



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Electro-Methods, Inc.

File: B-250931

Date: February 26, 1993

Paul J. Seidman, Esq., and Robert D. Banfield, Esq., Seidman & Associates, for the protester, Paul Shnitzer, Esq., and Kent R. Morrison, Esq., Crowell & Moring, for Pratt & Whitney Aircraft Group, United Technologies Corporation, an interested party. Gregory H. Petkoff, Esq., Department of the Air Force, for the agency. Peter A. Iannicelli, Esq. and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Air Force reasonably justified sole-source award of contract for duct supports for F-100 airplane engines to original equipment manufacturer under 10 U.S.C. § 2304(c)(2) where protester had failed to deliver sufficient quantity of usable duct supports under its contract with agency, thereby causing critical shortage of parts and potential grounding of fighter airplanes.
2. Where agency reasonably decided unusual and compelling urgency requires procurement of supplies, solicitation need not be synopsized in Commerce Business Daily.

DECISION

Electro-Methods, Inc. (EMI) protests the Air Force's award of a contract to Pratt & Whitney Aircraft Group, United Technologies Corporation, for duct supports for use in F-100 aircraft engines pursuant to request for proposals (RFP) No. F41608-92-R-45309. The San Antonio Air Logistics Center (SAALC) awarded the contract on a sole-source basis pursuant to the authority of 10 U.S.C. § 2304(c)(2) (1988) which permits an agency to use other than competitive procedures when the agency's need for the supplies is of an unusual and compelling urgency. Basically, the protester alleges that the use of noncompetitive procedures was improper since EMI can also provide the duct supports; that the Air Force's justification for a noncompetitive award resulted from the absence of advance procurement planning; that the Air Force

did not comply with the requirements of 10 U.S.C. § 2319 concerning the imposition of qualification requirements for this acquisition; and that the Air Force improperly failed to synopsise the solicitation in the Commerce Business Daily (CBD).¹

We deny the protest.

Pratt & Whitney is the original equipment manufacturer for the duct supports, identified as part number (PN) 4077394, that are the subject of this protest. In 1989, EMI was awarded a contract to supply an early version of the duct supports. In 1991, the Air Force determined that there was a problem with the parts being supplied by EMI under its contract. Many of the duct supports EMI supplied to the Air Force did not conform to the dimensions, nor were they within the tolerances set forth in the contract specifications.

After examining duct supports both before and after use, and after consulting with both EMI and Pratt & Whitney, the Air Force concluded that many of the parts were shrinking due to heat. The Air Force determined that there were two separate sources of the heat--engine operation and manufacturing processes. The Air Force calculated that about 10 percent of the duct supports would shrink enough in diameter due to operating engine heat to need repairs. About 40 percent of the duct supports supplied by EMI were rejected before use as not meeting specification dimensions because of shrinkage caused by heat generated during manufacturing processes.

Pratt & Whitney addressed the problem of shrinkage during engine operation in two ways. First, a repair procedure was developed. This was rejected by the Air Force because the cost to repair defective parts was more than the cost to make new parts. Second, in April 1991, Pratt & Whitney released engineering change proposal (ECP) 89NA464 to increase cool air distribution to reduce heat and stress to the duct supports and, thereby, shrinkage. Basically, in addition to dimension changes, the new version of the duct support has more cooling holes and slots.

¹EMI also protested that the Air Force improperly used a brand name purchase description and that the quantity of duct supports being purchased from Pratt & Whitney on a sole-source basis exceeds the Air Force's immediate needs. The Air Force rebutted both allegations in its report. In its comments on the agency's report, EMI did not address these issues. Accordingly, we consider these grounds of protest abandoned and will not consider them further. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

The current RFP was issued for the new version of the duct supports on August 13, 1992, in response to an emergency purchase request from the SAALC for the items. The purchase request stated that the emergency arose because the majority of the duct supports delivered by EMI under its contract were defective and could not be used in the aircraft. With a large number of the duct supports back-ordered and no more spare parts in the depot's inventory, and with a normal procurement lead time of 24 months, the SAALC became concerned that the repairs to the F-100 engine might be curtailed and fighter aircraft grounded, adversely affecting Air Force mission capabilities and national defense.

The RFP was issued to Pratt & Whitney in anticipation of ordering against a basic ordering agreement with that firm for the parts. Pratt & Whitney submitted a proposal for an undefinitized contractual action with a ceiling price of \$3,694,600. The Air Force accepted Pratt & Whitney's offer and, on September 11, issued a purchase order to Pratt & Whitney requiring delivery of 1,274 duct supports, at the rate of 75 per month, beginning in June 1993. The award was synopsised in the CBD on September 30, 1992, and EMI filed its protest in our Office on October 14.

The main point of EMI's protest is that the Air Force could not properly justify awarding a contract for duct supports, PN 4077394, to Pratt & Whitney on a sole-source basis. EMI argues that, as a prior supplier of the earlier version of duct supports, it could fulfill the Air Force's urgent requirement for the parts in a timely manner. In this regard, EMI contends that the physical modifications required to be incorporated into the new duct supports under Pratt & Whitney's ECP 89NA464 consist only of the addition of slots and holes. EMI states that the Air Force purchased Level 3 technical data (data suitable to permit competition), including manufacturing drawings, from Pratt & Whitney regarding the modifications. EMI contends that the Air Force should have provided the technical data as part of the solicitation and allowed EMI and other sources to compete for the contract.

In the alternative, EMI argues that, even if a noncompetitive award was justified on the basis of urgency at the time of award, any justification for a noncompetitive award resulted from the absence of advance procurement planning in violation of 10 U.S.C. § 2304(f)(5). EMI believes that the Air Force knew that there was a serious shrinkage problem with the old duct supports for several years--certainly, no later than April 8, 1991, the date Pratt & Whitney submitted ECP 89NA464 to reduce shrinkage. EMI contends the Air Force should have addressed the problem long before the shortage became critical and an emergency situation arose justifying a noncompetitive award.

Furthermore, EMI contends that the Air Force owns the Level 3 data needed to manufacture the new duct support and should have done advance procurement planning to ensure that the drawings were available to allow firms other than Pratt & Whitney to compete for this contract.

The Competition in Contracting Act of 1984 (CICA) provides for the use of noncompetitive procedures where the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits proposals. 10 U.S.C. § 2304(c)(2). While CICA requires that the agency request offers from "as many potential sources as is practicable under the circumstances," 10 U.S.C. § 2304(e), an agency may still limit the procurement to the only firm it reasonably believes can properly perform the work in the available time, provided this limitation is justified. Environmental Tectonics Corp., B-248611, Sept. 8, 1992, 92-2 CPD ¶ 160; Magnavox NAV-COM, Inc., B-248501, Aug. 31, 1992, 92-2 CPD ¶ 143.

We conclude that the Air Force had a reasonable basis for the sole-source award on an urgency basis. The record shows that EMI was supposed to deliver 1,729 duct supports to the Air Force under its contract. The Air Force reports that it was depending upon delivery of the parts by EMI to keep the level of its existing stock high enough so that the F-100 engine fan drive turbine repair line could keep operating. The record also shows that during 1991 the Air Force rejected many of EMI's duct supports as undersized and, as a result, the Air Force began to inspect 100 percent of EMI's parts before accepting them. The Air Force performed a quality deficiency investigation that was inconclusive as to the cause of the shrinkage problem. However, the Air Force's investigation did suggest that shrinkage occurred during two manufacturing processes performed by EMI--diffusion coating and forging. The report also noted that the Air Force reviewed contractor and government records and found no indication of similar discrepancies on file.

EMI began investigating the cause of the shrinking parts as well in January 1991. As late as May 7, 1992, EMI wrote that its reinspection of parts previously rejected by the Air Force showed that 105 of the 544 parts returned as defective by the Air Force actually met the contract specifications. Thus, by EMI's examination, at least 439 parts suffered from shrinkage or were otherwise defective. As noted earlier, the Air Force calculates that about 40 percent of EMI's parts were deficient.

Regardless of whose numbers are more accurate, the above portions of the record illustrate two points. First, it

appears that throughout 1991 and for much of 1992, the Air Force and EMI were both trying to determine why EMI was delivering so many unusable parts. Second, EMI was delivering a very high percentage of defective parts--parts that were critical to the continued operation of fighter airplanes. The shrinkage caused by manufacturing processes was unique to EMI. While some shrinkage was found to have occurred in parts originally supplied by Pratt & Whitney, that shrinkage was found only after the parts had been used in operating airplanes.

As a result of the problem with EMI's duct supports, the Air Force inventory became depleted and there was a large number of back-orders. We think it clear that the Air Force had a legitimate urgent need under these circumstances to acquire usable duct supports as soon as possible. We do not agree that the urgency was caused by the Air Force's lack of advance planning. The urgency was created by EMI's failure to furnish usable duct supports--had the efforts to correct the problem with EMI's product proven successful, the agency's need to make an urgent buy to replace these defective parts would have been unnecessary. Accordingly, we have no basis to object to the use of noncompetitive procedures here.

We also find no merit to EMI's contention that the Air Force improperly awarded the contract to Pratt & Whitney on a sole-source basis. Although EMI contends it could meet the Air Force's needs if the Air Force would furnish the Level 3 drawings developed by Pratt and Whitney, the urgent situation in which the Air Force found itself was the result, the Air Force believed, of EMI's manufacturing processes. Therefore, regardless of whether EMI were supplied Level 3 manufacturing drawings so that it could make duct supports in the new configuration, the Air Force would still have reason to be concerned with EMI's manufacturing process. While EMI contends that the modified design in those drawings will result in less shrinkage from manufacturing process heat, the Air Force and Pratt & Whitney maintain that the Pratt & Whitney modifications are designed to reduce shrinkage from operation of F-100 engines at extremely high temperatures, not from manufacturing processes. Review of Pratt & Whitney's engineering change proposal confirms that the design changes were directed primarily toward lowering maximum operating temperatures. EMI offers no evidence that the addition of slots and holes to the duct supports will correct EMI's manufacturing shrinkage problem as EMI contends. Thus, we

think the Air Force reasonably did not consider EMI to be a viable source for the urgently required duct supports.²

EMI also argues that the procurement was improper because the Air Force did not synopsise the solicitation in the CBD 15 days before it was issued nor keep the solicitation open for 30 days after issuance. A contracting officer need not synopsise a proposed acquisition where, as here, the need for supplies is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits offers and not comply with the usual response times. Federal Acquisition Regulation § 5.202(a)(2). Since the Air Force reasonably decided that it had an "urgent need" for the duct supports, it was not required to synopsise the proposed acquisition or comply with the usual response time requirement.

EMI points out that, on August 13, 1992, the Air Force solicited an offer from Pratt & Whitney on an urgency basis for 100 units to be delivered in September of that year and 75 units each month thereafter. However, Pratt & Whitney proposed and the Air Force accepted a delivery schedule of 75 units per month beginning 9 months after receipt of an order. EMI contends that even if the Air Force initially was not subject to the CBD synopsis requirement, that situation changed when the Air Force decided it could accept Pratt & Whitney's delivery schedule with first deliveries many months later than requested.


At the time the procurement was initiated, the Air Force had an urgent need for duct supports since there were no spare parts in its inventory and more than 1,000 units on back-order. The fact that Pratt & Whitney did not agree to deliver the part as fast as the Air Force had initially requested did not change the urgent nature of the

²EMI argues that the Air Force imposed a qualification requirement upon this procurement without first preparing a written justification stating the necessity for establishing the qualification requirement in violation of 10 U.S.C. § 2319(b)(1). Establishing a qualification requirement in the time available would not have been practical, and we do not believe that the events here establish that the Air Force did so. The record before us is insufficient to show whether a qualification requirement should be established before the agency again purchases the ducts. Before awarding the challenged contract, the Air Force expressed its concern about manufacturing processes and controls related to this part and determined that "it is unreasonable to specify or develop qualification requirements for these components"

requirement and therefore did not change the fact that the synopsis requirement was inapplicable to the procurement.

The protest is denied.



 James F. Hinchman
General Counsel

