



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Purdy Corporation

File: B-257432

Date: October 4, 1994

J. Michael Slocum, Esq., Slocum, Boddie & Murry, P.C., for the protester,
William R. Medsger, Esq., and Wade L. Brown, Esq., Department of the Army, for the agency,
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly justified on the basis of urgency a sole-source acquisition of limited quantities of overhauled critical helicopter parts from the original manufacturer where no other source, including the protester, possessed or would reasonably have access to the appropriate test stand, which is necessary for testing overhauled parts, in time to meet the required schedule.

DECISION

The Purdy Corporation protests the issuance of a delivery order against a basic ordering agreement (BOA) with United Technologies Corporation, Sikorsky Aircraft Division under request for quotations (RFQ) DAAJ09-94-Q-0398, issued by the U.S. Army Aviation and Troop Command (ATCOM), for maintenance and overhaul of UH-60 Blackhawk helicopter tail rotor gearbox assemblies. Purdy argues that it is capable of meeting all of the agency's requirements at a lower price.

We deny the protest.

The requirement for maintenance and overhaul of the gearboxes is ongoing and is generally performed under depot maintenance work requirement (DMWR) No. 55-1615-279.¹ On

¹A DMWR is essentially a government-furnished instruction manual which describes the operations, procedures, and practices required to overhaul and repair a particular item.
(continued...)

February 10, 1993, the Army issued a competitive solicitation (No. DAAJ09-92-R-0316) on the assumption that the gearbox DMWR was adequate to support a competitive procurement. However, discussions with offerors revealed that most would be unable to provide the special test stand required for testing the gearboxes after overhaul. In May 1993, the contracting officer requested all offerors, including Purdy, to provide documentation to substantiate their ability to provide the necessary special tooling and test equipment. Only Sikorsky, the original equipment manufacturer of the gearbox and test stand, furnished any evidence of its ability to meet the special tooling requirement; Purdy simply stated that, upon contract award, it intended to have an existing test stand which is used for different equipment modified by a subcontractor in order to meet the requirement.

In September 1993, ATCOM received notice of a Class B accident involving an EH-60A Blackhawk helicopter.² The accident was caused by a previously undetected fracture problem with the output shaft for the gearbox. The accident resulted in the Army's determination to take all affected aircraft out of service at different intervals to allow for repair and overhaul of the gearboxes.³ Affected military units were notified of the accident and the need for immediate overhaul; the overhaul plan was subsequently published in an aviation safety action message (ASAM) in February 1994. ATCOM determined that this requirement for overhaul, repair, and rework of the gearboxes, which would triple the demand for overhauls, was beyond the scope of the competitive solicitation. This change in requirements, coupled with the failure of Purdy and other contractors to substantiate their ability to meet the test stand requirement, caused the agency to cancel the competitive solicitation in November 1993.

¹(...continued)

A DMWR sometimes requires special tooling/test equipment to accomplish the overhaul. Unless the tooling is government-furnished, a contractor must provide it, and the government must test the tooling to ensure that it meets the required testing parameters.

²According to Army Regulation 385-40, para. 4-6, a Class B accident involves either property damage and personnel injuries of more than \$100,000 but less than \$500,000, or an injury resulting in permanent partial disability or hospitalization of five or more personnel in a single occurrence.

³For example, gearboxes in use for less than 800 hours are to be removed within the next 100 hours.

On January 5, 1994, ATCOM received an urgent procurement work directive for the overhaul of 150 gearboxes. The directive was supported by a statement of urgency and a technical justification and certification, issued in December 1993; and a statement of impact, issued in January 1994. According to the impact statement, the then current average monthly demand was 13 gearboxes; the agency had 18 on hand, of which 11 were "due out." The statement anticipated that once the ASAM was issued, the demand would increase to 50 or 60 gearboxes per month for approximately 3 months and then level off at 20 per month for the next 24 to 36 months. It set July 1994 as the date the service was required. The technical justification stated that the gearbox is critical to safe operation of the aircraft and requires "extremely close overhaul tolerances and quality assurance provisions." While the DMWR was adequate for overhaul of the gearboxes, it required that testing of the overhauled gearboxes be conducted on a Sikorsky test stand. The DMWR did not identify any equivalent stand. The Army was aware of only three Sikorsky test stands: one in Sikorsky's possession and two at military installations that were unable to absorb the additional testing covered by the urgent requirement.

The need for 150 units was based on the Army's requirement for a "positive supply position," that is, enough overhauled units on hand to fill all back orders and monthly demands until a competitive DMWR would be available. Accordingly, the contracting officer determined to restrict consideration to Sikorsky and, on the basis of the urgency determination, sent the RFQ to Sikorsky on February 17, 1994, requesting a not-to-exceed ceiling price for the overhaul of 150 gearboxes.

On March 18, the Army published a synopsis of the requirement in the Commerce Business Daily (CBD). The synopsis referred to the DMWR, but advised offerors that the procurement was restricted to Sikorsky due to the requirement for testing on Sikorsky's test stand. Both Sikorsky and Purdy submitted quotations for the work. In March, Sikorsky quoted a not-to-exceed unit price of \$24,900 for a total not-to-exceed price of \$3,735,000. In April, Purdy quoted a unit price of \$12,447, for a total fixed price of \$2,328,930, including prices for scrap and contractor-acquired property.

On May 13, the contracting officer determined to issue a purchase order to Sikorsky under an existing BOA, based on the urgency of the requirement; Purdy's (or any other potential source's) lack of an equivalent test stand; the time required to qualify any equivalent stand; and the government's lack of available data to qualify such an equivalent stand. Because of the urgency, the contracting

officer determined not to delay the order's issuance until completion of the justification for other than full and open competition. After receiving notice of the order, Purdy filed this protest with our Office.

On July 25, the Army executed the justification for other than full and open competition required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(f)(1) (1988 & Supp. V 1993). The justification was based on an "unusual and compelling urgency" under 10 U.S.C. § 2304(c)(2) (1988). In this regard, the justification and its attachments noted that the gearboxes were critical, flight safety items. The projected impact of failure to immediately issue a sole-source order was the grounding of a large portion of the UH-60 fleet and/or work stoppages, resulting in declining support for mission requirements. The justification also noted the procurement history and the interest of various contractors during the prior competitive procurement. However, the justification recognized that in the absence of a qualified equivalent test stand and the unavailability of the military-owned test stands, Sikorsky was the only contractor with the ability to properly test the overhauled gearboxes. The ATCOM competition advocate directed that future acquisitions for these services be considered for competition.

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) (1988); see Federal Acquisition Regulation § 6.302-2, an agency may still limit the procurement to the only firm it reasonably believes can properly perform the work in the available time, provided the limitation is justified. Silco Eng'g & Mfg. Co., B-250012.6, May 7, 1993, 93-1 CPD ¶ 372; Environmental Tectonics Corp., B-248611, Sept. 8, 1992, 92-2 CPD ¶ 160. We will object to the agency's determination only where the decision lacks a reasonable basis. Servrite Int'l, Ltd., B-236606, Dec. 6, 1989, 89-2 CPD ¶ 520. In this regard, a military agency's assertion that there is a critical need which impacts military operations carries considerable weight. Id.

We conclude that the Army had a reasonable basis for issuing the sole-source order to Sikorsky on an urgency basis. It is clear from the record that the gearboxes are critical, flight safety items which require periodic overhaul. The urgency is based on the discovery, through a serious accident, of a previously unknown problem with the gearboxes

which necessitated inspection and overhaul of all gearboxes on a faster than normal schedule. Since current supply levels are inadequate to handle the increased demand from overhaul and replacement parts, there is a legitimate urgency to increase the number of overhauled parts in the supply system as soon as possible. Failure to obtain sufficient numbers of the overhauled gearboxes through this procurement would cause the grounding of a large portion of the UH-60 fleet, which will have an adverse effect on military mission support requirements. To mitigate the effects of the sole-source award, the Army is only ordering those overhauls necessary to meet the immediate requirements and will consider competing future purchases.

The protester does not directly challenge the need to overhaul the gearboxes or the urgency of doing so; rather, it contends that it is as capable as Sikorsky of fulfilling the agency's needs and that it can do so at a lower price.⁴ According to Purdy, it has previously obtained the use of appropriate test stands "of the sort required" here, and that the agency should have provided it the opportunity to do so or explored the possibility of using one of the existing test stands. See Imperial Tooling & Mfg., Inc., B-249897, Dec. 23, 1992, 92-2 CPD ¶ 436. We disagree.

Here, the agency was and is willing to consider the protester's use of an equivalent test stand. However, Purdy has not established that it currently possesses an equivalent stand. In this regard, Purdy's quote neither mentioned an existing test stand nor indicated how it intended to meet the testing requirement. While Purdy had earlier stated (in its submission under the competitive procurement) that upon contract award it intended to have an existing test stand modified by a subcontractor in order to meet the requirement, this record provides no evidence that Purdy possesses a completed test stand for immediate use. In fact, according to Army engineers, development of a

⁴Despite Purdy's arguments to the contrary, it is not clear that Purdy's price would actually be substantially lower than Sikorsky's. Purdy's argument is based on a comparison of its quoted unit price with the not-to-exceed unit price quoted by Sikorsky, which is to be negotiated downward. Purdy's comparison is also misleading since its stated unit price does not include the "contractor acquired property" and scrap line item costs in its quote; if those line items were included in Purdy's price, its unit price would be more than \$15,000. Further, Sikorsky's last negotiated unit price under its BOA was less than \$9,000; thus, once the Sikorsky price is definitized under the BOA, it will not necessarily be significantly higher, and may, in fact, be lower than that quoted by Purdy.

duplicate test stand would take at least a year's time, and modification of an existing test stand would require a minimum of 6 months. This time would include development of a test plan, review and approval of the plan and modification drawings by ATCOM, actual modification of the stand, and testing of the stand by Purdy and ATCOM. Difficulties encountered during any of the steps could increase the total time necessary to obtain an operational test stand. Further, the Army is unaware of any approved equivalent test stand and lacks appropriate data to qualify an equivalent. Notwithstanding its protest, Purdy still has provided no evidence that it could timely provide an equivalent test stand. In view of the urgent need for large quantities of overhauled gearboxes; the absence of an existing equivalent test stand; the lack of qualification data; and the anticipated time to qualify any candidate test stand, the Army reasonably concluded that there was insufficient time to assure itself of Purdy's ability to meet the testing requirement. Thus, the Army reasonably determined that only Sikorsky was able to meet the delivery schedule. See Space Vector Corp., 73 Comp. Gen. 24 (1993), 93-2 CPD ¶ 273.

In the alternative, Purdy argues that the Army should have explored the use of the existing approved test stands by Purdy as the agency did in Imperial Tooling & Mfg., supra. In Imperial, the agency considered and rejected removing the original equipment manufacturer's test stand for use by another contractor. This solution was rejected because of logistical problems including the potential for damage to the test stand. Here, the Army similarly considered and rejected use of existing Sikorsky test stands. One, located at the Corpus Christi Army Depot, could not be used for this procurement because it was already operating at maximum capacity in the overhaul of gearboxes. The other, located at the Naval Aviation Depot in Pensacola, Florida, was unavailable for use because the depot is scheduled for closure in 1997, and the depot was not accepting any increase in work load. The only other extant test stand is in Sikorsky's possession.

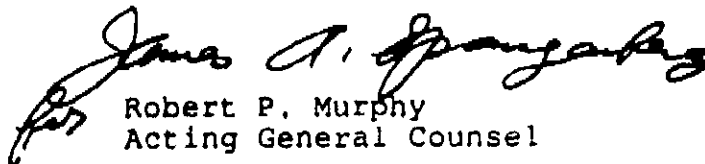
Finally, Purdy argues that Sikorsky has been given preferential treatment. Purdy bases this argument on the Army's recognition that the DMWR specifies certain Sikorsky part numbers as the only qualified test stands and that the Sikorsky-owned test stand does not possess either of those

³Although Purdy asserts that this third test stand is owned by the government and therefore must be made available, there is no evidence which supports this assertion.

part numbers.⁶ Thus, the Sikorsky stand is, at best, an "equivalent" stand. Since the Army is allowing Sikorsky to use an "equivalent" stand, Purdy argues that it is unfair not to allow Purdy to provide testing through equivalent, nonofficial test equipment.

As discussed above, the Army has not determined that an equivalent stand cannot be used. It has simply determined that Purdy does not yet possess such a test stand, and that there is insufficient time for the protester to modify and test such a stand and to meet the urgent delivery schedule. It has also determined that only Sikorsky, which does possess a test stand that is apparently identical to those specified with the exception of the part number (which were manufactured by Sikorsky), can meet the requirement. Since Purdy does not even have an equivalent test stand, the Army's allowance of Sikorsky to use an "equivalent" stand provides no basis for us to question the order. American Mut. Protective Bureau, Inc., B-229967, Jan. 22, 1988, 88-1 CPD ¶ 65.

The protest is denied.


Robert P. Murphy
Acting General Counsel

⁶The Army advises that it is contemplating revision of the DMWR to expressly include equivalent test stands before use in a competitive follow-on procurement.