



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Mobile Telesystems, Inc.

**File:** B-255213

**Date:** February 15, 1994

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Kenneth A. Homon for the protester.  
Kathleen D. Martin, Esq., Department of State, for the agency.  
Kathleen A. Gilhooly, Esq., and Michael R. Volpe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency that published in the Commerce Business Daily (CBD) its intention to purchase a particular vendor's equipment off that vendor's nonmandatory schedule contract, properly ordered an alternative source's equipment off that source's schedule contract, after determining that the alternative source's equipment was lower priced and functionally equivalent to the CBD-listed equipment.

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### DECISION

Mobile Telesystems, Inc. (MTI) protests the Department of State's issuance of delivery order No. 1019-371076 to Magnavox/Nav-Comm, Inc. for 10 Inmarsat (International Maritime Satellite) terminals under a nonmandatory schedule contract with the General Services Administration (GSA). MTI contends that the equipment offered by the awardee does not have the features synopsisized in the Commerce Business Daily (CBD).

We deny the protest in part and dismiss it in part.

The use of GSA's nonmandatory schedule to acquire Federal Information Processing (FIP) resources is governed by the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. §§ 201 et seq. (1993). The FIRMR permits an agency to place an order against these schedule contracts when certain conditions are met. One condition is that the agency synopsisize in the CBD its intent to place such an order. The CBD announcement must include sufficient information to permit the agency to determine from the responses whether ordering from the GSA schedule will meet its needs at the lowest overall cost. 41 C.F.R. §§ 201-39.501-3, 201-39.803-1(b). This requires the agency

to assure that available alternatives are brought to the agency's attention. See Rabal-Milgo, 66 Comp. Gen. 430 (1987), 87-1 CPD ¶ 472. If the contracting officer determines that a responding contractor's GSA nonmandatory schedule contract offering provides the lowest overall cost alternative to meet the government's needs, the agency may place an order against that GSA nonmandatory schedule contract. 41 C.F.R. § 201-39.803-3(b)(2)(ii).

As required by the FIRMR, on September 7, 1993, the agency published a notice in the CBD of its intent to purchase from the protester, under its GSA nonmandatory schedule contract, 10 communications terminals. The CBD notice listed equipment available under the protester's GSA contract, including a 1/2 meter collapsible antenna. The notice further provided that all responses from responsible sources would be fully considered, and directed responding vendors to stipulate whether their product was available through GSA or offered on the open market. The antenna size cited in the notice was incorrect, and responding vendors were subsequently notified that the correct antenna size was 1.2 meters.

Four vendors, including MTI and Magnavox, responded to the CBD notice. All held nonmandatory schedule contracts with GSA. The agency determined that Magnavox's terminals were functionally equivalent to MTI's terminals, and issued a delivery order on September 29 for 10 terminals to Magnavox, whose terminals were the lowest priced.

After receiving notice of the order, MTI protested to our Office on October 4, 1993. Notwithstanding the protest, the agency has proceeded with partial performance and accepted 6 terminals from Magnavox based upon the agency's determination that urgent and compelling circumstances exist which will not permit awaiting our determination in the matter. 31 U.S.C. § 3553(d)(2) (1988).

MTI contends that the equipment the State Department ordered from Magnavox does not have all the features synopsisized in the CBD, features that MTI alleges are available only on MTI's equipment. Specifically, MTI objects that the equipment does not include a 1.2 meter collapsible antenna, which MTI alleges represents the "best value" to the government.

Initially, it is important to emphasize that this was a procurement conducted under GSA nonmandatory schedule procedures. GSA nonmandatory schedule contracts provide federal agencies with a simplified process for obtaining FIP resources. GSA awards such contracts to many different vendors and each contract establishes terms, conditions, and prices for stated periods of time. According to the FIRMR,

agencies should use GSA nonmandatory schedule contracts for FIP resources when the contracting officer determines that placing an order under a GSA nonmandatory contract would result in a lower overall cost than other contracting methods, such as issuing a solicitation, using small purchase procedures, using a nonmandatory agency contract, or using other nonmandatory GSA programs. 41 C.F.R. § 201-39.803-1(b).

The FIRMR prescribes unique policies and procedures for publicizing contract actions when acquiring FIP resources using the GSA nonmandatory schedule contracts. At a minimum, the CBD synopsis must contain, among other things, an identification of the specific nonmandatory schedule contract intended to be used, and a description of the resources to be ordered, including, as applicable, the make and model of any FIP equipment to be ordered. See 41 C.F.R. § 201-39.501-3(c). The agency in this case listed the equipment it intended to purchase under the protester's GSA nonmandatory schedule contract. A CBD announcement is not the equivalent of a formal solicitation, and the agency is not "locked into" all the specific features of the advertised product, but may generally purchase functional equivalents that do not contain features of the products synopsized in the CBD. See AZTEK, Inc., B-236612, Dec. 6, 1989, 89-2 CPD ¶ 521; see also Lanier Business Products, Inc., B-240990, Jan. 14, 1991, 91-1 CPD ¶ 30.

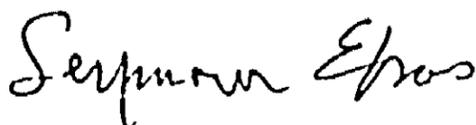
Under the FIRMR, an agency enjoys considerable latitude in deciding to consider, without further notice or written amendment of the CBD notice, offers from alternate schedule contractors. See 41 C.F.R. § 201-39.803-3(b). If an analysis of responses to the CBD notice shows that a responding contractor's GSA nonmandatory schedule contract offering provides the lowest overall cost alternative to meet the government's needs, the contracting officer is to include such an analysis in the contract file and place an order against that GSA nonmandatory schedule contract.

The contract file in this case indicates that the agency considered Magnavox's equipment, which met Inmarsat technical requirements for a transportable unit, functionally equivalent to that listed in the CBD. It is clear from the evaluation documents that the agency determined that units with a 1.2 meter or smaller collapsible antenna would meet its minimum needs for a transportable terminal, and that the unit offered by Magnavox, which had an antenna smaller than 1.2 meters, met those needs. The smaller antenna size offered by Magnavox contributed to its portability, while still meeting the Inmarsat technical specifications. We therefore find that the agency properly ordered equipment off Magnavox's nonmandatory schedule contract after determining that

Magnavox's equipment was lower priced and functionally equivalent to the CBD-listed equipment.

Finally, MTI also objects to the agency's finding that urgent and compelling circumstances require it to proceed with contract performance. We dismiss this protest basis because we do not review such determinations. Banknote Corp. of Am. Inc., B-245528; B-245528.2, Jan. 13, 1992, 92-1 CPD ¶ 53. When an agency makes a determination to proceed with performance of a contract while a protest is pending, the agency's only obligation is to advise our Office of that decision. See 31 U.S.C. § 3553(d)(2); Federal Acquisition Regulation § 33.104(c).

The protest is denied in part and dismissed in part.

*for*   
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