

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

50917

FILE: B-183528

DATE: August 5, 1975

MATTER OF: Del Norte Technology, Inc.

97306

DIGEST:

Sole-source award for ship's positioning equipment was not improper where only one manufacturer of conforming equipment was found after reasonable market search, even though procurement synopsis was inadvertently omitted from Commerce Business Daily. However, agency is requested to consider conducting evaluation and/or testing of protester's equipment to promote possible future competition.

Del Norte Technology, Incorporated (DNTI), has protested the sole-source award of a contract to Motorola, Incorporated, by the Naval Surface Weapons Center, Dahlgren, Virginia (Dahlgren), for a ship's positioning system. In substance, it is DNTI's position that the sole-source procurement is invalid since the agency failed to publicize the procurement in the Commerce Business Daily as required by Armed Services Procurement Regulation (ASPR) § 1-1003.1(a) (1974 ed.), the specifications required by Dahlgren were restrictive, and the Trisponder manufactured by DNTI can meet the Government's needs. For the reasons indicated below, the protest is denied.

The Navy reports that after an investigation was performed to determine potential sources of supply it was determined that only Motorola's equipment would meet its needs and, therefore, request for proposals No. N00178-75-R-0043, was issued to only Motorola on October 9, 1974. The principal justification for sole-source award is contained in the "Documentation for Non-Competitive Procurement" dated September 18, 1974, as follows:

"* * * Motorola is the only manufacturer with equipment that is directly compatible with existing equipment and also that meets the space and weight requirements."

Furthermore, as stated in the agency report to our Office the critical specifications for the equipment which it was determined only the Motorola equipment will meet are:

Size: Total system shall weigh no more than 80 pounds and shall occupy no more than 10 cubic feet of space.

Maintainability: Must have a diagnostic/trouble shooting capacity integral to the equipment and be maintainable in the field by replacement of components.

Frequency: Must operate in C Band. In order to preclude any possibility of interference between X-Band radar equipment already on board the test ship and other ship's X-Band equipment, the system must operate outside the X-Band.

The ship's positioning system is to be used on board the USS Hull during technical evaluation and testing of the 8" Major Caliber Lightweight Gun, which was initially scheduled to begin in June 1975. However, the evaluation and testing schedule was subsequently revised to begin in May 1975. Even though it was then discovered that the procurement apparently had not been synopsized in the Commerce Business Daily, due to the urgent delivery requirement for the system in order to support the rescheduled testing, the contracting officer determined that the procurement could not be delayed for synopsizing. See ASPR § 1-1003.1(c)(iv) (1974 ed.), under which award may be made without synopsizing where the Government would be seriously injured by postponing award for more than 15 days. On March 7, 1975, contract No. N00178-75-C-0166 was awarded to Motorola.

Del Norte contends that it did not learn of the procurement until after award and therefore was precluded from competing, even though it had equipment in stock which meets the Navy's needs, because the Navy failed to comply with the ASPR requirement for synopsizing and failed to conduct an adequate market search for competition. In this connection, it is pointed out that the procuring agency's contract Review Board specifically directed synopsizing in August 1974, the solicitation was not issued until October 1974, and the contract was not awarded until some 5 months later. With regard to the claimed inadequacy of the market search, it is suggested that the agency should have simply asked Motorola who its competitors were, and should have contacted the Corps of Engineers and the National Oceanographic and Atmospheric Administration (NOAA) Headquarters instead of one of its smaller facilities as was done.

When formal advertising is not feasible, the procurement agency is authorized to negotiate a purchase or a contract. In this regard, 10 U.S.C. 2304(a)(10) provides that a procurement may be negotiated if "the purchase or contract is for property or services for which it is impracticable to obtain competition." Further, Armed Services Procurement Regulation (ASPR) § 3.210.1 (1974 ed.) sets forth illustrative circumstances under which the authority to negotiate under Section 2304(a)(10) may be used. Under ASPR § 3.210.2(i) contracts may be negotiated where supplies or services can be obtained from only one person or firm ("sole source of supply"). In determining the propriety of a sole-source award the standard to be applied is one of reasonableness, and unless it can be shown that the contracting officer acted unreasonably, there is no legal basis on which to question the award. B-175953, July 21, 1972; 44 Comp. Gen. 590 (1965).

It is clear that this is the type of procurement required to be synopsisized under ASPR § 1-1003 and that there was ample time to do so. It appears from the record, however, that the failure to synopsisize resulted from inadvertence and not from a deliberate attempt to preclude Del Norte or any other potential source from competing. Furthermore, we believe the market search was adequate. Prior to issuing the RFP, the Navy reports that it checked Thomas Register of American Manufacturers and Visual Search Microfilm System and that Del Norte was not listed as a supplier of ships positioning systems, whereas Motorola and Teledyne were so listed. In addition, six Government agencies were contacted by telephone and these included a Corps of Engineers and NOAA facility. Moreover, our Office has no basis for questioning the validity of the D&F justifying the sole-source determination. In these circumstances, we do not believe that an otherwise valid award should be disturbed.

Del Norte also contends that its Trisponder system qualifies to compete for the Navy's requirements and takes issue with the Navy's contrary conclusion based upon the Navy's post-award investigation of this matter. Del Norte disputes the Navy's contention that the Trisponder will not operate effectively when located adjacent to an operating radar because it operates in X-Band. According to Del Norte the Trisponder has operated throughout the world with no known situations where extraneous radar interference has caused it to be unusable. Furthermore, the protester maintains that it has accepted and met contractual requirements to

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work in immediate proximity to 45 KW X-Band radars. Del Norte also takes issue with the necessity of restricting competition to equipment operating in C-Band.

This Office has consistently recognized that since Government procurement officials are generally in the best position to know the Government's needs and to determine whether the product offered meets those needs, we will not substitute our judgment for the agency's in the absence of arbitrary action. East Bay Auto Supply, 53 Comp. Gen. 771 (1974). In the instant case, the primary basis for the Navy's position concerning the unacceptability of a system based upon an X-Band principle is that a system operating within the C-Band range is needed to preclude any possible interference with radar equipment operating within the X-Band range. Such determination was based upon the technical expertise of the agency. While Del Norte strongly disagreed with the Navy's position in this regard subsequent to the award, we do not think that an honest difference of technical opinion is tantamount to arbitrary action on the part of the agency. 53 Comp. Gen. 373 (1972). Therefore, we have no basis for taking exception to the decision to limit solicitation to known manufacturers of equipment operating in the C-Band.

Since subsequent to the award Del Norte has presented a strong case in support of its position, and in order to promote possible competition for future procurements, we are suggesting to the Navy that consideration be given to further evaluation and/or testing of Del Norte's system.

For the foregoing reasons, the protest is denied.


Deputy Comptroller General
of the United States