

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-185970

DATE: June 24, 1976

MATTER OF: Emerson Electric Co.

61021
98404

DIGEST:

1. Protester has not shown that procurement on sole-source basis was arbitrary or capricious in view of technical risks and urgent delivery schedule and, therefore, no objection can be raised to instant procurement. However, GAO recommends to procuring activity that, upon receipt of data package from sole-source contractor, it carefully assess the possibility of competitive procurements for item in future.
2. Entire record before GAO justifies sole-source negotiation notwithstanding failure of contracting officer to include such justification in Determination and Findings (D&F). GAO is aware of no requirement in ASPR that sole-source justification must be included in D&F.

Emerson Electric Co. (Emerson) has protested the award of contracts by the Naval Air Systems Command (NavAir) on a sole-source basis to The Bendix Corporation (Bendix) for the development and limited production of an on-board acoustic data processor to be integrated with the AN/AQS-13B dipping sonar system of the SH-3H helicopter.

Bendix was awarded a 1-month contract for design definition on April 1, 1976, and a production contract for two processors with an option for an additional four processors on June 1, 1976. These awards were made notwithstanding the pendency of the Emerson protest based on a determination and finding by the contracting officer, pursuant to § 2-407.8(b)(3) (1975 ed.) of the Armed Services Procurement Regulation (ASPR), that it was advantageous to the Government to make the awards in order to avoid any slippage in the delivery schedule.

Portions of the NavAir response to the protest were classified and, therefore, Emerson was not allowed to comment on certain

factors which impacted on the decision to negotiate solely with Bendix. However, our Office has fully considered this classified information in reaching our decision.

Emerson contends that NavAir was aware, at the time it issued the sole-source solicitation to Bendix, that Emerson had designed and developed an acoustic processor for application in the SH-3H helicopter and, therefore, Emerson should have been solicited as a possible source. On August 1, 1975, Emerson submitted an unsolicited proposal to NavAir concerning its "stand alone" mini-acoustic processor which subsequently was successfully demonstrated aboard a SH-3H helicopter. On November 25, 1975, Emerson was advised by NavAir that due to current research priorities and budgetary restraints the Navy would be unable to accept the Emerson proposal.

Emerson states that within a month it learned that NavAir was preparing to award sole-source contracts to Bendix for development and production of a similar processor and protested this action to the contracting officer. This protest was denied on the grounds that existing Emerson equipment would not meet the Navy's requirements that the processor be integrated with the AN/AQS-13B system, and because of the technical risk and lack of specifications suitable for competitive procurement, only Bendix could comply with the urgent delivery schedule.

Emerson alleges that the requirement of the Navy should have been fulfilled through competitive negotiations rather than by sole-source negotiations with Bendix. Emerson argues that its mini processor, offered in its August 1, 1975, proposal will meet the Navy's technical and delivery requirements. Emerson states that the actions of NavAir violated the mandate of numerous ASPR provisions requiring competitive procurements whenever possible, that no public exigency exists and that the Determination and Findings (D&F) by the contracting officer were deficient in not justifying a sole-source procurement.

The Navy has determined that the Emerson mini processor will not meet its needs for application in the SH-3H helicopter. In

its letter dated February 20, 1976, denying the Emerson protest of February 9, 1976, the Navy made the following observations regarding the Emerson versus the Bendix processors:

"a. The SH-3H helicopter has a severe weight problem. Hence it is essential that any increased capability be accomplished at no increase in aircraft weight. The Bendix processor weighs approximately 37 pounds. However, use of this equipment means that the existing AN/ASA-26B processor, weighing 50 pounds, can be eliminated for a net reduction in weight. Adoption of the Emerson processor would also eliminate the AN/ASA-26B, however, since the Emerson equipment will weigh a minimum of 125 pounds, an undesirable net increase in weight of 75 pounds will result.

"b. Since the Bendix processor will be integral with the existing AN/ASQ-13B sonar equipment (i.e. an additional box and wiring will be added) it will possess the advantage of providing one display for both functions. Addition of the Emerson equipment would mean two displays. Aside from the obvious efficiency of a single display the saving in space in a cramped aircraft is highly desirable.

"c. The Navy has funded the development by Bendix of a modification to the AN/AQS-13B to provide active sonobuoy processing. This modification, which represents 60% of the proposed modification, has successfully undergone a formal Navy evaluation. The Emerson processor has been operationally tested but has not been subject to formal Navy testing. The Emerson equipment therefore represents considerably greater technical and schedule risk."

In addition to the above, the Navy's urgent delivery schedule is caused by the requirements to have the new equipment available for installation in the fiscal year (FY) 1977 production of the SH-3H helicopters. The reason for the need to have delivery for these helicopters was not disclosed to Emerson as it was classified in the interest of the national defense. However, as stated previously, we have reviewed this justification and find it to be a proper basis for the short delivery schedule.

Our Office will not question a contracting officer's decision to make a sole-source award unless it is clear from the record before us that the action was arbitrary or capricious. Hughes Aircraft Company, 53 Comp. Gen. 670 (1974), 74-1 CPD 137. While Emerson has argued that it could modify its "stand-alone" mini processor to comply with the Navy's requirement and that even if it could not meet the delivery schedule for the FY 77 helicopters, only 12 helicopters would be affected, we do not find that the actions of the contracting officer could be considered arbitrary or capricious. Based on the record before our Office, we are not prepared to question the Navy's judgment with regard to the technical and delivery risks involved and the protest on this point is denied.

Emerson also challenges the sufficiency of the D&F made by the contracting officer to justify the negotiation of the instant contracts. Emerson contends that no basis was given in the D&F to justify a sole-source procurement but that the D&F merely showed that the circumstances required competitive negotiation rather than formal advertising. The D&F reads as follows:

"Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 USC 2304(a)(11).

"FINDINGS

"1. The Naval Air Development Center proposes to procure by negotiation services and material necessary to finalize conceptual definition of the SH-3H Sonobuoy Interface Unit/Adaptive Processor Sonar (SIU/APS). The services and material are for support of the production of a light-weight, low-cost, microprogrammable

miniprocessor for use with the SH-3H helicopter which will provide on-board multi-sensor processing capability for both passive and active sonobuoys as well as the AN/AQS-13B Sonar. The proposed contract will not call for quantity production within the meaning of paragraph 3-211.3 of the Armed Services Procurement Regulation.

"2. Procurement by negotiation of the above described services and material is necessary because it is impossible to describe in precise detail or by definite drawings and specifications the nature of the work to be done under the proposed contract; only the ultimate objectives and the scope of the work can be outlined.

"3. Use of formal advertising for procurement of the above described services and material is impracticable because it is impossible to describe in precise detail or by any definite drawings and specifications the nature of the work to be done; only the ultimate objectives and general scope of the work can be outlined.

"DETERMINATION

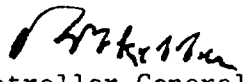
"The proposed contract is for experimental, developmental or research work."

While the above D&F does not specifically justify the sole-source action, the classified material submitted to our Office by NavAir justifies such an action. Further, we are aware of no requirement contained in the ASPR that a sole-source justification must be included in the D&F.

Accordingly, this aspect of the protest is also denied. However, we have been advised that the current limited production contract with Bendix for the processors is for the purpose of

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having units to test and evaluate for approval for in-service use. Following such approval, further production contracts will be awarded for processors to be incorporated in the SH-3H helicopters to be subsequently produced. Further, a data package is to be supplied by Bendix under the current contract which may make competition practicable. We therefore believe the Navy should carefully assess the possibility of competition in the future following receipt of the Bendix data package.


Deputy Comptroller General
of the United States