



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

B-176919 (1)

April 16, 1973

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Mr. Charles Hicken  
Attorney at Law  
470 Totten Pond Road  
Waltham, Massachusetts 02154

Attention: Jerry Cohen, Esq.

Gentlemen:

Reference is made to your letter of January 17, 1973, and prior correspondence, protesting on behalf of the Norton Company, the sole-source award of a contract No. F33657-72-C-0947, to The Carborundum Company, under request for proposals No. F33657-72-R-0947, issued by the Gunship Program Office, Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio.

Negotiations pertaining to the contract were completed on June 16, 1972, and award was made on August 7, 1972. The contract was for a quantity of ceramic armor panels and ballistic curtains to be used in modifying C-130 aircraft to an AC-130E aircraft gunship configuration. A Carborundum representative advised at a conference held in our Office on March 9, 1973, that the contract has been completed. The contract was negotiated under 10 U.S.C. 2304(a)(2), which authorizes the use of negotiation procedures in the case of public exigency, and a class determination and findings signed by the Assistant Secretary of the Air Force (Installations & Logistics).

The procurement was a part of the AC-130E gunship PAVE SPECTRE production program which had a DOD precedence rating of 1-3, force activity designator of 1 and a DX industrial priority under DSS regulation 1. The purchase request involved here indicated that the procurement was to be sole-source from The Carborundum Company. The sole-source justification in the purchase request stated:

This procurement provides for the acquisition of equipment to be used in modifying aircraft into PAVE SPECTRE configuration on an expedited basis. Carborundum is the only contractor having qualified engineering background

[Sole Source Contract Award Protest]

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on these items being procured. They are the only known source qualified to meet the installation and deployment schedules set forth in Hq USAF directed program.

The substance of the protest is that there were competitive ceramic armor manufacturers, including Horton, which make the same item. You contended that the procurement was awarded contrary to the provisions of 10 U.S.C. 2304(g) which provide:

In all negotiated procurements in excess of \$2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals, \* \* \* shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, \* \* \*.  
(Emphasis added.)

However, competition is required only where time of delivery will permit. B-172542, July 2, 1971, and B-174968, December 7, 1972.

In the instant case, the contracting officer justified the sole-source procurement basis as follows:

The buying officer is aware that public exigency does not remove the requirement to obtain competition if possible. However, by the time program direction was received there was no alternative but to contract on a sole source basis. Hq USAF message 121430Z Apr 72 (S) requested Budgetary estimates for several different quantities of aircraft and established November 1972 as the deployment date for the modified aircraft. As a result of this message, the Gunship Program Office submitted an acquisition plan on 18 April 1972 which stated that to meet the required deployment date program approval would be required not later than 1 May 1972. Program direction was not received until 31 May 1972 through Hq USAF message 312132Z May 72 (S). This message directed a planning conference be held at Aeronautical Systems Division to establish a detailed modification schedule. The delivery schedule established at the conference was 24 December 1972, 15 January 1973 and 30 January 1973 for each of the three aircraft, respectively. Procurement Authorization/Budget Authorization was not received until 26 June 1972

which necessitated that the aircraft delivery schedule be revised to 3 January 1973, 15 January 1973 and 30 January 1973, respectively. To meet the aircraft delivery schedule, the delivery schedule for armor was established as 15 August 1972, 29 August 1972 and 12 September 1972 per ship set respectively. As installation of the armor must commence before any other aircraft modification is possible, the delivery schedule for the armor is paramount in meeting the aircraft delivery dates. As the armor delivery schedule necessary to support the required aircraft delivery schedule only provided seventy-six days between program approval and the first delivery of armor, it is quite obvious that there was absolutely no procurement lead time available to process a competitive procurement.

Although use of the "public exigency" exception does not in and of itself cloak the contracting officer with authority to procure items on a noncompetitive basis, he is vested with a considerable amount of discretion to determine the amount of competition consistent with the exigency situation. See B-174026, February 8, 1972; B-172542, July 2, 1971. Furthermore, it has been the consistent policy of our Office not to question the contracting officer's decision to make a sole-source award unless it is clear from the written record that he acted in an arbitrary or capricious manner in abuse of that discretion. B-174026, February 8, 1972; B-172542, July 2, 1971; B-166579, July 18, 1969; 44 Comp. Gen. 590 (1965).

In the instant case, the record establishes that the contracting officer conducted negotiations only with Carborundum because he believed that there was not sufficient lead time to conduct the procurement on a competitive basis. We are unable to conclude that the contracting officer acted arbitrarily or capriciously in awarding the contract to Carborundum on a sole-source basis. Since we are unable to so conclude, we see no legal basis upon which we may object to the administrative determination in this matter. B-158924, October 5, 1966.

However, we note that the Air Force has advised that while the subject contract contains an option for additional sets of armor, full consideration will be given to competitive procurement in preference to exercising the option should additional requirements arise. In view of the fact that you have indicated that Horton can deliver armor as quickly as any other manufacturer since it has a continuously operating armor

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production group and can furnish a quotation within a matter of days after being requested, we are by a separate letter recommending that the Secretary of the Air Force take steps to assure that competition will be fostered in satisfying future requirements.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General  
of the United States

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