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REPORT BY THE U.S.

General Accounting Office

Army Justification For Awarding A Sole Source Contract For Automated Calibration Equipment

At DOD's direction, the Army awarded a sole source contract to Julie Research Laboratories, Inc. (JRL) in May 1982 for six units of automated calibration equipment costing about \$800,000. The award had been preceded by considerable controversy, with media coverage and congressional hearings, on JRL's efforts to obtain an Army contract. The Army cited as justification for the award 10 U.S.C. 2304(a)(16) which authorizes contracts if a company is vital to the mobilization base and in danger of going out of business without the contract.

GAO questions the contract award since the Army had a requirement for only one system for test purposes and recommends that further procurement of automated calibration equipment, other than those needed for test purposes, be delayed until the Army determines its requirements.



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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-202652

The Honorable Slade Gorton
United States Senate

The Honorable Joel Pritchard
House of Representatives

The Honorable Al Swift
House of Representatives

Mr. Denny Miller
Administrative Assistant
Office of the late Senator Henry M. Jackson
United States Senate

Your letter of June 1, 1982, questioned the legality and propriety of the Army's sole source contract to Julie Research Laboratories, Inc. (JRL), for six units of JRL's LOCOST 106 calibration system. You requested that we evaluate this procurement and the test and evaluation process that will be used by the Army. You also asked us to respond to 10 specific questions. In addition, the late Senator Jackson's letter of October 18, 1982, asked that we address other specific questions related to the appropriateness and necessity of the contract and the procurement procedure used. Responses to both sets of questions are provided in enclosure 1.

The Army justified the sole source award on the grounds that JRL was in a precarious financial condition and that issuance of an immediate order was the only way to maintain JRL as a source for the LOCOST 106 calibration system.

The Department of Defense (DOD) and the Army have legal authority to contract sole source under 10 U.S.C. 2304(a)(16). However, we believe the sole source award to JRL was questionable because (1) DOD and the Army did not assure themselves that JRL would have ceased producing the LOCOST 106 calibration equipment without this contract and (2) the Army had a requirement for only one for test purposes rather than the six units covered by the contract. Consequently, a valid basis did not exist to support awarding the sole source contract for quantities of equipment in excess of test requirements. We are recommending that the Secretary of the Army be directed to delay further procurements of automated calibration equipment, other than those needed for test purposes, until the Army determines its requirements.

(942184)

LONG-STANDING JRL-ARMY CONTROVERSY

Widespread interest in the long-running efforts by JRL to sell automated calibration equipment to the Army appears to have been an important factor in the DOD/Army decision to award the sole source contract to JRL. This controversy has prompted media coverage and several congressional hearings, including a recent one in June 1983. In addition, since 1981, in response to congressional requests we have issued three reports¹ pertaining to JRL and the Army's use of automated calibration equipment.

ARMY CONTRACT WITH JRL

In testimony before the Senate Governmental Affairs Committee on November 5, 1981, the President of JRL testified that his firm was on the verge of going out of business. Also when protesting to us about another contract award, JRL claimed that if it was not awarded a sole source contract it might not continue in business.²

In December 1981, JRL submitted an unsolicited proposal to the Army to deliver six JRL LOCOST 106 automated calibration systems.³ After submitting the proposal JRL provided the Army

¹ GAO/PLRD-81-16, Apr. 3, 1981, Allegations of Improper Procurements by the Army Metrology and Calibration Center.

GAO/PLRD-82-37, Jan. 28, 1982, Potentially Wasteful Procurements of the Army Calibration and Support Equipment.

GAO/PLRD-83-35, Feb. 11, 1983, Army Actions to Resolve Issues Affecting Procurements of Automated Calibration Equipment.

² B-207745, JRL Inc., November 16, 1982, JRL Inc., protested the award under RFP DAAH01-82-R-A274 for fixed site meter calibration systems. JRL did not bid on the RFP. GAO dismissed the protest as untimely.

³ The LOCOST 106 is a family of components for calibrating electronic equipment. It may be configured into at least 5 different calibration systems.

with documents stating that key personnel needed to manufacture the LOCOST 106 were being lost. In response to JRL's proposal, the Under Secretary of the Army in January 1982 instructed the Army Materiel Development and Readiness Command (DARCOM) to award a sole source contract in accordance with the proposal. The Under Secretary, however, said his instruction was contingent on a determination by the Defense Contract Audit Agency (DCAA) that JRL would go bankrupt without the contract.

DCAA reviewed JRL's financial status and concluded in its report dated January 19, 1982, that JRL's financial position was improving and JRL was not in danger of going out of business. As a result of DCAA's review, DARCOM informed the Under Secretary of the Army that there was no justification for the contract award to JRL.

DOD officials did not agree with DCAA's determination that JRL's financial condition was improved because DCAA's report was qualified. Some financial data was not available during DCAA's review and its report did not specifically address JRL's ability to continue LOCOST 106 production. Defense officials in support of an award to JRL contended that if JRL stopped producing LOCOST 106 equipment because it was operating the product line at a loss, the impact on DOD would be the same as if the company went out of business since the LOCOST 106 would not be available.

Accordingly, on May 10, 1982, the Under Secretary of Defense directed the Army to immediately award a sole source contract to JRL for a limited number of LOCOST 106 calibration systems. He further directed the Army to prepare a detailed test and evaluation plan concurrent with the expedited procurement. The Under Secretary of Defense stated in his directive that while the capability of the LOCOST 106 was in excess of the Army's current requirements, retention of JRL within the mobilization base was necessary for national defense purposes. He said that the procurement could be conducted pursuant to 10 U.S.C. 2304(a)(16) or any other authority found appropriate.

In part, 10 U.S.C. 2304 (a)(16) provides that:

"(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. If use of such method is not feasible and practicable, the head of an agency, subject to the requirements for determinations and findings may negotiate such a purchase or contract, if --

(16) he determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency, or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved..."

The implementing procedures for this negotiation authority are set out in Defense Acquisition Regulation (DAR) Part 3-216. DAR 3-216 (exception 16) states that the authority of this section shall not be used unless and until the Secretary has determined the existence of the above conditions. DAR limits the use of this authority to "production requirements for essential military supplies and services" and requires that a determination and findings be prepared in conjunction with using exception 16 to justify the need for the product or service being procured.

On May 26, 1982, DARCOM awarded a sole source letter contract to JRL for six units of the LOCOST 106 under the authority of 10 U.S.C. 2304(a)(16). The letter contract was finalized on June 6, 1983, at a price of \$840,120, excluding options. In his determination and findings supporting the award, the Assistant Secretary of the Army stated that ". . . JRL represents it is now in a precarious financial situation and can only be maintained as a source of this equipment through issuance of an immediate order. . . . In view of the need to award a contract immediately, the only suitable approach is issuance of a letter contract to JRL for six units."

Basis for Contract Award
Not Adequately Supported

The DAR provides that to invoke the authority of 10 U.S.C. 2304(a)(16), the head of an agency must determine that a requirement exists for the military supplies. Notwithstanding the Army's justification and award of a contract, we found that a specific need for the JRL LOCOST 106 had not been identified. While the Army did have a need to test automated calibration equipment, it did not know precisely what kind, how many, or where the greatest need was because sufficient workload data had not been developed nor is it expected to be available until 1984.

In a previous report (PLRD-81-16, April 3, 1981), we recommended that the Army test automated calibration equipment to determine what meets laboratory and field requirements. DOD responded to this recommendation and has completed phase one of a buy one and test program; funds have been requested to support phase two, wherein the equipment selected as a result of this test will be procured. Under phase one DOD bought one system from each

of three contractors. (This is discussed in detail in our report GAO/PLRD-83-35, dated February 11, 1983.) According to DOD officials, JRL did not bid on the buy one and test program contract, but DOD in its attempt to comply with GAO's recommendation, directed the Army to buy a limited number of JRL's LOCOST 106 systems. In our 1981 report, we recommended that equipment be tested, not that it be obtained in excess of test requirements.

DOD said it was concerned about JRL's ability to develop and produce the LOCOST 106 equipment -- which JRL claimed to be unique -- and not just whether JRL was going totally out of business. DOD did not, however, verify JRL's claim that essential personnel needed to produce the LOCOST 106 were being lost. In addition, DOD did not evaluate the production line for the LOCOST 106 to determine the actions necessary to maintain LOCOST 106 equipment availability or production capability.

The Under Secretary of Defense directed the Army to prepare a detailed test and evaluation plan concurrent with the expedited procurement from JRL. However, the Army has not prepared a test and evaluation plan. The Army's procuring activity, DARCOM, said it has no intention to develop such a plan because it does not believe the directive was to be executed by them. DOD officials disagreed and said they would restate the directive to the Army.

AGENCY COMMENTS AND OUR EVALUATION

In a draft of this report, we concluded that the sole source award was questionable and recommended that DOD terminate the contract for all six systems if it were economically feasible to do so because (1) DOD did not have a documented need for the LOCOST 106 equipment, and (2) DOD did not verify that JRL would have stopped producing the LOCOST 106 without the contract. DOD reviewed the draft and strongly disagreed with our presentation and conclusions. DOD stated that it did have a need for the equipment for test purposes, moreover, it has a recognized need for some type of automated calibration equipment, although the specific type of equipment has not yet been determined. DOD also maintained its position that JRL was essential to the mobilization base and the contract was necessary to assure the availability of the LOCOST 106. However, DOD did not provide additional support for this position. DOD comments on the draft of this report are at enclosure II.

We do not challenge the authority to award a contract under 10 U.S.C. 2304(a)(16) and we have reexamined our position on whether the contract with JRL should be terminated. We do not question the test requirement. However, DOD procured only one test system from each of the bidders on the buy one and test program. Because of (1) the limited level of procurement from other contractors and (2) the questions surrounding JRL's financial

condition, we continue to believe that the Army did not adequately justify its need for more than one LOCOST 106 system.

CONCLUSIONS AND RECOMMENDATIONS

The Army's decision to award this sole source contract to JRL was heavily influenced by the controversy surrounding JRL's longstanding difficulties in selling automated calibration equipment to the Army. These difficulties are fully documented in our earlier reports. Were it not for these earlier problems, which generated intense public and congressional discussion of the Army's dealing with JRL, we doubt that such a procurement would ever have been seriously considered. While we understand the DOD/Army desire to resolve this controversy, DAR requires that there be a valid need for items purchased under 10 U.S.C. 2304(a)(16).

Because of the progress JRL has made in completing work under the contract, we are not recommending that the Secretary of Defense terminate the contract for the five systems that are excess to the Army's test requirement. Given the current status of the contract,⁴ such a recommendation simply seems impracticable.

We believe, however, that DOD's actions in this case emphasize the need to resolve the problems cited in our previous reports on Army automated calibration equipment. The buy one and test program was hastily developed and inadequately designed to address the Army's calibration needs (See GAO/PLRD-83-35). These shortcomings prompted JRL to stay out of the program and ultimately led to this sole source award. Moreover, the Army still does not know its automated calibration equipment operational requirements because workload data has not been compiled and analyzed--a problem we noted in our 1981 report. Until the overall question of the need for and usefulness of automated calibration equipment is resolved, the Army risks further piecemeal procurement of equipment. Therefore, consistent with our earlier reports, we recommend that the Secretary of Defense direct the Secretary of the Army to delay further procurement of automated calibration equipment, other than those needed for test purposes until the Army determines its requirements.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objectives were to examine the legality and propriety of the Army's sole source contract and to respond to the specific questions raised in the request. We reviewed records and documents in support of the sole source contract award and discussed


⁴ As of September 12, 1983, the contractor had delivered three of the six systems.

them with the contracting officer and Army and Department of Defense officials. DOD and JRL comments on a draft of our findings were considered in preparing this report.

We obtained the views of officials at Letterkenny Army Depot in Chambersburg, Pennsylvania; the Army Calibration Laboratory, White Sands Missile Range, New Mexico; the Department of the Army Materiel Development and Readiness Command; Army Secretarial level and below and Department of Defense Secretarial level and below, in the Washington, D.C. area. The contractor also provided data and information. The review was concerned only with the justification for the sole source award to JRL and did not include such issues as JRL's claims of savings through the Army's use of the LOCOST 106. Our review was performed in accordance with generally accepted government audit standards.

We are sending copies of this report to the Secretaries of Defense and the Army; the Director, Office of Management and Budget; the Administrator, Office of Federal Procurement Policy; the Chairmen, Senate and House Committees on Appropriations and on Armed Services, Senate Committee on Governmental Affairs, and House Committee on Government Operations. We will also make copies available to others upon request.

Sincerely yours,

for 
Frank C. Conahan
Director

ANSWERS TO SPECIFIC QUESTIONS

Q. 1. Did DOD survey the marketplace to determine whether other manufacturers have a capability to produce equipment purchased? Was consideration given to issuing a competitive solicitation as opposed to a noncompetitive sole source procurement in order to determine whether other manufacturers could supply equipment which has been contracted for? If not, why not and would a competitive solicitation have been more appropriate?

Ans. An informal survey of the manufacturers and suppliers was conducted according to memoranda records presented by DOD. DOD was uncertain of the number and capability of available calibration equipment manufacturers. DOD concluded that there were two or three contractors other than JRL which could develop the same type of calibration equipment if given time (approximately 9 to 18 months), but that a readily available source did not exist for equipment having all described capabilities of the LOCOST 106 system. This conclusion was reached in May 1982, prior to the contract award. However, DOD had requirements only for test equipment. DOD and Army officials stated that no consideration was given to competition because the Under Secretary of Defense directed that a sole source contract be awarded to JRL.

Q. 2. What is the quantity of items to be procured and how was the number determined? If the quantity is more than one, why is more than one needed for test and evaluation purposes? Was a purchase of more than one unit intended to provide financial assistance to JRL? If so what was the basis for determining that financial assistance was necessary?

Ans. Under the sole source contract to JRL, six units of LOCOST 106 are being procured. JRL submitted an unsolicited proposal for six units. DOD said that

"While the financial situation at JRL was a factor in the determination, there were other equally important factors. At the time of the award, JRL could not find a market for the LOCOST 106 equipment and was pressing the Army to buy it. Upon review, DOD found that the equipment was

unique i.e., no other automated calibration equipment then in production had the capacity, performance or accuracy stated by JRL. The GAO had previously stated that there is a need for automated calibration equipment, but the Army/DOD do not know precisely what kind, how many and where the greatest need is because all workload data has not been developed. The availability of additional data is projected for 1984."

DOD stated it was concerned about JRL's ability to develop and produce the LOCOST 106 calibration equipment since after submitting the proposal, JRL provided documentation that key personnel needed to manufacture the LOCOST 106 were being lost. According to DOD, if JRL stopped producing LOCOST 106 equipment because it was operating the product line at a loss, the impact on DOD would be the same as if the company went out of business since the LOCOST 106 would no longer be available. The determination and findings used to support the award state that "JRL represents it is now in a precarious financial situation and can only be maintained as a source of the equipment through issuance of an immediate order. . . . In view of the need to award a contract immediately, the only suitable approach is issuance of a letter contract for six units."

- Q. 3. Senator Jackson's letter to Under Secretary DeLauer refers to a proposal which the Army entertained in January 1982 to undertake a noncompetitive sole source procurement of six units of JRL calibration equipment. Like the current contract the January proposal was based on the authority of 10 U.S.C. 2304(a)(16) to maintain the industrial mobilization base; however, the January proposal was conditioned on a finding that JRL would not be financially viable without assistance. We have enclosed a copy of a Defense Contract Audit Agency audit of JRL's financial condition to determine whether the company was financially viable. The audit indicates that the financial condition of JRL improved between 1978 and 1980 and that it did not face bankruptcy in the immediate future. The Army did not enter into the contract as proposed in January. What was the reason the Army did not do so? Was it that JRL's financial condition as described in the DCAA audit did not justify the award of a sole source noncompetitive contract under 10 U.S.C. 2304(a)(16)? If so was this a correct interpretation of the statute? In

relying on 10 U.S.C. 2304(a)(16) as legal authority for the current contract was the Under Secretary's directive based on the financial condition of JRL? If so what additional information did the Department of Defense obtain about JRL's financial condition? If the Under Secretary's directive was based on other criteria applicable to 10 U.S.C. 2304(a)(16) what were they and do they represent a correct interpretation of the applicability of that statute to this contract?

Ans. In December 1981, JRL submitted a proposal to the Army to deliver six JRL LOCOST 106 automated calibration systems. In January 1982 the Under Secretary of the Army instructed DARCOM to award a sole source contract in accordance with the proposal. However, the Army Under Secretary conditioned the sole source contract award upon a determination by DCAA that the contractor would go bankrupt without the contract. (In testimony before the Senate Governmental Affairs Committee on November 5, 1981, the President of JRL testified that his firm was on the verge of going out of business.) Also in protesting to GAO (B-207745, Nov. 16, 1982) on another contract award, JRL claimed that if it was not awarded the sole source contract, it might not remain in existence.

After a review of JRL's financial status, DCAA concluded in its report dated January 19, 1982, that JRL's financial position was improving and JRL was not in danger of going out of business. As a result of DCAA's review, DARCOM informed the Under Secretary of the Army that there was no basis for the contract award to JRL.

DOD officials disagreed with the determination that JRL's financial condition was improved because DCAA's report did not state JRL's financial condition in regard to continuation of LOCOST 106 production, and certain data such as specific information on previous operations and projections, was not made available by JRL. In addition financial statements for calendar years 1976 through 1980 were not audited by a certified public accountant.

Defense officials noted that if JRL stopped producing LOCOST 106 equipment because it was operating the product line at a loss, the results would be the same as if the company went out of business since equipment availability or source of material would be affected.

Therefore, on May 10, 1982, the Under Secretary of Defense directed the Army to immediately award a sole source contract to JRL for a limited number of LOCOST 106 calibration systems. In his directive the Under Secretary of Defense recognized that the capability of the LOCOST 106 was in excess of the Army's current requirements, but considered retention of JRL within the mobilization base to be in furtherance of national security. He said that the procurement could be conducted pursuant to 10 U.S.C. 2304(a) (16) or any other authority found appropriate. On May 26, 1982, DARCOM awarded a sole source letter contract to JRL for six units of the LOCOST 106. The contract was awarded under the authority of 10 U.S.C. 2304(a)(16). While we do not question the Army's authority to use this section to award a sole source contract, we question the award of the contract for equipment in excess of test requirements because DOD did not verify whether the LOCOST 106 product line would have continued without the award of a contract.

- Q. 4. How does the purpose of this procurement and the information to be obtained from the test and evaluation of the equipment to be procured differ from the competitive evaluation of available calibration equipment and Army needs which is already underway at Redstone Arsenal? Did JRL submit a bid to participate in the competitive evaluation which Redstone is conducting? If not, why not?

Ans. The Redstone Arsenal procurement, or U.S. Army Missile Command procurement, is commonly referred to as the buy one and test contract. This solicitation (RFP DAAH01-82-R-A193) and the follow on procurement (DAAH01-82-A-A274) of three off-the-shelf fixed automated meter calibration systems was implemented to allow the Army to purchase and test one calibration system from each responsive contractor who met the specifications and requirements of the requests for proposal (RFP). DOD bought one system from each of the three contractors that responded to the RFP.

Under this contract the Army compared automated meter calibration systems, determined the best system to meet the Army's needs, and plans to purchase additional quantities of systems. Because test and evaluation plans had not been developed for the JRL equipment, we were unable to determine how such plans might compare with those followed by Redstone Arsenal for the buy one and test program. According to its January 1982 message to the Army, JRL declined to

bid on the Redstone Arsenal RFP because JRL "cannot in good conscience, cooperate with a procurement based on incorrect, inconsistent and misleading technical data and one which will prolong rather than eliminate the Army's grave calibration deficiencies." In addition, JRL's president stated that "JRL could have met the specification in the solicitation but did not make a proposal because they would not be competitive from a cost standpoint." JRL objected to the Army limiting the test to its minimal requirements since JRL's equipment was reportedly more sophisticated and capable of performing these minimal requirements as well as other calibrations. This additional capability caused JRL's equipment not to be cost competitive according to JRL's president. Although we do not question the performance capability of JRL's equipment, the need for such equipment has not been determined by the Army.

Q. 5. Is there any current or known potential Army or defense operational requirement or need which calls for a product with the performance characteristics of the equipment being procured? If so, who determined that requirement or need and the performance characteristics related thereto?

Ans. The Army and DOD agree that there is a need for automated calibration equipment of which LOCOST 106 is one type. In a prior report (PLRD-81-16, April 3, 1981) we recognized that the Army has requirements for automated calibration equipment, and recommended that automated calibration equipment be tested to determine the extent that it could replace manual equipment. In carrying out this recommendation, DOD has completed phase one of a buy one and test program; funds have been requested to support phase two, wherein the equipment selected as a result of this test will be procured. In commenting on a draft of this report, DOD confirmed the need for automated calibration equipment, but did not know precisely what kind, how many, or the area of greatest need. Such data is expected to be available in 1984 according to DOD.

Q. 6. Where will the systems be located? What was used as the basis for determining the location? Does the workload at any of the sites where the units will be located justify placement of a fixed location calibration system of this type?

Ans. On July 28, 1982, DARCOM selected six depots to receive the LOCOST 106. According to DARCOM, site selections were based on a review of items requiring periodic calibration, equipment density, and annual calibration workload.

The six selected Army Depots (AD) are:

Sacramento AD, California
Tobyhanna AD, Pennsylvania
Letterkenny AD, Pennsylvania
Red River AD, Texas
Anniston AD, Alabama
Tooele AD, Utah

The official at DARCOM who made the decision on placement told us that "the depots can use the systems but they are not needed."

Q. 7. Were economic analyses to determine the cost effectiveness of the equipment performed prior to entering into the contract? If so, what were the results? If not, why?

Ans. Cost effectiveness studies and comparative cost analysis of automated calibration equipment (to be procured sole source from JRL) were not conducted prior to entering into the sole source contract with JRL. DOD stated that there was never any intent of performing a cost effectiveness study before purchasing the equipment. DOD commented that the cost effectiveness demonstration should be part of the test and evaluation plan which was requested by the Under Secretary of Defense for Research and Engineering. Army officials stated that economic analysis on this equipment procurement was not necessary because it was a directed sole source procurement.

Q. 8. Is it usual DOD practice to acquire a piece of equipment for the purpose of test and evaluation prior to any current or known potential need being identified? What is the justification for acquiring in advance of any determination of need in this case? Will the Redstone Arsenal test of calibration equipment develop information which will identify current and potential defense needs for calibration capability?

Ans. The Army has previously purchased automated equipment for test and evaluation purposes. In prior cases a specific need may not have been established, but the purpose of the procurement was to determine if automation could be applied to the field Army calibration program. DOD concluded in May 1982, that JRL was not a designated contractor under the industrial preparedness program and the JRL equipment was not a planned industrial preparedness item. Also, DOD determined that two or three other automated calibration equipment manufacturers were capable of supplying equipment required to support combat needs if given approximately 9 to 18 months.

The justification cited by the Army for acquiring JRL LOCOST 106 systems was 10 U.S.C. 2304(a)(16) as directed by the Under Secretary of Defense, and by the Assistant Secretary of the Army in his determination and findings. DOD and Army officials stated that while it is not common for the Under Secretary of Defense to direct a sole source procurement, it is not unprecedented.

Test and evaluations resulting from the Redstone Arsenal procurement will not develop information to identify current and potential defense needs for calibration capability. The Redstone Arsenal procurement to test and evaluate automated meter calibration systems was intended to determine which of the available commercial off-the-shelf systems best satisfied Army calibration equipment requirements. (See GAO/PLRD 83-35). As discussed above, JRL did not submit a bid on this procurement.

Q. 9. What precipitated the Office of the Secretary of Defense (OSD) staff assessment? Did any official of the Department of the Army ask the OSD to initiate this assessment or make any other request of the OSD seeking advice concerning the legal authority to conduct this procurement or soliciting direction to the Army to undertake this procurement? Did any other Government official or other person suggest that this assessment and this procurement be undertaken?

Ans. After the January 1982 DCAA report and DARCOM's decision against awarding a sole source contract to JRL, the Army requested assistance from the Office of the Secretary of Defense in handling the JRL matter. As a consequence, the Under Secretary of Defense requested a review to determine the importance of JRL and the LOCOST 106 to the mobilization base.

The memorandum resulting from this mobilization base assessment stated that JRL has an in-place research and development/production capability for automated calibration equipment and that JRL was the only known readily available source for equipment having the described capabilities of the LOCOST 106 calibration system. However, DOD concluded that JRL was not a designated contractor under the industrial preparedness program and the JRL equipment was not a planned industrial preparedness item. Hence, DOD had not determined that JRL's equipment was needed. On May 10, 1982, the Under Secretary of Defense directed the Army to procure equipment from JRL using any authority deemed appropriate, including 10 U.S.C. 2304(a)(16).

Q. 10. Did the Department (Army) follow the customary and usual preaward audit procedures and precautions to determine that the contract price and costs were reasonable and was the procedure followed sufficient to provide such assurances?

Ans. In a January 1982 memorandum DARCOM's Director of Procurement and Production stated that "there was absolutely no cost data or evaluation of the JRL unsolicited proposal" of December 23, 1981. All normal test, measurement, and diagnostic equipment approval requirements were waived by DARCOM in awarding this sole source letter contract of May 26, 1982. DOD stated that no cost data was available except for catalog prices and in view of the secretarial directive the Army did not need to follow all normal approval requirements in awarding the letter contract. The letter contract was the most expeditious means of awarding the contract. According to the Defense Acquisition Regulation part 3-408, contract finalization of a letter contract should occur not later than the established target date and a limitation on use of a letter contract is that finalization shall be prior to 180 days from the date of the letter contract. However, in extreme cases extensions may be granted. Under the letter contract which was signed on May 26, 1982, JRL was authorized to incur costs up to \$425,000. The contract was finalized on June 6, 1983, at a price of \$840,120, with one option. Finalizing the contract was scheduled to be completed by September 16, 1982. Difficulty in finalizing the letter contract resulted from disagreement between JRL and the contracting officer on the contract price.

Q. 11. Determine whether the OSD and the Army were aware of the Air Force report when they assessed the potential importance of the LOCOST 106 to defense requirements. What consideration was given to the conclusions of the report and how do these conclusions bear on the findings which were made pursuant to 10 U.S.C. 2304(a)(16)? If the conclusions of the Air Force report are accurate and correct, then what is the basis for the finding that the availability of this equipment is essential "in the interest of national defense and industrial mobilization..."? If the Air Force report was not considered by the OSD and the Army in making its findings under 10 U.S.C. 2304(a)(16), why not?

Ans. The Air Force study dated August 29, 1981, assessing the JRL LOCOST 106 calibration equipment was performed at the request of the Secretary of the Army. The Air Force report concluded that "there may be certain fixed Army calibration laboratories where applicable calibration workload is sufficient to consider use of automated equipment." It also raised questions about the benefits from procurement of the JRL automated calibration system.

The Air Force furnished a copy of the report to the Secretary of the Army prior to the Army's attempt to contract with JRL. Officials at DARCOM informed us that the Air Force report was "closely held" and was not available to DARCOM. Some Army officials involved in calibration equipment procurement decisions said they were aware of the Air Force report but that they had not seen the report and did not know its contents.

DOD stated that "the conclusion of the Air Force report was based upon use of the JRL automated equipment in vans and that JRL claims (of performance capability and costs savings from using his equipment) were unjustified because JRL used an invalid economic cost model and made erroneous assumptions in its application." Department of Defense officials were aware of the Air Force report prior to the May 1982 Army contract with JRL. However, when asked, neither Defense nor Army officials offered an explanation for continuing the contract with JRL.



THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

RESEARCH AND
ENGINEERING

20 JUN 1983

Mr. Donald J. Horan
Director, Procurement, Logistics and
Readiness Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Horan:

This is the Department of Defense response to the General Accounting Office Draft Report, "Army Justification for Sole Source Contract Award for Automated Calibration Equipment," dated February 28, 1983 (GAO Code 942183) OSD Case No. 6199.

It is the Department's position that the draft report does not deal fairly with the issues in this case. In some respects, it does not present a complete factual background. Therefore, DoD cannot concur in the report the way it is currently prepared. Detailed comments to the draft report's findings, conclusions and recommendations are contained in the enclosure.

Sincerely,

James P. Wade, Jr.
Principal Deputy Under Secretary of
Defense for Research & Engineering

Enclosure
a/s

GAO DRAFT REPORT - DATED FEBRUARY 25, 1983
(GAO CODE NO. 942184) OSD CASE NO. 6199

"ARMY JUSTIFICATION FOR SOLE SOURCE CONTRACT AWARD
FOR AUTOMATED CALIBRATION EQUIPMENT"

DEPARTMENT OF DEFENSE COMMENTS

* * * * *

FINDINGS

FINDING A: Basis for May 1982 Sole Source Award for Julie Research Laboratories, Inc. (JRL). GAO found that the stated basis of the Army's May 1982 sole source letter contract to JRL for six units of the LOCOST 106 was 10 U.S.C. 2304(a)(16)--i.e., it was determined that JRL was in a precarious financial situation and could only be maintained as a source of this calibration equipment through issuance of an immediate order. GAO further found that although the Army had previously determined that JRL's financial position was improving and was not in danger of going out of business (contrary to the testimony of the President of JRL before the Senate Governmental Affairs Committee), the Under Secretary of Defense for Research and Engineering (USDRE) nonetheless had directed the Army to immediately award a sole source contract to JRL for a limited number of LOCOST 106 calibration systems. GAO also found that the Under Secretary directed that the Army prepare a detailed test and evaluation plan concurrent with the expedited procurement. (p. 2. Letter; pp. 1-2, Enclosure/GAO Draft Report)

DOD COMMENT: DoD nonconcur. The information on which this Finding is based is incomplete. Further, the statement that JRL's financial position was improving is misleading.

While the financial situation at JRL was a factor in the determination to direct a sole source procurement, other equally important factors were considered which are not reflected in this statement. At the time the procurement decision was made, JRL could not find a market for the LOCOST 106 equipment and was pressing the Army to buy it. Upon review, DOD found that the equipment was unique--i.e., no other automated calibration equipment then in production had the capacity, performance or accuracy claimed by JRL. Further, the GAO had previously stated there was a need for

automated calibration equipment. DoD agreed there was a need but did not know precisely what kind, how many nor the area of greatest need since work load data had not been developed. (Additional work load data is projected to be available in 1984).

DoD does not agree that it determined the JRL financial condition was improved. A review of the DCAA January 1982 report indicates the DCAA auditor could not accurately state JRL's financial condition in regard to continuation of the LOCOST 106 product line because certain data was unavailable at the time of the review. The report was qualified in many respects and the 2 values (i.e., an analytical tool to access a contractor's financial viability) were not available for 1981 and 1982. DoD was concerned about JRL's continued ability to develop and produce the LOCOST 106 calibration equipment, not whether JRL would cease to exist as a viable business entity. If JRL stopped producing LOCOST 106 equipment because it was operating the LOCOST 106 product line at a loss, the results would be the same as going out of business as far as availability of the specific equipment was concerned. The president of JRL personally holds about 48 patents on calibration equipment and it was therefore unlikely that it could be purchased from any other source without significant development/production/engineering effort.

DoD agrees that the USDRE directed the Army to prepare a detailed test and evaluation plan. The previous GAO report dated April 3, 1981 (Report No. PLRD-81-16/OSD Case No. 5683) stated that the Army has both laboratory and field requirements for automated calibration equipment. The report also recommended that the Secretary of Defense require that an independent hardware demonstration be conducted to establish the cost effectiveness and productivity increases that may be attributed to automating field Army calibration functions. The purpose of the test and evaluation plan was to permit DoD to carry out this recommendation, which would require buying a limited number of units for testing.

FINDING B: To Invoke 10 U.S.C. 2304(a), Certain Criteria Must Be Met. In reviewing 10 U.S.C. 2304(a)(16) and the implementing procedures for this negotiation authority as set out in Defense Acquisition Regulation (DAR) Part 3-216, GAO found that the exception 16 authority cannot be used unless the head of an agency determines there is a requirement or need (1) for the military supplies or services, (2) to maintain a contractor in the mobilization base, or (3) to prevent the loss of experienced contractor personnel. (p.2., Letter; pp. 3-4, Enclosure/GAO Draft Report).

DOD COMMENT: DOD concurs. In directing the sole source procurement, the Department complied fully with this law and

the related regulations. A 10 USC 2304(a)(16) exception can be used for the purpose of maintaining an active engineering, research, and development source to prevent the loss of that source to the national defense. At the time of the purchase, the JRL calibration equipment was determined to be unique. Furthermore, there still are no known sources for equipment that provides both the performance and accuracy of the JRL equipment. The Secretary of the Army (head of agency) determined that JRL should receive a contract under exception (a)(16) on the basis that retention of this source within the existing mobilization base appeared to be in furtherance of national security.

FINDING C: Questionable Need for the LOCOST 106. GAO found that both DoD and the Army recognized there was no current military requirement for the LOCOST 106 system. GAO cited (1) that the Under Secretary of Defense in his directive to the Army stated that LOCOST 106 was in excess of specific current Army operational requirements and (2) that the Army, in its determinations and findings, stated the LOCOST 106 was being procured even though the military and Army requirements had not been determined. (p. 3, Letter; p. 4, Enclosure/ GAO Draft Report)

DOD COMMENT: DoD nonconcur. This Finding is incomplete and the statement concerning requirements is not correct. The USDRE, in his direction to the Army, stated "while this capability may represent, in part, performance in excess of specific current Army operational requirements, retention of this resource within the existing industrial mobilization base appeared to be in furtherance of national security." The directive also pointed out that DoD knew of no other readily available source for equipment having all the described capability of the LOCOST 106 automated calibration system.

The GAO appears to be trying to establish a need beyond the research, development and production source which the USDRE was attempting to sustain. This need was much broader than simply a material requisition. In May 1982 the USDRE found that no other source was capable of delivering equipment having all of of the described capability of the LOCOST 106.

FINDING D: Questionable Need to Maintain JRL in the Mobilization Base. GAO found that in 1982 the DoD official responsible for coordinating DoD mobilization base requirements stated there were two or three contractors capable of supplying automated calibration equipment, that JRL was not a planned producer under the industrial mobilization base program and that automated calibration equipment was not a planned item. GAO also found that in January 1982, DCAA had concluded that

JRL was improving financially and in no danger of going out of business. Notwithstanding this information, GAO found that the Army's Determination and Finding Statement, supporting the May 1982 sole source contract, references the precarious financial situation of JRL and the need to maintain JRL in the mobilization base. (p. 3, Letter; pp. 4-5, Enclosure/GAO Draft Report)

DOD COMMENT: DoD nonconcur. While it is true that the DoD has published policies and procedures for use by the Military Services and Defense Agencies in determining those suppliers and manufacturers needed in the industrial preparedness program for the industrial mobilization base, this is not the only method for establishing critical mobilization base items and the contractors that are required to support national security. The Secretary of Defense or his designated representative, which in this case was the Under Secretary of Defense for Research and Engineering (who is also the Defense Acquisition Executive) can, through independent review, determine that specific items are essential for mobilization. Items can also be established as critical mobilization items through DoD sectors studies or as the result of specific contractual requirements placed in a contract with our contractors. Furthermore, the GAO statement does not accurately reflect what the DOD official had written or stated in May 1982, which was as follows:

"We determined the following:

- "a. There is a definite need to retain a domestic R/D/production capability for this equipment to support national defense needs.
- "b. Data available indicated there were only two or three contractors other than JRL which, if given the time (approximately 9 to 18 months), could develop the types of items currently obtainable from JRL. Required development funding would have to be provided by DoD.
- "c. JRL is not a planned producer under our Industrial Preparedness Program and the equipment is not a planned item.
- "d. JRL is considered a key part of our technology base for calibration and measurement equipment required to support our combat needs. Also, this contractor is having financial problems due to low levels of procurement and they could go out of business or lose highly skilled personnel in the near future." emphasis added

This statement firmly supports the action taken to procure a limited number of JRL equipment to maintain a source for R&D/production. DoD could not allow such capability to be

lost until similar knowledge was available from another source, especially in view of the stated performance capability of JRL equipment and the requirement that funding to develop another source would have to be provided by DOD. Complying with the recommendation for testing the equipment (contained in the 3 April 1981 GAO report) precluded DoD from doing otherwise. (The report stated, "We recommend that the Secretary of Defense require that an independent hardware demonstration be conducted to establish the cost effectiveness and productivity increases that may be attributed to automating the field Army calibration functions.")

FINDING E. Need to Award Contract to Maintain Experienced Personnel of Contractor Was Not Validated. GAO found that the Army did not validate JRL's claims that it was losing key personnel needed to manufacture the LOCOST 106 nor was DCAA requested to follow-up on the contractor's alleged loss in experience personnel. (p.3. Letter; p. 6, Enclosure/ GAO Draft Report).

DOD COMMENT: DOD concurs. The specific personnel losses which JRL claim were not validated. At that time certain Congressional Committees had reported the probable loss of experienced JRL personnel and even survival of the company was at stake. JRL reported a turn over of experienced personnel that had happened because of the likelihood that the LOCOST 106 product line would be discontinued. In view of other determinations and reports from the Congressional Committees it was not considered essential to validate personnel losses at that time. (If such validation had been done it would have been the responsibility of the Defense Contract Administrative Services, not DCAA.)

FINDING F. Test and Evaluation Plan Not Developed. GAO found that although the Under Secretary of Defense directed the Secretary of the Army to develop a plan to test and evaluate the LOCOST 106 concurrent with the procurement, the plan has not been prepared. GAO further found that DARCOM, the procuring activity, does not recognize it has responsibility for executing the directive, and consequently, does not intend to develop a test and evaluation plan. (p.3. Letter; p.6, Enclosure/GAO Draft Report).

DOD COMMENT: DOD concurs. The Army was directed to develop a test and evaluation plan and the plan had not been furnished to USDRE at the time the GAO draft report was issued. However, no equipment had been delivered. The USDRE sent a followup request to the Army, Office of the Assistant Secretary. The plan was submitted April 30, 1983.

FINDING G: Survey of Marketplace: Consideration of Competitive Solicitation. GAO found that although DOD claimed

an informal survey of manufacturers was conducted, no conclusive documentation was produced beyond memorandum records; and that prior to the procurement, DOD was uncertain of the number and capability of available calibration equipment manufacturers. GAO further found that notwithstanding this uncertainty, DOD concluded that although there were two or three contractors other than JRL which could develop the type of calibration equipment obtainable from JRL, no other readily available source existed for equipment having all the desired capabilities of the LOCOST 106 system. GAO also found the Army gave no consideration to competition because this was a directed source procurement. (p. 7., Enclosure/GAO Draft Report).

DOD COMMENT: DOD partially concurs. The Army telephonically provided information concerning the manufacturerers and DOD concurs that a memorandum for the record was prepared on the basis of that information. DOD does not agree with the inference that additional documentation was required. It is the Department's position that the Memorandum for the Record (MFR) was sufficient.

Further, DOD does not concur with the additional inference that competition was an option. The intrinsic purpose of the sole source buy was to retain the contractor in the industrial base as a source of R&D/production. Therefore, competition was not a consideration. It was never intended that this particular procurement of a limited number of JRL LOCOST 106 equipment be acquired from a source other than JRL. The fact that no consideration was given to competition in this instance was appropriate and reasonable.

FINDING H. How This Procurement Differs From Competitive Procurement for Calibration Equipment at Redstone Arsenal. GAO found that because a test and evaluation plan has not been developed for the JRL equipment, there is no way to compare this sole-source award with the Redstone procurement (commonly referred to as the buy-one-test-one contract). GAO also found JRL declined to bid on the Redstone Arsenal RFP making any comparison somewhat moot. (pp. 8-9, Enclosure/GAO Draft Report).

DOD COMMENT: DoD nonconcur. The test plan for the JRL equipment has no bearing on the "Buy One, Test One" test plan. JRL did not bid on the "Buy One, Test One" IFB for reasons stated in their protest to the GAO(B-207745 at the August 1982 conference. JRL alleges it could have met the specifications in the solicitation but could not compete from a cost standpoint.

FINDING I. Locations of System: Basis For Site Determination and Workload Justification. GAO found that in July 1982, DARCOM selected six sites to receive the LOCOST 106 equipment, with the selection based on (1) a review of items requiring periodic calibration, (2) equipment density, and

(3) annual calibration workload. (In connection with this Finding, GAO noted that the official at DARCOM who made the site decisions advised that "the depots can use the system, but they are not needed.") (p. 9, Enclosure/GAO Draft Report).

DOD COMMENT: DOD concurs that DARCOM has selected sites and these had not been submitted to the USDRE at the time of the GAO review. These depots represent the highest density of items for calibration by JRL equipment. The quoted statement by a DARCOM official indicates a lack of understanding at that level as to the need and as to the purpose of the sole source buy by the Secretary of the Army. The Army is still in the process of determining its operational requirements for automated calibration equipment (as stated in GAO/PLRD-83-35, February 11, 1983, pages 24, 25, and 26). The test plan was submitted by 30 April 1983.

FINDING J: Cost Effectiveness Determination Not Made. GAO found that cost effectiveness studies and analyses of automated calibration equipment were not conducted prior to entering into the sole source contract with JRL. (In connection with this finding, GAO noted that the Army justified the absence of any economic analysis on this equipment procurement because it was a directed sole source procurement.) (pp. 9-10, Enclosure/GAO Draft Report).

DOD COMMENT: DOD nonconcurrs in this finding as presented. There was never any intent of performing a cost effectiveness study before purchasing JRL equipment. Demonstration of cost effectiveness will be part of the test and evaluation plan which has been requested by USDRE. This is in keeping with the 3 April 1981 GAO Report which recommended that the Secretary of Defense direct the Army to perform a demonstration of cost effectiveness and productivity increases of automated calibration equipment. To accomplish this DOD had to buy the equipment. It should be noted, however, that some White Sands Missile Range (WSMR) data was available which showed that when used under selective circumstances, JRL equipment was very cost effective. (A description of the White Sands evaluation is at page 17 of GAO Depot DLRD-83-35/OSD Case 6153.)

FINDING K: Procuring Equipment For Test and Evaluation in Advance of Any Known Need Not A Common Practice. Noting that the justification for the Army to acquire the JRL LOCOST 106 system was 10 U.S.C. 2304(A)(16) as directed by the Under Secretary of Defense, and by the Assistant Secretary of the Army in his Determination and Finding Statement, GAO found DOD and Army officials acknowledged this was a very uncommon, though not unprecedented, procurement action--but could not identify other similar prior procurement actions. GAO further

found that the test and evaluations resulting from the Redstone Arsenal procurement will not develop information which will identify current and potential defense needs for calibration capability. (pp. 10-11, Enclosure/GAO Draft Report).

DOD COMMENT: DOD nonconcurrs in this finding. If the GAO is saying that it is uncommon for the USDRE to direct the procurement of a specific product, that is true, but not improper. It is not uncommon to use exception 10 USC 2304(a)(16). For example, in 1982 DoD used this exception on some 6,313 procurement actions over \$10,000. (Future calibration needs are dealt with under other findings).

FINDING L: OSD Involvement in JRL Procurement: Army Request. GAO found (1) that the mobilization industrial base assessment on calibration equipment and JRL was requested by the Under Secretary of Defense for Research and Engineering, (2) that the assessment determined that JRL presented an in place research and development/production capability for automated calibration equipment, (3) that JRL was the only known readily available source for the described capabilities of the LOCOST 106 automated calibration system equipment, but (4) did not identify a DOD need. (GAO noted, however, that the documentation in support of the assessment results was not made available during the review.) GAO further found that DOD became involved after the January 1982 attempt by the Army to award a sole source contract to JRL, at which time the Army requested assistance from the Under Secretary of Defense in handling the JRL matter. This request resulted in (1) the Under Secretary directing the Army to procure equipment from JRL if there was legal authority to do so and (2) the subsequent issuance of the directive for the Army's May 1982 sole source contract award. (pp. 11-12, GAO Final Report).

DOD COMMENT: DOD concurs, with one exception. The documentation of Industrial Mobilization Base assessment results were made available during the GAO review. As a matter of fact, it is mentioned in another part of this report (see Finding D). (For further comments on these issues, also see Findings B and D.)

FINDING M: Usual Preaward Audit Procedures and Precautions Waived. GAO found that in January 1982 DARCOM's Director of Procurement and Production recorded there was absolutely no cost data or evaluation of the JRL unsolicited proposal of December 23, 1981; and therefore, all normal test measurement and diagnostic equipment (TMDE) approval requirements were waived by DARCOM in awarding the sole source letter contract to JRL in May 1982. In addition, GAO reported the DCAA audit of JRL found that JRL did not maintain a job cost accounting system which is a prerequisite for contractors to

receive progress payments, resulting in the letter contract not yet being definitized (due to lack of adequate contractor provided cost and pricing data). (pp. 13-14, Enclosure/GAO Draft Report).

DOD COMMENT: DOD concurs. No cost data was available except for catalog prices. "Cost data" is not a prerequisite for award of all procurements, especially in the case of commercial catalog items. In view of the Secretarial Determination and Findings Statement, the Army was not required to follow all normal TMDE approval requirements in awarding the letter contract. (The letter contract was the most expeditious means of awarding the contract.) Further difficulty in definitizing the letter contract resulted from disagreement on catalog pricing data. JRL has submitted a DD 633, but the cost data cannot be verified by DCAA.

FINDING N. Air Force Report on Assessment of Potential Importance of LOCOST 106 to Defense Requirements Not Available to DARCOM. GAO found that while the Air Force Study dated August 19, 1981, to assess the JRL LOCOST 106 calibration equipment was done at the request of the Secretary of the Army and provided to the Army prior to any attempted contract with JRL, the report was "closely held" and was not available to DARCOM. Further, GAO found that the Air Force report questioned the cost saving and performance claims of JRL as well as describing conditions under which JRL's LOCOST 106 could be used, but did not state that a need for the LOCOST 106 existed. (GAO noted that neither Defense or Army officials offered an explanation or reasons for continuing the contract with JRL when the Air Force study did not support procurement of the JRL automated calibration system.) (pp. 14-15, Enclosure/GAO Draft Report).

DOD COMMENT: DOD nonconcur. The Air Force furnished a copy of the report to the Secretary of the Army (and the information was available to DARCOM). Further, the conclusion in the Air Force report was based upon using the JRL automated equipment in vans. In that connection it stated JRL claims were unjustified because JRL used an invalid economic cost model and made erroneous assumptions in its application. The report further stated, however, "there may be certain fixed Army calibration laboratories where applicable calibration workload is sufficient to consider use of automated equipment." (There is a description of the Air Force report on pages 18 and 19 of the GAO report PLRD-83-35).

CONCLUSIONS

CONCLUSION 1. GAO concluded that expressed interest, including congressional interest, in the long-running efforts by JRL to sell automated calibration equipment to the Army (see GAO/PLRD-81-16, GAO/PLRD-82-37 and GAO/PLRD-83-35) 1/appears to have been an important factor in the DOD/Army decision to award the sole source contract to JRL. (p. 3, Letter/GAO Draft Report).

DOD COMMENT: DOD partially concurs. While Congressional interest and GAO reports have certainly had a definite bearing on the matter by focusing DOD attention on the problem, the deciding factor in directing the sole source award was the uniqueness of the equipment and its possible value to the DoD Industrial Mobilization Base. If these factors had not been present, DOD would not have directed sole source purchase of a limited number of the LOCOST 106.

CONCLUSION 2. GAO concluded that while it understood the DOD/Army desire to resolve the JRL controversy, nonetheless, the DAR states: (1) that contractors should be awarded only when there are requirements for essential supplies and services and (2) that award of contracts without established needs could result in proliferation of excess and useless equipment, and consequently, a waste of procurement dollars. (p.4., Letter/GAO Draft Report).

DOD COMMENT: DOD nonconcur. This conclusion is not drawn from the proper interpretation of the DAR and other factors bearing on the case, which are further explained under each finding. A detailed explanation is also set out in the "statement of facts/legal opinion" submitted by the Government in GAO protests B-207844 and B-207844.2. The protesters withdrew those protests after receipt of referenced document.

RECOMMENDATION

RECOMMENDATION 1. GAO recommended that the letter contract be terminated if the Army finds it economically feasible to

1/OSD Cases No. 5683,
No. 5885 and No. 6153

do so because (1) DOD and the Army recognize there is no identified need for the LOCOST 106, (2) DCAA has determined that JRL is not in danger of going out of business, hence, being lost to the mobilization industrial base, and (3) the Army has not determined that key experienced personnel would be lost and thus render JRL incapable of meeting Army needs. (p. 4., Letter/GAO Draft Report).

DOD COMMENT: DOD nonconcur. The report does not reflect all the facts bearing on this case, nor the conditions existing at the time the decision was made to award the sole source contract. The basis for directing award of the contract to JRL was concern that the source of the LOCOST 106 R&D/product line capability would be destroyed, not that JRL would be totally out of business. The LOCOST 106 systems product line could have been discontinued without JRL going out of business. Using 10 USC 2304(a)(16) to maintain an organization with unique equipment/capabilities in the Industrial Base is both appropriate and in compliance with procurement law and regulations. The GAO findings show a misreading or misunderstanding of the Defense Acquisition Regulations.

With respect to (1), at the time of the award it was determined that JRL presented an in-place research and development/product capability for automated calibration equipment, and that there was no other readily available source for equipment having all of the described capability of the LOCOST 106 system.

With respect to (2) and (3), without the sole source contract, the source of the JRL equipment R&D production capability could have been lost. (Even with the award of the contract, JRL alleges several key personnel were lost.)

It is also noted that this recommendation, as well as many of the findings and conclusions of the draft report, appear to be incongruous with the descriptions of this procurement which appear at pages iii and 19 of GAO report PLRD-83-35.

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