

**DECISION**



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

FILE: B-186098

DATE: August 3, 1976

MATTER OF: Metal Trades, Inc.

61280  
98744

**DIGEST:**

1. Where procurement was not advertised in Commerce Business Daily, where protester was not sent invitation because it was not within geographical area to which bidders were restricted, and where there is no evidence that protester knew of procurement prior to bid opening, protest against alleged impropriety in solicitation will be considered even though as general rule it should have been filed prior to bid opening since protest was filed within 10 days of when basis of protest became known to protester.
2. Geographical restriction on location of bidders allowed to compete on procurement was valid where procurement is pilot program of interdepartmental agreement thereby necessitating close cooperation and regular inspection by cognizant agency personnel to solidify procurement policy for future procurements.

Metal Trades, Inc., protests the award of a contract for the repair and overhaul of an Army vessel under invitation for bids No. N62678-76-B-0076, issued by the Fifth Naval District, Portsmouth, Virginia.

The basis of the protest is that Metal Trades believes it unfair that the award for this work was limited to contractors located in the Fifth Naval District (the solicitation required that all contract work would be performed in that district), since the vessel was located in Charleston, South Carolina, near the protester's plant and outside of the Fifth District.

Initially, the Department of the Navy contends that since the protest concerns a matter apparent on the face of the invitation our Bid Protest Procedures, specifically 4 C.F.R. § 20.2 (b)(1) (1976), require the protest, in order to be considered, to have been filed prior to bid opening, which was not the case. While the Navy has correctly stated the general rule, we do not believe it is applicable under the present circumstances. The

procurement apparently was not advertised in the Commerce Business Daily, and bids were solicited only from ship repair contractors located in the Fifth Naval District. Since the protester alleges that it did not learn of the procurement prior to bid opening, and because nothing is presented to indicate that the protester should have known of the procurement prior to bid opening, we believe the protest is for consideration.

The reasons for the geographical limitation placed upon bidders stemmed, we are advised (as was Metal Trades), from the singular nature of the procurement. This procurement represented the initial step in a pilot program developed by the Departments of the Army and the Navy, through the Naval Sea Systems Command, whereby the Command would repair and overhaul the vessel in question and then both military services would review the results and any problems encountered so as to develop a formal Defense Interservice Military Support Agreement that would become the basis for a 5-year program of Navy repair of Army vessels. To accomplish this initial step, the Fifth Naval District was designated as the activity responsible for procuring the necessary services for the first vessel. The geographical limitation was imposed to permit the necessarily detailed surveillance of the work, without the incurrence of additional expenses and problems that the supervision of work outside the district would entail, that would be possible by being in close proximity to the contractor's plant. This was felt to be essential to the proper development of the program. It was determined that adequate competition could be obtained, notwithstanding this limitation. It would also appear that after the development of the program ground rules from the procurement in question, as stated in the Navy's letter of March 12, 1976, to Metal Trades, future procurements of these services will not be limited to the Fifth Naval District but will be available for competition by contractors located where the Army vessels are actually situated.

We have held that geographical restrictions may constitute a legitimate restriction on competition where the contracting activity has properly determined, after a careful consideration of the relevant factors involved, that such a restriction serves a useful or necessary purpose and that the limitation is not unduly restrictive of competition. 53 Comp. Gen. 102 (1973); Paul R. Jackson Construction Company, Inc., and Swindell-Dressler Company, A Division of Pullman, Incorporated, A Joint Venture, 55 Comp. Gen. 366 (1975), 75-2 CPD 220. In the instant case, while we might not find such a

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restriction valid on all future contracts of this type, we believe that the restriction was valid in view of the need to coordinate the procurement process as regards the needs and capabilities of the Departments of the Army and the Navy on the initial procurement of this type and in view of the need to easily, inexpensively, and frequently inspect the work as it progresses.

Accordingly, the protest is denied.

However, with regard to future procurements, by separate letter of today we are advising the Secretary of the Navy of the statutory and regulatory duty to publicize such procurement information in the Commerce Business Daily. 15 U.S.C. § 637(e) (1970); Armed Services Procurement Regulation § 1-1005 (1975 ed.).

A handwritten signature in black ink, appearing to read 'R. K. ...', is written over the typed name.  
Deputy Comptroller General  
of the United States