

## Navy Sued After Yanking \$35M Contract From Supplier

By **Juan Carlos Rodriguez**

*Law360, New York (April 04, 2012, 1:29 PM ET)* -- Electronics company Superior Electric Holding Group LLC on Monday sued the U.S. Navy in the U.S. Court of Federal Claims for allegedly overstepping its authority when it withdrew a \$35 million contract award for ship power components following a bid protest.

After Superior in September won the contract for an unspecified number of automatic bus transfers, which allow Navy ships to switch between power sources, rival Ward Leonard Electric Co. Inc. protested to the U.S. Government Accountability Office, according to the complaint.

Before the GAO could rule, the Naval Sea Systems Command in October issued a stop work order on the contract and asked Ward Leonard and Superior for revised final bids, the complaint said.

"The Naval Sea Systems Command ... in the name of 'corrective action' has improperly taken away from Superior a valid contract award untainted by any procurement error — at least none of any relevance to Superior's award," Superior said in its complaint.

Ward Leonard's bid was initially rejected by the Navy because of weaknesses and deficiencies discovered during the company's technical evaluation, Superior said.

Superior, a subsidiary of Danaher Corp., objected and said that the most the Navy could do was ask Ward Leonard for clarification about its original proposal and that it could not offer the company an opportunity to revise its bid, especially since Superior's bid amount was made public along with the announcement that it had won the award.

In December, Ward Leonard allegedly contacted another Danaher subsidiary requesting a price quote for a part that matched the type and quantity necessary to fill the Navy contract, Superior said. Superior told the Navy the other company would not supply Ward Leonard with those parts and asked that its award be confirmed, which the Navy did not do.

The Navy in February sent letters to both Superior and Ward Leonard informing the companies that both were free to alter any part of their original proposals.

Quoting the Court of Federal Claims' decision in *Sheridan v. United States*, Superior told the Navy that the option to revise the bids was not a legal option.

“The Sheridan decisions stand for the proposition that, at least once an award has been made and an award price has been announced publicly, like here, corrective action must remedy an actual procurement error and the agency does not have discretion simply to start over if that is not necessary to correct an error,” Superior said.

The company added that if an error has been identified, the correction must be narrowly tailored to fit the error, and complete revision of a bid is too broad a remedy.

Superior said in March that the Navy announced it was canceling the request for proposals and the award to Superior because “the procurement process is irreparably flawed and has resulted in a flawed contract award.”

The Navy said it still needs the parts and will open a new bid process, according to the complaint.

Superior alleges the Navy breached the contract and harmed the company because Superior spent “tens of thousands” of dollars to prepare for the contract, hired new workers to help fill the contract, passed up other opportunities in order to satisfy the Navy’s demands and has now lost an opportunity to make itself more competitive for future business.

The company is asking for relief on the grounds of improper corrective action, improper cancellation of a contract award and improper termination for convenience. It wants the judge to issue an injunction preventing the Navy from issuing a new request for proposals and keeping Superior’s award in place.

Ward Leonard was granted the opportunity to intervene in the case.

Navy spokesman Alan Baribeau said he could not comment on pending litigation.

Superior Electric is represented by Frederick W. Claybrook Jr., James G. Peyster and Raja Mishra of Crowell & Moring LLP.

Ward Leonard is represented by John H. Horne of Weissman Nowack Curry & Wilco PC and W. Bruce Shirk and Marko W. Kipa of Sheppard Mullin Richter & Hampton LLP.

The case is Superior Electric Holding Group LLC v. United States, case number 1:12-cv-00214, in the U.S. Court of Federal Claims.

--Editing by Lindsay Naylor.