

DECISION

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

FILE: B-208275

DATE: June 17, 1983

MATTER OF: S.A.F.E. Export Corp.

DIGEST:

Sole-source procurement of smoke detectors was improper because agency's belief that there was no other source of acceptable detectors did not have a reasonable basis.

S.A.F.E. Export Corporation protests the sole-source award of contract DACA51-82-C-0116 by the New York District Office of the Army Corps of Engineers for 10,000 smoke detectors to be installed in family housing quarters in West Germany. The Corps, relying on information furnished by the Army Installation Support Activity, Europe (AISA, Europe) believed that only Pyrotronics Canada Ltd. could furnish 220-volt, 50Hz. smoke detectors approved by Underwriters Laboratories Inc. (UL) or Underwriters Laboratories of Canada (ULC). S.A.F.E. markets a 220 volt, 50 Hz. detector manufactured by BRK Electronics which received UL approval before the award was made, and the firm contends that a sole-source award thus was not justified. S.A.F.E. also protests that the Pyrotronics unit does not meet the Army's needs, and that there was collusion between the Corps and AISA, Europe to restrict competition.

We sustain the protest on the basis that the sole-source award was not justified.

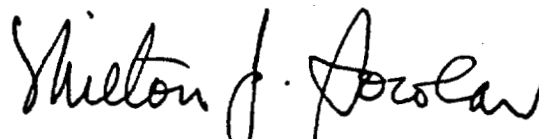
Because of the general requirement that procurements be conducted on a competitive basis to the maximum practicable extent, sole-source awards are subject to close scrutiny. A contracting agency can justify a sole-source award by showing that it reasonably believed at the time of award that there clearly was but one possible source of supply, or that based on the totality of the circumstances that existed at the time of award it would have been futile to have sought competition. ROLM Corporation and Fisk Telephone Systems, Inc., B-202031, August 26, 1981, 81-2 CPD 180.

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We cannot conclude that there was a reasonable basis for the Corps' belief that only Pyrotronics could meet its needs. The information from AISA, Europe that the Corps relied on was several months old by the time the contract was awarded, and there is no evidence in the record that the Corps attempted to update the information before the award or otherwise to verify it by, for example, checking with UL or ULC. Nor does the record show any public announcement of the anticipated award in the Commerce Business Daily, see Defense Acquisition Regulation § 1-1003 (1976 ed.), which in this instance could be expected to have produced expressions of interest from firms that could have offered the BRK detector. See D. Moody & Company, 56 Comp. Gen. 1005 (1977), 77-2 CPD 233.

Under the circumstances, we find that the sole-source award was not justified. We therefore do not find it necessary to reach the other issues S.A.F.E. has raised. We point out, however, that there is no evidence in the record to support S.A.F.E.'s allegations that the Corps acted in bad faith by attempting to make a sole-source award to preclude competition by S.A.F.E.

The protest is sustained. We do not recommend corrective action, however, because the contract has been substantially performed. In addition, the Corps' report to our Office on the protest indicates that the agency has already taken steps to insure that future procurements of this sort are fully competitive.

for 
Comptroller General
of the United States