN THE SOLICITATION (MAY 1986 AFLC FAR SUP 52.215-9008

". . . Offers from firms not previously identified as sources for this requirement will only be considered when it can be determined prior to award that the material or service being offered will meet the Air Force's requirement. Offers from firms other than those previously identified and listed below may be considered for award only if:

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(a) The offeror identifies the source of the data to be utilized in the performance of this contract including drawing number, revision letter and the date of the last revision, and

(b) The offeror provides a set of the data to be used in the performance of this contract, and

(c) The offeror provides evidence that the item or service proposed will, in fact, meet the Air Force's requirement.

". . . The decision of the contracting officer regarding adequacy of the data shall be final. The following previously identified source(s), having previously complied with the foregoing relative to this item, need not comply with paragraphs (a) through (c) above:

MFG CODE  
SOURCES

PREVIOUSLY IDENTIFIED

12849

TEXSTAR PLASTICS

(IAW AFLC FAR SUP 15.406-5(c)(90))"

Contracting officials meanwhile received an urgent purchase request for the containers, which would be used for transporting electronic drawers needed in support of a missile program. The purchase request noted that the containers were required by June 1, 1988, and that Texstar was the only qualified source that could meet the accelerated schedule for the item, whose normal manufacturing lead time was 12 months. The Air Force officials had not yet determined if all the data necessary for another vendor to make the item was available, or what first article requirements might be necessary. A justification for using other than full and open competitive procedures due to an unusual and compelling urgency was approved by the Air Force's Director, Competition Advocacy, on December 15, 1987. See 10 U.S.C. § 2304(c)(2) (Supp. III 1985). The justification stated that the only qualified source for the containers, which must be on site June 1, 1988, was Texstar. According to the justification, extensive qualification testing, including shock and vibration requirements, was needed, as well as an engineering prototype to be developed by the vendor. The justification indicated that there was insufficient lead time to qualify another source by June 1, 1988, and that any delay would result in a work stoppage condition, and adversely affect a missile program, requiring extensive and

costly missile retargeting. Each day's delay in the missile program was estimated to cost \$36,000.

The Air Force received two proposals by the RFP's January 6, 1988, closing date, one from Texstar and the other from PHT. The Air Force notified PHT that its proposal did not contain information required by clause M.25, cited above. By letter dated January 15, PHT submitted copies of some drawings of the containers and contracts with other government agencies for other types of containers. The Air Force reviewed the material and determined that it was insufficient to demonstrate that PHT had successfully manufactured the exact case required. The drawings did not reflect vibration and shock test requirements, and sub-tier drawings were missing. Since the containers would be carrying expensive, nuclear critical, electronic drawers, and PHT had never manufactured the containers, the Air Force determined that PHT would have to submit a first article for testing, but that there was insufficient time for such testing. By letter dated February 23, the Air Force notified PHT that it was awarding a contract to Texstar for a minimum quantity of 90 units, and intended to compete the balance as soon as it researched all the data and other requirements. On February 26, the Air Force awarded a contract to Texstar for 90 units, which the Air Force felt represented its minimum exigent need to insure mission support.

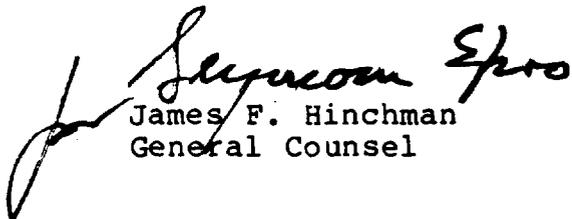
PHT protested to our Office on March 3, contending it was the low offeror and should have been awarded a contract for the 240 cases. PHT states that the RFP does not express a requirement for first article or test reports of any kind, that it has a set of drawings for the part number, and has manufactured aluminum, fiber glass and plastic cases.

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). 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, Factech Corp., B-225989, Mar. 26, 1987, 87-1 CPD ¶ 350, 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 CPD ¶ 38.

We do not find the award to Texstar legally objectionable. As stated above, the Air Force had determined that the 90 containers awarded to Texstar were urgently needed to prevent work stoppages that would result in extensive and costly missile retargeting. PHT does not appear to dispute this urgent need for the containers. Furthermore, the record fails to establish that the Air Force reasonably could have qualified PHT in time for award, given that delivery of the containers was due June 1, much sooner than the normal manufacturing lead time of 12 months, and that extensive qualification testing was required. We think the Air Force reasonably concluded that the information PHT submitted under clause M.25 to demonstrate the acceptability of its container was insufficient. The drawings did not reflect vibration and shock test requirements, and PHT had never manufactured the specific container which would be used to transport expensive, nuclear critical, electronic drawers. We think the agency reasonably was concerned that manufacturing methods could result in unacceptable deviations from the prescribed dimensions or in latent weaknesses relative to the specified part. See Pacific Sky Supply, Inc., B-227113, Aug. 24, 1987, 87-2 CPD ¶ 198. We conclude that the agency properly proceeded on an urgent and compelling basis to award a noncompetitive contract to the only known firm capable of providing the containers within the required timeframe. See Kitco, Inc., B-228045, B-229609, Dec. 3, 1987, 67 Comp. Gen. \_\_\_\_\_ 87-2 CPD ¶ 540.

Though we do not object to the award, we anticipate that the Air Force will expeditiously develop the technical data and testing requirements for the containers so that future procurements can be conducted with more qualified sources.

The protest is denied.

  
James F. Hinchman  
General Counsel