The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EMCO, Inc.

File: B-240070.2

Date: September 19, 1990

M.D. Blood for the protester.
Edward J. Korte, Esq., Department of the Army, for the agency.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably justified limiting competition under solicitation for grenade parts to mobilization base producers without a current production contract.

DECISION

EMCO, Inc. protests the proposed award of any contract under request for proposals (RFP) No. DAAA09-90-R-0639, issued by the U.S. Army Armament, Munitions and Chemical Command for M77 grenade metal parts to be used in the Multiple Launch Rocket System (MLRS). The protester objects to the agency's decision to limit competition to mobilization base producers without current production contracts.

We deny the protest.

On May 16, 1990, the agency issued the solicitation for a quantity in excess of 10 million items, with competition restricted to two currently inactive mobilization producers, NI Industries, operating contractor at the Riverbank Army Ammunition Plant, and Valentec International, Inc., which owns and operates its own facility. On June 15, the date set for receipt of proposals, the protester, a mobilization base producer of the grenade parts with an existing multi-year contract, submitted an unsolicited proposal for production of the items at its own facility. On July 23, following an earlier protest filed by EMCO with our Office, the agency notified the protester that it would not consider EMCO's proposal for award. This protest followed.

The protester contends that the mobilization base for the grenade metal parts has five active producers, with the capability on a one-shift basis of producing 50 million grenades per year, a quantity double the agency's projected fiscal year 1991 requirement. The protester therefore believes that the agency could "lay away" some of the grenade production capacity without degrading the mobilization base and should revise the solicitation to allow for competition to the maximum extent practicable within the mobilization base. The unsuccessful offerors, according to the protester, can safely be placed in an inactive status.

The Army prepared a justification and approval (J&A) for the use of other than full and open competition as required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(f) (1988). The J&A authorized the acquisition of 10 million metal parts for use in the MLRS, citing the authority of 10 U.S.C. § 2304(c)(3), 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.

The J&A explains that there are currently five mobilization producers of the metal parts, and that three of these have ongoing production contracts. The document further notes that two production facilities, those of Valentec and NI Industries, will assume inactive status unless the operating contractors receive award of sufficient quantities to keep them in production. The loss of these facilities would result in a loss of critical skills and a delay in providing grenades at the rate required for mobilization. For this reason, the agency has decided to restrict competition for the requirement to the two inactive producers, to insure their availability in the event of national emergency.

Decisions as to which and how many producers must be maintained in the mobilization base and the decision whether facilities must be kept active or whether mobilization needs will allow certain facilities to be inactivated and the work force released are the responsibility of the military agencies. This Office will question those decisions only if the record shows that the agency has acted unreasonably. See Carolina Parachute Corp., B-236153, Nov. 16, 1989, 89-2 CPD ¶ 466.

Here, the agency has supplied a "constraining rate analysis,"1/ which reveals that in the event of mobilization, the military will need five producers to meet its requirements. The protester has presented only broad allegations that the decision to restrict competition constitutes an abuse of discretion. However, there is nothing in the record to show that the agency was unreasonable in its decision to maintain five producers. We therefore find that the agency's decision to restrict competition to keep the additional producers in an active status was reasonable and in accordance with the applicable statutory exception.

The protest is denied.

James F. Hinchman
General Counsel

1/ This analysis compares the maximum capability of the mobilization base producers to the actual mobilization requirements to determine if there is a mobilization base shortfall. The figures contained in the analysis are confidential.