



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Metric Systems Corporation

File: B-279622

Date: July 2, 1998

E. Bruce White Wolf, Esq., for the protester.
Joyce U. Ballack, Esq., for Harris Corporation, Government Communications Systems Division, an intervenor.
Todd E. Norton, Esq., Lawrence J. Feldhaus, Jerry W. Aldridge, and John E. Lariccia, Esq., Department of the Air Force, for the agency.
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Although the Competition in Contracting Act of 1984 generally mandates that contracting agencies obtain full and open competition in their procurements through the use of competitive procedures, the proposed sole-source award of a contract under 10 U.S.C. § 2304(c)(1) (1994) is unobjectionable where the agency reasonably determined that only one source could complete the modification of an electronic warfare system to simulate advanced threats within the urgent time constraints of the procurement.

DECISION

Metric Systems Corporation protests the Department of the Air Force's decision to award a sole-source contract to Harris Corporation, Government Communications Systems Division, to provide total system performance responsibility for the Miniature-Multiple Threat Emitter System (Mini-MUTES) Modification Program. Metric argues that the Air Force unreasonably determined that Harris is the only source capable of meeting the agency's needs within the required time constraints.

We deny the protest.

The Mini-MUTES system is a surface-to-air-missile threat radar simulator presently in place on Combat Air Forces training ranges. Each system typically consists of one Master Control Group (MCG) and up to five Remote Emitter Units (REU). The REUs emit electronic signals that simulate different threat signal combinations to train pilots that might face the actual threats during combat, and the MCG directs and coordinates all REU activity occurring on the training ranges.

The Mini-MUTES system was initially produced by General Dynamics Corporation pursuant to a 1986 contract. After a competition, Harris was awarded the follow-on production contract in 1990. Harris has since added new threats to the system's capability and improved its reliability pursuant to various engineering change proposals under that original contract. The Mini-MUTES system, whose current configuration uses a 1980s-vintage computer, was deemed obsolete in 1993 because its central processor units (CPU) were outdated and its bus (the electronic pathway through which the REUs and the MCG communicate) was inadequate. The Air Force lacked the funding to upgrade the system but continued to maintain and troubleshoot its outdated computer technology because it remained a viable simulator of low-level threats. At the same time, the Air Force began exploring its options for obtaining the capability to train against advanced threats. Beginning as early as 1995, and continuing through mid-1997, the agency commissioned advanced threat feasibility studies, explored joint initiatives with other military services, evaluated existing equipment and systems, and conducted informal market surveys with industry.

In January 1997, the Defense Advanced Research Projects Agency (DARPA) announced its Dual Use Applications Program for the fiscal year 1997. Under the program's Commercial Operations and Support Savings Initiative (COSSI), contractors were asked to propose methods of inserting commercial technology into fielded military systems in order to lower the operations and support costs for such systems. News Release, Dual Use Applications Program Plans Announced, Jan. 14, 1997. The DARPA solicitation supporting COSSI set forth a two-stage process. In the first stage, DARPA and the contractor were to share the costs of developing and testing prototype "kits" for the military customer for installation into a fielded system. Assuming a successful first stage, the military customer's goal in the second stage of the process was to purchase reasonable production quantities of the kit at fair and reasonable prices and without recompetition. Solicitation No. 97-12 at 2, 3.

Harris responded to the COSSI solicitation by submitting a proposal to replace the existing obsolete CPU and bus in the Mini-MUTE system with a commercial open architecture processor and bus system. On May 5 the Air Force announced that Harris's proposal was one of six Air Force projects that had been awarded a DARPA grant. News Release, Air Force Announces Operations and Support Projects, May 5, 1997. Successful completion of this task will result in a processor that extends the life of the present Mini-MUTES system to the year 2015.

At about this same time, the Air Force announced that the acquisition or development of an advanced threat system by September 2001 was one of its highest priorities. Contracting Officer's Statement at 1. The acquisition is considered to be urgent because pilots unable to train against advanced threats might face them for the first time during combat. May 1997 Modification Proposal at 1. All of the options disclosed by the agency's planning process--the acquisition

of a new system, the modernization of the Mini-MUTES system, and the modernization of other existing systems--were presented to user commands. For reasons not at issue here, the Air Force opted to modify the Mini-MUTES system.

The Air Force was left to decide how to acquire the modification of the Mini-MUTES system. As its January 1998 acquisition plan makes clear, the Air Force began its decision-making process by considering the effect that Harris's performance of two ongoing Mini-MUTES system research and development (R&D) efforts--its DARPA-sponsored replacement of the system's CPU and bus and its improvement of the REU's tracking capability under its original contract--would have on the modification program.

The Air Force believed that a contractor could not modify the Mini-MUTES System to add advanced threat capability unless it understood the CPU and bus architecture, since additional system upgrades must be integrated with the new interface architecture to ensure that the system operates as a cohesive unit. Harris was upgrading these systems pursuant to its DARPA agreement, and other contractors could only understand the upgraded architecture after reviewing the technical data associated with the upgrade. However, Harris's agreement with DARPA provides that Harris will control the data rights to the upgraded architecture until the production phase of the effort in 2001. Harris-DARPA Agreement at 13-14. The data for Harris's tracking capability effort will be unavailable until 2001 as well. Since the target date for obtaining initial operational capability for the modified Mini-MUTES system was also 2001, no contractor aside from Harris could provide the modifications within the required time constraints. Acquisition Plan at 7, 10.

On January 18, 1998, in view of the ongoing R&D efforts and the limited technical data availability associated with each, the Air Force prepared a justification and approval (J&A) document for the sole-source award of the advanced threat upgrade contract to Harris which will give the firm total system performance responsibility for the modification program. J&A at 2-3. The J&A recounted the background described above and set forth three acquisition options considered by the Air Force.

The Air Force considered terminating the DARPA agreement--sacrificing the CPU and bus development undertaken by Harris in the 11 months since the COSSI solicitation was issued and surrendering the more than \$2 million committed by DARPA and Harris to upgrade the system--and competing and funding the computer upgrade along with the advanced threat modification. Id. at 3-4. The Air Force decided that this course of action would "delay the R&D phase an estimated two years or more and result in additional costs of \$2.5 million to duplicate the on-going development efforts that [Harris] is currently working under separate contracts." Id. The Air Force believed that the "complexity of the required Mini-MUTES

modifications and their interfaces with on-going development would necessitate extensive pre-performance efforts by another contractor in order to establish a responsible development/production capability and an engineering support team. Based on [its] experience under previous Mini-MUTES modification development efforts, the estimated 'spin-up' time for another offeror would be 18 months from contract award." Id. at 4. Since the program funding profile and delivery requirements would not support delay in the schedule, the Air Force rejected this acquisition option. Id.

The Air Force also considered honoring the DARPA agreement to permit Harris to develop and complete the CPU and bus upgrade, and then competing the advanced threat modification after the agency received the data rights to the new processor and bus. The Air Force rejected this option because a validated procurement package would not be available until the completion of the Mini-MUTES Modification Program production phase,¹ and because "government property, including tools and test equipment necessary for the Mini-MUTES modifications development, [would] not be available for a competing contractor until the completion of on-going development efforts for the system computer replacement (i.e., FY01)." Id. The agency's timeline for this acquisition approach showed that initial operational capability would not be possible until 2006, well past the target date.

The Air Force finally considered awarding the advanced threat upgrade to Harris on a sole-source basis with concurrent development of the CPU and bus upgrade and the advanced threat modifications. The J&A stated that Harris, the current Mini-MUTES manufacturer, had the necessary skills, equipment, and capabilities in-place to accomplish the required modifications. In addition, Harris had extensive experience developing and producing modifications for the Mini-MUTES system. As the Air Force's J&A explained, at 4:

The required Mini-MUTES modifications must not only integrate with existing Mini-MUTES hardware and software, but interface with the on-going computer replacement and tracking upgrade efforts currently on-contract with [Harris]. Only [Harris] can concurrently perform the required Mini-MUTES modifications with on-going development of a system computer replacement and tracking upgrades and meet the delivery requirements. System integration is the key risk area for the Mini-MUTES modification, including integration of available advanced

¹The Air Force explains that the technical data package on the existing system has not been revised to reflect several field-level modifications, and the development of an up-to-date package on the existing system, even without consideration of the DARPA effort, would require as much as 18 months. Air Force Response to Comments at 6-7.

threat transmitter technology. [Harris] is best qualified to perform as the responsible total system integrator.

The proposed sole-source award was synopsized in the Commerce Business Daily (CBD) on February 11. The notice described Harris's ongoing R&D efforts and explained that the reprourement data containing the necessary interface documentation would not be available until 2001, the target year for initial operational capability of the modified system; considering these developments, providing Harris total system project responsibility would ensure a seamless integration of the new Mini-MUTES computer. The CBD notice stated the Air Force would consider all proposals received within 20 days in order to determine whether to conduct a competitive procurement.

On March 5, Metric filed an "objection and protest" of the proposed sole-source award with the Air Force. Metric's letter asserted that Harris was not the only firm capable of providing the Air Force with the advanced threat modifications and briefly outlined its capabilities with respect to these modifications. In a March 23 response, the Air Force explained that the Mini-MUTES system was undergoing a development effort to remedy problems associated with an obsolete CPU and that Harris was the only source capable of concurrent development to enable the Air Force to satisfy its mission requirement. The letter further explained that the Air Force could compete the advanced threat modifications alone, but if it did so it would have to integrate the advanced threat transmitters with the ongoing CPU and bus interface development in order to meet the mission requirement date; the government did not have the resources to act as an integrator. After it received the Air Force's response Metric filed the instant protest.

Metric argues that sources other than Harris, including itself, are capable of providing the entire modification effort--the CPU and bus upgrade, the tracking upgrade, and the advanced threat modifications--and that the Air Force should have terminated Harris's ongoing efforts and held a competition for the entire modification program.

In general, the overriding mandate of the Competition in Contracting Act is for "full and open competition" in government procurements, which is obtained through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A) (1994). The Air Force's justification for awarding this sole-source contract relies primarily upon the

exception to full and open competition authorized by 10 U.S.C. § 2304(c)(1)--i.e., that there is only one source capable of meeting the agency's needs.² Datacom, Inc.--Protests and Request for Costs, B-274175 *et al.*, Nov. 25, 1996, 96-2 CPD ¶ 199 at 6; Mnemonics, B-261476.3, Nov. 14, 1995, 96-1 CPD ¶ 7 at 3. To use noncompetitive procedures under 10 U.S.C. § 2304(c)(1), the agency must execute a written J&A with sufficient facts and rationale to support the use of the specific authority, 10 U.S.C. § 2304(f)(1)(A), (B); Federal Acquisition Regulation §§ 6.302-1(d)(1); 6.303; 6.304, and publish a notice in the CBD to permit potential competitors to challenge the agency's intent to procure without full and open competition. 10 U.S.C. § 2304(f)(1)(C).

Our review of an agency's decision to conduct a sole-source procurement focuses on the adequacy of the rationale and conclusions set forth in the J&A. When the J&A sets forth reasonable justifications for the agency's actions, we will not object to the award. Datacom, Inc.--Protests and Request for Costs, *supra*; AAI ACL Techs., Inc., B-258679.4, Nov. 28, 1995, 95-2 CPD ¶ 243 at 5. A sole-source award is justified where the agency reasonably concludes that only one known source can meet its needs within the required time except where the noncompetitive situation arises from a lack of advance procurement planning. Space Vector Corp., B-253295.2, Nov. 8, 1993, 93-2 CPD ¶ 273 at 10. We conclude that the Air Force reasonably determined that only Harris could satisfy its requirements for the advanced threats modification within the time required.³ See AAI ACL Techs., Inc., *supra*, at 7; Midwest Dynamometer & Eng'g Co., B-257323, Sept. 2, 1994, 94-2 CPD ¶ 91 at 3.

The J&A contains the Air Force's express consideration and rejection of the course of action proposed by Metric. The Air Force set forth two reasons for concluding that surrendering the funds and time invested in these projects was not a viable option. First, building in the time required for another contractor to "spin-up" to Harris's achievements would jeopardize the Air Force's ability to meet the initial operational capability date of September 2001. It would take as long as 18 months to prepare a current data package to give to other contractors, and at least this long

²The J&A cites as a second authority the exception authorized by 10 U.S.C. § 2304(c)(5), which applies where a statute expressly authorizes or requires that the procurement be made through a certain agency or from a specified source. Since we conclude that the Air Force reasonably relied upon the authority in 10 U.S.C. § 2304(c)(1) in making this sole-source award, we need not consider Metric's allegations with respect to the second cited authority.

³As for Metric's assertion that basing the sole-source decision on Harris's ongoing performance of the DARPA project reflects an improper lack of advance procurement planning, the record is replete with evidence of detailed, long-term procurement planning.

for any other contractor to both match Harris's experience and capabilities with the Mini-MUTES system and duplicate its progress on the computer upgrade. This additional time would necessarily extend the date for obtaining initial production capability. Second, this course of action would result in significant additional costs to duplicate Harris's efforts. Since the advanced threat modifications had to be integrated with the computer upgrade, and since the documentation to ensure integration will be in the sole possession of Harris until 2001, the only contractor that could provide all of these efforts concurrently and still meet the 2001 target date was Harris.

Metric does not dispute the fact that the advanced threat modifications must be integrated with the computer system upgrade, or that, under the circumstances, one contractor should be responsible for the entire effort. Metric simply argues that that contractor need not be Harris. Cast as a challenge to the Air Force's failure to terminate Harris's ongoing efforts and compete the entire modification program, Metric's protest actually challenges the Air Force's proposed sole-source award on two bases: time and money.

Metric disputes the Air Force's assertion that taking the protester's proposed course of action would jeopardize the schedule. Metric generally discounts Harris's experience and capabilities, as well as the difficulty of its ongoing efforts, and claims that it could accomplish the entire effort prior to September 2001. In its comments, Metric asserted that it could make initial delivery 24 months after award. May 8 Comments at 2. Its supplemental comments backed away from that schedule and claimed that it could deliver initial operational capability a conservative 31 months after award. May 28 Supplemental Comments at 2. Setting aside the realism of this proposed schedule, which the Air Force disputes, 31 months from the date of this decision's issuance, let alone the date of any future competitive award, is so close to the September 2001 target date as to represent an obvious risk to the effort. We do not believe the Air Force should have been required to jeopardize its ability to obtain the urgently required modifications based upon these unsupported promises, particularly when Harris's investment of substantial time and money will apparently enable the Air Force to meet its target date.

Metric next asserts that the costs of duplicating Harris's efforts will be recovered through competition because it can perform the effort for \$35-40 million, less than the \$49 million estimated for Harris's sole-source effort. Metric's argument that it would be cheaper for the agency in the long run to simply "redo" what it has already done is speculative; moreover, a protester cannot insist that an agency abandon an established approach to satisfying its needs in order to allow the protester to sell to the government. Vorum Research Corp., B-255393, B-255394, Feb. 28, 1994, 94-1 CPD ¶ 155 at 3-4.

As for Metric's claim that the Air Force "purposely overlooked" its abilities to perform the entire modification program, the information provided to the Air Force in Metric's March 5 letter did not describe any capabilities aside from those associated with the advanced threat modifications. As a result, the Air Force reasonably determined that the information provided by Metric was inadequate to justify abandoning its planned course of action.

The protest is denied.

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