



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Eclipse International Corporation

File: B-274507

Date: November 12, 1996

Avinash Shah for the protester.

Thomas F. Brown and Mark Frazier, Esq., the Department of the Air Force, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Military agency reasonably awarded a contract on a sole source basis for urgently required deployable circuit analyzers for use in helicopter maintenance and repair to the only approved source of the items, where the record evidences that no other source is or will become an approved source of the circuit analyzers in time to meet the urgent requirement.

DECISION

Eclipse International Corporation protests the award of a contract on a sole source basis to DIT-MCO International under request for proposal (RFP) No. F41608-96-R-29699, issued by the Department of the Air Force, for circuit analyzers used in the repair and maintenance of the MH-60G helicopter.

We deny the protest.

The agency conducted a market survey in November 1995 for the circuit analyzers, and determined that DIT-MCO was the only approved source for circuit analyzers that could meet its needs. In order to develop alternative sources for the circuit analyzers, the agency had a sources sought synopsis published in the Commerce Business Daily (CBD) in December. Eclipse responded to the sources sought synopsis by letter dated January 11, 1996. In its response, Eclipse provided descriptive information regarding its circuit analyzers, and informed the agency that the Department of the Navy had "62 of these units deployed."

On February 9, the agency had a synopsis published in the CBD that announced a proposed sole source award to DIT-MCO for four "shop electronic test sets" or circuit analyzers, and 13 smaller, deployable circuit analyzers, with a delivery date of December 31, 1996. The synopsis stated that the agency's proposed sole source

procurement was based upon its determination that DIT-MCO was the only responsible source that could meet its needs. The synopsis referenced note 22, which provides that firms interested in submitting a proposal or an expression of interest in the proposed procurement should do so within 45 calendar days of the date of the CBD synopsis.

Six firms, including Eclypse, submitted timely expressions of interest to the agency. Shortly after responding to the CBD notice, Eclypse, in response to an agency request, submitted additional information regarding its circuit analyzers. On April 12, the solicitation was canceled due to lack of funds. The agency informed Eclypse, as well as the other vendors seeking to become approved sources of the circuit analyzers, that they should continue to pursue source approval "as a [p]urchase [r]equest for this item may be funded in the future."

On April 22, the agency informed Eclypse that its "source approval request package ha[d] been evaluated," and requested that Eclypse "provide a sample item[] for testing." The agency's notice to Eclypse provided that Eclypse would have to demonstrate its unit at the Corpus Christi Army Depot (CCAD), which serves as the repair facility for the MH-60G helicopter weapon system. The demonstration at CCAD was determined necessary by the agency to ensure that the proposed circuit analyzers were capable of interfacing with the test program sets, software, and cable assemblies developed by CCAD for use in the maintenance and repair of the MH-60G helicopters.

On May 21, Eclypse requested that the agency assist Eclypse "in planning for the demonstration of [Eclypse's] equipment" by providing, among other things, a "[s]ample test program . . . to allow [Eclypse] to verify [its] capability in this particular instance." The agency sent the test programs to Eclypse shortly thereafter with the test programs being received by Eclypse on June 11.

Meanwhile, the agency determined that the procurement of 14 deployable circuit analyzers from DIT-MCO on a sole source basis was justified because of an unusual and compelling urgency. A justification and approval (J&A) authorizing the acquisition was prepared, as was a determination that synopsizing the requirement would unduly delay the procurement. The agency subsequently awarded DIT-MCO a contract for the 14 deployable circuit analyzers.

Eclypse protests that the agency's award of a contract on a sole source basis to DIT-MCO for 14 deployable circuit analyzers was improper because there is no urgency justifying the sole source award. Eclypse argues that, in any event, it should have been solicited for this requirement, contending that it has supplied circuit analyzers to the Navy for the repair and maintenance of the Navy's H-60 helicopter, and that if it had been solicited it could satisfactorily demonstrate

its circuit analyzers at CCAD and provide deployable circuit analyzers meeting the agency's needs.

The Competition in Contracting Act of 1984 (CICA) provides for the use of noncompetitive procedures where an agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits proposals. 10 U.S.C. § 2304(c)(2) (1994). Although CICA requires that the agency request offers from "as many potential sources as is practicable under the circumstances," 10 U.S.C. § 2304(e); see Federal Acquisition Regulation (FAR) § 6.302-(c)(2), an agency may still limit the procurement to the only firm it reasonably believes can properly perform the work in the available time. Sargent & Greenleaf, Inc.; The Safemasters Co., Inc., B-255604.3, Mar. 22, 1994, 94-1 CPD ¶ 208; Silco Eng'g & Mfg. Co., B-250012.6, May 7, 1993, 93-1 CPD ¶ 372. In addition, an agency is not required to synopsise such urgent contract actions where the government would be seriously injured if the agency were to comply with the time periods required for publication of the synopsis. FAR § 5.202(a)(2); Abbott Prods., Inc., B-231131, Aug. 8, 1988, 88-2 CPD ¶ 119. We will object to an agency's determination that it has a need for property or services of an unusual and compelling urgency and that there is only one source that can meet the need only where the determination lacks a reasonable basis. Id. In this regard, a military agency's assertion that there is a critical need which impacts military operations carries considerable weight, and the protester's burden to show unreasonableness is particularly heavy. Sargent & Greenleaf, Inc.; The Safemasters Co., Inc., supra; Abbot Prods., Inc., supra.

The J&A authorizing the acquisition of the circuit analyzers on a sole source basis states that the deployable circuit analyzers "will allow for badly needed field checks on the MH-60G helicopters used by the Special Operations Forces." The J&A explains that the MH-60G helicopters, which are used primarily in the rescue of downed pilots in hostile areas, currently "operate without the assurance of having circuit analyzers in-place to eliminate potentially hazardous wiring problems." According to the J&A, the deployable circuit analyzers "will be used to perform aircraft systems wiring maintenance and related preventative maintenance tasks . . . necessary to keep MH-60G Pavehawk helicopters in mission-capable status and safe," and that "deployment without repair capability will cause aircraft grounding, possible loss of life and/or aircraft." The J&A notes that the agency is "currently attempting to approve other sources that can demonstrate the ability of their analyzers."

In our view, the record evidences that the agency's decision was based upon its determination that the deployable circuit testers are currently and urgently needed, and that without this equipment helicopter safety will be adversely affected. This determination was properly documented by the agency, and the protester's

unsupported assertions to the contrary simply do not establish that the agency's decision that it had a critical need for the items was unreasonable. The fact that this urgent requirement was determined shortly after the cancellation of the prior solicitation does not belie the urgency.

In addition, the record evidences that the agency has taken steps to ensure that it procures only the number of deployable circuit analyzers it currently requires, leaving the balance of deployable and "shop-type" circuit analyzers to be procured competitively if additional sources are approved. In this regard, the agency notes that "[d]espite a fleet of 90 [MH-60G] helicopters stationed at 25 forward operating bases, the sole-source award was limited to 14 deployable circuit analyzers to be shared at the 14 most critical locations." The Air Force adds that "[s]ignificant future procurements of deployable circuit analyzers are anticipated and the Air Force will continue its efforts to approve as many sources as possible for those procurement[s]." In our view, the Air Force's determination that it had a need of unusual and compelling urgency for 14 deployable circuit analyzers was reasonably based.

We also find that the agency's decision to limit the noncompetitive award to DIT-MCO was reasonable in view of the fact that only DIT-MCO circuit analyzers have been tested and approved by the agency. In this regard, the agency explains that the circuit analyzers produced by Eclipse and used by the Navy are for the Navy's configuration of the H-60 helicopter, and that "[a]lthough there are similarities in the circuit analyzers used by the Navy and the Air Force, there are differences in configuration to accommodate the specific mission of the military branch." The agency adds that because of the configuration differences, the Navy's approval of Eclipse's analyzers "doesn't necessarily mean the item is compatible with Air Force systems," and thus, "software compatibility testing at the CCAD facility is required."

Eclipse does not assert that a demonstration test of its circuit analyzers at CCAD should be waived, but rather contends that its ability to perform such a test was adversely affected by "numerous delays [it encountered] in obtaining source approval." The record does not support Eclipse's complaint that it encountered "numerous delays" in obtaining source approval. First, the only "delay" referenced by Eclipse is the 3-week period from its request of May 21 that it be provided with a sample test program, and its receipt of the such a program from the agency on June 11. Eclipse provides no explanation as to why it was adversely affected by this "delay" in light of its failure to communicate with the agency during the 3 months between its receipt of the information on June 11, and the filing of this protest on September 9 or its "request for clarification of requirements" submitted to the agency on September 12. Nor does Eclipse provide any explanation as to why, in view of its apparent claim that it could have satisfactorily demonstrated its circuit analyzers at CCAD if it had been solicited, it still has not requested an

opportunity to do so. In sum, the record does not support Eclipse's claim that it encountered numerous delays in obtaining source approval, nor its assertion that it could provide an approved circuit analyzer in sufficient time to meet the agency's urgent requirement.

The protest is denied.

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