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DECISION



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

FILE: B-201953

DATE: July 15, 1981

MATTER OF: Aerospace Research Associates, Inc.

DIGEST:

1. Weight of evidence supports conclusion that sole-source determination exceeds justifiable urgent needs. Sole-source purchase of more helicopter seats than reasonably justified amounts to extension of sole-source award beyond scope of justification. Agency should reevaluate sole-source determination in light of present situation to limit purchase to number of seats reasonably required to be purchased sole-source and commit balance to ongoing competitive procurement.
2. Where procuring agency possesses information indicating that second potential supplier may well be able to meet agency's needs, it is incumbent on agency to investigate further prior to issuing sole-source contract, if time permits.

Aerospace Research Associates, Inc. (ARA), has filed a protest against the award of a sole-source contract to Simula, Inc., by the United States Army Research and Development Command (AVRADCOM) for the purchase of crashworthy armored crew seats (CWACS) to support part of the fifth year (1982) production of Blackhawk helicopters manufactured by the Sikorsky Aircraft Company. We find the protest to have merit.

The CWACS is essentially an armored seat equipped with restraining and shock absorbing devices intended to provide ballistic protection and to reduce the likelihood of occupant injury in a crash. In June 1980 the Army decided to purchase the seats directly and supply them to Sikorsky as Government-furnished equipment for the fifth and subsequent years of Blackhawk production. Simula, a small business, has been a principal subcontractor for past production of Blackhawk CWACS.

[Protest of Army Award of Sole-Source Contract]

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ARA, also a small business, developed its seat under a Government contract to develop a standard joint Army/Navy CWACS without reference to any particular aircraft. In 1978 this program was extended to include reconfiguration of the ARA seat for installation in the Blackhawk. The ARA and Simula seats differ technically in approach to shock absorption and in relative degrees of ballistic protection.

On January 2, 1981, AVRADCOM issued two solicitations for the purchase of a total of 163 CWACS to support the fifth year production of Blackhawk helicopters. The first was a sole-source request for proposals (RFP) to Simula for 98 seats built to the original Sikorsky specification. This quantity is sufficient to support about 7 months' Blackhawk production, or slightly more than the first half of the fifth year production. The RFP contemplated delivery beginning in January 1982 and extending through August 1982. The second solicitation is a request for technical proposals initiating a two-step advertised procurement for 65 CWACS to support the balance of the fifth year Blackhawk production with an option for a second year quantity of more than 150 seats. This procurement uses a performance specification explicitly designed by AVRADCOM in October 1980 to accept either the Simula or ARA seat. This solicitation requires deliveries to commence in April 1982 and to build to 14 seats per month by December 1982 with that rate to be maintained through the second (option) year. Qualification, or formal approval of the contractor's seat for use in the Blackhawk, is to be accomplished through first article testing.

The sole-source contract was awarded to Simula while ARA's protest was pending. The contracting officer's request for approval to make award during the pendency of the protest indicates that seven seats have been shifted from the RFP to the yet-to-be-awarded competitive procurement.

ARA contends that the sole-source to Simula was improper because ARA is capable of producing the entire fifth year requirement of CWACS under the competitive procurement. Alternatively, ARA argues that even if a sole-source was necessary, the justification does not

cover a full 7 months' production and the quantities of seats should therefore be realigned between the two solicitations. We agree with ARA that AVRADCOM has not justified the total quantity of seats assigned to the sole-source procurement.

Because of the requirement for maximum practical competition, agency decisions to procure sole-source are subject to close scrutiny and must be adequately justified. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. Noncompetitive awards may be made where only one firm can reasonably be expected to satisfy the Government's minimum needs within the required time and without undue technical risk. Fermont Division, Dynamics Corporation of America, B-198197, September 9, 1980, 80-2 CPD 184; Hughes Aircraft Company, 53 Comp. Gen. 670 (1974), 74-1 CPD 137. In Apex International Management Services, Inc., B-200008, January 16, 1981, 81-1 CPD 24, we defined the test of reasonableness as whether the decision reflects the reasoned judgement of the contracting officer based on an evaluation of the evidence reasonably available at the time the decision is made. We have consistently been critical of sole-source decisions which did not reflect reasonable efforts to obtain the information necessary to support a decision. See Algonquin Parts, Inc., B-198464, April 9, 1981, 81-1 CPD 270; Las Vegas Communications, Inc., B-195966, July 22, 1980, 80-2 CPD 57, aff'd B-195966.2, October 28, 1980, 80-2 CPD 323; Computer Election Systems, Inc., B-195595, December 18, 1979, 79-2 CPD 413; cf. Memorex Corporation, 57 Comp. Gen. 865 (1978), 78-2 CPD 236. We find these ingredients to be lacking in this case.

To the extent relevant here, the rationale of the sole-source determination, dated December 31, 1980, is as follows:

(1) The first seats must be delivered by January 1982. Deliveries will have to be at the rate of about 14 seats per month if Blackhawk production is not to be disrupted.

(2) The change from the original manufacturer's specification to the Army's new performance specification may require some requalification and/or design.

"One source, Simula, may desire to redesign their seat and will need additional time to transfer from their existing seat to a new one. The other source, ARA, is not in production now for the Blackhawk aircraft, as is Simula, and will require additional testing [to] be performed to insure that the seat will meet all Army requirements."

(3) The competitive procurement may require as much as 7 months to make award. The Government's interest can best be protected by purchasing a quantity of seats sole-source to minimize the risk of a shortage of seats available to support production of the Blackhawks.

(4) The Blackhawk project manager's office has decided that 98 seats (now 91 seats) is an appropriate number.

The quantity determination is explained in part by an analysis utilizing a "best case-worst case" approach to estimate the effect on Blackhawk production of a fully competitive vs. mixed sole-source/competitive procurement of seats in 1982. This analysis suggests that a "worst-case" fully competitive procurement would result in the initial deliveries being 7 months late, or a 98-seat shortfall (7 months x 14 seats/month). A full 12 of the total 19 months covered by the "worst-case" procurement is devoted to postaward first article testing (8 months) and additional production time (4 months) until delivery; 7 months is required for contract award. The lengthy first article test and production times are attributable in part to the supposition that both ARA and Simula would redesign their seats.

After reviewing the information underlying this sole-source determination, we find that it neither accurately reflects the situation as it existed at the time of the determination nor persuades us of the reasonable expectation that only one offeror could satisfy AVRADCOM's requirements without undue technical risk and within the required time. For ease of discussion, we will break the three-pronged sole-source justification test into its component parts.

1. Only one source: We think it readily apparent that AVRADCOM was aware of at least two potential CWACS suppliers.

2. Can satisfy the Government's minimum needs without undue technical risk: AVRADCOM is using two separate specifications for these two procurements: The sole-source RFP carried the original manufacturer's specification; the competitive procurement uses a specification developed by AVRADCOM in October 1980 specifically to fit either the Simula or ARA seat, as we noted above. Since we must presume that the performance specification reflects the Government's minimum needs, we must also presume that either seat can fulfill those needs.

The only question here, then, is whether the satisfaction of these needs by other than sole-source would involve undue technical risks.

With regard to the ARA seat, we note that an October 1980 report by the United States Army Aviation Development Test Activity on 2 months of user flight tests of ARA seats installed in Blackhawk helicopters states:

"Considering results of this test and findings of crashworthiness and ballistic testing, the [ARA] seat is an acceptable alternative to the current seat for use in the [Blackhawk] helicopter."

In a memorandum dated November 19, 1980, an AVRADCOM committee appointed to resolve a dispute concerning the relative merits of the two seats and to arrive at a consensus on how to approach the procurement reported that:

"Neither the Norton/Simula seat nor the ARA seat is inherently superior, and, therefore, sole source is not supportable."

The ARA seat is in use on, and absent evidence to the contrary, we presume qualified for, other aircraft. A preaward survey of ARA conducted in

March 1981 incident to the competitive procurement advises that ARA presently has three Army contracts for items similar to these seats and that no deficiency reports had been issued at the time of the survey. We note further that both seats have already been extensively tested and that neither seat is expected to repeat the full range of tests necessary for first article qualification.

We are persuaded that neither manufacturer presents any undue technical risks. Both firms are experienced producers and both firms are currently in production of CWACS, although ARA admittedly is producing seats for aircraft other than the Blackhawk. Similarly, both firms are familiar with the Blackhawk--Simula through its long association with the Blackhawk and ARA by virtue of its flight tests and recent qualification efforts. On the record, we find little, if any, basis on which we might distinguish between these two producers in terms of risk to the program.

(3) Within the required time (January 1982 through August 1982): On September 19, 1980, ARA proposed a schedule in a letter to AVRADCOM which would have required only 7 months from the award of a "First Article Contract" until ARA delivered an initial quantity of seats sufficient to support Blackhawk manufacture and moved into full production at a rate of 16-20 seats per month; this schedule contemplated the completion of first article testing in 3 months. ARA's preaward survey, to which we referred above, stated that ARA was currently producing similar seats for the Boeing Company at a rate of 20 seats per month and indicated that in "a cursory review of * * * sub-contracts completed, it was noted that the purchase orders were completed 30 days prior to required delivery date." This report also incorporates detailed production plans which reflect a capability equal to or better than that described in ARA's September 19 letter which preaward survey officials considered "realistic and acceptable."

Simula, on the other hand, contacted AVRADCOM personnel on several occasions during November-December 1980 concerning these procurements. Simula eventually

supported the mixed sole-source/competitive procurement on December 18-19 with a recommendation that the sole-source quantity cover 6 months' production, or 96 seats, which would provide Simula time to redesign its seat. Simula stated that its seat could not be cost-competitive without a redesign and that, due to long-leadtime items, this effort would result in deliveries not taking place until July 1982, 6 months (or 96 seats) after the required date for initial deliveries.

On December 30, 1980, AVRADCOM's Chief of the Industrial Management and Production Division recommended a competitive quantity of 118 seats and a sole-source of 39 seats. In a January 2, 1981, solicitation review board meeting which approved the IFB and RFP, he stated that both ARA and Simula are low-risk producers and that a shortfall (and hence--sole-source) of no more than 30 seats can be justified. In a memorandum concerning this meeting he also states:

"Although the Project Office desires protection against a potential delivery delay by the competitive contractor, the sole-source RFP, as presented to the review board, provides more quantities than this function can justify in the way of production line protection."

AVRADCOM's Small and Disadvantaged Business Office also consistently opposed the proposal to sole-source a large number of seats.

We agree with both the Chief of the Industrial Management and Production Division and AVRADCOM's Small and Disadvantaged Business Office that the record here does not support a sole-source procurement covering 7 months. We generally give considerable weight to estimates by contracting agencies of the technical and delivery risks associated with the introduction of competition into a sole-source situation, particularly where an agency is seeking to satisfy immediate needs. See Applied Devices Corporation, B-187902, May 24, 1977, 77-1 CPD 362. Here, however, we find the weight of the evidence supporting the conclusion

that the sole-source determination exceeds AVRADCOM's justifiable urgent and compelling needs. In this respect, we find particularly persuasive the Government's own virtual verification in ARA's preaward survey of the production capability expressed in ARA's September 19, 1980, letter which was known to AVRADCOM and which conflicts directly with the sole-source justification. There is no evidence that AVRADCOM made any attempt to verify the information presented in ARA's September 19 letter prior to issuance of the sole-source RFP to Simula.

Where a procuring agency is in possession of information which clearly indicates that a second supplier may well be capable of fulfilling the agency's requirements, we think it incumbent upon the agency to investigate further prior to awarding a sole-source contract, if time permits. See Algonquin Parts, Inc., supra. We think that in the 3-1/2 months between ARA's letter of September 19, 1980, and the issuance of the two solicitations on January 2, 1981, AVRADCOM could and should have investigated ARA's apparent ability to satisfy its needs; we consider the failure to do so fatal to the justification.

We reach this result mindful that there is reasonable justification in the present record for the sole-source purchase of at least some seats and we think it would be unfair to criticize AVRADCOM to the extent that this justification exists. We note, for instance, that if we accept AVRADCOM's estimate of approximately 7 months to award the competitive contract, which now seems likely, and also accept ARA's September 19 proposed schedule without question or minimal allowance for optimism, there is still a shortage of about 30 seats which must be procured sole-source. However, we believe that to approve AVRADCOM's purchase of the entire quantity of 91 seats sole-source would be to sanction, as the protester termed it, "the extension of a sole-source award beyond the scope of its justification."

The protest is sustained.

We recognize that additional factors, such as possible termination costs and potential delays in the competitive procurement attributable to the time

needed to reconsider the sole-source justification and/or issue and respond to amendments, which were not present at the time of the original sole-source determination will necessarily lead to a different result now than should have been reached in the initial determination. These additional considerations may, in fact, now preclude meaningful relief. Nonetheless, we recommend that the Army reevaluate its sole-source determination in light of the current situation with the objective of limiting the sole-source purchase of seats to the number reasonably required to support Blackhawk production and commit the balance to the competitive procurement.



Acting Comptroller General
of the United States