



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Imperial Tooling & Manufacturing, Inc.

**File:** B-249897

**Date:** December 23, 1992

Stan Hinton, Esq., Duke & Riley, for the protester.  
Jack A. Stein, Esq., for Bell Helicopter Textron, Inc., an interested party.  
Jeffrey I. Kessler, Esq., and Jack R. Mandel, Esq., Department of the Army, for the agency.  
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency properly justified sole-source award under 10 U.S.C. § 2304(c)(1) (1988), where only the awardee had previously performed the required fatigue testing on the solicited aircraft flight safety part and insufficient time remained to perform the fatigue testing on the protester's part for reasons not caused by a lack of advanced procurement planning.

### DECISION

Imperial Tooling & Manufacturing, Inc. protests the sole-source award of contract No. DAAJ09-91-G-0006 to Bell Helicopter Textron, Inc. by the Department of the Army, Aviation and Troop Command, for 500 yoke assemblies for the UH-1 helicopter.

We deny the protest.

A yoke assembly is a component in the helicopter's rotor system that transmits rotational motion from the main rotor mast to the rotor blades. Because of its function and connection, the yoke assembly reacts to aerodynamic forces imparted by the aircraft rotor blades. The forces or "loads" on the yoke vary in intensity, direction, and order depending upon the circumstances under which the helicopter is operated. Over time, the repeated application of these forces will weaken the structural integrity of the yoke until a single application of force can cause catastrophic failure; this is called fatigue failure.

A failure of the yoke assembly obviously poses a threat to the safety of the aircraft and crew. Therefore, the Army designated the yoke assembly a flight safety part, encompassed by the requirements of 10 U.S.C. § 2383(a) (1988), which states:

"In procuring any spare or repair part that is critical to the operation of an aircraft or ship, the Secretary of Defense shall require the contractor supplying such part to provide a part that meets all appropriate qualification and contractual quality requirements as may be specified and made available to prospective offerors. In establishing the appropriate qualification requirements, the Secretary of Defense shall utilize those requirements, if available, which were used to qualify the original production part, unless the Secretary of Defense determines in writing that any or all such requirements are unnecessary."

On August 29, 1990, in response to this statute, the Army imposed an engineering testing requirement, including fatigue testing, upon any contracts awarded for the yoke, which would be implemented as part of first article testing. These test requirements covered both new and previously approved suppliers of the yoke, and the Army policy provided that the yokes could not be used on an aircraft until the required tests were performed.

Fatigue testing compares the fatigue strength of yokes produced by current contractors with the yoke produced by Bell, the developer and original manufacturer of the UH-1 helicopter. This entails fatigue tests of the Bell yoke and the alternate source's yokes. Bell performed fatigue testing of its yoke assembly in 1960-1961 during the initial development phases of the UH-1 helicopter in its mechanical laboratory at Fort Worth, Texas, which has since housed the test stand needed to conduct fatigue testing of this part. The stand measures 40 feet long, 8 feet wide, by 8 feet high, weighs approximately 20,000 pounds, and mounts into pre-existing floor slots in the Bell laboratory floor. The test stand simulates the application of centrifugal force upon the yoke in order to measure the strength of the component when subjected to repeated loads and to predict the component's lifespan.

Bell provided all spare yokes on a sole-source basis until 1987. At that time, the protester became a qualified source for the yokes and was awarded that year's contract in a competition against Bell. The Army did not require fatigue testing of the protester's yokes as part of the source approval process, nor did the protester's contract include

such testing within its statement of work or first article test requirements.

By the time the protester competed for the 1991 requirement for spare yokes, Army policy required fatigue testing of helicopter yokes to ensure that they had at least the same quality and service life of the UH-1 yoke previously qualified by Bell. Both at that time and currently, Bell is the only firm, among the several qualified suppliers, whose yoke has undergone fatigue testing. As stated above, the Army originally intended to implement 10 U.S.C. § 2383(a) by requiring all other qualified suppliers of the yoke to fatigue test the parts as part of first article testing. The Army relaxed this policy when it encountered delays in arranging for fatigue testing of the various flight safety parts and, consequently, authorized the award of contracts to any qualified source, pending a contract modification to provide first article fatigue testing once the agency developed the ability to implement this requirement reasonably and efficiently. Although the new policy permitted the procurement of flight safety parts that were not fatigue-tested, it forbade the use of these parts until fatigue testing was finally accomplished. This decision effectively relegated the untested parts to a holding depot, pending completion of the testing.

Having deferred the requirement for fatigue testing, the Army decided to compete its 1991 requirement for 664 spare UH-1 yokes among qualified small business suppliers, none of which offered fatigue-tested yokes.<sup>1</sup> Although the protester was the low offeror in this competition, the Army found Imperial nonresponsible because it was delinquent on 64 percent of its open contracts and because it was financially unstable, despite a \$3.8 million advance payment by the government in June 1991. The Army referred its determination to the Small Business Administration (SBA), which declined to issue Imperial a certificate of competency (COC). Accordingly, the agency rejected Imperial's offer and awarded the contract to the next low offeror, Tura Machine Co., Inc., in October 1991. Tura, which had never before manufactured the yoke, will be required to complete a first article test, including a fatigue test to be arranged by contract modification. Meanwhile, the yokes delivered under Tura's contract are in storage and will not be used.

In an effort to facilitate the fatigue testing of both the yokes and other flight safety parts, the Army placed a delivery order for fatigue testing under an engineering services contract with Scientific Applications International Corporation (SAIC). After reviewing the nature of the

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<sup>1</sup>Bell, a large business, was excluded from the set-aside.

tests, SAIC discovered that it was unable to perform the fatigue testing at the rates negotiated under its time-and-materials contract, so it sought to compete a fixed-price subcontract among Bell and several other testing contractors. When Bell emerged the low priced offeror, the Army realized that Bell possessed an apparently insurmountable competitive advantage in performing the fatigue testing services. This was so because, unlike the other competitors, Bell could omit the first half of the fatigue test altogether--the benchmark test of its own parts--which likewise negated the government's responsibility to deliver Bell parts to another contractor for testing. In addition, the massive test stand needed to conduct the fatigue testing was already fastened to the floor of the Bell laboratory, which the government would be obliged to extricate, dismantle, package, transport, reassemble, and secure for use by a different contractor, with an attendant risk of damage to the test stand. The competition also disclosed to the Army that it could enjoy considerable savings if it negotiated directly for a fatigue services contract, rather than subcontracting for these services through SAIC. As a result, the Army did not authorize SAIC to enter a subcontract with Bell for the fatigue testing of the yokes,<sup>2</sup> but undertook to prepare a sample solicitation for its fatigue testing requirements in anticipation of a competition.

The Army's acquisition plan for the fatigue testing contract estimated award by June 1993, and the completion of testing by March 1994. The Army also commenced negotiations with Bell to conduct limited fatigue testing services on a case-by-case basis, pending award of the competitive contract. Although Bell has refused requests for fatigue testing from private manufacturers, such as the protester, assertedly to avoid product liability exposure, it has indicated a willingness to perform these services through a contractual relationship with the government.

The Army's inability to arrange for fatigue testing subsequent to August 23, 1990, has resulted in a stock shortage of yokes available for immediate use. Since the other qualified sources have been unable to fatigue-test their yokes, the Army has virtually exhausted its supply of usable yokes and states that UH-1 helicopters would be grounded on a progressive basis if properly tested yokes were not immediately procured.

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<sup>2</sup>The agency did authorize SAIC to subcontract with Bell for the fatigue testing of one of its 12 requirements, the swashplate inner ring assembly.

The Army identified a need for 1,033 yokes, and split this quantity for acquisition under two separate procurements: a competitive procurement for 533 yokes set aside for small business participation and a noncompetitive procurement with Bell for the other 500 yokes, which is the subject of this protest. The Army authorized the Bell sole-source acquisition because it did not believe fatigue testing services would be available to permit first article testing by sources other than Bell before its supply of overhaul yokes was exhausted and a new source of fatigue-tested, immediately usable yokes was needed to maintain the UH-1 helicopter. Conversely, since a fatigue testing contract would be in place before its need for the additional 533 yokes arose, the Army reasoned that it could set aside this requirement for qualified small business suppliers.

Accordingly, on June 26, 1992, the Army published a synopsis in the Commerce Business Daily (CBD) for the proposed sole-source procurement of 500 yokes to Bell. The synopsis stated that the yokes were flight safety parts, subject to a fatigue testing requirement, and that only one responsible source, Bell, could deliver supplies satisfactory to the agency's requirements within the required time frame. The synopsis stated that the agency required shipment 180 days after placing an order against an existing Basic Ordering Agreement.

Bell provided a ceiling price in response to an oral solicitation, and the Head of the Contracting Activity approved an award to Bell based upon its quote on June 30, 1992. The Army placed the delivery order on July 27, 1992, which required Bell to deliver an initial shipment of 10 yokes by December 31, 1992, and monthly shipments thereafter through March 1994, by which time another qualified source should have completed fatigue testing pursuant to the Army's proposed contract for these services.

On August 14, 1992, Imperial protested the sole-source award to Bell. Imperial disputes the determination that its yokes could not pass fatigue testing within the time frame of the Army's delivery schedule. Imperial claims that the Army could have timely arranged for the fatigue testing of its yokes via the SAIC omnibus engineering services contract, and that it was improper for the agency not to do so. Imperial also asserts that it has privately solicited fatigue testing services from National Testing Services (NTS), which advised that it could perform the required testing of its yokes in less than 4 months.<sup>3</sup> Alternatively, Imperial argues that

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<sup>3</sup>NTS unsuccessfully competed for the fatigue testing subcontract issued by SAIC.

the Army brought about the necessity of awarding a sole-source award to Bell by a lack of advance procurement planning, as evidenced by the Army's assertedly sluggish response to the August 29, 1990, fatigue testing requirement, with testing only scheduled to commence in June 1993. The protester alleges that once the Army instituted the new testing policy, it should have foreseen the need either to contract directly with Bell for fatigue testing services or to remove its test stand from Bell's testing facilities for use by another contractor.<sup>4</sup>

While the overriding mandate of the Competition In Contracting Act of 1984 (CICA) is for "full and open competition" in government procurements through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), CICA does permit noncompetitive acquisitions in specified circumstances, such as when only one responsible source is available and no other type of property or services will satisfy the agency's needs. 10 U.S.C. § 2304(c)(1); Kollman, A Div. of Sequa Corp.; Applied Data Techn., Inc., B-243113; B-243113.2, July 3, 1991, 91-2 CPD ¶ 18; Petro Star, Inc., B-248019, July 27, 1992, 92-2 CPD ¶ 34. Where the agency has substantially complied with the procedural requirements of CICA calling for written justification and higher level approval of the proposed sole-source action and publication of the required CBD notice, see 10 U.S.C. § 2304(f) (1988 and Supp. III 1991), we will not object to a reasonably justified sole-source award. Environmental Tectonics Corp., B-248611, Sept. 8, 1992, 92-2 CPD ¶ 160. A sole-source award is justified where the agency reasonably concludes that only one known source can meet its needs within the required time, except where the noncompetitive situation arises from a lack of advance procurement planning. Servo Corp. of Am., B-246734, Mar. 31, 1992, 92-1 CPD ¶ 322, recon. den., B-246734.2, Aug. 6, 1992, 92-2 CPD ¶ 75. Where, through advance planning, the agency can devise first article testing requirements or prequalification standards that permit competition without substantial risk to the government, the agency should do so. Pacific Sky Supply, Inc., B-227113, Aug. 24, 1987, 87-2 CPD ¶ 198.

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<sup>4</sup>Imperial also asserts that fatigue testing is essentially a "prequalification" requirement. The August 29, 1990, policy made this a first article test requirement, which is not a prequalification requirement under 10 U.S.C. § 2319, the statute applicable to prequalification. See Nasco Eng'g, Inc., B-224292, Jan. 14, 1987, 87-1 CPD ¶ 57; Honeycomb Co. of Am., B-225685, June 8, 1987, 87-1 CPD ¶ 579.

We find that the Army had a reasonable basis for the sole-source award to Bell.<sup>5</sup> The record shows that the agency properly determined that Bell is currently the only source capable of providing immediately usable, fatigue tested yokes before the agency completely exhausts its existing supply of usable yokes. While the protester claims that it could obtain fatigue testing services from another testing contractor, NTS, within the 4 months required to meet the agency's delivery schedule, the record shows this schedule to be unrealistic, since the cumbersome test stand needed to conduct the fatigue tests is located in Bell's laboratory, and the Army has no Bell yokes within its supply system to furnish NTS for the benchmark fatigue tests. Moreover, given the costs associated with subcontracting, the Army reasonably declined to authorize a subcontract for fatigue testing services under the auspices of the SAIC contract. Even if the Army had authorized SAIC to subcontract with Bell to fatigue test the yokes, the delivery order under the SAIC contract provided for a 10-month performance period, which exceeded the constraints of the agency's delivery schedule for the yokes.

Imperial complains that the need for this sole-source action stems from the Army's lack of advance procurement planning, which negates the sole-source justification. See 10 U.S.C. § 2304(f)(5)(A). Imperial claims that the agency had abundant time since the implementation of its August 1990 fatigue testing policy to arrange for fatigue testing services before it faced a critical stock shortage of

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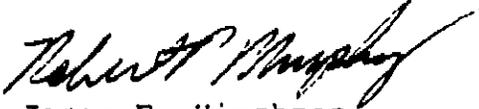
<sup>5</sup>The agency's sole-source determination was also influenced by Imperial's doubtful viability as a responsible source, in light of the determination of Imperial's nonresponsibility in the 1991 competition for this requirement (for which the SBA declined to issue a COC), as well as Imperial's reportedly still shaky financial condition. The Army reports no evidence to suggest that Imperial has arrested its financial difficulties, despite a \$3.8 million dollar advance payment by the government in June 1991. For example, the Army learned that suspension of the protester's progress payments on another government contract was recommended in February 1992. Imperial also filed for reorganization under Chapter 11 of the Bankruptcy Code in April 1992, shortly before the agency contemplated a sole-source award to Bell, and has yet to propose a reorganization plan. See generally Harvard Interiors Mfg. Co., B-247400, May 1, 1992, 92-1 CPD ¶ 413. An agency can properly rely upon the protester's lack of financial responsibility in determining to proceed on a sole-source basis for urgent requirements. See General Elevator Co., Inc., B-237285, Jan. 30, 1990, 90-1 CPD ¶ 133; cf., Sanchez Porter's Co., 69 Comp. Gen. 426 (1990), 90-1 CPD ¶ 433.

previously tested yokes. The protester faults the agency for failing to anticipate the impracticability of contracting for fatigue testing services with SAIC and asserts that the agency should have recognized at the outset the need to negotiate directly with Bell, the contractor obviously best situated to perform these services, or the need to prepare earlier for a competitive fatigue testing contract with arrangements to remove its test stand from Bell's laboratory. According to Imperial, the agency's wasteful efforts to arrange for fatigue testing through SAIC have improperly extended the targeted acquisition of a fatigue testing contract until June 1993, well beyond the time the agency could have reasonably expected to sustain its supply of salvageable yokes.

We do not agree with the protester that the Army created the need for a sole-source award to Bell by a lack of advance procurement planning. Rather, the facts cited by the protester show that the Army planned to fill its interim fatigue testing needs through its SAIC contract, but that its efforts were unsuccessful. CICA requires only that the agency engage in advance procurement planning, which the Army did here, not that the advance planning achieve the desired results. See Honeycomb Co. of Am., supra. In addition, to the extent that the protester argues that the Army should have directly contracted with Bell for testing services, we do not think that the agency was required to award one sole-source contract (for fatigue testing services) to avert another (for the yokes). We note that the agency has firm plans to compete both a contract for fatigue testing services as well as its future yoke requirements. See Petro Star, Inc., supra.

In sum, the sole-source award to Bell was properly justified based upon the agency's critical stock shortage of yokes and was not caused by a lack of advance procurement planning.

The protest is denied.

  
James F. Hinchman  
General Counsel