

TK +  
Halperin  
30825

**DECISION**



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

**FILE:** B-217420; B-217424; **DATE:** March 27, 1985  
B-217425; B-217426

**MATTER OF:** Genigraphics Corporation

**DIGEST:**

1. Requirement that procurements be synopsisized in the Commerce Business Daily may be waived in accordance with Federal Acquisition Regulation, 48 C.F.R. § 5.202(d) (1984), where it is documented in the contract file that there is an unusual or compelling emergency, and the government would be seriously injured by the delay resulting from the synopsisizing requirement.
2. Protester has not met its burden of proof where the only evidence before the GAO is the conflicting statements of the protester and the agency.
3. GAO does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions.

Genigraphics Corporation (Genigraphics) protests the award of three delivery orders, Nos. DACW31-85-F-0212, DACW31-85-F-0061 and DACW31-85-F-0062, to Autographix, Inc., by the United States Army Corps of Engineers (Army) for the purchase of three computer graphics systems. Genigraphics states that it was denied an opportunity to compete on these procurements.

Specifically, Genigraphics contends that the Army utilized improper notice procedures by only synopsisizing one of the three systems in the Commerce Business Daily (CBD). Genigraphics alleges that the Army obtained information from Genigraphics and evaluated Genigraphics' systems without notifying it that the information would be used for competitive bid evaluations. Genigraphics also contends that the Army made three separate awards instead of a single award in order to establish a lower price to justify sole-source awards, and that the justification was otherwise inadequate. Finally, Genigraphics argues that a major integral component of one of the systems, a film recorder, is not covered under the awardee's General Services Administration (GSA) schedule contract, but rather is an "open market" item.

031616

We deny the protest.

In response to Genigraphics' allegation that the Army only synopsised one of three procurements, the Army states that additional synopsising was waived in accordance with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 5.202(d) (1984), which states that synopsising is not required in an unusual or compelling emergency in which the government would be seriously injured by the delay resulting from the synopsising requirement. It further provides that the circumstances involved shall be documented in the contract file by the contracting officer. The Army did document, by "Certificate of Urgency" dated November 23, 1984, why the Army was unable to synopsisize the requirements. The justification stated that it was imperative that the Army acquire an integrated, automated graphics system and have it fully operational, including the training of personnel, not later than January 1, 1985, in order to provide responsive support to the fiscal year 1986 congressional budget submission. Since nothing in the record controverts the agency's position as to the urgency of the procurement, we cannot question the Army's decision not to synopsisize the procurement. See B-174968, Dec. 7, 1972.

Genigraphics contends that it was unaware that it was participating in a competitive evaluation of its equipment. However, the Army's procurement was synopsised on October 5, 1984, and, the following week, Genigraphics' representative went to the Army's Washington D.C., office, where Genigraphics was informed that the Army was interested in obtaining a computer graphics system. According to Genigraphics, the Army requested, and Genigraphics supplied, information concerning the prices, availability and technical makeup of Genigraphics' products. The Army states that the data supplied by Genigraphics received full and fair consideration in the evaluation against the Autographix products.

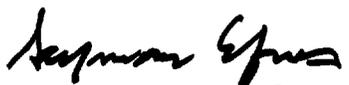
While we agree with Genigraphics that contractors should be made aware of the degree to which information supplied by them will be used, the facts here suggest that Genigraphics was treated fairly in this regard. Because of the nature of the procurement (potential purchase from a nonmandatory GSA schedule), the data required from contractors did not have to be submitted by way of formal proposals. Since Genigraphics has not alleged that the Army unfairly evaluated the data submitted and Genigraphics was aware that the data was submitted because the Army "was interested in obtaining a computer graphics system," we find no impropriety in the Army's actions.

Genigraphics argues that three separate purchase orders were issued in order to establish a lower price and justify sole-source awards and to avoid full price competition. The Army states, however, that three separate purchase orders resulted from the agency's need to install the three systems in three different locations. We find that the protester has not met its burden of proving its allegation, since the only evidence before our Office is the conflicting statements of the protester and the agency. Adams-Keleher, Inc., B-213452, March 6, 1984, 84-1 C.P.D. ¶ 273. Genigraphics requested that we investigate this and the other protested matters. However, this Office does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions. E.J. Murray Company, Inc., B-212107.3, Dec. 18, 1984, 84-2 C.P.D. ¶ 680.

Genigraphics protests the fact that award was made to Autographix because Autographix has a GSA schedule contract and the Army used this to avoid a competitive procurement. The Army states, however, that it evaluated a large number of computer graphics systems and only three survived a screening based upon the criteria of quality, responsiveness, ease of operation, maintenance availability and cost. The Army states that only the systems of Autographix and Genigraphics remained after the third system was determined to be inferior in quality to the other two. Although the Autographix and Genigraphics systems were considered basically equal technically, the Autographix system was evaluated as being considerably less expensive than the Genigraphics system. Under these circumstances, we do not consider the awards against Autographix's GSA nonmandatory schedule contract to be improper. See, e.g., NCR Corporation, B-215048, Dec. 26, 1984, 84-2 C.P.D. ¶ 698.

Genigraphics' final contention is that one of the major components of one of the systems, a film recorder, is not covered under the awardee's GSA schedule contract. However, the film recorder is on the awardee's GSA schedule contract (item H202).

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel