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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Brinkmann Instruments, Inc.

File: B-309946; B-309946.2

Date: October 15, 2007

J. Michael Littlejohn, Esq., Hal J. Perloff, Esq., and Steven J. Koprince, Esq., Akerman Senterfitt Wickwire Gavin, for the protester.

Robert Kois, Esq., and Richard Martinelli, Esq., Naval Supply Systems Command, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's proposed award of a sole-source contract for autotitrators to be used in nuclear submarines is unobjectionable where the agency reasonably determined that it needed to acquire the same autotitrator previously fielded on other nuclear submarines for purposes of standardization and safety across the nuclear submarine fleet.

DECISION

Brinkmann Instruments, Inc. protests the proposed sole-source award of a contract to Mettler-Toledo, Inc. under request for quotations (RFQ) No. N00104-07-Q-VY68, issued by the Naval Supply Systems Command, Department of the Navy, for 33 Mettler DL77 Navy autotitrators.

We deny the protest.

On July 23, 2007, the Navy published in FedBizOpps a presolicitation notice of its intention to procure, on a sole-source basis, 33 DL 77 Navy autotitrators from Mettler to be used onboard its 688 Class and 726 Class nuclear submarines. Currently, the Mettler unit is installed onboard 44 of the Navy's nuclear submarines and is used to automate the chemistry analysis of steam and steam plant water samples. As explained by the Navy, 22 of the 33 units are to be used for "On Board Repair Parts,"

while the remaining units are either intended for ship alterations or necessary to fulfill minimum stocking levels.¹ Agency Report (AR) at 5.

Prior to issuance of the presolicitation notice, the Navy prepared a justification and approval (J&A) in support of the sole-source award to Mettler, citing the authority at 10 U.S.C. § 2304(c)(1) (2000) and Federal Acquisition Regulation (FAR) § 6.302-1, which authorize the use of other than competitive procedures when items required by an agency are available from only one responsible source or a limited number of responsible sources, and no other product will satisfy the agency's needs.

Brinkmann objects to the proposed sole-source award to Mettler principally on the ground that its own autotitrator, the Metrohm 809 Titrando, which it claims is less expensive than the Mettler autotitrator, is also technically and functionally equivalent or superior to the Mettler unit.² Accordingly, Brinkmann contends that the Navy is required to compete the autotitrator requirement.

As a general matter, CICA mandates "full and open competition" in government procurements obtained through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A). CICA, however, provides several exceptions to this requirement, including when an agency's requirements can only be satisfied by one responsible source. 10 U.S.C. § 2304(c)(1). When, as here, an agency invokes this exception, it is required to execute a written J&A with sufficient facts and rationale to support the use of the cited authority. Our review of an agency's decision to conduct a sole-source procurement focuses on the adequacy of the rationale and conclusions set forth in the J&A; where the J&A sets forth a reasonable justification for the agency's actions, we will not object to the award. Chapman Law Firm, B-296847, Sept. 28, 2005, 2005 CPD ¶ 175 at 3. In this regard, our Office has held that an agency's legitimate need to standardize the equipment it uses may provide a reasonable basis for imposing restrictions on competition. See, e.g., Advanced Med. Sys., Inc.,

¹ In March 2007, the Navy had issued a solicitation for the purchase of 62 Mettler units in order to replace all the fielded Mettler autotitrators. The Navy subsequently reevaluated its needs and decided that some units could be refurbished, reducing the number of needed Mettler units to 33 as provided in the subject solicitation.

² Brinkmann also argued that the "only one responsible source" exception in the Competition in Contracting Act (CICA) and FAR § 6.302-1 was not available to the agency because the autotitrators are not "highly specialized equipment." CICA and the FAR, however, do not limit application of the single source exception to procurements of "highly specialized equipment," as suggested by the protester. Rather, the provisions in CICA and the FAR regarding "highly specialized equipment" merely prescribe the necessary findings regarding "a follow-on contract for the continued development or production of . . . highly specialized equipment" 10 U.S.C. § 2304(d)(1)(B); see also FAR § 6.301-2(a)(2)(ii).

B-259010, Jan. 17, 1995 (agency's need to standardize fetal monitors in order to maximize patient care was reasonable); Sperry Marine, Inc., B-245654, Jan. 27, 1992, 92-1 CPD ¶ 111 (sole-source acquisition of particular radar system was reasonable where agency needed to utilize the same radar system it had already deployed at training school).

Based on our review of the record, we conclude that the Navy had a reasonable basis for the sole-source award to Mettler. The record shows that the ability of the Brinkmann autotitrator to meet the Navy's onboard technical requirements was not an issue. Rather, the Navy's justification for the sole-source award to Mettler is based upon, among other things, a reasonable need for standardization.

As explained by the Navy, the accuracy and reliability of the chemical analyses by the autotitrators is essential for the safe operation of a submarine's nuclear reactor plant and having a standard unit allows Navy personnel to operate the autotitrator equipment without regard to the specific submarine to which they are assigned. AR, Tab E, J&A at 2. Maintaining the operational continuity of the autotitrators across submarines is especially important since Navy personnel operating the units are not professional chemists and there is "constant turnover" of personnel between submarines. AR, Tab A, Declaration of Director, Fleet Readiness Division, Naval Nuclear Propulsion Program, Aug. 28, 2007, at 1. Because no other autotitrator is "directly interchangeable in form fit and function" with the currently fielded Mettler unit, AR, Tab E, J&A at 2, introducing a different unit would undermine the advantage of having Navy personnel operate a single standard unit, thereby "increas[ing] the risk of incorrect chemical analyses," and in turn increasing the risk to the safety of Navy personnel and equipment. AR, Tab A, Declaration of Director, Fleet Readiness Division, Naval Nuclear Propulsion Program, Aug. 28, 2007, at 1.

According to Brinkmann, other than a different keypad or operating system, there is little difference between its own autotitrator and the Mettler unit, and the differences which do exist would not affect ease of use. Comments at 4. In arguing that the differences between the two units are insignificant in nature and that the Navy's standardization and safety concerns are therefore overstated, Brinkmann relies on broad assertions and the opinions of its own director of sales. In our view, Brinkmann's arguments on this point amount to little more than its disagreement with the agency's determinations, which does not provide an adequate basis to sustain the protest. In sum, we conclude that the Navy has established a legitimate safety need for fielding a single standard autotitrator and that the contemplated award to Mettler will achieve the Navy's standardization goals. See American Eurocopter Corp., B-283700, Dec. 16, 1999, 99-2 CPD ¶ 110 at 6-7 (finding restriction of competition to specific make and model of helicopter was reasonable where

standardization of agency's fleet was necessary based on safety concerns). We therefore find the proposed sole-source award to Mettler unobjectionable.³

The protest is denied.

Gary L. Kepplinger
General Counsel

³ Brinkmann also challenged the agency's sole-source award to Mettler on the ground that it was the result of the agency's lack of advance planning. See 10 U.S.C. § 2304(f)(5)(A) (providing that an agency may not use noncompetitive procedures due to its lack of advance planning); see also FAR § 6.301(c)(1). Since, as discussed above, the Navy has articulated a reasonable need to employ the Mettler autotitrator due to a need for standardization stemming from safety concerns, Brinkmann's advance planning argument is without merit. In addition, Brinkmann filed a supplemental protest challenging the solicitation's "Alternate Product Offers" clause. Since the protester did not respond to the Navy's substantive responses on this issue, we consider this issue to have been abandoned. MFVega & Assocs., LLC, B-291605.3, Mar. 25, 2003, 2003 CPD ¶ 65 at 4.