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DECISION



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

FILE: B-202880

DATE: August 4, 1981

MATTER OF: Bethlehem Steel Corporation

DIGEST:

Sole-source award is justified based on urgency only if agency finds that just one source can meet Government's need within required time.

Bethlehem Steel Corporation protests the sole-source award of a contract by the Department of Commerce, Maritime Administration (MarAd) to Norfolk Shipbuilding and Drydock Corporation to repair the training ship BAY STATE. MarAd's reason for awarding the contract on a sole-source basis was its belief that there was not adequate time before the work had to be completed to secure the services through a formally advertised procurement. Bethelhem Steel contends that it has adequate capacity to perform the work within the necessary time period.

The protest is sustained.

MarAd reports that it relied on 41 U.S.C. § 252(c)(2) (1976) to negotiate the sole-source contract with Norfolk. That statute allows negotiation when "the public exigency will not admit to the delay incident to advertising."

However, by its terms 41 U.S.C. § 252(c)(2) does not, in itself, authorize a sole-source award. Rather, the statute only justifies the use of negotiated procedures instead of formally advertised ones where there is a need that must be met in a shorter time than advertising will allow. It does not relieve an agency of the requirement to conduct the procurement in a manner that will generate the maximum practicable competition. See Federal Procurement Regulations (FPR) § 1-3.101(d) (1964 ed.); Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. A sole-source negotiated procurement can be justified based on urgency only where the agency finds that just one known source can meet the Government's needs within the

[Protest of Sole-Source Contract Award]

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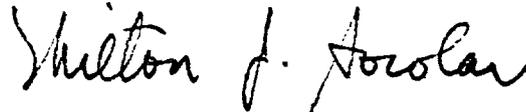
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required time. See Las Vegas Communications, Inc., --
Reconsideration, B-195966.2, October 28, 1980, 80-2 CPD
323.

In the above respect, Bethlehem Steel asserts that at least three of its shipyards, each of which is considerably closer to the BAY STATE's home port outside of Boston than is Norfolk, "routinely" provide multiple shifts or otherwise increase staffing to complete urgent jobs. The firm suggests that certainly its Boston shipyard "was too obvious a competitor to have been reasonably overlooked."

It is clear from the record that MarAd did not consider whether a sole-source award was appropriate under the requisite standard. The agency did not decide that its needs could not be met through a negotiated competition; rather, it only decided that an advertised procurement would take too long. Under the circumstances, we must conclude that the award was improper. The protest is sustained.

The extent of Norfolk's performance under the contract precludes a recommendation for corrective action in this instance. Nonetheless, by separate letter we are advising the Secretary of Commerce of the noted procurement deficiency.



Acting Comptroller General
of the United States