

DECISION

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

26164

FILE: B-211403**DATE:** September 2, 1983**MATTER OF:** ITT Electro-Optical Products Division**DIGEST:**

1. Decision to sole-source procurements of high performance night vision goggles because of urgent need based on prior testing which determined that only one manufacturer had commercially available off-the-shelf product which could meet the Government's requirements is not objectionable.
2. With regard to the acquisition of critical human survival items, Government agencies may legitimately specify items with superior performance characteristics allowing for as much reliability, effectiveness and safety in performing the function for which they are designed as possible.

ITT Electro-Optical Products Division (ITT) protests the sole-source procurement by the United States Army Electronics Research and Development Command under solicitation No. DAAK20-83-R-0307 for high performance night vision goggles manufactured by Litton Industries (Litton) for delivery within 60 days.

We deny the protest.

The protester contends that it, as well as other manufacturers, is qualified to compete for the contract. ITT asserts it can easily incorporate another supplier's lense into the standard goggle, the AN/PVS-5A, which ITT manufactures as the ITT second generation model, and with a few simple component adjustments meet the Government's requirements and that no further research, development or testing would be necessary. In the alternative, ITT contends that the solicitation requirements are overly restrictive and that the minimum needs of the Government could be met by the standard goggle already produced by several manufacturers, including ITT.

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The Army reports that this acquisition was to satisfy an urgent need of helicopter pilots of the Army Joint Special Operation Command for goggles that are safe for use in performing their unique missions at low altitudes, including identifying targets and avoiding flying hazards in areas highly lighted during periods of darkness. Prior to the sole-source determination, the Army tested the three then currently available night vision systems, including ITT's model. The test results and other Army findings showed that the Litton M-909 goggles best satisfied the Government's minimum requirements because of the ability of the goggles to continue operating under highly lighted conditions. The Army found that the Litton model was the only goggle tested that did not "shut down" during testing. The Army states that a goggle's inability to function in all situations jeopardizes the pilots' lives and the mission. The Army notes that it has had helicopter crashes related to use of the AN/PVS-5A model, which was originally designed for ground forces, and is conducting a development program for a specific goggle designed for aviation use and that this purchase from Litton is, in essence, an interim buy to meet an immediate need.

The Army agrees that ITT and others may have the engineering capability to match the performance of Litton's goggles. The Army asserts, however, that the urgency of this procurement did not permit sufficient time for other manufacturers to upgrade their goggles to meet the Army performance needs, which were met by the Litton product, and to permit adequate testing before procurement.

Because of the requirement for maximum practical competition in the conduct of Government procurements, agency decisions to procure from a sole source must be adequately justified and are subject to close scrutiny. Such decisions, however, will be upheld if there is a reasonable, or rational, basis for them. Frequency Electronics, Inc., B-204483, April 5, 1982, 82-1 CPD 303.

We have held that a sole-source award can be justified on the grounds that time is of the essence and only the known tested source can meet the required timeframe in circumstances similar to this, involving a critical human survival item. See Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181;

BioMarine Industries; General Electric Company,
B-180211, August 5, 1974, 74-2 CPD 78.

In addition, we have recognized the appropriateness of an agency conducting, as was done here, preprocurement tests to determine whether existing products constitute the Government's minimum needs, or to develop items to meet those needs. See Maremont Corporation, supra. Cf. D. Moody and Co., Inc., Astronautics Corporation of America, 55 Comp. Gen. 1 (1975), 75-2 CPD 1, and cases cited therein, which recognize the propriety of prequalifying products through preprocurement testing to be listed on a qualified products list.

As indicated above, the Army based its decision to make a sole-source award on the urgency of the requirement and the fact that, based on the Army's test of currently available products, only Litton could meet its needs within the required time.

ITT does not refute the agency's urgency determination, but argues that it could provide the high performance goggles within the Army's time constraints and, upon finding that this procurement was to be issued, made an extended effort to demonstrate to the Army its qualifications. ITT essentially relies on our decision, Aerospace Research Associates, Inc., B-201953, July 15, 1981, 81-2 CPD 36, where we advised that when an agency has information which clearly indicates that a second source may be capable of filling its needs, it must investigate further before making a sole-source award, if time permits. However, in Aerospace, supra, the agency's own preaward survey indicated a second competitor had the capability to meet agency needs and other evidence refuted the urgency and compelling need for the quantity of the item under the sole source. No such factors or circumstances are present in this case.

Here, the Army had an urgent need for the night vision goggles and although ITT represented that it could have delivered a goggle that was comparable or exceeded Litton's product within the stated delivery time, the fact remains that Litton's product was an already commercially available, off-the-shelf item which the Army had evaluated and tested against other then currently available models and which the Army had concluded could be delivered in time to meet its

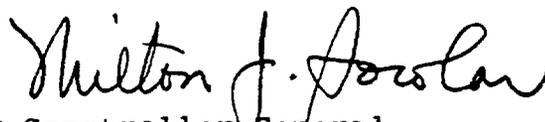
urgent need. On the other hand, ITT offered an alternate product, not commercially available, whose production was dependent on other suppliers for components to upgrade its existing model. The Army had not tested the modified product and could not be reasonably certain it would meet the Army's needs or that it could be delivered within the time constraints involved. Under these circumstances, the decision to award sole source to Litton was reasonable.

With regard to ITT's contention that the Government's minimum requirements under this solicitation are overly restrictive and that ITT's standard unmodified goggle would have satisfied agency needs, the agency has advised that Litton's high performance goggles are needed to minimize danger to helicopter pilots in addition to ensuring the success of flight missions.

We have recognized that agencies may specify items with superior performance characteristics allowing for as much reliability, effectiveness and safety as possible in performing the function for which they are designed, especially items critical to human survival. See Maremont Corporation, supra.

The well-being of the "user-activity's" pilots and the success of the missions are legitimate concerns of the Government. The technical requirements which ensure a higher level of safety are, therefore, reasonably related to the "user-activity's" needs. ITT has not shown this relationship to be unreasonable or that its product, as manufactured without modification, affords the same degree of safety.

Accordingly, we deny protest.



Acting Comptroller General
of the United States