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

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

JUN 19 1984

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The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

Subject: Analysis of Selected Sections of DOD's Revised Breakout Regulation (GAO/NSIAD-84-138)

In response to your August 26, 1983, request, subsequent correspondence, and discussions with your office, we have examined selected areas of the Department of Defense's (DOD's) revised breakout regulation to determine if they inhibit or promote competition. We also examined issues associated with DOD's implementation of breakout efforts.

Breakout of a part refers to competing an acquisition, or purchasing directly from the contractor that actually manufactures the part. Successful breakout of a part generally means acquisition of the part from a contractor other than the prime contractor, unless the prime contractor actually manufactured the part.

During our review, we examined the revised and previous breakout regulations and interviewed DOD and National Tooling and Machining Association (NTMA) officials. In our efforts to be responsive to your request, we relied primarily on work we have previously conducted in this area. We also reviewed and referenced DOD reports as appropriate.

DOD has experienced longstanding problems in achieving greater competition through the breakout program. The revised breakout regulation contains changes designed to improve breakout and competition. The revised regulation, however, must be properly implemented with the necessary commitment and resources to ensure increased opportunities for breakout. DOD has done this to some extent with the creation of the Competition Advocate's Office, which will provide additional full-time resources for breakout efforts.

We believe DOD should reassess its definition of "actual manufacturer." Use of the phrase as introduced in the revised breakout regulation may innibit breakout because a contractor who controls the design, but does not actually produce the part,

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can be designated as the actual manufacturer. Our observations on this and other areas involving the breakout regulation and its implementation are discussed in detail in enclosure I.

We reviewed NTMA's primary legal objections to the breakout regulation. Our opinions on these objections are provided in enclosure II.

As requested by your office, we did not obtain official agency comments, but instead, discussed the contents of this report with DOD officials. We also met with and obtained comments from NTMA officials. Their comments were considered in preparing this report. A copy of this report is being sent to the Secretary of Defense, and copies will be made available to other interested parties.

Sincerely yours,

Frank C. Conahan

Frank C. Conahan
Director

Enclosures - 2

DOD'S BREAKOUT REGULATION

BACKGROUND

DOD established its breakout program in 1963. DOD issued the joint services regulation, High Dollar Spare Parts Breakout Program, in March 1969. The regulation reflected DOD's attempt to reduce the cost of replenishing spare parts for weapon systems by "breaking out" the procurement of these parts from the original contractor. The objective of this program was to screen spare parts, as early as possible, to identify those of high-dollar value and to determine the optimum procurement methods, particularly, the potential for breakout for competition or direct purchase from the actual manufacturer.

The Subcommittee on Legislation and National Security, House Committee on Government Operations held hearings on the management of DOD's High Dollar Spare Parts Breakout Program in April 1983. DOD, NTMA, and our office testified before the Subcommittee and also answered questions. The entire spare parts area, including pricing and competition has recently been the subject of numerous congressional hearings, reports, and reviews by federal investigative agencies.

DOD replaced the 1969 regulation with Defense Acquisition Regulation (DAR) Supplement No. 6, DOD Replenishment Parts Breakout Program, in June 1983. The supplement was incorporated into the DOD Federal Acquisition Regulation (FAR) supplement on April 1, 1984. According to DOD, this revised regulation was issued to enhance savings opportunities, revise procedures, and increase the use of program resources. The supplement modifies the earlier regulation, particularly with the revision of many of the acquisition codes used. Other significant changes include the establishment of time limits on certain codes and the clarification of vague and repetitive language.

Codes are basis of breakout process

The main feature of DOD's spare parts breakout process is the assignment of Acquisition Method Codes (AMCs) and more detailed Acquisition Method Suffix Codes to selected parts. Codes are assigned in a screening process by government personnel and denote the acquisition status of a particular part and why that status was selected. The AMC reflects the degree of competitive or direct procurement planned for each spare part, as follows:

--AMC 1 indicates the part can be competed.

--AMC 2 indicates the part can be competed for the first time.

--AMC 3 indicates the part can be acquired directly from the actual manufacturer (or manufacturers), whether or not the prime contractor is the actual manufacturer.

--AMC 4 indicates the part can be acquired, for the first time, directly from the actual manufacturer (or manufacturers) rather than the prime contractor who is not the actual manufacturer.

--AMC 5 indicates the part can be acquired only from the prime contractor who is not the actual manufacturer. The part cannot be competed or purchased directly.

Many DOD contracts for major acquisitions require the contractor to furnish technical information for use in determining the acquisition status of certain spare parts. The revised breakout regulation provides Contractor Technical Information Codes to be used when contractor's assistance is required.

REVISED BREAKOUT REGULATION CONTAINS CHANGES TO IMPROVE COMPETITION

DOD's revised breakout regulation contains changes designed to improve breakout and competition efforts. Several of the regulation's codes have been changed or deleted and some of the language has been clarified. The regulation, however, retains essentially the same procedures used under the previous breakout regulation to determine a part's potential for breakout.

We examined three main areas of the revised breakout regulation. We evaluated the breakout coding system, actual manufacturer terminology, and contractors' participation in the coding process to determine if these promote or inhibit competition on spare parts procurement. We selected these areas because NTMA expressed interest in them to you and our office and we have done some previous work in these areas.

Breakout regulation's coding system describes results of screening reviews

The coding system in the revised breakout regulation neither inhibits nor promotes competition. It is used to describe the results of screening reviews held to determine a part's potential for breakout.

While the breakout regulation is intended to promote and guide breakout efforts, the purpose of the coding system is essentially to label or describe the circumstances affecting a specific part. The codes were not designed to promote competition by themselves, but rather, to denote how a part should be acquired. However, improper use of the codes can result in nonfactual reporting and could inhibit potential breakout and competition.

Actual manufacturer terminology is misleading and could inhibit breakout efforts

We believe the new definition of actual manufacturer, contained in the revised breakout regulation, is misleading. Use of the phrase as it now exists in the breakout regulation may innibit breakout efforts because the contractor who controls the design, but does not actually produce the part, can be designated as the actual manufacturer.

DOD's previous breakout regulation did not define the term actual manufacturer, perhaps because the meaning appeared to be reasonably clear. However, according to section 6-103 of the revised breakout regulation, an actual manufacturer is a manufacturer (who may or may not be the prime contractor) having the design control responsibility[1] for a part. The revised regulation also states the actual manufacturer may produce the part in-house or by subcontracting.

DOD officials noted that design control responsibilities are a major and essential function. They stated that because of the importance of this function, contractors exercising design control responsibilities should be designated the actual manufacturer, including those instances in which the contractor obtains a part from a subcontractor.

DOD's definition of the actual manufacturer term is too broad. We do not believe the design control activity should be the criteria for designating which contractor is the actual manufacturer. Use of the actual manufacturer term should generally exclude contractors who subcontract for products which have a stable design and are essentially finished parts. In these situations, design control is a minor function.

DOD's current definition can also confuse users of statistics that are accumulated to show the status and achievements of breakout efforts. For example, a part may presently be coded with an AMC 3 when the government purchases a part from a prime contractor who has obtained that part from a subcontractor, if the prime contractor has design control responsibility for that part. An AMC 3 indicates breakout by direct purchase from the actual manufacturer, but in this example, the government would not purchase directly, but instead through the prime contractor.

In discussions on this issue DOD breakout officials later agreed that the definition of an actual manufacturer in the revised regulation is misleading. In our opinion, DOD should

[1]Design control responsibility includes responsibility for a part's design and preparing and maintaining current engineering drawings and other technical data for a part.

reassess its definition of actual manufacturer. DOD should consider not defining the design control activity as the actual manufacturer, especially when the prime contractor subcontracts for design stable and essentially finished parts.

Breakout regulation can ensure accurate contractor coding, if properly implemented

The use of prime contractors' assistance may be a valid requirement in the breakout coding process, particularly in major acquisitions in which the contractor possesses most of the experience and knowledge derived from development and production of the end item. The revised breakout regulation contains adequate provisions, which if properly implemented, will ensure that prime contractors' technical codes are accurate. The use of accurate contractor information should contribute to efforts aimed at increasing competition.

NTMA objects to the participation of prime contractors in the breakout coding process without small business representation. It states that prime contractors can supply the government with information which unfairly restricts competition and effectively guarantees that spare parts will be procured from them. NTMA states that the benefits the prime contractors stand to gain through their exclusive participation in the coding process raises serious conflict-of-interest questions. It has been suggested the regulation be amended to require the solicitation of recommendations from small business associations whenever information is solicited from prime contractors.

The DOD Inspector General's report entitled, Management of Technical Data and its Use In Competitive Procurement (report #83-098, dated April 11, 1983) discusses many of the issues examined in this review, and specifically addresses the issue of prime contractor input under the earlier regulation. The report notes that:

> "Prime contractors have much to gain in the form of sales of spare parts, by recommending restrictive codes that would cause the government to solicit future buys from these firms exclusively."

We agree that prime contractors could benefit by supplying the government with biased information, when their assistance is requested. We focused our review on determining if sufficient controls are contained in the revised breakout regulation to ensure accurate contractor technical information and coding.

The breakout regulation and accompanying military standard (Military Standard 789C, entitled "Contractor Technical Information Coding of Replenishment Parts") include the following requirements.

--DOD personnel are to assign all final acquisition codes. DOD has the final decision and responsibility for determining the acquisition method and justification for this determination.

--The contractor is to substantiate any technical information codes it provides with records, analyses, and DOD-provided forms.

--The government is to hold verification meetings, normally at the contractor's facility, to review contractor codes and support for these codes. If the government determines that a verification meeting should not be held, the contractor must forward supporting documents to the government for review.

--Commanders of DOD activities with breakout screening responsibility are to invite the activity's Small and Small Disadvantaged Business Utilization (SADBU) Specialist and the resident Small Business Administration's (SBA's) Procurement Center Representative (PCR), if any, to participate in all acquisition method coding conferences at government and contractor locations. Also, DOD commanders must provide the SADBU Specialist and the PCR the opportunity to review breakout decisions resulting from acquisition method coding conferences.

We believe the separation of industry from the final acquisition decision, the required review of contractor codes and supporting data by government technical personnel, and SBA representation at screening conferences to be adequate controls on the accuracy of contractor submissions. The breakout regulation, therefore, provides the framework for the government to preclude contractors from unfairly restricting competition by submitting inaccurate or biased information.

Effective implementation of the regulation's provisions, however, is required to ensure accurate contractor coding. The DOD Inspector General's report noted that auditors could not confirm that government personnel were adequately examining restrictive contractor recommendations. Effective use of the regulation requires proper staffing resources along with the necessary commitment and motivation.

IMPLEMENTATION PROBLEMS HAVE HAMPERED DOD'S BREAKOUT EFFORTS

Although the revised breakout regulation contains some positive changes, it must be properly implemented to effectively guide DOD's efforts to breakout and increase competition on spare parts acquisitions. DOD must provide the commitment,

motivation, and resources to implement the revised regulation. DOD has taken an important step with the creation of the Competition Advocate's Office, which will provide additional full-time resources for breakout efforts.

DOD has experienced breakout problems which were mainly attributable to inadequate implementation rather than inadequacies in the previous breakout regulation. We examined some of these past problems and noted some changes are underway which may enhance breakout opportunities.

Unavailable or poor quality technical data has inhibited breakout efforts

Breakout efforts have been seriously hampered by missing, incomplete, or illegible technical data. The services have also accepted some restrictively marked data (data labeled "proprietary") without support, analysis, or challenge.

We reported last year[2] that various Air Logistic Centers (ALCs) attributed breakout problems to poor data acquisition planning and management. The April 11, 1983, DOD Inspector General's report (#83-098) and a recent Air Force Management Analysis Group report entitled Spare Parts Acquisition (dated October 1983), discuss this technical data problem in detail.

The previous and current breakout regulations describe generally similar processes for evaluating available technical information and developing missing technical information. While the revised regulation provides steps for developing missing technical information, the entire process depends heavily on prior efforts by the government to ensure receipt and maintenance of complete data packages.

We found that changes in the current regulation regarding the review of restrictive markings on technical data are not substantial, but the language in the regulation appears to be sufficient. However, DOD must make effective use of the regulation's provisions to ensure the receipt of data to which it is entitled.

High-level DOD management has pledged itself to the correction of technical data-related problems. In testimony before the House Committee on Small Business, Subcommittee on General

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[2]Air Force Breakout Efforts are Ineffective, GAO/PLRD-83-82, June 1, 1983.

Oversight and the Economy on October 6, 1983, the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management) stated that data restrictions must be challenged. The Deputy Under Secretary also testified that programs are underway to improve technical data storage and retrieval. In addition, the Secretary of Defense issued an August 29, 1983, memorandum detailing actions to be taken which could correct many technical data constraints to breakout and competition. Continued management emphasis and attention on this problem can contribute to increased breakout opportunities.

Lack of information on actual manufacturers of parts

In our June 1, 1983, report[3] we noted that breakout efforts at ALCs have been limited because the Air Force lacked information on the actual manufacturers of spare parts. We reviewed some sample parts last year and found that many of these were manufactured by subcontractors and shipped as finished products to the prime contractor, yet they were coded as having been purchased from the actual manufacturer. We recommended the Air Force establish procedures for identifying actual manufacturers of parts scheduled for sole-source procurement from the prime contractor.

DOD concurred with our finding and recommendation. It noted that many parts had been coded in a manner which identified the prime contractor as the actual manufacturer when the parts were, in fact, produced by subcontractors. DOD reported actions it was taking to improve its ability to identify actual manufacturers.

We confirmed that some actions were being taken at Oklahoma City ALC to identify actual manufacturers. For example, a Procurement Planning List is made available to hundreds of small businesses. This list contains information on future restricted acquisition requirements. Small businesses have notified ALC that they actually manufacture some listed parts, possess the required technical data, and would like to do business with the government. As a result, action is being taken to breakout these acquisitions.

The revised breakout regulation includes a change which may assist the services in identifying the manufacturers or sources of parts. Under the revised regulation, when contractors' assistance is requested, contractors are required to furnish a list of known sources whenever certain restrictive codes are

[3]Air Force Breakout Efforts are Ineffective, GAO/PLRD-83-82, June 1, 1983.

identified. If the services are successful in obtaining this information as required, it should enhance the potential for breakout from the prime contractor.

Inadequate justifications for acquisition codes

The April 11, 1983, DOD Inspector General's report (#83-098) showed that breakout review files on selected parts did not contain adequate justifications for most of the restrictive acquisition codes that were assigned. In the DOD Inspector General's opinion, the breakout reviews were inadequate in many instances. The revised breakout regulation requires establishing files to document and justify the decisions and results of all breakout screening efforts.

Limited resources prevent adequate small business representation at screening conferences

According to the breakout regulation, SBA's PCR and the acquisition method coding conferences that are held. We believe, however, that SBA cannot adequately represent small business interests when these conferences are held. In addition, SBA cannot fully assist in other breakout efforts because of limited resources.

SBA officials told us that SADBU Specialists do not normally attend screening conferences. This function, among others, is assigned to PCRs.

SBA has 52 PCRs at federal procurement activities around the country (one per location). Their major function is to maximize opportunities for small businesses to obtain government contracts. In addition, SBA has four "breakout PCRs" at four ALCs--Oklahoma City, San Antonio, Warner Robins, and Ogden. The breakout PCR's main function is to further small business participation in DOD contracting by assisting in the breakout of contracts from prime contractors.

We reported 2 years ago[4] that SBA personnel involved in breakout activities told us limited staff prevented them from reviewing many procurements with breakout potential. SBA had three breakout PCRs during our review 2 years ago, and added a fourth in December 1982. We recommended the Administrator of SBA assign additional resources to the breakout efforts at ALCs and consider assigning breakout PCRs to other DOD procurement centers. SBA responded that it was recruiting additional breakout PCRs as personnel positions became available.

[4]SBA's Breakout Efforts Increase Competitive Procurements at Air Logistics Centers, GAO/PLRD-82-104, August 2, 1982.

The Administrator of SBA detailed plans to increase the number of breakout PCRs in the April 6, 1984, testimony before the Senate Committee on Small Business. Neither the number of breakout PCRs nor the number of their assigned support staff are currently sufficient to monitor small business opportunities and fully assist in breakout activities. The four breakout PCRs only have two full-time and seven part-time technical advisors in total.

Legislation proposed in the Congress, including H.R. 4209 and S.2489, address this breakout personnel resource problem. The House approved H.R. 4209 on May 21, 1984. Among other provisions, the legislation

--requires SBA to assign breakout PCRs to major procurement centers;

--provides for breakout PCRs to review acquisition method codes and request or conduct reevaluations on restrictively coded acquisitions; and

--requires DOD to assign to each breakout PCR a staff of technically qualified advisors, including at least one accredited engineer.

In our April 6, 1984, testimony before the Senate Committee on Small Business, we supported the enactment of this legislation to improve the role of PCRs. We believe it can enhance the verification of prime contractor technical information, identification of actual manufacturers, and overall breakout efforts.

DOD has responded with comments to congressional committees and in summary is opposed to the proposed legislation. One of DOD's major comments addresses the requirement to assign advisors, especially engineers, to the breakout PCR. DOD has stated that it has a shortage of qualified engineers.

Small business associations' participation in the assignment of codes

It has been suggested that small business associations be permitted to submit information on proposed acquisitions whenever information is solicited from prime contractors. NTMA has stated that its technical expertise and computerized data base used to identify its members' capabilities would provide government purchasing activities a more balanced industry perspective.

We support this suggestion if the pending legislation is not enacted. Some potential problems may exist, however, with small business association participation. These include selecting specific association(s) to participate in coding conferences and verifying the information provided by small business associations. Also, a DOD official involved in the revision of the

breakout regulation questioned whether DOD could rely on the competence and objectivity of some small business associations in all engineering areas. The official stated the use of a disinterested and neutral party would be a preferable alternative.

If the proposed legislation is not enacted, we believe DOD should consider small business association participation when contractor technical information is solicited. DOD should consider this idea, weighing the potential problems it presents against the merits of increased small business representation.

LEGAL QUESTIONS CONCERNING THE DEPARTMENT OF DEFENSE BREAKOUT REGULATION

This enclosure reviews certain legal aspects of Defense Acquisition Regulation (DAR) Supplement No. 6, entitled "DOD Replenishment Parts Breakout Program," now incorporated into the Department of Defense (DOD) Supplement to the Federal Acquisition Regulation (FAR). See, e.g., DOD FAR Supp. § 17.7202-1(b). In answering the questions contained in this enclosure, we have considered comments received from DOD and the National Tooling and Machining Association (NTMA).

The purpose of DAR Supplement No. 6, or the breakout regulation, is, where possible, to "break" spare parts out of the weapons system in which they function so that the parts might be purchased, presumably at less cost, either from the parts manufacturer or competitively. The regulation was issued as a supplement to DAR § 1-313(c) (now DOD FAR Supp. § 17.7203(c)), which permits restrictive procurements under the following conditions: (1) fully adequate data, test results, or quality assurance procedures are insufficient to assure the requisite reliability and interchangeability of parts, and competition would not be consistent with assuring the safe, dependable, and effective operation of the equipment; and (2) the part being procured has a critical application.

To carry out the provisions of DAR § 1-313(c), the breakout regulation establishes a screening process with step-by-step instructions for examining the status of the part's technical design and data. As a result of the screening process, parts are assigned two codes: (1) an Acquisition Method Code (AMC), represented by numbers 1 through 5, which signifies DOD technical officials' judgment concerning whether the procurement of the part ought to be competitive or restrictive; and (2) an Acquisition Method Suffix Code (AMSC), represented by letters A through Z, which generally supplements the AMC by providing the rationale for the AMC.

We have not previously rendered an opinion concerning the legality of the provisions of the revised breakout regulation, which was issued in 1983. In our bid protest decisions, however, we have recognized generally that both DAR § 1-313(c) and the practice of coding spare parts are reasonable exercises of procurement authority. See Harvey W. Neeley, B-189175, Sept. 5, 1978, 78-2 CPD ¶ 166; Mercer Products & Manufacturing Co., B-188541, July 25, 1977, 77-2 CPD ¶ 45. See also Algonquin Parts, Inc., 60 Comp. Gen. 361 (1981), 81-1 CPD ¶ 270; Rotair Industries; D. Moody & Co., Inc., 58 Comp. Gen. 149 (1978), 78-2 CPD ¶ 410. We have also held that DAR § 1-313(c) is not a blanket authorization for sole-source procurements. See Rotair

Industries, supra; Oro Manufacturing Company, B-211299, April 22, 1983, 83-1 CPD ¶ 451. In this regard, we have stated that restrictive procurements under DAR § 1-313(c) are valid only insofar as:

(1) no firm that can provide a satisfactory product is necessarily precluded from competing on procurements of that product; and

(2) a firm may become eligible to compete where it demonstrates, under suitable procedures, that it is able to furnish an acceptable product.

See Compressor Engineering Corporation, B-213032, Feb. 13, 1984, 84-1 CPD ¶ 180; Metal Art, Inc., B-192579, April 3, 1979, 79-1 CPD ¶ 229.

It is in light of those decisions that we now examine questions raised concerning the specific provisions of the breakout regulation.

QUESTIONS

1. Does the system of acquisition codes represent a restrictive prequalification system which may contravene the Small Business Administration's (SBA) exclusive statutory authority to determine the competency of small business concerns?

We do not believe that the breakout regulation either is unduly restrictive of competition or contravenes SBA's authority. First, we think that the regulation contains sufficient safeguards to constitute a valid restrictive procurement program. As we noted earlier, restrictive procurements under DAR § 1-313(c) are not improper where they are based on a bona fide need and opportunities for competition are not foreclosed. See, e.g., Compressor Engineering Corporation, supra. In this regard, the regulation recognizes that opportunities for competition must be afforded to alternate sources by providing in section S6-104(e) that:

> "No firm shall be denied the opportunity to demonstrate its ability to furnish a part which meets the government's needs . . . where a restrictive AMS/AMSC is assigned.. . . The government shall make vigorous effort to expedite its evaluation of such demonstration . . . and to furnish a decision to the demonstrating firm within a reasonable period of time."

In addition, the codes set forth in the regulation are generally to be assigned to parts only after a screening process, in which

the possibilities of competition and the availability of other sources are examined. See section S6-303. Finally, the regulation requires that any part whose code is considered suspect must be reevaluated and that, in any event, most parts must be rescreened after a set period of time. See sections S6-301.4 and S6-203(b)(1).

We also do not view the regulation's system of codes itself as a series of negative responsibility determinations that encroach upon SBA's authority to issue a certificate of competency where small businesses are concerned. It is clear from the regulation that the information conveyed by AMC's and AMSC's is to be advisory; that is, the codes are meant to be one of several factors considered by the contracting officer. See sections S6-102(b) and S6-105(e)(1). The ultimate responsibility for determining that a competitive procurement is not feasible still rests with the contracting officer. DAR § 3-101(d) (now FAR § 15.105(b)). Thus, the contracting officer must ensure the part being purchased falls within the conditions of DAR § 1-313(c), listed earlier. In our view, that responsibility includes verifying that the reasons for the particular codes assigned are documented and current.

We do not intend here to exclude the possibility that the application of certain codes without the required justification might constitute a de facto nonresponsibility determination. The breakout regulation itself, however, does not represent the responsibility-related type of prequalification system that we found deficient in Office of Federal Procurement Policy's Films Production Contracting System; John Bransby Productions, Ltd., 60 Comp. Gen. 104 (1980), 80-2 CPD ¶ 419. Unlike the system that was the subject of our decision there, the breakout regulation seeks to ensure the technical acceptability of parts, not to determine the basic capability of suppliers.

2. AMSC "A" restricts competition where the government's right to technical data is deemed questionable. AMSC's "R" and "U" restrict competition where it is deemed to be economically infeasible. Are these sufficient bases upon which to restrict competition?

AMSC's "A," "R" and "U" specifically provide the following:

> "AMSC A. The government's right to use data in its possession is questionable. (Note: This code is only applicable to parts under immediate buy requirements and only as long as rights to data are still under review for resolution and appropriate recoding.)

* * * * *

"AMSC R. The data or the rights to use the data needed to purchase this part from additional sources are not owned by the government and it has been determined that it is uneconomical to purchase them.

* * * * *

"AMSC U. The cost to the government to breakout this part and acquire it competitively has been determined to exceed the projected savings over the life span of the part."

We find no legal deficiencies inherent in the use of AMSC's "A," "R" and "U," assuming that the parts so coded have been screened and the conditions summarized by those codes are documented as required by DAR and the breakout regulation. For instance, it may be necessary to code a part "A" while appropriate steps are being taken to resolve the question of the government's right to technical data. Clearly, however, the regulation intends that a part coded "A" should not retain that code for any substantial length of time.

We can also visualize instances in which it may be uneconomical, as reflected in AMSC's "R" and "U," for the government to acquire the means to purchase a part competitively. We have held that agencies may not justify noncompetitive procurements where competition is clearly feasible based simply on the fact that one source has a considerable cost advantage over competitors. See Burton Myers Co., B-190723, B-190817, April 13, 1978, 78-1 CPD ¶ 280 (1978); Olivetti Corporation of America, B-187369, Feb. 28, 1977, 77-1 CPD ¶ 146 (1977). Here, the economic considerations are more basic than whether a particular source has a significant competitive advantage. Under the cited AMSC's, the agency considers whether the cost of obtaining the data necessary to issue a competitive solicitation can be justified in a particular situation, as well as whether a particular part's life span is such that competitive procurement can be justified. While we think such AMSC's should be used sparingly, it would not be reasonable for us to conclude that under no circumstance could such a determination be justified.

3. AMSC "L" restricts competition for purchases under $10,000 of already-inventoried parts that have been screened for known sources. Does the code violate the Small Business Act's mandate that contracts under $10,000 be let to small business concerns?

AMSC "L" provides the following:

> "The annual buy value of this part falls below the screening threshold of $10,000, but it has been screened for known source(s). (NOTE: This code shall not be used when screening parts entering the inventory . . . . It shall not be assigned in preference to or supersede any other AMSC.)"

Under the breakout regulation, the status of parts coded "L" is not reevaluated unless an immediate purchase requirement of over $10,000 is forecast. See section S6-203(b)(2).

Assuming that the parts to which AMSC "L" is assigned fall within the conditions of DAR § 1-313(c), the Small Business Act's mandate to set aside contracts under $10,000 for small business concerns is not violated. See 15 U.S.C.§ 644(j) (1982). In our view, a finding that the conditions of DAR § 1-313(c) are met is essentially a finding under the statute that "the contracting officer is unable to obtain offers from two or more small business concerns . . . in terms of quality and delivery of the goods or services being purchased." 15 U.S.C. § 644.

Certain provisions in the breakout regulation, however, might hinder a contracting officer in determining independently that a part coded "L," currently supplied by a large business, in fact could be purchased under a small business set-aside. For instance, the description for AMSC "L" does not provide, as do the other AMSC's, information as to the reason the part may be assigned a restrictive AMC; that is, it says nothing, for example, about the government's lacking data. In addition, that description seems to exclude parts coded "L" from the justifications cited under the other AMSC's by stating that AMSC "L" shall not be used in preference to another AMSC.

We also note that since parts coded "L" are not generally rescreened under section S6-203(b), it appears that DOD technical officials are not required to reexamine the status of those parts, even though the parts might also have been coded for noncompetitive purchase, that is, assigned an AMC of 3, 4, or 5. Thus, the regulation does not encourage any on-going effort by technical officials to periodically seek new sources for those parts.

We highlight these concerns since there is a statutory mandate to award contracts under $10,000 to small businesses. While some of the parts presently coded "L," which DOD informs us number around 480,000, might in any event now be purchased from small businesses, we believe that DOD should take every reasonable step to ensure that use of AMSC "L" does not foreclose future opportunities for small businesses.

4. Does the prime contractor's participation in the coding process weight the process unreasonably in favor of non-competition and represent a conflict of interest?

The breakout regulation permits prime contractor participation in the screening and coding process when requested by DOD technical officials. See section S6-201.3. Contractor participation in that process extends only to providing technical information, S6-302(c), and arrangements entered into with contractors to obtain information must provide, in part, that the contractor exert its best effort to make impartial technical evaluations. See section S6-400(c). Where a contractor supplies information, contractor technical information codes (CTIC) are used to designate the contractor's advice concerning the status of the technical data or sources for the part. DOD technical personnel are to assign AMC's and AMSC's using all available data, including CTIC's.

We recognize that prime contractor participation in the screening and coding process affords that contractor an opportunity to influence the process. Assuming that DOD technical officials follow the provisions of the breakout regulation, however, we believe that the extensive screening process generally should result in the assignment of AMC's and AMSC's that have been objectively selected after consideration of all available information including that requested of the prime contractor. See Military Standard 789C, "Contractor Technical Information Coding of Replenishment Parts," October 14, 1983. Again, we note that AMC's and AMSC's selected by DOD technical officials must be verified by the contracting officer before a particular part is procured.

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