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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190020

DATE: January 31, 1978

MATTER OF: General Electrodynamics Corporation

DIGEST:

1. While GAO does not usually review awards of subcontracts, except in limited circumstances, awards made "for" Department of Energy (DOE) by prime management contractors who operate and manage DOE facilities will be reviewed.
2. Where procuring activity, in purchasing cameras for testing and evaluation, attempts to isolate manufacturers from procurement process to assure receiving "off the shelf" items, and, therefore, issues RFQ's to dealers, fact that two manufacturers were dealt with directly was not prejudicial to protester where no evidence has been presented that manufacturers knew of purpose of procurement. Also, allegation that model changes and price reductions by two manufacturers during timeframe of camera evaluation were made solely to qualify cameras for program has not been substantiated by evidence presented.
3. Since it is within discretion of agency as to how it fulfills its needs and Air Force determines its needs can best be served by utilizing expertise of Department of Energy's prime management contractor, GAO is unable to conclude that real purpose was to avoid requirements of procurement regulations.
4. Decision as to whether procurement should be set aside for small business is within authority and discretion of contracting agency.

General Electrodynamics Corporation (GEC) has protested to our Office any award under request for quotations (RFQ) No. CPB/07-1360 issued by Sandia Corporation (Sandia), which operates Sandia Laboratories, a Government-owned laboratory, under Prime Contract No. AT(29-1)-789 with the Department of Energy (DOE).

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The procurement is for security monitoring television cameras for the United States Air Force Boundary Alarm Assessment Program (BAAS, and results from a Memorandum of Understanding between the Air Force and DOE pursuant to the Economy Act (31 U.S.C. § 686 (1970)).

While our Office does not usually review awards of subcontracts, except in limited circumstances, we do review awards made "for" DOE (previously the Atomic Energy Commission and the Energy Resources Development Administration) by prime management contractors who operate and manage DOE facilities. See Optimum Systems, Inc., 54 Comp. Gen. 767 at 774 (1975), 75-1 CPD 166. Accordingly, as the work being performed here is under Sandia's prime contract with DOE, we will consider the matter.

GEC's protest is based on the allegation that it was improperly denied the opportunity to compete for the instant procurement because of various actions by Sandia. A review of the history of this project is necessary to an understanding of the grounds of protest advanced by GEC.

On October 9, 1975, the Mitre Corporation, pursuant to an Air Force contract, placed a notice in the Commerce Business Daily (CBD) requesting indications of interest and capabilities for cameras to be evaluated for the Base and Installation Security System (BISS). Based on responses to the CBD notice, Mitre evaluated 55 camera models from 18 companies, including GEC. Following evaluation, Mitre's report recommended six cameras for further evaluation by the Electronics System Division (ESD) of the Air Force. This information was forwarded to Sandia. Using the Mitre report, the Statement of Work from ESD, the Sandia Tasking Statement and other correspondence with the Air Force, Sandia established a list of 17 requirements for the cameras to meet the Air Force's needs.

Following a review of the Mitre report and manufacturers' published literature, Sandia decided to delete one of the cameras recommended by Mitre because it utilized a rotating filter determined to be unreliable for the BAAS program. Sandia added three cameras to those recommended by Mitre, including the GEC model ED7084-108, based on the manufacturers' literature which showed the cameras may meet the requirements of the BAAS program.

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Sandia thereafter issued RFQ's to a number of concerns which it believed were distributors of the various cameras selected for three each of the cameras for testing and evaluation. Sandia states that it desired to purchase the cameras directly from distributors rather than manufacturers because it desired "off the shelf" cameras and did not desire to alert the industry as to the reason for purchasing the cameras. All cameras, according to Sandia, were purchased from distributors except the RCA camera, which was purchased directly from RCA since it was not known to sell through distributors.

Following a two-phase program of testing and evaluation, which included initial evaluation and then environmental testing of the cameras which successfully passed the first phase, two cameras were selected. These were the RCA model TC1306 and the Cohu, Inc., model 2850B. On August 16, 1977, RFQ CRB/07-1360 was issued to RCA and Cohu for 319 cameras with lens and related technical manuals.

GEC's protest is based on the allegation that there was unequal treatment of suppliers in the selection, procurement and evaluation of the cameras.

Initially, GEC argues that the use of dealers, rather than placing the orders directly with the manufacturers, was an attempt by Sandia to isolate manufacturers from the selection process except RCA and Cohu. GEC states that it was penalized because the dealer through which Sandia placed the order for the GEC model 7084, in responding to Sandia's request for a price quote from the General Services Administration Federal Supply Schedule (FSS) contract, was not aware that GEC held such a contract and stated such a price was not available. GEC has submitted copies of its FSS contract prices to our Office, in connection with the protest, which shows it held current FSS contracts at the time the RFQ's were issued. Also, GEC states that the dealer supplied camera electronics from the model 7084 but selected and supplied other than a GEC vidicon tube and lens. Therefore, alleges GEC, what was tested by Sandia was not a true model 7084 but a combination of electronics, vidicon and lens supplied by an independent dealer, who also supplied another firm's cameras to Sandia under the RFQ.

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GEC contends that RCA and Cohu were dealt with directly by Sandia, not through dealers and accordingly had an advantage over GEC and the other manufacturers who did not know Sandia had purchased their cameras.

Sandia, in its initial report to our Office on the protest, stated that it attempted to purchase the cameras from three RCA dealers but was referred by all three to RCA, Lancaster, Pennsylvania. RCA, in commenting on the protest, has noted that it has a dealer network throughout the United States but that these dealers are interested primarily in installing closed circuit television systems, not resale of individual items. However, we note that an RCA dealer submitted an offer on a recent Navy procurement for similar items. It appears from the record that Sandia attempted to purchase the RCA cameras through a dealer and when it was repeatedly directed to RCA assumed RCA did not sell through dealers. While this belief has since been proven false, there is nothing in the record to show that RCA knew the purpose for which the cameras were being procured and, therefore, we do not believe RCA gained an unfair advantage through this action.

Regarding the purchase of the Cohu cameras, Sandia states that it purchased these through an independent distributor in Denver, Colorado. GEC argues that this purchase was made through the Cohu Denver Sales Office. The Denver office is Scientific Systems, Inc., which represents six or more electronic manufacturers. However, the RFQ for the three test cameras is signed by an engineer employed at the Cohu facility in San Diego, California. It appears that while Sandia mailed the RFQ to Scientific Systems, it was addressed to Cohu and was forwarded to the main Cohu facility where the order was filled. In this regard, Cohu has stated that it does not sell via dealers or distributors and that placing the order with Cohu via Scientific Systems was the only manner in which an order could be placed with Cohu. However, as with RCA, there is no evidence that Cohu had any knowledge as to the reason for Sandia purchasing the cameras.

Accordingly, contrary to the contentions advanced by GEC, we do not find that there was any covert use of dealers to isolate certain manufacturers from the selection and evaluation process by Sandia. Moreover, the two manufacturers,

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which it appears were dealt with directly, supplied "off the shelf" cameras based on published literature, which was the purpose of Sandia's attempting to procure the test cameras from dealers.

GEC also protests the evaluation of its model 7084 by Sandia, which it states is an inexpensive commercial camera not intended for the type of application to be employed by Sandia. GEC states that the proper camera to have been evaluated was the model 7047, which was developed for the Army Safeguard program.

Sandia responds that it did not evaluate the model 7047 camera because it was priced above the \$3,000 limit it had imposed on the camera it would purchase for testing. The model 7047, in the FSS contract for July 1, 1975, to June 30, 1976, with lens was \$3,913 list and \$3,326.90 GSA net (15-percent discount).

GEC argues that during the same time period the Cohu 2850B was priced at over \$3,000, yet it was included in the test and evaluation process. In the FSS contract for July 1, 1975, to June 30, 1976, the Cohu camera was \$3,625 list and \$3,123 GSA net. However, in the FSS contract effective July 1, 1976, to June 30, 1977, the price was reduced to \$2,741 GSA net, under the \$3,000 price ceiling imposed by Sandia. Therefore, at the time the RFQ's were issued for the test camera, the Cohu model was priced below the \$3,000 limit.

While GEC contends that this price reduction appears highly irregular in view of the fact that during the same time period Cohu raised the price of other camera models and that the reduction in the model 2850B price was solely to be eligible for the BAAS program, no evidence has been submitted to show that Cohu had knowledge of the price ceiling.

GEC states that the RCA model which finally passed the two-phase testing program was specially designed for the program and evaluation criteria.

Sandia initially procured the RCA model TC1005-H41 camera for evaluation and this camera passed the first-phase evaluation but failed the high temperature test under phase

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two. During a visit to RCA in January 1977 to check production capabilities (a similar visit was made to Cohu following successful completion of phase one), RCA was advised of the failure. RCA checked the serial numbers of the units supplied Sandia and advised that later production models of the TC1005-H41 incorporated an automatic black control circuit which would solve the problem encountered and on February 17, 1977, RCA shipped two of the TC1006 to Sandia to replace the other cameras. These cameras successfully passed the phase-two evaluation.

GEC contends that the TC1006 was a major modification to the TC1005 and the modifications were made specifically to pass the BAAS program. RCA contends the modifications were incorporated in all the cameras beginning with those produced on November 5, 1976, 2 months prior to the Sandia visit which discussed the deficiencies. While GEC argues that RCA, not being isolated through a dealer, knew of the purpose for the Sandia testing, there has been no evidence presented that Sandia advised RCA prior to January 1977 of the problems with the camera.

Finally, GEC protests the manner in which this procurement was conducted through the use of Sandia, rather than by the Air Force or DOE directly, which would require strict compliance with the Armed Services Procurement Regulation (ASPR). Also, GEC argues that the procurement should have been a small business set-aside as was a similar Navy procurement conducted during the same timeframe.


Regarding the use of Sandia, it is within the discretion of an agency whether to fulfill its needs under the Economy Act. Here the Air Force determined that its needs would best be served by utilizing the expertise of DOE and Sandia, as evidenced by the Memorandum of Understanding. Therefore, we are unable to conclude that the real purpose in having Sandia conduct the procurement was to avoid the requirements of ASPR.

Concerning the failure to set aside the procurement for small business, we have held that while it is the policy of the Government to award a fair proportion of purchases of supplies and services to small business, there is nothing in the Small Business Act or applicable ASPR provisions which mandates that there be set aside for small business

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any particular procurement. The decision whether a procurement should be set aside is within the authority and discretion of the contracting agency. Par-Metal Products, Inc., B-190016, September 26, 1977, 77-2 CPD 227.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States