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DECISION



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

FILE: B-205063

DATE: April 14, 1982

MATTER OF: Cerberonics, Inc.

DIGEST:

1. Sole-source award to the incumbent to provide critical services for the period from the expiration of the firm's contract to the completion of a competition for a new contract was justified where the agency reasonably concluded that the incumbent was the only firm able to meet the agency's needs for the interim period.
2. GAO will not attribute improper motives to individuals on the basis of inference or supposition.

Cerberonics, Inc. protests the award of a seven-month sole-source contract by the Naval Sea Systems Command to Electromagnetic Technology, Inc. (EMT) for engineering and technical services to correct electromagnetic problems. The effort is designed to prevent adverse effects on a ship's communications and combat systems capabilities. EMT was the incumbent contractor for the services, and the contract in issue is to furnish the services after EMT's contract expired until a competition for a new contract can be completed. Cerberonics also argues that the planned competition should be a two-step, formally advertised procurement.

We deny the protest.

EMT had been providing the Navy with services to correct electromagnetic problems under a contract (awarded after a competition with Cerberonics) that was to expire on September 30, 1981. The agency announced in the September 30 Commerce Business Daily that a new one-year contract would be issued to EMT. Cerberonics then filed a protest in our Office on October 22 against any award to EMT on the basis that award without competition involving Cerberonics and other allegedly capable firms was not warranted.

By letter of November 19, the Navy advised that the contracting officer had "re-examined the facts and reassessed the Navy's position * * * and determined that competition would in fact be possible * * *." The Navy stated that the competitive process and award would take approximately six months. To insure uninterrupted services after the September 30 expiration of EMT's contract, the Navy awarded a contract to EMT for the period October 1, 1981 (by agreement, EMT had been performing the services since that date) through April 30, 1982, when the Navy expected to complete the competitive procurement. The interim contract also includes three one-month options in case the competition is delayed. The competed contract will be for the balance of fiscal year 1982, with two option years.

The basis for the sole-source award of the interim contract to EMT was the Navy's view EMT was the only firm that could meet the agency's need for the critical services in the required time-frame. As the incumbent contractor, EMT had all necessary qualified and trained personnel in place; a competition for the interim period, even if possible and accelerated, would take too much time; and a new contractor would require at least a minimum training period. Cerberonics, however, contends that it could have met all of the Navy's needs, or at least part of those needs with EMT meeting the remainder, during the interim period.

As a general matter, Government procurements must be conducted on a competitive basis to the maximum extent practicable. Defense Acquisition Regulation § 3-210 (1976 ed.). A sole-source acquisition may be authorized however, where the procuring agency's minimum needs can be met only by items or services that are unique; time is of the essence and only one known source can meet the agency's needs within the required time frame; a sole-source award is necessary to insure compatibility between the procured item and existing equipment; or an award to other than the proposed sole-source contractor would pose unacceptable technical risks. International Business Machines Corporation. B-198094.3, September 29, 1981, 81-2 CPD 258. Since the contracting agency logically is in the best position to determine what its minimum needs are and how best to meet them, our Office will not object to a sole-source award where an agency proffers a reason such as one of those listed to support the sole-source decision, unless the party protesting shows that the decision lacks a reasonable basis. See Harris Systems Pest Control, Inc., B-199636, May 27, 1981, 81-1 CPD 413.

We recognize that the Navy's predicament arose because of the agency's initial erroneous assessment, and that it was Cerberonics' protest in response to the Commerce Business Daily announcement that a sole-source contract was contemplated that prompted the Navy to rethink and reverse its position. Nonetheless, at that point the Navy was faced with an interim period during which it had to insure the uninterrupted continuation of the services. We see nothing unreasonable in an agency in effect extending an incumbent's contract in that situation where the services are needed until a new competition can be conducted and a new contract awarded. Research, Analysis & Management Corporation, B-203786, November 2, 1981, 81-2 CPD 372. Moreover, the fact that the Navy's own actions contributed to the situation that ultimately required a sole-source interim award to EMT does not preclude the Navy from using the sole-source authority when necessary to relieve the critical situation. See R&E Cablevision, B-199592, February 19, 1981, 81-1 CPD 110.

Under the circumstances, we will not object to the interim sole-source award to EMT.

Cerberonics also argues that the planned competition should be effected by a two-step, formally advertised procurement, rather than by a negotiated procurement. The contract in two-step formal advertising is awarded to the technically acceptable firm (determined in the first step) that submits the lowest bid (in the second step). This procurement method generally is reserved for complex items where existing specifications are so indefinite that technical negotiations between prospective contractors and the Government are needed. See DAR § 2-501. The protester's reason for suggesting its use, however, is that two-step formal advertising would avoid any "retaliation" by the Navy against Cerberonics because of the firm's protests; Cerberonics suggests that in a negotiated procurement the Navy might establish evaluation factors that effectively make EMT's incumbency a critical element in the selection decision, or might evaluate proposals in a manner biased against Cerberonics.

The Navy informally advises that a negotiated procurement is contemplated. Nonetheless, we do not view Cerberonics' speculation that the Navy might act improperly in conducting that procurement as a basis to object to the acquisition method selected by the Navy, since we will not attribute

improper motives to individuals on the basis of inference or supposition. See, e.g., Alan-Craig, Inc., B-202432, September 29, 1981, 81-2 CPD 263.

The protest is denied.

for Milton J. Rowland
Comptroller General
of the United States