

19839 Boyle

DECISION



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

FILE: B-203800

DATE: October 21, 1981

MATTER OF: Paradyne Corporation

DIGEST:

1. Protester contends that agency procured automatic data processing equipment without procurement authority. GAO has no basis to question agency's procurement action where (1) the contracting officer, with higher level concurrence, determined that system was classified as "Communication, Detection and Coherent Radiation Equipment" available under Federal Supply Schedule Group 58 requiring no delegation of authority from the General Services Administration, and (2) the protester offers no rebuttal to the agency's position.
2. Protest--that (1) the agency improperly restricted competition by listing in the RFP only three firms (including the protester) that were eligible to compete, and (2) the RFP omitted necessary technical evaluation criteria to ensure acceptable performance--is untimely under 4 C.F.R. § 21.2(b)(1) (1981), since the protest is against alleged improprieties apparent in the RFP and it was not filed prior to the closing date for receipt of initial proposals.

Paradyne Corporation protests the award of a contract to Racal-Milgo Information Systems, Inc., under request for proposals (RFP) No. NOO244-81-R-0293 issued by the Navy for a telecommunications network technical control system. Paradyne contends that the Navy acted without procurement authority, improperly restricted competition to only three vendors (including Paradyne), and improperly structured the RFP by omitting certain

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technical evaluation criteria to insure acceptable performance. We find that Paradyne's protest is without merit.

First, Paradyne contends that the Navy procured automatic data processing equipment covered by the Brooks Act, 40 U.S.C. § 759 (1976), without obtaining a required delegation of procurement authority from the General Services Administration (GSA).

In response, the Navy explains that its contracting officer determined, with higher level concurrence, that the system being procured was classified as "Communication, Detection and Coherent Radiation Equipment" assigned to Federal Supply Schedule Group 58 and no delegation of procurement authority from GSA is required for such equipment. The Navy explains that the system would be used to monitor the Navy data processing department's entire telecommunications network to detect and diagnose potential problems permitting timely corrective action. Paradyne offers no rebuttal.

We have examined the Navy description of the requirement and the items ordered from the awardee, and we have carefully considered the Navy's purpose for the system. From the record, we have no basis to question the Navy's classification of the system. Thus, in the circumstances, we cannot conclude that the Navy acted without procurement authority.

Second, Paradyne contends that the Navy improperly restricted competition to itself, the awardee, and one other vendor. In response, the Navy argues that since the RFP listed the known qualified sources, Paradyne's objection is untimely. Third, Paradyne contends that the RFP omitted necessary technical evaluation criteria to ensure that the selected equipment could operate properly. In response, the Navy argues that Paradyne's objection, first raised after the competition, is untimely.

Paradyne's second and third contentions concern alleged improprieties in the RFP, which were or should have been apparent prior to closing date for receipt of initial proposals. In order to be considered on the merits, under our Bid Protest Procedures, such protests

must be filed here prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1981). Since these aspects of Paradyne's protest were not timely filed, they will not be considered on the merits. Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439.

Accordingly, Paradyne's protest is denied in part and dismissed in part.

for Milton J. Aroslan
Comptroller General
of the United States