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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Servo Corporation of America

**File:** B-246734

**Date:** March 31, 1992

Robert J. Guerra and Stephen A. Barre for the protester, Eric A. Lile, Esq., and Angela J. Consentino, Esq., Department of the Navy, for the agency, Aldo A. Benejam, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through the use of competitive procedures, the proposed sole-source award of a contract, under the authority of 10 U.S.C. § 2304(c)(1) (1988), to the only known qualified source is unobjectionable where the agency reasonably determined that only one source could supply the desired item within the critical time constraints of the procurement, which were not the result of lack of advance planning.

### DECISION

Servo Corporation of America protests the proposed sole-source award of a contract to Loral-Conic under request for proposals (RFP) No. N00163-92-R-0023, issued by the Naval Avionics Center, Department of the Navy, for 186 Loral-Conic model 551 flight termination receivers (FTR).<sup>1</sup> Servo contends that the RFP's allegedly restrictive delivery terms can be met by only Loral-Conic, and are the result of a lack of advance planning by the agency. Servo also argues that the agency incorrectly determined that Loral-Conic is a qualified source for the FTRs.

We deny the protest.

<sup>1</sup>The FTRs are solid state, FM, B-Band command receiver/decoders, provided as government-furnished equipment to be used on the AN/AQM-37C target currently provided by Beech Aircraft Corporation under a separate contract. The FTRs provide command outputs for the destruction of the target in the event a mission is aborted.

## BACKGROUND

On September 20, 1991, the Navy synopsisized an initial requirement in the Commerce Business Daily (CBD) for 300 FTRs to be delivered during the base year and for an option of up to 200 additional FTRs. The announcement required the FTR to comply with Naval Air Systems Command Drawing (NASCD) No. 1588AS103 Revision B (Rev. B). The agency states that at the time that CBD announcement was published, it considered three firms, including Loral-Conic and the protester, capable of providing the FTRs within the required delivery dates.

The requiring activity subsequently informed the contracting office that NASCD No. 1588AS103 Revision C (Rev. C) specifications for the FTRs became available and that all future purchases of the FTR should be made under the new Rev. C drawings. On October 17, 1991, the agency published a notice in the CBD modifying the September 20 CBD synopsis informing offerors that the FTRs were required to comply with the new NASCD No. 1588AS103 Rev. C, instead of Rev. B. The CBD announcement also informed sources that the procurement would be unrestricted; that delivery of first production items was extended from 180 days to 18 months after award; and that 3 option years were added to the base year calling for up to 240 FTRs each option year.

On November 6, the agency published a CBD announcement canceling the prior September 20 and October 17 CBD notices. The agency explains that although the Rev. B specifications for the FTRs were modified by Rev. C, it still needed a limited number of FTRs under the Rev. B drawings to meet its obligation under the Beech Aircraft contract. Consequently, on November 7, the agency synopsisized a notice of its intention to procure a "final buy" of 170 Loral-Conic Rev. B FTRs. The synopsis stated that the agency required first deliveries 90 days after award.<sup>2</sup>

On November 19, the agency prepared a justification and approval (J&A) for other than full and open competition for the Loral-Conic model 551 Rev. B FTRs. The J&A concluded that a sole-source award to Loral-Conic was justified under 10 U.S.C. § 2304(c)(1) (1988), which authorizes the use of other than competitive procedures when the items needed by

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<sup>2</sup>On November 14, the agency synopsisized a requirement in the CBD for 1,020 "Rev. C" FTRs as an unrestricted procurement. Servo protested to our Office on November 25, arguing that the RFP for "Rev. C" FTRs should be set aside for small businesses. The protester subsequently withdrew its protest, and we closed our file (B-246774) on January 14, 1992, without issuing a decision.

the agency are available from only one responsible source or a limited number of responsible sources, and no other product will satisfy the agency's needs.

On November 22, the agency issued RFP No. N00163-92-R-0023 calling for a total of 186 Loral-Conic Rev. B FTRs. The RFP required the FTRs to be delivered at the rate of 20 units per month, with the first 20 units to be delivered within 90 days after contract award. Servo filed this protest prior to the December 24 closing date for receipt of initial proposals. On December 20, Servo then submitted a proposal to the Navy providing for the delivery of the first 20 FTRs within 270 days after contract award, rather than within 90 days as required by the RFP. On January 6, 1992, the Navy rejected Servo's proposal because it took exception to the required delivery terms of the RFP.

#### PROTESTER'S CONTENTIONS

Servo primarily objects that the RFP's delivery terms are unreasonably short. Specifically, Servo alleges that it cannot meet the current schedule and that only a contractor currently producing the FTRs--i.e., Loral-Conic--is capable of meeting the 90-day delivery schedule for the first 20 units. Servo states that since the FTRs have been required by the Navy annually since the "inception of the AN/AQM-37C target program," the proposed sole-source award is not properly justified because it is the result of lack of advance planning on the part of the agency. In addition to challenging the delivery terms, Servo also objects to the agency's determination that Loral-Conic is a qualified source for the required FTRs.

#### DISCUSSION

Because the overriding mandate of the Competition in Contracting Act (CICA) is for "full and open competition" in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), we will closely scrutinize sole-source procurements under the exception to that mandate provided by 10 U.S.C. § 2304(c)(1). Eaton Corp., B-235603, Sept. 18, 1989, 89-2 CPD ¶ 238. A sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time, except where the noncompetitive situation arises from a lack of advance planning.<sup>3</sup> We will not object to a reasonably justified

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<sup>3</sup>CICA specifically provides that agencies may not justify the use of noncompetitive procedures on the basis of a lack of advance planning. 10 U.S.C. § 2304(f)(5); TeQcom, Inc., B-224664, Dec. 22, 1986, 86-2 CPD ¶ 700.

sole-source award. Astron, B-236922.2, May 2, 1990, 90-1 CPD ¶ 441; Turbo Mechanical, Inc., B-231807, Sept. 29, 1988, 88-2 CPD ¶ 299. Based upon our review of the record, we find that the Navy has a reasonable basis for the award to Loral-Conic on a sole-source basis.

#### Delivery Schedule

In justifying the contemplated sole-source award, the J&A states that only Loral-Conic can provide the required FTRs within the required delivery schedule.<sup>4</sup> The J&A further states that the required FTRs will be a government-furnished part under Beech Aircraft's contract for that firm to install in the AN/AQM-37C targets. Under its contract, Beech Aircraft is required to deliver to the government approximately 185 targets at the rate of about 9 targets per month, complete with FTRs, beginning in August 1992.<sup>5</sup> Accordingly, the agency states that the RFP's delivery terms provide just enough lead time for the government to provide the FTRs to Beech Aircraft, and for that firm to install the FTRs and commence timely delivery of the targets.

Servo admits that it requires 9 months for initial production of the FTRs and the record shows that the agency is obligated to provide the FTRs to Beech Aircraft as government-furnished property under that firm's contract as early as June. Thus, we find the RFP's delivery schedule reasonable since the RFP's 90-day requirement for delivery of the initial FTRs will allow just enough time for the government to meet its contractual obligations with Beech Aircraft, and it therefore properly reflects the agency's minimum needs. See Microwave Radio Corp., B-227962, Sept. 21, 1987, 87-2 CPD ¶ 288 (the fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable where it properly reflects the agency's minimum needs).

Further, we find that the record does not support Servo's assertion that the proposed sole-source action results from the Navy's lack of advance planning. It was only after the

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<sup>4</sup>The J&A specifically states that this is a "last time buy" for the Rev. B FTRs and that at least 22 firms have expressed interest in responding to the unrestricted RFP for the Rev. C FTRs.

<sup>5</sup>To assure the safe destruction of the targets in the event a mission is aborted, each target is equipped with a prime and a back-up FTR, and the agency estimates that some FTRs are recoverable from the targets following a mission. Accordingly, the agency requires only 186 FTRs to be used in connection with the targets Beech Aircraft will deliver.

requiring activity informed the contracting office that the FTRs should be purchased under the new Rev. C specifications that the agency discontinued the procurement for the Rev. B FTRs as then synopsised in the September and October CBD announcements. Prior to that time, the agency considered that at least three firms, including the protester, could have provided the FTRs.

Even if the agency had continued its procurement of a limited quantity of Rev. B FTRs under the delivery schedule originally announced in the September 20 CBD notice (i.e. first FTRs delivered within 180 days after award), since the protester requires 9 months for initial delivery, Servo would not have been capable of supplying the FTRs within the time constraints of the original schedule. Thus, even assuming that the new, 90-day schedule requires delivery of the FTRs somewhat sooner than would have been required under the original schedule, Servo could not provide the FTRs under either delivery scheme.

During a telephone conference between the parties, and as reflected in Servo's comments on the agency report, Servo proposed that the agency split the award, allowing Loral-Conic to provide the initial FTRs within the required 90-day schedule and thereafter until one-half of the required FTRs have been delivered, and permit Servo to provide the remaining requirement during the last-half of the delivery schedule. Even assuming that the firm could become a qualified source for the Rev. B FTR, however, given that Servo requires 9 months from contract award to delivery of the FTRs, at a rate of 20 FTRs per month Loral-Conic would have substantially completed delivery of most of the FTRs required under the proposed contract (186) by the time Servo would be ready to deliver its FTRs.

#### Qualification Status of the FTRs

The J&A states that the Loral-Conic FTR is the only FTR that has been fully qualified to NASCD No. 1588AS103 Rev. B, and has been tested and certified for use by the Target Programs Range Safety Office (TPRSO). Servo disputes this statement essentially arguing that this is the first time the Navy will award a prime contract for the FTRs, and that the agency has not previously had an opportunity to qualify or test the Loral-Conic FTR.

Contrary to the protester's assertion that Loral-Conic is not a qualified source for the FTRs, the record contains voluminous documentation on the qualification tests on the Loral-Conic FTR. The agency provided our Office a complete package generated by Loral-Conic prior to Servo filing this protest, which contains a detailed explanation of all the test documentation, Loral-Conic's quality test plan and

procedures, and an extensive reliability predictor analysis for the FTR 551.<sup>6</sup> The record shows that prior to qualification testing, two Loral-Conic units were subjected to physical examination, environmental stress screening (ESS) and applicable acceptance test procedures (ATP), and that each unit successfully completed the tests.<sup>7</sup> In summary, the documentation package shows that the Loral-Conic FTR model 551 was built and qualified to the requirements of NASCD No. 1588AS103 Rev. B. Additionally, the J&A shows that TPRS0 considered the FTR 551 qualified and certified its use in the AN/AQM-37C program. We find no evidence in the record in support of Servo's assertion that Loral-Conic is not a qualified source.

#### CONCLUSION

We find that the record adequately supports the sole-source award to Loral-Conic for the limited quantity of FTRs involved here. Servo has provided no evidence that it can furnish fully tested and qualified operational Rev. B FTRs within the agency's reasonable delivery schedule--in fact, Servo states that it requires 9 months to provide a fully tested and qualified FTR. We therefore find reasonable the agency's determination that Loral-Conic is the only qualified source that can meet its requirements and that award to Loral-Conic would limit the possible unacceptable delays and costs to the government that might otherwise result from award to a firm that cannot propose a fully

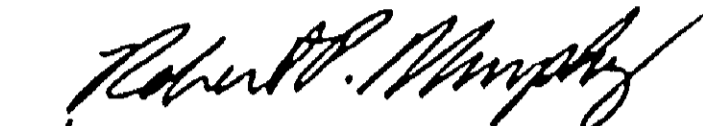
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<sup>6</sup>This information was not provided to the protester since it contains privileged information, the release of which would result in a competitive advantage. See 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(d)(4)). Due to the nature of that information, it is only briefly discussed here in general terms as relevant to Servo's allegation that Loral-Conic is not a qualified source.

<sup>7</sup>Both ESS and ATP tests were conducted using Loral-Conic ATP No. 11000911. Briefly, ESS testing consisted of baseline electrical tests, screen vibration, and temperature cycling. Following ESS testing, the units were subjected to further tests consisting of acceptance "vibe tests" and extreme temperature testing.

tested and qualified FTR within the time available. See, e.g., Kollsman, A Div. of Sequa Corp.; Applied Data Tech., Inc., B-243113; B-243113.2, July 3, 1991, 91-2 CPD ¶ 18. Consequently, we find unobjectionable the proposed sole-source award to Loral-Conic.

The protest is denied.

  
for James F. Hinchman  
General Counsel