



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20340

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B-178314

September 28, 1973

Mr. Simon Vanderlee, President  
Hydraulic Services Inc.  
1730 San Pablo Avenue  
Berkeley, California 94702

Dear Mr. Vanderlee:

Reference is made to your letter of March 19, 1973, and subsequent correspondence, protesting against the anticipated award of an indefinite quantity contract for the repair of Vickers' hydraulic winch equipment to Vickers Aerospace-Ordnance-Marine Division, Sperry Rand Corporation (Vickers). As you are aware, the Department of the Navy subsequently sole-source awarded contract N00104-73-D-F013 to Vickers on August 6, 1973.

Your protest alleges generally that your small business firm of Hydraulic Services Inc. (HSI) has provided satisfactory service on winch equipment over the past years and that the Navy's contract with Vickers would not provide the Navy with any better services and would improperly eliminate competition and foreclose HSI from providing such services.

Additionally, in your correspondence you raise allegations that Vickers has improperly eliminated valuable parts supply services to HSI and that, in past Navy-Vickers contracts, the "Navy has been subjected to numerous delays caused by Vickers' late deliveries and workmanship failures." Regarding these last two allegations, respectively, we see no present means whereby this Office may interfere with private contractual problems or should intervene in a situation properly within the purview of Navy contract administration.

The record submitted here by the Department of the Navy shows that this procurement was negotiated pursuant to 10 U.S.C. 2304(a)(10) which, as implemented by paragraph 3-210 of the Armed Services Procurement Regulation (ASPR), provides that purchases and contracts may be negotiated if "for property or services for which it is impracticable to obtain competition." As an example of circumstances permitting negotiation pursuant to this authority, ASPR 3-210.2(ix) cites the situation when the procurement involves construction, maintenance, repairs, alterations or inspection, in connection with any one of which the exact nature or amount of the work to be done is not known.

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The contracting officer's Determination and Finding (D&F) justified negotiation with Vickers as follows:

Findings

"1. The Navy Ships Parts Control Center proposed to procure by negotiation a contract for the inspection, testing, repair and overhaul of replenishment at sea equipment, including the furnishing of necessary replacement parts. These units were manufactured by the Vickers Division of the Sperry Rand Corporation and the replacement parts and drawings are proprietary to said company.

"2. Necessary inspection, testing, repair and overhaul of the replenishment at sea equipment can only be made during a greatly compressed period of time while the ship is in port. The turn-around time for the work to be performed on this equipment may vary from 14 to 30 days, based upon the availability of the ship.

"3. The Vickers Division of the Sperry Rand Corporation is the only company which has the knowledge of the test specification and procedures applicable to these replenishment at sea equipments and, therefore, the only one able to meet the various ship's availability schedules. No other company has the technical expertise, replacement parts and experience necessary to provide the required support within the time frames for implementation of the program. Furthermore, use of formal advertising would be impracticable because the exact nature, amount of work and number of replacement parts is not known.

"4. Pursuant to the foregoing this Determination and Findings shall be applicable to this contract and to all orders placed thereunder.

"5. The price is not fixed by law or regulation.

Determination

"The proposed contract is for services and replacement parts for which it is impracticable to obtain competition by formal advertising."

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Further, the Navy's report indicates they have experienced great difficulty in effecting timely completion of repair work on their Underway Replenishment (UNREP) ships, primarily "due to the inability of commercial shipyards to repair and satisfactorily test UNREP hydraulic equipment." In essence, the Navy's report concludes that independent vendors are unable to complete timely the repair because of two factors. First, they do not normally have access to all of the proprietary information required to overhaul properly a hydraulic pump or motor. Secondly, such vendors are usually unable to obtain expeditiously repair parts from the original equipment manufacturers.

The Navy feels that the Vickers contract will reverse the slow trend of overhaul/repair schedules for Vickers' hydraulic equipment and will accomplish the following:

- "1. Provide for a fixed price per unit, a short turn-around time with the repaired equipment incorporating product improvements and covered by a new unit warranty.
- "2. Ensure that the original equipment manufacturer maintains adequate facilities and uses competent personnel.
- "3. Require the original equipment manufacturer to procure and maintain a stock of hydraulic component repair parts to support its overhaul/repair effort, eliminating the necessity for Navy to stock a large quantity of such parts.
- "4. Provide for increases in the numbers of components to be repaired over the number originally estimated as necessary."

While the Navy cites ASPR 1-313 as directing that parts be procured so as to assure safe, dependable and effective operation, they have correctly noted that ASPR 1-313 does not constitute a mandate for sole-source awards. B-166435, July 1, 1969; 50 Comp. Gen. 184 (1970). We have often stated that absent sufficiently documented reasons, competition in all aspects of Government procurement is the desired goal and that continuing vigilance should be exercised in an effort to maximize competition.

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However, it has also been the consistent policy of our Office not to question the contracting officer's broad discretion to make a sole-source award unless it is clear from the written record that he acted in an arbitrary or capricious manner in abuse of that discretion. 44 Comp. Gen. 590 (1965); B-176919(1), April 16, 1973; B-174026, February 8, 1972. In the instant case, the record establishes that HSI received an unfavorable pre-award survey, dated March 29, 1973, based on its difficulty in obtaining Vickers replacement parts, which made it doubtful that your organization could meet Navy delivery schedules.

Based on the Navy's recent experiences and HSI's unfavorable pre-award survey we are unable to conclude that the contracting officer acted arbitrarily or capriciously in awarding the contract to Vickers on a sole-source basis. Since we are unable to so conclude, we find no legal basis upon which we may object to the administrative determination reached in this matter. B-174968, December 7, 1972; E-178179, July 27, 1973.

You also question why the Navy made award while your protest was pending. ASPR 2-407.8(b)(3) provides that an award will not be made during the pendency of a protest unless the contracting officer determines that the items to be provided are urgently required, or that delivery or performance will be unduly delayed by failure to make award promptly, or that a prompt award will otherwise be advantageous to the Government. The Navy has advised us that award had to be made without further delay to meet the first of several regular scheduled overhauls. Notice of intent to award was furnished our Office on July 20, 1973, pursuant to ASPR 2-407.8(b)(2). Our Office cannot object to the award under these circumstances. 49 Comp. Gen. 369 (1969).

For the foregoing reasons, your protest is denied.

Sincerely yours,

Paul G. Dembling

Acting Comptroller General  
of the United States