Duplication of Sustainment Costs as a Justification for Sole Source Awards

The following Comptroller General decisions indicate that the duplication of sustainment costs, when properly substantiated under the appropriate circumstances as detailed below, are plausible justifications for a sole source award. Consequently, Justifications and Approvals (J&As) which cite duplication of sustainment costs as the reason for a sole source award should be reviewed in order to discern both: (1) a detailed explanation of the applicable recognized exception to the competition rule; and (2) actual analysis and data substantiating the claim of duplicative costs. This review should be performed on a case by case basis.

The instructive case is ***Sperry Marine, Inc***., B-245654, Jan. 27, 1992, where the Comptroller General denied a protest in part and sustained a protest in part. There, the Comptroller General held that the proposed sole-source award of a contract under the authority of ***10 U.S.C. § 2304***(c)(1) (1988) for navigational radar systems to be used at the Department of the Navy's School for instructional purposes was not objectionable where the agency reasonably determined that it needed a particular radar system that was the same as the other radar system already designated for use at the school. However, the protest against the proposed sole-source award for navigational radar systems to be used in ship overhaul and construction was sustained, where the agency's justification that it would incur substantial duplicative costs if another radar system was acquired for the application was not reasonably based nor supported by the record.

In justifying the contemplated sole-source award to Raytheon, the J&A stated that only the Raytheon product could satisfy the needs of the school because:

(1) the 50 radars being procured must be identical to the 40 Raytheon SPS-64 radar system training stations being transferred to the school from another school for use in training to ensure continuity of instruction;
(2) the Raytheon SPS-64 radars are currently deployed on 297 ships in the fleet and the Navy considers it sound to train its personnel on the same equipment as that which they will encounter once assigned; and
(3) only Raytheon had technical manuals and training materials incorporated into the Naval Training System, and the procurement of different radar equipment would require the development or acquisition of new technical manuals, training materials, and various logistics related plans at an estimated cost of $844,000.

The Comptroller General held that the proposed sole-source award to Raytheon for the school's requirement was unobjectionable, since the Navy already had 40 Raytheon SPS-64 radar systems for use at the school. ***Id***. The Comptroller General further held that the Navy reasonably believed that the equipment being procured must be identical to that which it already had for the school in order to ensure continuity and efficiency in instruction. ***Id.*** The Comptroller General agreed that it would be disruptive to the learning process, and make instruction less effective, if school instructors have to

teach the same functions or concepts to students who are working on different radar systems***. Id.*** While the Comptroller General found that this explanation by the Navy of why identical machines were needed for instruction reasonably supported the sole-source acquisition, the Comptroller General made no comment on the other reasons advanced by the Navy in justifying the sole-source award. ***Id.***

The J&A in support of the ship overhaul and construction portion of the proposed sole-source award stated that only the Raytheon SPS-64 could satisfy the needs of the agency because the acquisition of any other radar system would result in the unnecessary duplication of costs for logistics support, training, test and evaluation, engineering support, and ship alteration documents, which would not be recovered through competition. ***Id***. The Navy also argued that the acquisition of a radar system other than the SPS-64 would be inconsistent with its desire to have a "standard" navigation radar in use on its ships to allow for the emergent removal and replacement of inoperative equipment. ***Id***.

The Comptroller General opined that notwithstanding the desirability of a policy to standardize radar systems in the fleet to achieve savings and efficiency in logistics, the Competition in Contracting Act (CICA) only permits sole source acquisitions where authorized and justified. ***Id***. The Comptroller General further stated that while it is appropriate under CICA for an agency to restrict a procurement under ***10 U.S.C. § 2304***(c)(1) to a specified make or model where "standardization and interchangeability" are required, such a restriction must be reasonably based and justified. ***Id***.

After delineating the law above, the Comptroller General held that there was no reasonable justification for the sole-source here. ***Id.*** The Comptroller General explained that the J&A only contained conclusory statements not supported by probative evidence relating to duplication of costs and that there was no attempt in the J&A to justify the procurement on the basis of a requirement for standardization and interchangeability. ***Id.***

In addition to the conclusory statements regarding duplicative sustainment costs above, the J&A listed the following incidental costs:

(a) Ship Check to identify where equipment will be installed, any equipment which must be removed, and lay-out of compartment space;
(b) Preparation of installation drawings, block diagrams, cable runs, and connector pin-outs for each piece of equipment;
(c) Installation and Control Drawing for each ship; and
(d) Re-identification of equipment to be removed, moved or altered by the overhaul.

Id.

However, the Comptroller General sustained the protest because “during the course of this protest, the agency has not produced any documentation or other

evidence in support of its assertion that it will incur substantial duplicative costs if a radar system other than the SPS-64 is acquired for this application, nor for that matter has it provided an estimate as to the amount of these costs. " ***Id.***

Matter of Allied Signal, Inc., B-247272, May 21, 1992 followed. There, the Comptroller General denied a protest against a sole source award to ESCO for avionics testers where the Air Force's J&A included a detailed cost analysis providing ample support for the agency's conclusion that a competitive award to another source would likely result in substantial duplication of cost to the government that would not be recovered through competition.

The Air Force analysis identified a total of four cost areas. Three of these were: (1) the cost of procuring the data rights for a new tester since the Air Force purchased such rights from ESCO; (2) the cost of rehosting the new tester since the Air Force wanted common test equipment; and (3) the additional cost of procuring test program sets to connect with the existing radar. ***Id.*** The Comptroller reviewed the assumptions and choices underlying the Air Force's finding that an award to another source would entail substantial duplication of costs in these areas, and found that the Air Force's conclusions were reasonable. ***Id.*** The Comptroller General found that the fourth category, support equipment maintenance, was not a duplicative cost. ***Id.*** The Comptroller General found that since maintenance costs were calculated as a fixed annual percentage of the purchase price, these costs were actually lower as a result of a competition. ***Id***. Accordingly, the Comptroller General considered these costs as additional savings resulting from competition.

The latest word on the subject was ***Matter of American Eurocopter Corporation***, B-283700, Dec. 16, 1999, where the Comptroller General held that restriction of competition by the Department of Energy to a specific make and model of helicopter was reasonable, where that helicopter uses specialized equipment that cannot be used with protestor's helicopter and where, given the nature of the agency's flight mission and its organization, standardization of the agency's fleet was necessary for safety reasons.

The justification stated the following reasons for restricting competition:

A. [DOE's] current fleet of 4 helicopters is all Bell Helicopters.
B. [DOE's] inventory of parts and accessories are for Bell Helicopters.
C. [DOE] owned specialized equipment, such as an Inframetrics IR [infrared] Camera System exclusively used for transmission line and substation IR inspections and a Hazard Marking Sphere and Anti-Spin devices which were designed specifically for a Bell Helicopter.
D. [DOE's] pilot staff is trained only on Bell Helicopters. Standardization is essential because [DOE's] pilots rotate to different locations as relief pilots. Some of [DOE's] pilots have never been qualified in a helicopter other than Bell.

E. [DOE's] pilots would have to be trained at two different flight training facilities and [DOE's] Instructor Pilot would have to give [DOE] pilots twice as many Competency Check Flights if a different make and model helicopter were operated by [DOE].
F. Costs related to pilot training, currency and travel would double.
G. [DOE] would have to seek and contract with another manufacturer's service center for maintenance requirements.
H. [DOE's] computerized pilot training program is for Bell Helicopters only.
I. [DOE's] Flight Operations Manual, Helicopter External Load Manual and Pilot Training Manuals would have to be completely re-written to accommodate any other make of helicopter. ***Id.***

The Comptroller General found no basis to question DOE's determination that the protestor's helicopter could not satisfy all of the agency's particular needs. ***Id.*** Specifically, the Comptroller General found that the helicopter that the protestor stated it would propose could not perform DOE's hazard marking ball placement work. ***Id.*** The Comptroller General also found reasonable the agency's concerns with the safe integration of the protestor's helicopter into DOE's fleet considering the nature of the agency's flight missions and its organization. ***Id***.

The Comptroller General found the remainder of the bases relied upon by the agency in its limited-competition justification to be unsupported, unpersuasive and/or insufficient to support the limit on competition. ***Id.*** For example, the Comptroller General found that although the agency expressed concern with costs associated with pilot training, there was no effort to quantify these costs to determine whether in fact this was or should be a significant concern. ***Id.*** Similarly, the Comptroller General found that the statement that the Inframetrics IR camera system could be used only with Bell Helicopter models was not supported by the record, which indicated that this camera system could be used with the protestor's helicopter. ***Id.***

Therefore, it appears from the above that under the appropriate circumstances, the duplication of costs and the need for products that are compatible with the Agency's existing programs and/or mission may serve as plausible justifications for a sole source award, if both a detailed explanation of the applicable recognized exception to the competition rule, and actual analysis and data substantiating these costs, are provided in the J&A.

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