

United States General Accounting Office

GAO

Report to the Honorable
H. James Saxton, House of
Representatives

May 1999

CHEMICAL PROTECTIVE SUITS

No Basis to Question Procuring Agency's Acquisition Strategy





United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-238830

May 1, 1990

The Honorable H. James Saxton
House of Representatives

Dear Mr. Saxton:

In your letter of October 16, 1989, you requested that we determine why the Defense Personnel Support Center (DPSC) was excluding Winfield Manufacturing Company, Inc., from a planned procurement of chemical protective suits and whether this exclusion was appropriate. You also requested that we identify the basis for DPSC's calculation of protective suit requirements.

DPSC, a supply support activity of the Defense Logistics Agency (DLA) located in Philadelphia, Pennsylvania, buys chemical protective suits for the military services. In the Commerce Business Daily of August 23, 1989, DPSC announced its plans for a future procurement of about 1.3 million chemical protective suits from firms willing to enter into industrial preparedness agreements and the exclusion of all current DPSC suit contractors from participation.

Results in Brief

We found no basis on which to question DPSC's acquisition strategy. DPSC excluded Winfield, as well as other current suit manufacturers, from this planned procurement because it believed that the production base for the suits needed to be expanded. DPSC estimated that current manufacturers would fall about 20 million suits short of meeting requirements during the first 3 months of mobilization. By restricting competition to firms agreeing to enter into industrial preparedness agreements and excluding current contractors, DPSC expected to add at least two new producers to the production base. Thereafter, all of the suppliers, along with other interested firms, will be permitted to compete for future procurements.

We determined that DPSC had calculated chemical suit requirements on the basis of orders and other information furnished by commands that use the suit. In view of the changing threat and constrained funding, DLA has put the planned procurement on hold until the commands that need the suit revalidate their requirements.

Background

The chemical protective suit is intended to be used by combat personnel, including air and combat crewmen, to provide protection against battle-field concentrations of chemical agents. The suit, which has a fabric outer layer with a charcoal-impregnated liner to absorb chemical agents, is worn in all environments under the threat of chemical attack.

The Competition in Contracting Act of 1984, 10 U.S.C. 2304(b)(1)(B) and 2304(c)(3) authorizes military agencies to conduct procurements in a manner that enables them to establish or maintain sources of supply of a particular item in the interest of national defense. The act also requires that the procuring agency prepare a written justification to support the desired action when restricting competition for mobilization purposes. This justification must include a description of the agency's needs and its rationale for using other than full and open competition. When proposed restricted procurements exceed \$10 million, a senior procurement executive designated by the head of the agency must approve the procurement justification.

Chemical Suit Requirements and DPSC's Justification of a Restricted Procurement Strategy

In developing its procurement strategy, DPSC considered both the difficulties firms have previously experienced in producing the chemical suit and the quantities that would be needed in the event of mobilization.

The procurement history of this item shows that since 1974, DPSC has awarded contracts to 15 different firms for various models of a chemical protective suit. Some of these firms have encountered difficulties in producing the suits and in completing their contracts. Historically, according to DPSC, chemical protective suit acquisitions have resulted in failed contracts leading, in turn, to the loss of required supplies, stock funds, and sources. Particular difficulties that DPSC noted include (1) the need to change sewing machine needles frequently, slowing production and annoying machine operators; (2) the adverse effects of the unavoidable dust on machines and personnel; (3) the requirement for a separate production facility with a specialized ventilation system; and (4) the high attrition rate of contractor personnel, with a corresponding extended learning curve and increased training requirements.

DPSC's records show that, at the time the proposed procurement was announced, Winfield held two contracts for the production of about 1.7 million chemical suits, and three other suppliers held production contracts for about 1.1 million suits. According to DPSC, Winfield, the only experienced suit producer, was delinquent in providing suits and was in financial difficulty at the time the procurement was announced.

Shortly after the announcement, DPSC terminated its contracts with Winfield for default. Moreover, DPSC officials told us that the other new suit producers had not delivered any production units.

DPSC also pointed out that the chemical protective suit is included on the Joint Chiefs of Staff Critical Items List¹ and is deemed an essential item of defense. Information available to DPSC showed that 3,550,000 suits were currently deployed to prepositioning sites, and 20,000 suits were on hand in supply depots.

According to DPSC data for fiscal year 1990, the War Material Requirement for chemical protective suits for the first year of mobilization, excluding those suits on hand, is for 50.7 million suits. Upon declaration of mobilization, 13.2 million suits will be required within the first month of mobilization, and a total of 6.6 million suits will be required over the next 2 months. Thereafter, about 3.4 million additional suits will be required per month for the next 9 months.

DPSC concluded that “warm-base” producers² are essential to satisfying, over time and within funding constraints, the first month requirement of about 13.2 million suits upon declaration of mobilization, because “cold-base” producers³ require 4 months’ lead time to make their initial deliveries and 7 months’ lead time to reach their maximum production rates. DPSC also estimated, based on capacity information, that its three current chemical suit producers had the capacity to supply a total of only 295,000 units per month, while the mobilization requirement is for about 3.4 million units per month.

As a result of this shortfall, DPSC proposed limiting the planned procurement of chemical suits to new producers who would agree to enter into industrial preparedness agreements and thus to expand the production base by at least two new producers. On January 10, 1990, DPSC submitted a written justification called a “Justification for Other Than Full and Open Competition” to DLA for approval. This document contained the reasons for restricting the chemical suit procurement.

¹The Critical Items List serves as a general guide for resource allocation and is a primary document for planning with industry and determining production requirements.

²“Warm-base” producers are producers that are delivering suits.

³“Cold-base” producers are producers that are considered capable of producing the suit but are not currently producing it.

Authority to Use Other Than Full and Open Competition

As the authority for its planned procurement strategy, DPSC cited 10 U.S.C. 2304(c)(3) and the Federal Acquisition Regulation (FAR) 6.302-3, which implements this law. The law states in part that the Department of Defense (DOD) is not required to conduct full and open competition when it is necessary to award a contract to a particular source or sources to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization. The FAR section provides that this authority may be used to limit competition under DOD's Industrial Preparedness Program.

On March 22, 1988, the Comptroller General issued a decision on a case similar to the planned procurement.¹ In this decision, the Comptroller General stated that military agencies have the authority to conduct procurements in a manner that enables them to establish or maintain sources of supply for a particular item in the interest of national defense. These agencies need not conduct full and open competition when the procurement is for industrial mobilization purposes; they may use other than competitive procedures when it is necessary to award the contract to a particular source or sources. Because DOD is responsible for developing an effective industrial preparedness program, it must ascertain which producers should be included in the mobilization base. Accordingly, the decision on how many producers of a particular item must be kept in active production is a judgment that generally must be left to the discretion of the military agencies.

The Comptroller General's decision also stated that, because the normal concern of maximizing competition is secondary to the needs of industrial mobilization, GAO would question such a decision only if the evidence convincingly demonstrates that the agency has abused its discretion.

On the basis of our review, we find no evidence that DPSC abused its discretion in selecting an acquisition strategy that excluded Winfield and other current contractors from competing.

Procurement Deferred

On March 3, 1990, DLA put the proposed procurement on hold until both current and mobilization suit requirements were reconfirmed by commands that need them. The reasons DLA gave for reconfirming the requirements were that the threat to U.S. forces has been reduced as a

¹Proper International, Inc. (B-229888; B-229889, Mar. 22, 1988).

result of recent international events and that available funds have been substantially reduced.

Scope and Methodology

To assess DPSC's rationale for restricting competition for the procurement of chemical protective suits, as set forth in its Justification for Other Than Full and Open Competition document, we reviewed the basis for the mobilization requirements for the suit in Industrial Preparedness Planning (mobilization) records. We also discussed requirements with DPSC Industrial Preparedness Planning officials, DPSC supply management officials, and U.S. Army Support Activity officials in Philadelphia, Pennsylvania (the Army accounts for about 88 percent of the requirements).

In addition, we (1) reviewed DPSC's and the federal government's procurement policies and procedures that apply to restricting competition and Comptroller General Decisions concerning the restriction of procurements to ensure the ability to fill mobilization requirements, (2) discussed the reasons for the restriction with appropriate DPSC and DLA officials, and (3) reviewed contracts awarded for the suit since 1985 and documents about contractor performance on those contracts, including the 1986 and 1989 contracts awarded to Winfield Manufacturing Company, Inc., and DPSC's basis for terminating both contracts.

Our review was performed from November 1989 through January 1990 in accordance with generally accepted government auditing standards. As requested, we did not obtain official agency comments on this report, but we discussed our findings with Army, DLA, and DOD officials. Their views are included in the report where appropriate.

Copies of this report are being sent to the Secretaries of Defense and the Army and will be sent to other interested parties upon request.

Please contact me at (202) 275-4141 if you or your staff have any questions concerning this report. Major contributors to this report are listed in appendix I.

Sincerely yours,

A handwritten signature in black ink that reads "Richard Davis". The signature is written in a cursive, flowing style.

Richard Davis
Director, Army Issues

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