



Decision

Matter of: Midwest Dynamometer & Engineering Company

File: B-257323

Date: September 2, 1994

George M. Pape for the protester.
Anita M. LeBlanc, Esq., and Theresa M. McKenna, Esq.,
Department of the Navy, for the agency.
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Esq., Office of the General Counsel, GAO, participated in
the preparation of the decision.

DIGEST

Protest of agency decision to procure engine test dynamometer system on a sole-source basis is denied where agency reasonably determined that only one source could furnish a dynamometer system meeting its requirement for a system capable of running on existing software.

DECISION

Midwest Dynamometer & Engineering Company protests the Department of the Navy's decision to procure an engine test dynamometer system on a sole-source basis from Super Flow Corporation under request for proposals (RFP) No. N00123-94-R-0307. The dynamometer will be used in the Naval Postgraduate School's Marine Propulsion Laboratory. The protester contends that the Navy should compete its requirement for a dynamometer system rather than awarding a sole-source contract.

We deny the protest.

The contracting officer determined in writing that the dynamometer system should be purchased on a sole-source basis from Super Flow because the Navy had previously acquired a Super Flow dynamometer for use in the Marine Propulsion Laboratory and had invested significant time and expense (*i.e.*, approximately 2 man-years and \$80,000) in modifying the software that controls the system for the specific applications of the laboratory. According to the agency, the modified software will not work on a dynamometer other than Super Flow's.

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The Navy announced the proposed sole-source award to Super Flow in the April 18, 1994, Commerce Business Daily (CBD). The CBD synopsis referenced footnote 22, which advised that potential sources would have 45 days to submit expressions of interest showing their ability to meet the agency's requirement. Shortly thereafter, the Navy executed a Justification and Approval for the sole-source award that stated, among other things, that "it has been determined that the synopsis notice will not generate any additional sources," and on May 2, two weeks after publication of the CBD notice, the Navy proceeded with issuance of the solicitation. Midwest protested to our Office 10 working days later.

The protester contends that the proposed sole-source award violates the requirement of Competition in Contracting Act of 1984 (CICA) for full and open competition.

While the overriding mandate of CICA is for "full and open competition" in government procurements through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A) (1988), the statute does permit noncompetitive acquisitions in specified circumstances, such as when only one responsible source is available and no other type of property or services will satisfy the agency's needs. 10 U.S.C. § 2304(c)(1); Kollsman, A Div. of Sequa Corp.; Applied Data Technology, Inc., B-243113; B-243113.2, July 3, 1991, 91-2 CPD ¶ 18. An agency may not award a contract using procedures other than competitive procedures unless the contracting officer justifies the use of such procedures in writing, 10 U.S.C. § 2304(f)(1)(A), and publishes notice of the sole-source action in the CBD. 10 U.S.C. § 2304(f)(1)(C); 41 U.S.C. § 416(b)(5) (1988); Space Vector Corp., 73 Comp. Gen. 24 (1993), 93-2 CPD ¶ 273. Where the

¹The Navy argued as a preliminary matter that we should dismiss the protest as premature since Midwest had not filed an expression of interest with the Navy prior to protesting to our Office. Although we have dismissed protests against an agency's announced intent to procure on a sole-source basis as premature where the protester had not yet filed an expression of interest with the agency and received a negative agency response prior to protesting to our Office, see, e.g., DCC Computers, Inc., 70 Comp. Gen. 534 (1991), 91-1 CPD ¶ 514, where, as here, the agency has concluded that there will be no additional sources and has proceeded with issuance of the solicitation on a sole-source basis before expiration of the 45-day period for submitting expressions of interest, we will consider a protest of the sole-source decision.

agency has substantially complied with these procedural requirements, we will not object to a reasonably justified sole-source award. Environmental Tectonics Corp., B-248611, Sept. 8, 1992, 92-2 CPD ¶ 160.

Here, the contracting officer determined that only a Super Flow dynamometer would satisfy the agency's needs since only a Super Flow dynamometer would run on the modified software developed by the agency. The protester does not dispute the agency's assertion that its dynamometer system will not run on the modified software. Accordingly, given the agency's need for compatibility with the software, we see no basis to object to the award to Super Flow as the only source capable of meeting the agency's needs. See C&S Antennas, Inc., 66 Comp. Gen. 254 (1987), 87-1 CPD ¶ 161; Bartlett Technologies Corp., B-218786, Aug. 20, 1985, 85-2 CPD ¶ 198.

The protest is denied.

/s/ Robert H. Hunter
for Robert P. Murphy
Acting General Counsel