

DOCUMENT RESUME

03117 - [C3348429]

[Protest by Defaulted Contractor against Sole-Source Award].
B-192189. November 28, 1978. 4 pp.

Decision re: Ikard Mfg. Co.; by Robert F. Keller, Deputy
Comptroller General.

Contact: Office of the General Counsel; Procurement Law I.
Organization Concerned: Department of the Army; Army Missile
Material Readiness Command; Wego Precision Machine, Inc.
Authority: 54 Comp. Gen. 1114. B-191432 (1978). B-190942 (1978).
B-189319 (1978). B-188729 (1977). E-180211 (1974).

A protester contended that a sole-source award should have been opened to competition because it was capable of delivering the item procured on a timely basis. The sole-source award was reasonable in view of the urgent need for the item which the protester did not timely deliver under a prior contract, and the awardee was the only other known successful supplier during the last 5 years. (HIM)

DECISION

9th Day Co. #2

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

8429

FILE: B-192189

DATE: November 28, 1978

MATTER OF: Ikard Manufacturing Company

DIGEST:

Protester contends that sole-source award for dial scales should have been opened to competition because it is capable of timely delivering item. Where expedited procurement for urgently needed item was necessary because protester did not timely deliver required item under prior contract even after delivery date was extended and where award was made to only other successful supplier during last 5 years, contracting officer's determination was reasonably based and will not be questioned by GAO.

Ikard Manufacturing Company (Ikard) protests the award of purchase order No. DAAH01-78-P-1030 to Wego Precision Machine Incorporated (Wego) on a sole-source basis by the Army Missile Materiel Readiness Command, Redstone Arsenal, Alabama, for 3) dial scales. Dial scales are part of the Hawk missile system and are essential to engage targets detected by radar after any tactical relocation.

The instant award was necessary because the awardee, Ikard, under a prior competitive procurement was unable to meet the delivery schedule even after extension by the Army. Because of Ikard's failure, the Army terminated its contract for default. That matter has been referred to the Armed Services Board of Contract Appeals and is not involved here.

Ikard attributes its problems under the prior contract to the failure of a subcontractor to meet an intermediate delivery date but Ikard contends that it had solved this problem and so advised the Army before the sole-source award to Wego. Ikard believes that it should have been permitted to compete for the instant award.

The Army reports that on March 31, 1978, the dial scales' priority designator was upgraded from 10 to 02, reflecting the increased urgency of the requirement. Furthermore, at the time of the award to Wego, the Army had terminated Ikard for default on 12 contracts. In view of Ikard's failure to meet the delivery date or the extended delivery date in its terminated dial scale contract for 31 units, the contracting officer did not have confidence that Ikard would be able to meet the instant delivery requirements. Accordingly, the contracting officer made award to Wego--the only other producer within the last 5 years. The Army contends that the sole-source award is justified because procurement from any other source would have entailed unacceptable performance and delivery schedule risks. In support, the Army refers to our decisions in Vega Precision Laboratories, B-191432, June 30, 1978, 78-1 CPD 467, and Technical Services Corporation, B-190942, April 13, 1978, 78-1 CPD 282.

In reply, Ikard states that the Army elected not to terminate two other contracts for a total of 46 identical dial scales. Ikard also states that timely delivery was made under one contract and early delivery was made under the other contract. In essence, Ikard believes that it should have had the opportunity to participate in the instant procurement.

Because of the statutory requirement for maximum practical competition, agency decisions to procure sole source are subject to close scrutiny by our Office. Capital Recording Company, Inc., B-189319, February 15, 1978, 78-1 CPD 126; Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402 (there we recommended termination of a contract, which was awarded sole source based on the preference of agency personnel rather than on a determination that only that supplier's item could satisfy the Government's minimum needs).

We recognize that in situations involving "exigency" the contracting officer has considerable

discretion to determine the extent of competition that is consistent with the urgent needs of the Government and unless it is shown that the contracting officer, in authorizing a sole-source procurement, acted without a reasonable basis, our Office will not question the award. See, e.g., Aydin Corporation, Vector Division, B-183729, September 6, 1977, 77-2 CPD 175; Vega Precision Laboratories, supra.

Past decisions of this Office have found that expected delivery delays and their potential adverse impact on an agency's missions are particularly compelling reasons to justify sole-source procurements based on urgency. For example, in BioMarine Industries, B-180211, August 5, 1974, 74-2 CPD 78, the urgency related to the Navy's need for life support breathing devices to outfit submarine rescue ships which had already joined the fleet.

We note that Ikard's deliveries under the two now terminated dial scale contracts occurred on June 14, 1978, and the instant purchase order was awarded on May 17, 1978, about 1 month earlier. The relevant timeframe for our consideration is when the contracting officer determined that a sole-source award was required. At that time, information available showed that under the terminated dial scale contract for 31 units Ikard had missed the first delivery date and the extended delivery date; also, Ikard had been terminated for default on 12 other contracts. In our view, it was reasonable for the contracting officer to conclude that Ikard would be unable to meet the delivery date in the instant purchase order, resulting in unacceptable delivery delays. While we recognize that Ikard was able to solve its delivery delay problems on two contracts, this had not occurred until 1 month after the contracting officer was required to make award of the instant purchase order.

After carefully reviewing the entire record, we conclude that the award to Wego was reasonable in view of the increased urgency of the requirement and the fact that Wego was then the only other known successful manufacturer of the item during the past 5 years.

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Protest denied.


Deputy Comptroller General
of the United States