



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EDO Corporation
File: R-224386
Date: September 18, 1986

DIGEST

Protest against the agency's intent to make a sole-source award for the production of light-weight fuel tanks is premature where the solicitation for the production contract is not expected to be announced or issued for several months and the agency as yet has not detailed a basis for limiting competition in a written, approved justification as required by the Competition in Contracting Act.

DECISION

EDO Corporation, Fiber Science Division, protests the Department of the Army's intended sole-source award of a contract to Fiber Technology for production of a quantity of light-weight, 230 gallon crashworthy, external fuel tanks to be used in extending the range of flight of its Blackhawk and Apache helicopters. We dismiss the protest as being premature.

In 1983, Fiber Technology received an award under a competitive solicitation for the development of a light-weight, 230 gallon crashworthy fuel tank made of composite fibers. The awarded contract contained an option, subsequently exercised by the government, for the furnishing of a complete technical data package (TDP) for the manufacture of the tank under competitive procurement procedures. Fiber Technology was required to furnish a draft TDP, and then a TDP in final form within 30 days after the government's approval and verification of the draft.

Due to technical difficulties that Fiber Technology has encountered, however, the development contract has not yet been completed. Fiber Technology only recently has furnished the Army with a draft TDP. Because of these delays, the Army anticipates buying 400 tanks from Fiber Technology while at the same time obtaining a final, verified TDP for future

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competition during the early stages of the production run, approximately by June 1987. The Army believes that Fiber Technology's development effort is sufficiently advanced that any configuration changes in the tank from Fiber Technology's draft TDP will be minor and can easily be incorporated prior to initial production. In this respect, operational testing on three prototype 230 gallon tanks built by Fiber Technology with prototype tooling is expected to be completed sometime in November 1986, and the Army currently expects to issue a solicitation to Fiber Technology for the production of the tanks in December 1986.

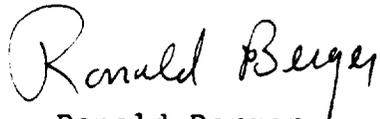
EDO contends that the Army is not justified in awarding a sole-source production contract to Fiber Technology because, as a manufacturer itself of composite fiber fuel tanks for the government, EDO is equally capable of performing such a contract.

The Army responds that the draft TDP furnished by Fiber Technology is not sufficiently complete to permit other companies in the industry to compete for the production of the tanks. The agency indicates that it has an urgent need to extend the range of some of its helicopters; according to the Army, the delays that have already occurred in the overall program to extend their range have adversely affected the mission of certain combat units. At the time the Army awarded the development contract to Fiber Technology, it reports, it anticipated that the installation of the 230 gallon tanks on the helicopters could begin in September 1986. Under the Army's current timetable, delivery of the tanks is not expected to begin until late 1987, even with Fiber Technology receiving the first production contract.

We find that the protest is premature. Under the Competition in Contracting Act of 1984 (CICA), a contracting officer must prepare a written justification before effecting a sole-source procurement. This justification must identify the specific statutory exception from the requirement to use competitive procedures and demonstrate why, based on the proposed contractor's qualification or the nature of the procurement, the exception must be used. 10 U.S.C. § 2304(f) (Supp. III 1985). The justification then must be approved by the procuring activity's competition advocate for contracts between \$100,000 and \$1 million, the head of the activity or his delegate for contracts between \$1 million and \$10 million, or the senior procurement executive for contracts over \$10 million. Id.

Although the Army appears to anticipate issuing a sole-source solicitation in December 1986 based at least in part on a currently-perceived military urgency, no written justification yet has been prepared for approval at the necessary level within the agency, since the government is months away from formally announcing action. Our review at this time of whether a sole-source award would be justified inappropriately would preempt the decision of those individuals who are statutorily charged by CICA with responsibility for conducting that review in the first instance. Our function in reviewing sole-source procurements issued pursuant to CICA is to ensure that the specific grounds for not obtaining full and open competition, which must be stated by the agency in its written, approved justification, are reasonable. See WSI Corp., B-220025, Dec. 4, 1985, 85-2 C.P.D. ¶ 626.

Consequently, we will not, at this time, consider the propriety of awarding a production contract on a sole-source basis to Fiber Technology. We note here that if and when the Army officially decides, in accordance with CICA, that a sole-source award would be appropriate, the agency is required to so announce in the Commerce Business Daily and to consider the impact on its decision of any offers in response to such announcement. 10 U.S.C. § 2304(f)(1)(C). EDO thus will have an opportunity to contest the agency's official decision at that time. The protest is dismissed.



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