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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Magnavox Electronic Systems Company; Ferranti Technologies, Inc.

**File:** B-247316.2; B-247316.3

**Date:** May 28, 1992

Thomas W. Biggs, Esq., Magnavox Electronic Systems Company, and Judd L. Kessler, Esq., Porter, Wright, Morris & Arthur, for the protesters.  
John J. Nichols, Esq., Motorola, Inc., an interested party.  
Vera Meza, Esq., and Bridget Stengel, Esq., Department of the Army, for the agency.  
Scott H. Riback, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that individual executing required justification and approval (J&A) for sole-source award did not possess requisite authority is denied where record shows that individual was agency's acting senior procurement executive at the time J&A was executed.

2. Protest that contracting agency improperly awarded a single, sole-source contract on mobilization base grounds is denied where record shows that agency's current requirement was sufficient to maintain only one producer and agency properly exercised its discretion in deciding that the award was necessary to protect the industrial mobilization base.

### DECISION

Magnavox Electronic Systems Company and Ferranti Technologies, Inc. protest the Department of Army's award of a contract to Motorola, Inc. under request for proposals No. DAAA09-91-R-0886, for electronic bomb fuzes. The protesters allege that the contract was improperly awarded on a sole-source basis.

We deny the protests.

The acquisition was originally synopsisized in the Commerce Business Daily (CBD) on January 8, 1992. The CBD announcement stated that the Army, which is acting on behalf of all the military services, intended to award a contract on a sole-source basis to Motorola for a base quantity of

129,323 model FMU-139A/B electronic bomb fuzes and an option quantity of an additional 64,661 units. After Magnavox and Ferranti protested to our Office that the CBD notice was improper because it failed to state the basis for a sole-source award, an amended CBD notice was published, stating that the award was being made for industrial mobilization base purposes pursuant to 10 U.S.C. § 2304(c)(3) (1988) and Federal Acquisition Regulation (FAR) § 6.302-3. Magnavox then filed a second protest based upon the amended CBD announcement and the receipt of the agency's justification and approval (J&A) in support of the determination to acquire the fuzes on a sole-source basis.

In its protest, Magnavox first argues that the Army's approval of the procurement was procedurally flawed. Magnavox claims that the Army's J&A is invalid because it was not executed by an individual possessing the appropriate authority. In this regard, Magnavox states that 10 U.S.C. § 2304(f)(1) requires that an agency's senior procurement executive execute the J&A required for a sole-source acquisition where the value of the acquisition is to exceed \$10 million, and that this authority may not be delegated. (Here, the ceiling price for the base quantity totals approximately \$86.9 million.) Magnavox argues that this requirement was not satisfied because the J&A was not signed by the Army's senior procurement executive but, rather, was signed by another individual on his behalf. Magnavox also contends that the agency acted improperly by executing the J&A prior to synopsisizing the acquisition in the CBD. According to Magnavox, the Army was required to publish a CBD notice prior to executing its J&A so that potential contractors could review and respond to the solicitation before the agency finally determined to make a sole-source award.

We find no basis upon which to question the execution of the J&A. It was signed by the Deputy Assistant Secretary of the Army for Procurement. According to the agency, when the J&A was executed, the individual who normally acts as the Army's senior procurement executive--the Assistant Secretary of the Army (Research, Development and Acquisition)--was absent and the Deputy Assistant Secretary for Procurement was the agency's acting senior procurement executive and signed in that capacity. In our view, since the J&A was signed by the official acting as the agency's senior procurement executive, the execution of the J&A complies with the requirement in 10 U.S.C. § 2304(f)(1).

As for the CBD notice, where an agency conducts a procurement for industrial mobilization base purposes, it is

not required to publish a CBD notice, 10 U.S.C. § 2304(f)(1)(C); 41 U.S.C. § 416(c)(2); FAR § 5.202(a)(10). This is because the agency is not attempting to foster competition but, rather, is placing a particular requirement with a particular producer in order to maintain that firm's manufacturing capability. See 10 U.S.C. § 2304(b)(1)(B). Here, the Army published the CBD notice only in order to make information regarding the acquisition available to potential subcontractors and not for purposes of fostering competition. The timing of the notice does not furnish any basis for questioning the procurement.

Both Magnavox and Ferranti challenge the restriction of the procurement to Motorola on substantive grounds. Magnavox essentially argues that the requirement for fuzes should be met using full and open competitive procedures. According to Magnavox, both it and other firms are capable of meeting the agency's requirements from a technical standpoint. Magnavox further argues that "the Pentagon does not want to get on the slippery slope of trying to decide which contractors should be subsidized and which should not."

Ferranti, on the other hand, does not contend that the acquisition should be subject to full and open competition. Ferranti argues that the current requirement for fuzes is sufficient to maintain more than one mobilization base producer. In this regard, Ferranti points out that while the Army's J&A identifies a full mobilization requirement for this item of 133,300 units per month, or 1,599,600 units per year, the J&A states that Motorola's proven production rate, based upon one 8-hour shift, 5 days a week (its 1-8-5 production rate), is only 11,000 units per month, or 132,000 units annually. Ferranti concludes that since Motorola apparently could produce no more than 33,000 fuzes per month at its full capacity (three 8-hour shifts, 5 days a week or its 3-8-5 production rate), the Army should split the present requirement between it and Motorola so as to maintain not only Motorola's production capability but Ferranti's as well.

The Army responds that the contract was properly awarded to Motorola for purposes of maintaining that firm's facilities and expertise in the manufacture of the FMU-139A/B model fuze. According to the agency, Motorola is the only firm which has a proven ability to manufacture this particular model of fuze and the current limited requirement for the product is only sufficient to maintain Motorola's manufacturing capability.

Specifically, the Army reports that specialized skills and equipment are required to manufacture the FMU-139A/B model fuze and Motorola currently is the only proven producer of the FMU-139A/B model. According to the agency, although

Ferranti has produced an FMU-139/B model, that model is a less complex configuration of the fuze and lacks an initiator device required in connection with the FMU-139A/B model fuze. Furthermore, the Army notes that of the two contracts awarded to Ferranti for the less complex FMU-139/B model fuze, one of the contracts has been terminated for default because of an inability to pass first article testing, and the other, a follow-on to the first, has had the delivery schedule extended five times because of the problems under the first contract and production problems under the second, resulting in a delay of approximately 4 years. In addition, the Army reports that its current requirements as compared to the full mobilization requirement of 133,300 per month, are insufficient even to maintain Motorola at its single-shift (1-8-5) production rate; the production rate called for under the contract is 10,568 units per month while Motorola's 1-8-5 production rate is 11,000 units per month. The Army concludes it would be both uneconomical and not in the best interests of the government to maintain more than one mobilization base producer at this time.


Military agencies have authority to conduct procurements in a manner that enables them to establish or maintain mobilization base sources of supply for a particular item in the interest of national defense. See 10 U.S.C. §§ 2304(b)(1)(B) and 2304(c)(3). These 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. Propper Int'l, Inc., B-229888; B-229889, Mar. 22, 1988, 88-1 CPD ¶ 296. Therefore, although we closely scrutinize procurement actions using other than competitive procedures, since the normal concern of maximizing competition is secondary to the needs of industrial mobilization, decisions as to which and how many producers are in the mobilization base involve complex judgments which must be left to the discretion of the military agencies. Minowitz Mfg. Co., B-228502, Jan. 4, 1988, 88-1 CPD ¶ 1. An agency's decisions as to which particular producer or producers will be awarded a contract will not be questioned by our Office, so long as the agency can demonstrate that its determinations in this respect are related to its industrial mobilization needs. Lister Bolt & Chain, Ltd., B-224773, Sept. 15, 1986, 86-2 CPD ¶ 305. Our Office will question these decisions only if the record convincingly establishes that the agency abused its discretion. Minowitz Mfg. Co., supra.

Based upon our review of the record, we find that the Army did not abuse its discretion in determining to award a contract to Motorola on a sole-source basis. The Army's decision to acquire these fuzes on a sole-source basis

rather than through full and open competition is unobjectionable. Although Magnavox questions the desirability of an industrial mobilization base policy (preferring to rely instead upon the competitive procurement of military items), CICA specifically provides for this exception to the general requirement for full and open competition. This exception allows military agencies to direct the award of contracts to particular firms possessing critical facilities and expertise for mobilization base purposes. 10 U.S.C. § 2304(b)(1)(B). In this regard, neither protester has shown that the Army's need to maintain a manufacturing capability for the FMU-139A/B fuze is not a critical requirement. Under the circumstances, even if other firms may currently possess the necessary expertise to fabricate the fuzes (which is not apparent from the record), this is of no consequence since the object of an industrial mobilization acquisition is to maintain the capability of a particular producer for use in case of a national emergency or industrial mobilization.

We also find unobjectionable the Army's decision to make a single award to Motorola rather than split the award between Motorola and Ferranti. While Ferranti is correct that the Army's J&A identifies an apparent mobilization base "short-fall," with Motorola able to satisfy only one-fourth of the potential mobilization fuze requirement, there is no basis in the record to question the agency's determination that the current requirements for the fuze are inadequate to maintain more than one producer. The base quantity called for under the contract is less than Motorola's single-shift, 1-8-5 production rate. In addition, it is unclear whether there exists a current requirement for the option quantities, since the Navy and the Air Force have canceled their requirements for this model fuze for fiscal year 1993. In any case, given the termination of Ferranti's first contract and the significant 4-year delay under the second contract for the less complex FMU-139/B fuze, and given the fact that only Motorola has previously manufactured the FMU-139A/B fuze, the record supports the Army's determination that Motorola is the only firm with a proven production capability for this item. Under these circumstances, the Army has not abused its discretion in selecting Motorola to receive a sole-source award as part of the agency's effort to maintain the mobilization base for the FMU-139A/B model fuze.

The protests are denied.

  
for James F. Hinchman  
General Counsel