

Gary



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Donlee Precision

File: B-235782

Date: September 21, 1989

DIGEST

Protest that agency made an improper sole-source award is denied where the record clearly indicates that only one manufacturer, the awardee, was capable of producing the item, a flight-critical part that was urgently required, without the risks of delay attendant on production lot sampling, which would have been required for other approved sources of the item.

DECISION

Donlee Precision protests the issuance of a delivery order to Pratt & Whitney (P&W) under request for quotations (RFQ) No. N00383-88-Y-K303, issued by the Navy Aviation Supply Office for aircraft engine turbine shafts. Donlee protests that the order, issued pursuant to a basic ordering agreement with P&W, constitutes an improper sole-source award, since the Navy failed to request quotes on the item from two other firms, Donlee and Purdy Corporation, which, in addition to P&W, had been approved as sources for the item. Donlee further asserts that, even if the agency's urgent need for the engine shafts might otherwise warrant a sole-source award, the urgency was brought about by the Navy's lack of advance planning, and thus cannot serve as a proper basis for such an award in this case.

We deny the protest.

In response to the protest, the Navy explains that although Donlee and Purdy had recently been approved as sources for the engine shaft based on their manufacture of similar items, only P&W, which originally designed, developed, and qualified the part, had previously and successfully produced the identical item. Thus, according to the agency, production lot sampling would not be required for P&W to assure that the part complied with specifications, but would be required for any new manufacturer, including Donlee.

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The agency notes that if a new manufacturer did not pass production lot sampling, considerable delays in obtaining the item would result due to the need to correct deficiencies or to resolicit the requirement. (According to the agency, the delay could amount to 13 months, the production lead time.) Since the shaft is a flight-critical item, the malfunction of which would result in aircraft engine failure, the Navy determined that a sole-source award to P&W was warranted for a portion of the overall requirement that it considered urgent and compelling due to a shortage of the item in stock; for the remainder of the requirement, for which time was not as critical, the Navy issued a competitive solicitation to all approved sources, including Donlee.

Donlee alleges that the urgency here was created by a lack of advance planning, and that the Navy intentionally allowed a critical shortage of the item to develop, so that it could then justify issuing a sole-source award to P&W on grounds of compelling urgency. Further, the protester asserts that, even in the emergency situation, there was no basis for soliciting only P&W and ignoring the other two qualified sources, since all qualified sources should have been considered equal. Donlee asserts that any risk of delays due to its possible failure to pass production lot sampling could be negated by Donlee's assignment to the repurchase award of its supplier contracts and all work in process on the subject item, thus substantially reducing the production lead time required for the new awardee.

As a general matter, because the overriding mandate of the Competition in Contracting Act (CICA) is for full and open competition, 10 U.S.C. 2304(a)(1)(A) (Supp. IV 1986), we will closely scrutinize noncompetitive procurements. Except in those noncompetitive situations which arise from a lack of advance procurement planning, a sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. JTP Radiation, Inc., B-233579, Mar. 28, 1989, 89-1 CPD ¶ 315. In making such a determination, we have held generally that the establishment of tests and procedures to determine product acceptability is within the ambit of the expertise of the contracting agency, and will not be questioned by this Office absent a clear showing that the establishment of such tests or procedures is arbitrary or capricious. Id.; see also East/West Indus., Inc., B-228301, Dec. 21, 1987, 87-2 CPD ¶ 611.

Although Donlee contends that its approval as a qualified source of supply means that it can meet the agency's needs as well as P&W, the Navy has provided a reasonable

explanation of why production lot testing would be required for firms that have never manufactured the item in question, but not for P&W. Thus, we find the Navy's conclusion that only one firm could meet its needs in the time required to be reasonably based. We reject Donlee's argument that the production lead time required for a new awardee, in the event Donlee failed production lot sampling, could be so substantially shortened as to negate the risk of failure. In this regard, we agree with the agency that even if the practical and legal difficulties involved in terminating one contractor and assigning work in process to another could be surmounted, if Donlee's production lot items were found unacceptable there is a strong likelihood that some of its work in process would be unacceptable as well, and thus not suitable for the new awardee's use. Therefore, we find that the risk of delay attendant on the need for production lot sampling provided a reasonable basis for making a sole-source award for that portion of the requirement the Navy considers urgent and compelling.

Further, contrary to Donlee's assertion, we find nothing in the record to indicate that the urgent need for the item was due to a lack of advance planning. Under CICA, 10 U.S.C. § 2304(f)(5)(A), award of a contract using other than competitive procedures may not be made where the requirement has been brought about by a lack of advance planning by contracting officials. Midwest Contractors, Inc.; R.E. Scherrer, Inc., B-231101; B-231101.2, Aug. 8, 1988, 88-2 CPD ¶ 118. The Navy has presented persuasive evidence that the shortage here was due, not to poor planning or inaction, but to delays in the procurement process caused by the agency's efforts to qualify additional sources for the item. As noted above, those additional sources (including Donlee) were successfully qualified by the agency and were solicited for the remainder of the requirement. See Nebraska Aluminum Castings, Inc., B-234144.2, June 8, 1989, 89-1 CPD ¶ 534 (allegation of lack of advance planning rejected where record showed that agency's urgent requirement was due, not to deliberate action or to inaction, but to efforts to encourage the development of additional sources).

The protest is denied.


James F. Hinchman
General Counsel