



Comptroller General
of the United States

Washington, D.C. 20548

147473¹³ Bednarz

Decision

Matter of: Magnavox NAV-COM, Inc.

File: B-248501

Date: August 31, 1992

Alfred J. Verdi, Esq., for the protester,
John R. Burns, Esq., On-Site Inspection Agency, for the
agency,
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency reasonably justified a sole-source award of satellite communication terminals for use in the former Soviet Union to a manufacturer, which had previously supplied such equipment, where (1) urgent and compelling circumstances, not caused by lack of advanced planning, required the immediate deployment of the terminals by the following week, and (2) only the terminals of the selected source had been certified for deployment into the former Soviet Union and only these terminals could assuredly meet the agency's training and operational needs.

DECISION

Magnavox NAV-COM, Inc. protests the sole-source award of contract No. OSIA01-92-C-0008, to Mobile Telesystems, Inc. (MTI), by the Department of Defense On-Site Inspection Agency (OSIA) for 26 Satellite Communication (SATCOM) transceiver terminals.

We deny the protest.

OSIA is a Department of Defense agency that assists in the implementation of arms control treaties, related agreements, and international missions. In November 1991, OSIA initiated a requirements analysis for SATCOM terminals to provide voice and data communications services in the former Soviet

Union in furtherance of various weapons reduction treaties.¹ OSIA assumed at the time of the requirements analysis that it may need the SATCOM terminals in July 1992, because it anticipated that the former Soviet Union might not provide this communications equipment as originally contemplated by the international agreement. OSIA commenced a market survey in December 1991, which identified three SATCOM manufacturers, including the protester and the awardee, which might be able to satisfy the anticipated requirements.

In January 1992, OSIA identified a requirement for 26 terminals to support the various treaties, after learning that the former Soviet Union would not supply the SATCOM terminals. In March 1992, an international agreement accelerated the first phase implementation of the Bilateral Chemical Weapons Destruction Treaty, such that the SATCOM terminals would be needed by May 15, 1992, rather than July 1992. In response, OSIA initiated a purchase request and began planning for a limited competition to procure the items, determining that full and open competition was no longer feasible. Around this time, Magnavox presented a technical capability demonstration of its product to OSIA.

On April 12, 1992, OSIA was charged to assist Operation Provide Hope II, a short-term humanitarian effort to provide food and medical supplies to the independent states of the former Soviet Union. OSIA was required to commence operations the following week, April 19, 1992. OSIA determined that each of the 21 teams assembled for this purpose would require SATCOM capabilities; it viewed the ability to maintain outside communications as critical to the safety of personnel deployed in the potentially unstable regions of the former Soviet Union. Thus, OSIA decided to procure the SATCOM terminal immediately for Operation Provide Hope II, with the intent that the terminals would subsequently fulfill the arms control treaty requirements.

In light of the unusual and compelling urgency of the procurement, OSIA determined that it could not publish notice of the procurement in the Commerce Business Daily (CBD), and waived the notice requirement on April 14, 1992, pursuant to Federal Acquisition Regulation (FAR) § 5.202(a)(2). On the same day, OSIA determined that an oral solicitation was necessary to implement the procurement, per FAR § 15.402(f), and requested MTI to furnish a firm, fixed-price quote for 26 SATCOM terminals, identified by MTI part number. OSIA

¹The specific treaties to be services were the Bilateral Chemical Weapons Destruction Treaty, the Conventional Armed Forces in Europe Treaty, and the Strategic Arms Reduction Treaty.

requested delivery of 15 units by April 19, 1992, to support deployment of the first Operation Provide Hope II teams, and requested delivery of the remaining 11 units by May 15, 1992. MTI responded orally to the solicitation with an acceptable price and delivery terms by the proposal closing date, also April 14, 1992.

On April 17, 1992, OSIA issued a written justification and approval authorizing the sole-source award to MTI under the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(c)(2) (1988), which permits an agency to use non-competitive procedures when its needs are of such an unusual and compelling urgency that a competition would seriously injure the government's interests.

In justifying the sole-source award, OSIA explained that only the MTI terminals were certified to enter the former Soviet Union.² OSIA could not obtain timely certification of an unfamiliar product before Operation Provide Hope II commenced, a process that reportedly consumed 90 or more days. OSIA feared that it would encounter unacceptable delays in gaining the unfamiliar product's admission. In addition, the acquisition of an unfamiliar product carried the risk that it might ultimately be rejected and be ineligible for use in OSIA's future arms control missions.

OSIA also explained that it presently owns seven MTI terminals from a previous acquisition and that it has already trained 75 percent of its intended staff on MTI terminals. The purchase of a different model would result in additional training requirements, which OSIA considered unacceptable, given the urgency of the Operation Provide Hope II requirement.

OSIA also evaluated the product information obtained from the three vendors identified in the December 1991 product survey, and determined that the MTI SATCOMs most closely approximated the government's specifications. For example, of the three products examined, only the MTI terminal did not exceed the government's power consumption threshold. If this threshold were exceeded, the terminals may be rendered inoperable, which would leave OSIA personnel without the communications capability necessary to coordinate the relief effort or its arms control obligations.

On April 17, funds were certified for the procurement, and the contractor agreed to proceed, with the understanding that OSIA would reduce the contract to writing as soon as

²This approval, given 1 year earlier, was based on previously procured MTI units.

practicable,³ On April 19, MTI delivered the first 15 terminals. On April 27, 1992, Magnavox protested the award to MTI, which had the effect of staying performance under the contract. OSIA lifted this stay in accordance with the CICA, 31 U.S.C. § 3553(c)(2), (d)(2) (1988), determining that urgent and compelling circumstances that significantly affect the interests of the United States would not permit it to await our decision on the protest.

In its protest, Magnavox argues that there was no justification for a sole-source award, and that the agency should have synopsisized the requirement in the CBD and solicited Magnavox to compete for the contract. We disagree.

CICA provides for the use of non-competitive procedures when the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits proposals, 10 U.S.C. § 2304(c)(2). While CICA requires that the agency request offers from "as many potential sources as is practicable under the circumstances," 10 U.S.C. § 2304(e), an agency may still limit the procurement to the only firm it reasonably believes can properly perform the work in the available time, provided this limitation is justified. Abbott Prods., Inc., B-231131, Aug. 8, 1988, 88-2 CPD ¶ 119.

In this case, the agency required SATCOM terminals to assist its humanitarian relief effort in Operation Provide Hope II, a requirement which arose 1 week before operations were to commence. Faced with only a week to procure the SATCOM terminals, we think that the agency's decision to limit the competition to MTI was reasonable. Specifically, OSIA reasonably desired to acquire a product already certified to enter the former Soviet Union, so as to avoid the risk that an alternate product, such as the protester's, might be rejected or detained beyond the imminent commencement of operations. OSIA was also reasonably concerned that there was not sufficient time to train its personnel on unfamiliar equipment in the limited period between the equipment's receipt and its deployment to the former Soviet Union, a fact that the protester does not refute. Also, the agency had evaluated the technical information submitted by the three SATCOM manufacturers; our review of the record supports the agency's concern that Magnavox's product exceeded the agency's allowable power consumption. Although the protester argues that OSIA could have resolved its technical concerns regarding Magnavox's product through a question and answer session, we think it unreasonable to expect the agency to conduct negotiations with so little

³The contract was written and signed on May 11, 1992.

time available to procure the equipment, in light of the immediate response required by Operation Provide Hope II. Accordingly, we find no basis to object to the agency's determination that only MTI could properly perform the work within the urgent time constraints of this procurement.

Regarding the protester's contention that OSIA should have synopsised the procurement in the CBD, an agency need not synopsis urgent contract actions where compliance with the time periods required for publication would seriously injure the agency, as was the case here. FAR § 5.202(a)(2).

Magnavox also argues that OSIA created the urgent situation in this case because it anticipated a SATCOM requirement in November 1991, but failed to compete the requirement until April 12, 1992, when it was engaged to assist in Operation Provide Hope II. It is true that an agency may not make a sole-source award where the need for the sole-source acquisition results from a lack of advance planning by procurement officials. 10 U.S.C. § 2304(f)(5)(A). However, a change in conditions does not generally indicate a lack of advance planning by an agency; in fact, the changed conditions may warrant a sole-source award in the short-term to allow the agency to adjust to the changed conditions. Petro Star, Inc., B-248019, July 27, 1992, 92-2 CPD ¶ ____; Kollsman, A Div. of Sequa Corp.; Applied Data Tech., Inc., B-243113; B-243113.2, July 3, 1991, 91-2 CPD ¶ 18.

Here, the record does not support the protester's assertion that OSIA's sole-source requirement resulted from a lack of advance planning. The record reflects that OSIA was preparing to satisfy its SATCOM requirements through a limited competition even up to March 27, 1992, when it requested a technical demonstration of Magnavox's product. These plans were interrupted by an event outside of OSIA's control, its assignment to provide assistance for Operation Provide Hope II on April 12, 1992, which forced the agency to resort to sole-source procedures to fulfill its requirements by the following week.

The protest is denied.


for James F. Hinchman
General Counsel