

DOCUMENT RESUME

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[Review of a Contract for Mobile Radio Sets for the Army].
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Report to Rep. Gerry E. Studds; by Robert F. Keller, Deputy Comptroller General.

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Organization Concerned: Department of Defense; Department of the Army; E-Systems, Inc.

Congressional Relevance: Rep. Gerry E. Studds.

Authority: 54 Comp. Gen. 521.

A review of the contract for AN/PRC-77 mobile radio sets awarded by the Army to E-Systems, Inc., showed that, although the Army accepted a GAO recommendation that the option for additional radios in the basic contract with E-Systems not be exercised because of defects in the way the basic contract was awarded, the Army subsequently modified the contract several times, significantly increasing the number of radios procured. The additional radios added to the basic contract were for delivery under foreign military sales. For each of these sales, the foreign government had directed sole-source procurement from E-Systems. No U.S. Government financing or aid was directly or indirectly involved in any of these foreign sales.

Findings/Conclusions: The basic contract with E-Systems was modified nine times under Department of Defense regulations which provide that foreign governments may designate commercial available items to be procured as foreign military sales under certain circumstances. Under this provision, a foreign government can insist on procurement from a sole-source producer for reasons other than price. The sole source directives from the foreign governments to procure the radios from E-Systems were received both before and after award of the basic contract. The Army had the option of either modifying the existing contract or issuing a new sole-source contract to E-Systems. In several of the cases, the Army had provided the foreign countries with a list of potential suppliers, although in one instance it requested the foreign country to designate E-Systems as the sole-source producer for the radios in order to meet an urgent delivery schedule. (SC)

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

B-180247

September 12, 1977

The Honorable Gerry E. Studds
House of Representatives

Dear Mr. Studds:

In response to your March 31, 1977, letter, we reviewed a contract for AN/PRC-77 mobile radio sets awarded by the Army to E-Systems, Incorporated. On April 12, 1977, we met with a member of your office and agreed that our review would concentrate on the facts and circumstances surrounding the contract modifications that added additional quantities of radios to the contract.

Our review of the contract files and foreign military sales files was performed at the Army Electronics Command, Fort Monmouth, N.J. We received additional information from personnel of the Army Material Development and Readiness Command, Alexandria, Va., and the Army International Logistics Center, New Cumberland, Pa.

On December 26, 1974, we recommended in a bid protest decision (54 Comp. Gen. 521) that the option for additional radios in the basic contract with E-Systems not be exercised because of defects in the way the basic contract was awarded. Although the Army accepted our recommendation, it subsequently modified the contract which significantly increased the number of radios procured. The additional radios added to the basic contract were for delivery under foreign military sales. For each of these sales, the foreign governments directed sole-source procurements from E-Systems.

Although the Army has experienced serious shortcomings with its billing procedures for foreign military sales, it has received payment or is initiating billings for each of the sales which were delivered to the foreign governments. Details of our review follow.

On November 27, 1973, the Army Electronics Command issued Request for Proposal Number DAAB05-74-R-0362. The

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Army solicited proposals for 6,764 AN/PRC-77 radio sets and 226 RT-841 receiver-transmitters, with an option to purchase an additional 100 percent of the basic quantity.

Five companies responded to the solicitation. Two of the companies were declared ineligible for not fully responding to the Request. Of the three responsible bidders, Bristol Electronics Corporation submitted the lowest bid; E-Systems submitted the highest bid. Subsequently, the Request was amended several times; E-Systems offered the lowest price in the last round of proposals. On March 14, 1974, the Army awarded the contract to E-Systems.

On March 21, 1974, Bristol protested the award to our Office, claiming that E-Systems was not responsive to the Request. It contended that E-Systems' offer could not be accepted because its price for the option quantity was higher than the basic quantity, contrary to the terms of the Request which required the option quantity to be priced at or below the price of the basic quantity.

On July 11, 1974, we upheld the protest, concluding that the contract to E-Systems was improperly awarded, and recommended that negotiations be reopened for another round of best and final offers.

The Army, on September 8, 1974, requested us to reconsider our recommendation because termination of the E-Systems contract would have cost the Government an estimated \$1,671,306. Also it was alleged that effective competition could not be expected if negotiations were reopened.

On December 26, 1974, we withdrew our July 11, 1974, recommendation to reopen negotiations; however, we recommended that the option not be exercised.

The Army notified the Office on January 20, 1975, that the option would not be exercised; however, the contract was subsequently modified nine times, significantly increasing the quantity of radios produced under the contract. This was done under Department of Defense regulations which provide that foreign governments may designate commercially available items to be procured as foreign military sales under certain circumstances. Under this provision, a foreign government can insist on procurement from a sole-source producer for reasons other than price.

For each of the modifications to this contract, the contracting officer had received a sole-source directive from the foreign government to procure the radios from E-Systems. These sole-source directives were received both before and after award of the basic contract (see enclosure). Thus, the contracting officer had the option of either modifying the existing contract or issuing a new sole-source contract to E-Systems. Army officials stated the existing contract was modified for expediency.

A review of the contract files and Foreign Military Sales case files showed that there were nine contract modifications which increased the quantity of radios as a result of requests from six foreign governments. Ten foreign military sales were involved. In several of the cases, the Army provided the foreign countries with a list of potential suppliers, including Bristol, Cincinnati Electronics, Electrospace, and E-Systems. In one instance, however, the Army requested the foreign country to designate E-Systems as the sole-source producer for the radios. In this case there was an urgent requirement for the radios to meet the delivery schedule of vehicles which were to be equipped with the radios. The request for designation of E-Systems was not unique because the Army also requested sole-source designations for three other producers who were supplying items for the vehicles.

For three foreign military sales, two foreign governments and E-Systems signed memorandums of understanding to contract for the AN/PRC-77 radios. The memorandums of understanding contained essentially all of the provisions of the modifications. Modifications to the contract were subsequently issued by the Army under foreign military sales procedures.

Our recommendation of December 26, 1974, that the option not be exercised was intended to generate a competitive procurement for the quantities that would have been encompassed in the option. We were concerned that items properly the subject of competition, retain that character. It was not our intent to override otherwise legitimate foreign country designations of E-Systems as the sole-source of supply.

You requested that we determine whether any U.S. Government financing or aid was directly or indirectly involved

in the sales. We requested financial and payment records from the Army International Logistics Center, New Cumberland, Pa., and received records for 9 of the 10 sales. We were told that there were no records for one of the sales.

We reviewed the records and determined that in 5 of the 10 sales, payment for the radios had been received from the foreign governments. There was no indication in the records that there was any U.S. Government financing or aid involved either directly or indirectly in these five sales.

For four of the remaining five sales, the records did not indicate whether the Army received payment for the radios. After further inquiry, we were told that the Army billed a foreign government for one sale; however, for two other sales the foreign governments had not yet been billed. Additionally, the Army has suspended the shipment of radios under another sale due to the conflict in Lebanon. These radios are currently being held in an Army supply depot awaiting final disposition.

Army personnel stated that for the tenth sale there were no financial or payment records. We were told by Army personnel that there had been errors in their billing procedures. Additionally, they noted that the transfer of Army Electronics Command from Philadelphia, Pa., to Fort Monmouth, N.J., contributed to the Army's problems in the billing of foreign military sales.

Army personnel explained that a new billing system has been established and action taken to bill the foreign governments for all deliveries not billed. All bills should be reconciled by September 30, 1977, including the delivery for which no billing records were available.

On December 14, 1976, we issued a report to the Congress entitled "Millions of Dollars of Cost Incurred in Training Foreign Military Students Have Not Been Recovered," FGMSD-76-91. In this report, we noted problems in the Department of Defense's billing and collecting procedures for foreign military students' tuition. We plan to conduct additional reviews of the Department of Defense's financial management of foreign military sales of other items.

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We have obtained informal comments from the Army; they concurred with our findings.

Subsequent to your letter we received a similar request from Senators Bayh and Lugar, and Congressman Quayle. As arranged with your office, we are sending copies to them, other interested Congressmen, and the Secretaries of Defense and Army. Copies will be available to other interested parties upon request.

Sincerely yours,


DEPUTY Comptroller General
of the United States

Enclosure

QUANTITIES OF AN/PRC-77 PROCURED UNDER CONTRACTDAAB07-74-C-0173 AWARDED TO E-SYSTEMS

<u>Contract action</u>	<u>Date of sole-source authorization</u>	<u>Date of modification</u>	<u>Country</u>	<u>Foreign military sales case</u>	<u>Quantity purchased</u>	<u>Unit price</u>	<u>Dollar value</u>
Basic contract		3/74	Various	Various	a/5,464	b/\$528.00	\$2,884,992.00
Modifier number							
2	7/73	6/74	Spain	4UQE	245	861.00	210,945.00
4	12/74	12/74	Norway	UYR	3,035	815.00	2,473,525.00
6	1/75	4/75	Indonesia	UAC	1,500	943.46	1,415,190.00
7	8/74	4/75	Spain	5USI,5USW	904	898.16	811,936.64
9	5/75	6/75	Norway	UZP	390	855.75	333,742.50
10	4/75	6/75	Indonesia	UAD	130	c/1,606.75	208,877.50
12	10/74	9/75	Jordan	ULM	2,765	(d)	2,715,761.00
13	2/73	-	Lebanon	5UIE	284	858.16	255,077.44
16	2/73	10/75	Lebanon	UIE	200	889.22	197,844.00
	9/75	2/76	Saudi Arabia	3UEY,3UGG	400	c/1,688.00	675,200.00
					209	939.76	196,409.84
Total modifications increasing quantity					10,062		9,434,508.92
Miscellaneous modifications							452,510.38
Contract totals					15,526		11,832,011.30

a/This procurement was for 5,238 AN/PRC-77 radio sets and 226 RT-841 receiver-transmitters, each costing \$528.

b/This price did not include Government-furnished equipment worth \$105 per unit.

c/The procurement was for the AN/GRC-160 radio set of which the AN/PRC-77 was a component.

d/This was a coproduction agreement between E-Systems and the Government of Indonesia. The procurement supplied 15 RT-841 receiver transmitters and components parts and test equipment for 2,750 AN/PRC-77 radio sets.