



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: NI Industries, Inc., Vernon Division

File: B-223990.2

Date: June 16, 1987

DIGEST

By statute, military agencies need not obtain full and open competition and may use other than competitive procedures when it is necessary for industrial mobilization purposes to award the contract to a particular source or sources. Therefore, since the normal concern of maximizing competition is secondary to the needs of industrial mobilization, decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization will be left to the discretion of the military agencies absent compelling evidence of an abuse of that discretion.

DECISION

NI Industries, Inc., Vernon Division (NI), protests the proposed award of a sole-source cost-plus-no fee contract (project Nos. 5860115B/5870115) by the Army Armament, Munitions and Chemical Command, Rock Island, Illinois, to the Scranton Army Ammunition Plant (SAAP), a government-owned facility operated by Chamberlain Manufacturing Corporation. The requirement is for the construction of fabrication facilities for the 155mm XM864 projectile. The Army restricted the procurement to SAAP on the basis of an identified need to maintain SAAP as a vital mobilization base producer in the event of a national emergency. NI argues that the mobilization base restriction is unwarranted.

We deny the protest.

Early in 1986, NI, Chamberlain (at its private facility), and Louisiana Army Ammunition Plant completed engineering studies for the purpose of evaluating the feasibility and cost of modifying their own 155mm M483 production facilities for use in manufacturing a new projectile, the 155mm XM864. The engineering studies were awarded to these three manufacturers because they constituted the mobilization base for the M483 projectile which is similar to the new XM864 projectile. SAAP had no M483 facility and therefore was not called to participate in these cost efficiency studies.

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According to NI, where the Army has intended to establish a facility for a new projectile, it has solicited bids for the facilities contracts and the awardee would become the first member of the mobilization base for the new armament. Therefore, NI assumed that all three of the engineering studies contractors would be given the opportunity to compete for the subsequent facilities contract, offering either conversion of similar lines or installation of largely new equipment. NI subsequently learned that the Army had decided against competitively awarding the facilities contract for the XM864 but had elected to negotiate a sole-source contract, without synopsising the requirement, with Chamberlain at SAAP. This protest followed.

The record shows that the Army executed a Justification and Approval (J&A), which was approved by the Assistant Secretary of the Army on September 30, 1986. The J&A is for fiscal year 1987 contract actions involving SAAP. The authority cited for such actions was 10 U.S.C. § 2304(c)(3) (Supp. III 1985) which allows the head of a military agency to use other than competitive procedures in awarding a contract to a particular source or sources when such action is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization. Among the contract actions found to be required, the J&A specifically lists the present XM864 project (program No. 0115) as a requirement which would be procured from SAAP under the authority of the J&A. The reason cited for these proposed actions, including the XM864 project, is that "use of other than full and open competition will maintain [SAAP] in a 'warm' condition, and available in the event of a national emergency." The J&A further states that SAAP is the only government-owned, contractor-operated facility which solely produces metal parts and is a vital component of the mobilization base. The J&A is otherwise proper in form and was approved by the proper authorities.

In its agency report, the Army reiterates that SAAP is the only government-owned, contractor-operated plant which solely produces projectile metal parts, including the M106, M107 and M509 projectile metal parts. The Army further states that production of M106 metal parts will cease by September 1987 and that production of M107 and M509 metal parts will conclude by May 1989. According to the Army, there are no known additional requirements for these items and the XM864 is the only item whose configuration would allow the Army to keep SAAP available in the event of a national emergency. The Army concludes by stating that failure to make this XM864 award would likely result in

plant closing and loss of the work force at SAAP and the critical skill which that work force possesses.

NI protests that the proposed sole-source award would deprive the firm, and other companies that had prepared engineering studies, of the opportunity to compete for a requirement that can be easily met by modification of existing M483 facilities. According to NI, the decision not to compete the XM864 facilities contract will leave the firm with seriously underutilized facilities and will ultimately result in higher costs to the government.

Under the Competition in Contracting Act of 1984 (CICA), military agencies continue to have authority to conduct procurements in a manner that enables them to establish or maintain sources of supply for a particular item in the interest of the national defense, see 10 U.S.C. §§ 2304(b)(1)(B) and 2304(c)(3), supra, and the 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. Lister Bolt & Chain, Ltd., B-224473, Sept. 15, 1986, 86-2 CPD ¶ 305.

Therefore, although it is the established policy of this Office to scrutinize closely sole-source procurement actions, see Jervis B. Webb Co. et al., B-211724, et al., Jan. 14, 1985, 85-1 CPD ¶ 35, it is also our view that decisions as to the producers that should be included in the mobilization base and restrictions required to meet the needs of industrial mobilization involve complex judgments which must be left to the discretion of the military agencies. Wayne H. Coloney Co., Inc., 64 Comp. Gen. 260 (1985), 85-1 CPD ¶ 186; Urdan Industries, Ltd., B-222421, June 17, 1986, 86-1 CPD ¶ 557. This Office will question those decisions only if the evidence convincingly shows that the agency has abused its discretion. Martin Electronics, Inc., 65 Comp. Gen. 59 (1985), 85-2 CPD ¶ 504. We limit our standard of review in such cases because the normal concern of maximizing competition is secondary to the needs of industrial mobilization. Id.; National Presto Industries, Inc., B-195679, Dec. 19, 1979, 79-2 CPD ¶ 418.

The record fails to show that the Army abused its discretion here. While the protester argues that 10 U.S.C. § 2304(c)(3) does not apply here because that section authorizes a noncompetitive award to "maintain" a manufacturer while the Army in this case is seeking to "establish" a manufacturer of the XM864, the fact remains that the J&A authorized award of the present requirement to maintain SAAP as a vital facility in producing projectile metal parts

("maintain [SAAP] in a 'warm' condition"). Military agencies are responsible for developing an industrial preparedness program that will ensure the nation's ability to respond to a military emergency. In implementing this goal, military agencies must continually reassess current and future weaponry needs. Therefore, decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization must, as stated above, be left to the discretion of the military agencies. See Martin Electronics, Inc., 65 Comp. Gen. 59, supra. We therefore believe that the statute, which authorizes noncompetitive awards not only to maintain a manufacturer but also to maintain a facility, was not violated here. In addition, the fact that NI disagrees with the Army's judgment, and argues that the mobilization base would not be adversely affected if the proposed procurement were not restricted to SAAP, does not demonstrate that the Army abused its discretion. See Urdan Industries, Ltd., B-222421, supra.

NI also complains that the Army failed to synopsis the requirement in the Commerce Business Daily. The short answer is that publication is not required in the case of industrial mobilization procurements. See Federal Acquisition Regulation, 48 C.F.R. § 5.202(10) (1986).

Finally, the protester contends that this industrial mobilization procurement was subject to the provisions of the Arsenal Statute, 10 U.S.C. § 4532 (1982), which requires the Secretary of the Army to produce supplies in factories owned by the United States, "so far as those factories or arsenals can make those supplies on an economical basis." Specifically, the protester maintains that award to SAAP would not be economical. However, we have specifically held that the Arsenal Act, supra, does not operate to preclude a proper award for the purposes of industrial mobilization, regardless of cost. See Etamco Industries, B-187532, Feb. 25, 1977, 77-1 CPD ¶ 141.

Since we find no merit in the protest, the protester's request for reimbursement of the costs of filing and pursuing its protest, including attorney's fees, is denied.

The protest is denied.

for Seymour E. Fox
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General Counsel