

DOCUMENT RESUME

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[Protest against Sole Source Procurement of a Negotiated Requirements Type Term Contract]. B-185769. August 10, 1977. 4 pp.

Decision re: Hayden Electric Motors, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government (806).

Organization Concerned: Alaska Railroad; Westinghouse Electric Co.

Authority: 41 U.S.C. 252(c)(10). F.P.R. 1-3.210(a)(1). B-185644 (1976).

The protester alleged that the award of a negotiated requirements type term contract on a sole source basis was improper in that the contemplated work was encompassed by two General Services Administration Federal Supply Schedule contracts previously awarded to the protester. The award of the contract to another firm did not infringe on the protester's rights under its supply schedule contracts since the items awarded were clearly outside the scope of their contracts. The decision to procure on a sole source basis was not disturbed since the awardee was the only known source with the capability to satisfy the procuring activity's requirements. (Author/SC)

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J. Notopoulos  
P. A. C. III



**DECISION**

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

**FILE: B-188769**

**DATE: August 10, 1977**

**MATTER OF: Hayden Electric Motors, Inc.**

**DIGEST:**

1. Award of contract to another firm did not infringe protester's rights under its supply schedule contracts where items awarded were clearly outside the scope of supply schedule contracts.
2. Decision to procure on a sole-source basis will not be disturbed where record reasonably establishes that awardee was only known source with capability to satisfy procuring activity's requirements.

Hayden Electric Motors, Inc. protests the award by the Alaska Railroad (ARR) of a negotiated requirements type term contract on a sole-source basis to Westinghouse Electric Company, Anchorage, Alaska for the repair and rebuilding of locomotive electrical equipment.

The protester alleges that the award was improper in that the contemplated work is encompassed by two General Services Administration Federal Supply Schedule contracts previously awarded to Hayden. Hayden argues in the alternative that even if the requirements of the Westinghouse contract are not encompassed by Hayden's contracts, then the award on a negotiated sole-source basis was improper since the requirement should have been formally advertised and Hayden permitted an opportunity to bid thereon.

In examining Hayden's two supply schedule contracts, we find that they are essentially identical in their requirements. In pertinent part, items 3 and 4 of each are for the armature rewinding and reconditioning of "direct current motors, constant speed, shunt wound, ball bearing, 200 h. p. and below;" items 5 and 6 are for "service and repairs to motors, generators, motor generator sets, and related electrical equipment \* \* \* of all types and makes, AC or DC, and all sizes up to 200 horsepower." In view thereof, and of ARR's un rebutted representation that the items contemplated by the Westinghouse contract are in excess of 200 h. p., we must reject the protester's contention that either the motors or the generators under the Westinghouse contract are included within the scope of Hayden's supply schedule contracts. The fact that ARR may have provided Hayden in the past with some traction motors and generators to repair may not, in the absence of a formal contract modification, legally

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entitle Hayden to work in excess of the 200 h. p. contractual limitation. To the contrary, it was due to ARR's determination that Hayden's capabilities were insufficient to properly handle the larger items such as traction motors that it was decided to let a separate contract therefor.

In considering the allegation that the Westinghouse procurement should have been formally advertised rather than negotiated sole-source, the Federal Railroad Administration advises it was negotiated pursuant to 41 U.S.C. 252(c)(10) and Federal Procurement Regulations (FPR) 3.210(a)(1), which permits a negotiated award "when property or services can be obtained from only one person or firm (sole-source of supply)."

This action was taken pursuant to a determination and findings (D and F) that Hayden has neither the shop equipment nor trained personnel to repair and rebuild this type equipment in the quantities required by ARR and that, at present, the only source with this capability in Anchorage is Westinghouse. In view thereof, a competitive procurement was determined impracticable.

The determination that Hayden lacked the facilities for the contemplated effort was predicated upon a Plant Facilities Report dated September 9, 1976, of Hayden's facility. We excerpt in pertinent part the revelations provided by the Plant Facilities Report:

"\* \* \* Inspection of the shop revealed two or three traction motors in various stages of repair waiting for parts.

"During our visit, we observed a traction motor armature lying on the floor with a chain around the center, and it appeared that this method had been used in moving the armature. The sling for proper handling of armatures lay a few feet from the scene.

"During our visit, we discussed qualifications of those who worked on the larger motors. Mr. Malley said that because of the pipeline activity and high wages paid, they were unable to get and maintain persons experienced in this type equipment. Their procedure was to have a previous employee stop by after his work for another firm, or on Saturday, to instruct Hayden personnel in the next step of the repair process and act as sort of quality control check on what had been done.

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"At the time of our visit, Hayden also lacked proper shop facilities and test equipment to handle this type equipment, which resulted in having to transport the traction motor and component parts to Westinghouse Corporation for various services and tests during repair of the units.

"In view of the inexperienced personnel, lack of shop facilities and that the GSA contract is not mandatory for this type equipment, it is hereby determined by the undersigned to be in the best interest of the Government and The Alaska Railroad to negotiate a contract for these services with Westinghouse Corporation, the only Anchorage source capable of handling this size equipment in the quantities required to keep our fleet of Diesel Electric locomotives operational."

The protester contends that the Plant Facilities Report should be disregarded because it was dated September 9, 1976, almost one year after the survey was actually made. However, ARR states that the report was based on an inspection of the protester's facilities during September and October of 1975, and that the notes of this inspection were misplaced. As a result, the 1976 Report was prepared as a reconstruction of the 1975 inspection findings. Therefore, we do not think this Report should be disregarded because it was dated September 1976.

Moreover, ARR also has provided us with copies of Westinghouse invoices to Hayden showing that Hayden sublet certain portions of the repair work to Westinghouse. The Westinghouse invoices show that an EMD armature was received September 30, 1975 and returned October 13, 1975; a D 27 armature was received October 13, 1975 and returned October 29, 1975; and an EMD returned November 6, 1975. All three involved turning, undercutting, polishing and balancing. Based on the foregoing, ARR insists that Hayden itself does not have the capacity to perform the services required.

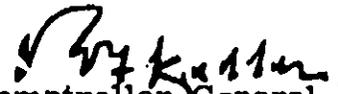
On the existing record we must conclude that there was adequate factual justification for the determination that Hayden lacked the necessary facilities and capabilities to perform the effort. In this regard, we have held that a decision to procure on a sole-source basis will not be disturbed where a D&F to negotiate on a sole-source basis is supported, as in the instant case, "by a record sufficiently establishing that the awardee was the only known source with the capability to satisfy the procuring activity's requirements. See Triple A Machine Shop, Inc., B-185644, March 25, 1976, 76-1 CPD 197.

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The protester has also alleged that ARR is not giving Hayden repair work on ARR equipment which Hayden is entitled to perform under its GSA contracts. Hayden also alleges that Westinghouse is charging ARR \$35 per hour for services which is in excess of the rates (\$23 and \$25 per hour) charged by Westinghouse to some of its regular customers.

While admitting it has not recently delivered DC generators to Hayden for repairs the agency advises that it has not had occasion to deliver such generators to any contractor. However, to the extent that ARR would require servicing on DC auxiliary generators within the scope of Hayden's contract, ARR states that these would be delivered to Hayden. As for the price of the Westinghouse contract, ARR reports that it is paying Westinghouse \$26.50 per hour for service rather than the \$35.00 speculated by Hayden. Therefore, it appears that Hayden's allegations are not correct.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States