



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Greenbrier Industries, Inc.

File: B-248177

Date: August 5, 1992

Richard D. Lieberman, Esq., Feith & Zell, P.C., for the protester.

A. Brin, Isratex, Inc., an interested party.

Diane Cherinchak, Esq., and Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly may award contracts for its current fiscal year needs for chemical protective suits on a noncompetitive basis to the current, active mobilization base producers in order to maintain their production capabilities notwithstanding the existence of other planned producers that could also manufacture the suits.

DECISION

Greenbrier Industries, Inc. protests the award of a contract to National Apparel, Inc. under request for proposals (RFP) No. DLA100-92-R-0197, and the award of a contract to Isratex, Inc. under RFP No. DLA100-92-R-0218, both solicitations issued by the Defense Logistics Agency, Defense Personnel Support Center, for quantities of chemical protective suits. Greenbrier essentially challenges the agency's decision to direct awards to current, active mobilization base producers.

We deny the protest.

A chemical protective suit, characterized as a critical "war stopper" item, is a disposable overgarment which protects an individual against chemical warfare agents for periods of 1 to 22 days. For this item, there currently are six active mobilization base producers. These producers are National Apparel, Isratex, Gibraltar PR, Raven Industries, Propper International, and Sidran, Inc.

The agency's fiscal year (FY) 1992 requirements were for 1,1 million chemical protective suits. In order to maintain the production lines of the current, active mobilization base producers whose contracts would be completed in the summer and fall of 1992, the agency determined it would award follow-on contracts to four of the six firms--National Apparel, Isratex, Gibraltar, and Raven--at their minimum sustaining rates of production.¹ To ensure that there would be no breaks in production when these firms completed deliveries under their current contracts, the agency planned to award the follow-on contracts approximately 5 months (the agency's estimate of the lead time necessary to purchase and receive materials) prior to the expiration of each firm's current contract. Each firm would be expected to complete deliveries under its follow-on contract in January 1994. In the interim, when the agency's FY 1993 requirements become known (in October 1992), the agency intends to conduct a competitive procurement and in August 1993, 5 months before deliveries under the follow-on contracts are to be completed, make an award on a "best value" basis. Deliveries under the competitively awarded contract would begin in February 1994.

For each of the four noncompetitive awards, the agency prepared a justification and approval (J&A), as required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(f) (1988), for the use of other than full and open competition. The J&As cited 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&As stated that the chemical protective suit was a critical, mission-essential item, and that to maintain the industrial base and to ensure continuity of supply in the event of mobilization, awards had to be made to National Apparel, Isratex, Gibraltar, and Raven, all firms with currently active production lines. The J&As stated that funding was not available for quantities in excess of those required to maintain the current mobilization base producers. The J&As also described the agency's plan to issue a competitive solicitation to satisfy its FY 1993 requirements.

¹The agency determined that follow-on contracts were not necessary to maintain the active production lines of Proper and Sidran.

On April 1, 1992, Greenbrier, designated as a "planned producer" of chemical protective suits under the Department of Defense Industrial Preparedness Program, protested the agency's decision to make noncompetitive awards for all of its FY 1992 requirements to the current, active mobilization base producers.² Greenbrier, which previously manufactured chemical protective suits for the Navy and Air Force, argues that the agency has failed to justify restricting its acquisitions to the current producers, as opposed to conducting a competition among all planned producers and expanding the mobilization base. Greenbrier maintains that since it is a planned producer, it is entitled to compete and receive an award for at least part of the agency's FY 1992 requirements. Greenbrier, suggesting that clothing items are fungible, meaning that the skills, personnel, and facilities used to produce one type of clothing can be transferred and used to produce other types of clothing, also contends that the mobilization base firms which are producing other types of clothing items do not need follow-on contracts for chemical protective suits in order to maintain mobilization base continuity. Greenbrier finally argues that the agency's determination to make noncompetitive awards to the current, active mobilization base producers results from a lack of advance planning.

As indicated above, military agencies need not obtain full and open competition when industrial mobilization base requirements necessitate awards to a particular source or sources. Magnavox Elec. Sys. Co.; Ferranti Technologies, Inc., B-247316.2; B-247316.3, May 28, 1992, 92-1 CPD ¶ 475; Proper Int'l, Inc., B-229888; B-229889, Mar. 22, 1988, 88-1 CPD ¶ 296. An agency's decision as to which particular producer or producers will be awarded a contract will not be questioned by our Office so long as the agency can demonstrate that its determinations in this respect are

²Department of Defense Federal Acquisition Regulation Supplement § 208.7201 defines a "planned producer" as an industrial firm which has agreed to provide production capacity data, to maintain existing capacity for a negotiated period of time, and to accept contracts for planned items. To be designated a "planned producer", a firm must have indicated its willingness to produce the specified military item in a national emergency by completing, and then having approved by government production planning officials, a DD Form 1519, "DOD INDUSTRIAL PREPAREDNESS PROGRAM PRODUCTION PLANNING SCHEDULE." An active mobilization base producer is a planned producer currently performing a mobilization base contract (the firm is then characterized as a "warm" mobilization base producer).

related to its industrial mobilization needs. Lister Bolt & Chain, Ltd., B-224473, Sept. 15, 1986, 86-2 CPD ¶ 305. Our Office will question these decisions only if the record convincingly establishes that the agency abused its discretion. Magnavox Elec. Sys., Co.; Ferranti Technologies, Inc., supra; Minowitz Mfg. Co., B-228502, Jan. 4, 1988, 88-1 CPD ¶ 1.

Here, the agency determined it should divide its FY 1992 requirements among four current, active mobilization base producers to provide a continuation of each firm's minimum sustaining rate of production. We find no abuse of discretion in that determination. We are aware of no requirement that the agency expand the mobilization base to include planned producers without current, active production lines or to substitute a planned, inactive producer for a current, active producer when the agency's mobilization needs can be satisfied by awards to existing active producers. While Greenbrier believes that as a planned producer of chemical protective suits it is entitled to compete and receive an award for at least some of the agency's FY 1992 requirements, participation in an industrial mobilization base does not guarantee an award of any of an agency's current requirements, and an agency is not legally obligated to compete an item when its industrial mobilization needs dictate otherwise. Lister Bolt & Chain, Ltd., supra. Therefore, the fact that there are other planned producers of chemical protective suits simply does not establish that the agency's decision to award only to some of those with current mobilization base production lines is improper.

Concerning the fungibility of clothing items, the agency states that production lines must be independently maintained for each individual mobilization base item regardless of any similarity between the items. For this reason, the agency made its award determination without regard to whether any of the awardees had other contracts to concurrently manufacture other types of clothing items. We think the decision as to what specific production lines must be maintained for mobilization base purposes is a matter within the agency's broad discretion in this area, and we find nothing in the protester's submissions that establishes an abuse of that discretion.

Finally, we find no support for Greenbrier's contention that the agency's noncompetitive awards to its current, active mobilization base producers at their minimum sustaining rates of production are a result of a lack of advance procurement planning. A lack of advance planning cannot be used as a justification for the use of other than competitive procedures. 10 U.S.C. § 2304(f)(5)(A); Lister Bolt & Chain, Ltd., supra. Here, since the agency is merely

continuing with its current, active mobilization producers, and has decided not to expand the mobilization base, the noncompetitive awards are not the result of a lack of advance planning. Rather, they simply reflect the agency's discretionary decision regarding how to satisfy its mobilization base requirements.

The protest is denied.

Robert P. Murphy
for James F. Hinchman
General Counsel