

DECISION

26184
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-209524

DATE: September 1, 1983

MATTER OF: Lear Siegler, Inc.

DIGEST:

1. Where only basis of protest against F-16 wing tank procurement is that agency in separate procurement action improperly obtained F-16 centerline tanks noncompetitively, protest against wing tank procurement is without merit as there is no legal connection between the procurements.
2. Protest that defective Commerce Business Daily synopsis of proposed sole-source award for F-16 centerline fuel tanks and agency's failure to synopsise additional quantities included later misled protester into believing the quantities were not sufficient to warrant its participation in procurement is denied. Protester suffered no prejudice because lack of design data would have prevented it from competing.
3. Award of multi-year sole-source contract for F-16 centerline fuel tanks was not justified where, because data package could be obtained, agency had no basis for concluding that competition for future requirements was foreclosed.

Lear Siegler, Inc. (LSI) protests an Air Force sole-source, 3-year award to the Sargent-Fletcher Company (SFC) for 300 gallon F-16 aircraft centerline fuel tanks (contract No. F42600-82-C-5941). Additionally, the protest concerns a concurrent competitive procurement for 370 gallon F-16 wing tanks (request for proposals FD2600-81-R-4223).

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LSI contends the Air Force inaccurately announced the centerline tank requirement in the Commerce Business Daily (CBD), which caused LSI to believe that the quantities were too small to warrant competing against SFC, the previous contractor. LSI asserts that the sole-source purchase from SFC was improper because competition was possible.

LSI is an offeror in the wing tank procurement. As its basis for protest, LSI says that the Air Force's failure to inform it of the concurrent sole-source procurement of the centerline tanks placed it at a competitive disadvantage with respect to the wing tank procurement because SFC, which alone knew of the scope of the centerline tank acquisition, was able to take advantage of potential cost savings by combining production of both tanks.

We sustain the protest in part, and deny it in part.

We first point out that, although LSI maintains that there are similarities between the centerline and wing tanks (a fact which the Air Force disputes), the procurements are connected only by the circumstance that both were conducted by the same contracting activity. While there may be some benefit due to reduced costs to a firm which is able to obtain more than one Government contract, or for that matter commercial as well as Government business, we know of no grounds on which a potential defect in one of two legally separate procurements can be used as a basis of protest concerning the second procurement. Since LSI has stated no basis of protest arising from the Air Force's conduct in connection with the wing tank procurement, that portion of the protest is without merit.

Concerning the disputed sole-source award for the centerline fuel tanks, the record shows that the Air Force announced in the CBD on January 22, 1982 that it was issuing an RFP to SFC for a multi-year requirement for "540 ea--Alternate Qty 640 ea" 300 gallon F-16 centerline fuel tanks. The Air Force advises that, although not clearly stated, 540 to 640 tanks were required for each year of the 3-year program. During negotiations with SFC in July 1982, a requirement for additional tanks arose and the Air Force determined that under Defense Acquisition Regulation (DAR) § 1-1003.1(c)(iv) (1976 ed.) it was justified in not

synopsizing these additional quantities. The increase resulted in a minimum requirement of 3,852 tanks and a maximum of 6,852, if all options were exercised.

LSI insists that it was misled by the inaccurate CBD synopsis into believing that the quantity of centerline tanks required was not enough for it to consider competing. LSI also believes that the increases in the Government's requirement should have been announced in the CBD. It contends that it believed that the only requirement for the centerline tanks was for the 540 or 640 units originally synopsized and that if it had known that 6,582 tanks might be purchased, it would have pursued the centerline tank procurement because a contract of that magnitude would have improved its competitive position with respect to the concurrent wing tank procurement.

This portion of LSI's protest is without merit because the record indicates that LSI could not have competed at the time the requirement was solicited even if it had known of the true quantity of centerline tanks required. The centerline fuel tank was designed and developed by SFC under a contract awarded to that firm by General Dynamics Corporation which developed the F-16. It is reported that the centerline tank is not similar to the conventional wing tanks which LSI has produced in the past in that it has an elliptical cross-section and upwardly sweeping tail to provide ground clearance when installed under an F-16. According to the Air Force, the tank is inherently weaker than a cylindrical wing tank and requires that a manufacturer use special tooling and manufacturing techniques to produce it. An urgent need exists for centerline tanks without which, it states, the operational radius of the F-16 is severely limited. At the time of the solicitation, however, neither the Air Force nor LSI possessed the tooling or knowledge of the manufacturing techniques which would have been needed to fabricate the tanks.

In the circumstances, a sole-source award to SFC was justified, at least for a limited initial quantity of centerline tanks. A contracting agency can justify a sole-source award by showing that it reasonably believed

at the time of award that there clearly was but one possible source of supply, or that based on the totality of the circumstances that existed at the time of award it would have been futile to have sought competition. ROLM Corporation and Fisk Telephone Systems, Inc., B-202031, August 26, 1981, 81-2 CPD 180. Lack of data sufficient to permit an agency to prepare adequate specifications, coupled with urgency limiting the time in which it might obtain that data, justifies procurement from a sole source of supply. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402.

Since LSI could not have competed for the centerline tanks requirement at the time the LSI contract was being negotiated, it was not prejudiced with respect to that quantity of tanks which only SFC could have produced. This portion of the protest is also without merit.

As LSI contends, however, the fact that a limited initial quantity of tanks was urgently needed and could only have been ordered from SFC does not justify the award of a multi-year contract for more tanks than were urgently needed at the time of award. In this respect, LSI cites DAR § 1-322.1(c)(2), which provides that:

"Prior to use of the multi-year method in the case of noncompetitive contracting, the head of the contracting activity or his designee must determine that the item is expected to be obtainable only from a sole-source during the entire multi-year period." (Emphasis added.)

The Air Force justifies its decision to award a sole-source multi-year contract for the entire centerline tank requirement on the basis that, insofar as the contracting officer knew, the Air Force did not have the data which would be necessary for a competitive procurement and believed that considerable time would be required to obtain this data which then would have to be validated. The Air Force points out that the contracting officer

reached his conclusion only after making what it believes were reasonable inquiries. Moreover, the Air Force points out, the F-16 is a relatively new aircraft and normally, as a matter of policy, it does not acquire data until a product is in service and the design is established.

We are not persuaded by the Air Force's explanation. The Air Force's original determination that a data package would not be available until too late to permit competition for any part of the multi-year requirement was based on inquiries made approximately 10 months before the centerline tank contract was awarded. The contracting officer checked with appropriate Air Force personnel 2 months before the centerline tank award and was advised that the data package had not been ordered from SFC by General Dynamics. The data package, however, had been ordered from General Dynamics (the prime contractor) several months earlier. The contracting officer knew that SFC was working on the data package and that the package could be available and verified (a process the record indicates takes approximately 90 days) within 6 months of award. Since a substantial portion of the Air Force's procurement would then have remained to be performed, the contracting officer should have concluded that competition for much of the multi-year requirement was feasible.

We conclude, therefore, there is no basis in the record on which the contracting officer could reasonably have believed, at the time the centerline tank contract was awarded, that SFC was clearly the only possible source for the entire quantity of tanks which were ordered.

This portion of the protest is sustained.

In the circumstances, we are recommending that the Air Force cancel or terminate as appropriate the SFC centerline tank contract for the next program year and that it procure its remaining requirements on a competitive basis.

The protest is sustained in part and denied in part.

for *Harry R. Van Cleave*
Comptroller General
of the United States