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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-202488

DATE: August 7, 1981

MATTER OF: Electronic Systems USA, Inc.

**DIGEST:**

1. Sole-source award is valid where agency reasonably determined competition is not practical because it twice attempted to acquire services by formal advertisement and no other potential sources bid or expressed interest in contract except protester which expressed interest but neglected to complete and return Bidders Mailing List Application agency sent it.
2. GAO will not disturb otherwise valid sole-source award where failure to synopsise the requirement in Commerce Business Daily was not result of deliberate attempt to preclude any potential source from competing.

Electronic Systems USA, Inc. protests the Army's award of a sole-source contract (No. DABT31-81-D-0023) to Honeywell, Inc. for the maintenance of a Honeywell Delta 2000 Central Automation System used for climate control at the General Leonard Wood Army Hospital, Fort Leonard Wood, Missouri. The protester argues that the Army lacked a sufficient justification for a sole-source acquisition, and that the Army failed to have a synopsis of the intended acquisition published in the Commerce Business Daily (CBD), thus depriving Electronic Systems of the opportunity to demonstrate its ability to fulfill the agency's needs.

We deny the protest because the Army's sole-source determination was reasonable under the circumstances and its failure to have a synopsis published was not the result of a deliberate effort to exclude any potential contractor.

[Protect Award of Sole-Source Contract]

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The record shows that the Army has attempted to formally advertise its two most recent acquisitions of the maintenance services. For its 1980 requirement the Army issued an invitation for bids (IFB) to 11 potential bidders and had a synopsis published in the CBD. Only Honeywell submitted a bid. Prior to the current sole-source acquisition, the Army again issued an IFB and sent a synopsis to the CBD. No potential source other than Honeywell ever expressed interest in the contract. According to the Army the maintenance of a Delta 2000 is complex and requires highly specialized training. The Army deduced from its attempts at formal advertisement that most firms lacked the requisite familiarity with the Honeywell system to perform the services. Since efforts at obtaining competition had failed in both attempts, the Army decided to negotiate a sole-source contract with Honeywell. The Army never attempted to synopsise its contemplated sole-source acquisition, and only learned after the award was made and Electronic Systems' protest was filed that the earlier synopsis had never appeared in the CBD. The Army states that it is not aware of the reason the synopsis was not published.

The protester nonetheless contends that the Army lacked a sufficient basis for the sole-source determination because after the 1980 acquisition its predecessor firm, Electronic Systems and Services Co., Inc., had expressed interest in being included on the bidders mailing list, and allegedly had been assured by the contracting officer that it would be solicited for future requirements. In addition, the predecessor firm had submitted a bid in 1978 for the removal and reinstallation of a damaged Delta 2000 at General Leonard Wood Hospital.

In response to the protester's alleged expressed interest in Delta 2000 maintenance, the Army reports that Electronic Systems failed to complete and return a Bidders Mailing List Application (Standard Form 129) which the Army sent its predecessor firm prior to this acquisition. According to the Army, the predecessor firm originally was on the bidders mailing list for the 1980 acquisition and was mailed a bid package, but prior to bid opening the firm returned Department of Defense Form 1707 having checked a box explaining it did not submit a bid because it did "not regularly manufacture or sell the type of items involved." However, the firm also checked the box stating, "We do desire to

be retained on the mailing list for future procurements of the type of item(s) involved." Consequently, the Army mailed the firm a Standard Form 129. Later, Electronic Systems' predecessor requested a copy of the IFB, which it alleges arrived on the bid opening date. After bid opening, the firm filed a protest with the Army complaining that it did not have ample time to prepare a bid. With his written response to the protest, the contracting officer included another Standard Form 129 and explained, "Your completion of this form will include your firm on our bidder's mailing list for future procurement action." However, the predecessor firm did not complete and return the form.

Sole-source awards are authorized in circumstances when needed supplies or services can be obtained from only one person or firm. For example, there may be only one source because items or services needed are unique; time is of the essence and only one known source can meet the Government's needs within the time available; data which would be needed to permit a competitive procurement is unavailable and cannot be obtained within the time available; or only a single source can provide an item which must be compatible or interchangeable with existing equipment. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. In addition, we have held that a sole-source award may be justified where repeated attempts to obtain acceptable bids have failed and a review of market conditions reveals no likely competition at a reasonable price. See 28 Comp. Gen. 470 (1949).

Because of the general requirement to obtain competition to the maximum practical extent, a sole-source award is subject to close scrutiny by this Office. The agency must have a reasonable basis for determining that no competition is practical. However, the burden of proof is on the protester, and unless it can be shown that the contracting agency acted without a reasonable basis, our Office will not question the decision to acquire services or supplies on a sole-source basis. Harris Systems Pest Control, Inc., B-199636, May 27, 1981, 81-1 CPD 413.

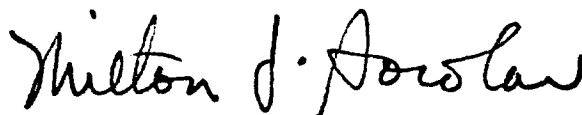
The protester has failed to meet this burden. The Army's sole-source determination appears to have been reasonable in light of the Army's experience and prior efforts, when it twice attempted to formally advertise and synopsize the acquisition of Delta 2000 maintenance services and had sent

bid packages to firms it believed might be capable of providing such services without obtaining a response from any potential source except Honeywell, see 28 Comp. Gen. supra, and the protester has not shown why this determination was unreasonable. The fact that the contracting officer conducting the 1980 procurement might have assured the predecessor firm that it would be solicited for future acquisitions did not mean that the firm could dispense with the requirement that it submit a Standard Form 129. The Army took the firm's failure to do so to mean either that it could not meet the Army's requirements (as the firm originally indicated in its response to the 1980 IFB) or that it was no longer interested in being included on the bidders mailing list. We believe the Army acted reasonably in so doing and that it therefore had a reasonable basis for concluding that only Honeywell could meet the need for maintenance and service.

The fact that the procurement was not synopsisized in the CBD also does not warrant sustaining the protest. The Army did attempt to have the formally advertised procurement synopsisized and, in view of its failure to elicit interest from potential bidders, it apparently believed a synopsis of the subsequent sole-source procurement would serve no useful purpose.

We will not disturb an otherwise valid sole-source award where the failure to synopsisize one acquisition in the CBD is not the result of a deliberate attempt to preclude a potential source from competing. Del Norte Technology, Inc., B-183528, August 5, 1975, 75-2 CPD 82. There was no such attempt here. The reason for nonpublication of the synopsis of the competitive solicitation is not known, but apparently is not the fault of the Army. Moreover, while the Army, under Defense Acquisition Regulation § 1-1003.1 (1976 ed.), should have also synopsisized the contemplated sole-source procurement, we think its failure to have done so here is understandable and does not warrant disturbing the contract.

The protest is denied.



Acting Comptroller General  
of the United States