



ФЕДЕРАЛЬНАЯ
АНТИМОНОПОЛЬНАЯ
СЛУЖБА
(ФАС России)

СТАТС-СЕКРЕТАРЬ -
ЗАМЕСТИТЕЛЬ
РУКОВОДИТЕЛЯ

Садовая Кудринская, 11
Москва, Д-242, ГСП-5, 123995
тел. (499) 795-71-69, факс (499) 254-83-00
delo@fas.gov.ru <http://www.fas.gov.ru>

06 ФЕВ 2013

№

137У/00492

На № _____

от _____

Руководителю
Московского УФАС России
Петросяну Р. А.

Мясницкий проезд, д. 4, стр. 1,
Москва, 107078

О направлении жалобы
по принадлежности

Уважаемый Рачик Ашотович!

В ФАС России поступила жалоба ЗАО «ФЕРРИ ВАТТ» (далее – Заявитель) на действия Федерального государственного унитарного предприятия «Всероссийский научно-исследовательский институт автоматики им.Н.Л.Духова» (далее - Заказчик) при проведении открытого аукциона в электронной форме на право заключения договора на поставку установки напыления типа Antares D23 или эквивалент для ФГУП «ВНИИА» (номер извещения 0573100002312000061) с начальной максимальной ценой контракта – 12 758 600 рублей.

В связи с тем, что Заказчик осуществляет свою деятельность на территории, подведомственной Московскому УФАС России, ФАС России направляет указанную жалобу в Ваш адрес.

О результатах рассмотрения жалобы и принятых мерах прошу проинформировать ФАС России и Заявителя.

Приложение: указанное на 9 л. в 1 экз.

Цариковский

А.Ю. Цариковский

Стрельникова Е.В.
(499) 795-7154

Московское УФАС
Рег.номер 3447
Зарегистрирован: 08.02.201



64313

лист 1

ЗАО «ФЕРРИ ВАТТ»

(2 листа)

420087, Татарстан, г. Казань, ул. Аделя Кутуя, 159

Тел/факс (843) 299-72-69, 273-15-85, 299-70-89

E-mail: info@magnetron.ru

http://www.magnetron.ru

31 января 2013 г. Исх. № 42

Руководителю ФАС России
Артёмьеву И.Ю.ФАС России
Рег.номер 8199-Ф/13
Зарегистрирован 04.02.2013

Уважаемый Игорь Юрьевич!

**Жалоба на действия**

Аукционной комиссии ФГУП «ВНИИА», которая опубликовала протокол № б/н от 28.01.2013 г., где на основании недостоверных сведений принято решение об отказе в заключении договора с ЗАО «ФЕРРИ ВАТТ».

Наша организация участвовала в открытом аукционе в электронной форме на право заключения Договора на поставку установки напыления типа Antares D23 или эквивалент для ФГУП «ВНИИА» - извещение о проведении процедуры № 0573100002312000061 в редакции № 3 от 26.12.2012 г. на официальном сайте госзакупок «Zakupki.gov.ru».

После завершения аукциона ЗАО «ФЕРРИ ВАТТ» было признано победителем - протокол № 0573100002312000061-3 от 22.01.2013 г.

В соответствии с 94-ФЗ на электронной торговой площадке «РОСЭЛТОРГ» (далее ЭТП) 28.01.2013 г. в 8.28 был выставлен проект Договора № 198-13/06 от 04 февраля 2013 г. в электронной форме для его подписания представителями ФГУП «ВНИИА» и ЗАО «ФЕРРИ ВАТТ». В качестве обеспечения указанного Договора нами была выбрана банковская гарантия и проведена работа по ее получению с ОАО «АЛЬФА-БАНК» (казанский филиал).

Однако, ФГУП «ВНИИА» на ЭТП 28.01.2013 г. в 17.23 опубликовало протокол № б/н от 28.01.2013 г., где на основании якобы представленных нами недостоверных сведений принято решение об отказе в заключении Договора с ЗАО «ФЕРРИ ВАТТ», причем, без каких либо консультаций с нами.

Мотивировка отказа выглядит следующим образом:

...
В комплект поставки входит электронно-лучевой испаритель Telemark 266 с блоком питания ТТ-6, по данным технического описания, полученного от фирмы-производителя Telemark, имеющий следующие характеристики:

1). Максимальное напряжение ускорения ЭЛИ – 8 кВ (стр. 9 по техническому описанию на блок ТТ-6, стр. 8 по тех. описанию на ЭЛИ), что противоречит требованию технического задания Заказчика.

2). По техническому описанию на блок ТТ-6 шаг регулировки тока не нормируется. По официальному каталогу (стр. 1) регулируется с шагом $\pm 0.5\%$, что составляет 7,5 мА и противоречит требованию технического задания Заказчика.

3). В данном комплекте не предусмотрен необходимый контроллер, без которого невозможно выполнить необходимую траекторию движения электронного луча, что противоречит требованию технического задания Заказчика.

...

ЗАО «ФЕРРИ ВАТТ» лист 2
Исх. №42 от 31.01.13г. (2 листа)

В опровержение вышеуказанной мотивировки отказа в заключении договора поясню, что при подготовке технического предложения по указанной торговой процедуре нашим сотрудником Кондраниним С.Г. в ходе поездки в США была согласована с компанией «Telemark» поставка необходимого специализированного оборудования отвечающего требованиям технического задания (далее ТЗ) опубликованного ФГУП «ВНИИА». По результатам согласования поставки 07 января 2013 г. компанией «Telemark» нам было выставлено коммерческое предложение (Приложение 1), в котором предлагается изготовить оборудование в соответствии с ТЗ ФГУП «ВНИИА» на базе стандартного блока питания ТТ-6, предусматривающего:

- 1). Максимальное напряжение ускорения ЭЛИ – 10 кВ.
- 2). Регулировку тока электронного луча с шагом 2,0 мА.
- 3). Встроенный контроллер для обеспечения необходимой траектории движения электронного луча.

Также была достигнута договоренность о подписании агентского соглашения, которое в настоящий момент подписано (SALES AGENT'S AGREEMENT) (Приложение 2).

В протоколе об отказе в заключении договора, ФГУП «ВНИИА» ссылается на сведения полученные из своих запросов к компании «Telemark». ФГУП «ВНИИА» запросил технические характеристики на стандартное оборудование. Во избежание подобных ошибок и зная возможности компании «Telemark» мы и направили нашего сотрудника Кондранина С.Г. в компанию «Telemark» для согласования возможности получения такого оборудования и получили положительный ответ.

Исходя из вышеизложенного, мы обращаемся к Вам с просьбой разобраться в данной ситуации и отменить решение ФГУП «ВНИИА» зафиксированное в протоколе № б/н от 28.01.2013 г. об отказе в заключении Договора с ЗАО «ФЕРРИ ВАТТ».

Приложения: (на английском языке)

1. Коммерческое предложение компании «Telemark» от 07 января 2013 г. (на двух листах) – Приложение 1.
2. Агентское соглашение (SALES AGENT'S AGREEMENT) (на пяти листах) – Приложение 2.

При необходимости мы готовы выслать заверенный перевод указанных документов на русский язык.

С уважением,
Генеральный директор



А.А. Бикташев

ЗАО "ФЕРРИ
BATT" Приложение 1 (2 листа,
к исх. №42 от 31.01.13г.

TELEMARK

лист 1

Quotation No. Q20130109-1kv
Inquiry No. _____

Date: 07.01.2013

1801 SE COMMERCE AVENUE, BATTLE GROUND, WA 98604
TEL: 360-723-5360 FAX: 360-723-5368

Sergey Kondranin.

QUOTATION

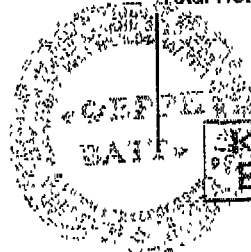
By:
Gary Henderson

TO: General Director.

FerriVatt

email: info@magnetron.ru

ESTIMATED SHIP DATE		QUOTE VALID FOR 30 DAYS	SHIPPING TERMS FOB, BATTLE GROUND, WA	PAYMENT TERMS To be determined	
ITEM NO.	QTY.	TELEMARK PART NO.	DESCRIPTION	UNIT PRICE	AMOUNT
1	1		Model 266-28 Electron Beam Source 4 Pocket, 8cc, External Rotary Water Seal	\$ 9 400,00	\$ 9 400,00
2	1	275-0705-1	Basic Feedthru Kit, 1" Bolt (Includes 2 HV, 1 Octal instrument, and 1 Dual Water)	\$ 1 775,00	\$ 1 775,00
3	1		Model TT-6 Electron Beam Power Supply 6kW, Specify 208V or 400VAC, 50Hz., 3 Phase Voltage Adjustable from -6kV to -10kV Maximum Current is 600mA <i>Note: Current is adjustable in 2mA increments</i> Includes Analog Sweep with Oscillating Circle pattern, four pattern memory module, and handheld Joystick Remote	\$ 18 900,00	\$ 18 900,00
4	1		Model 379 Crucible Indexer 4/6 pocket, continuous or retrograde (banana) motion with speed control and remote PLC operation	\$ 2 900,00	\$ 2 900,00
5	1	880-9901-1	Model 880 Basic Model 880 Deposition Controller capable of supporting two sensors and controlling two sources, with eight each programmable digital inputs and outputs, and Labview process definition software Standard features include weighted averaging, RS232/485 interface, and four user definable functional control buttons.	\$ 4 500,00	\$ 4 500,00
5a	1		Six Crystal Rotary Sensor and Installation Kit including oscillator, feedthru, cables, and five spare crystals and indexer	\$ 8 500,00	\$ 8 500,00
6	4	273-0001-1	Filament, 7-1/2 Turn, Box of 5	\$ 55,00	\$ 220,00
7	3	880-0201-3	Crystal, 6MHz Gold Coated Sensing, Box of 10	\$ 50,00	\$ 150,00
				TOTAL:	\$ 46 345,00
				Less 10% OEM Discount:	\$ (4 634,50)
				Total Net Price:	\$ 41 710,50



КОПИЯ
ВЕРНА

[Handwritten signature]

Приложение 1 (2 листа)

ЗАО "ФЕРРИ
БАТТ" к исх. №42 от 31.01.13г
лиц 2

TELEMARK

1801 SE COMMERCE AVENUE, BATTLE GROUND, WA 98604
TEL: 360-723-5360 FAX: 360-723-5368

Sergey Kondranin.
TO: General Director.
FerriVatt
email: info@magnetron.ru

QUOTATION

Quotation No. Q20130109-1kv
Inquiry No.

Date: 07.01.2013

Page 2 of 2

By:
Gary Henderson

ESTIMATED SHIP DATE		QUOTE VALID FOR	SHIPPING TERMS	PAYMENT TERMS	
		30 DAYS	FOB, BATTLE GROUND WA	To be determined	
ITEM NO.	QTY.	TELEMARK PART NO	DESCRIPTION	UNIT PRICE	AMOUNT
OPTIONS					
	1	Upgrade	Analog Sweep to Cheetah Digital Programmable Sweep Up to 32 shapes and 32 patterns, preprogrammed shapes, variable offset, adjustable coil current limits. Including handheld trackball	\$ 1 000,00 -10%	\$ 900,00
	1		Model 246-28 Electron Beam Source 4 Pocket, 8cc, External Rotary Water Seal	\$ 7 900 00 -10%	\$ 7 110,00
	1	110-0016-1	High Voltage Grounding Probe	\$ 300,00 -10%	\$ 270,00
	1	275-0888-1	Electro-Pneumatic Shutter Controller and one rotary shutter on 1" bolt feedthrough (controller can operate 2 shutters)	\$ 2 500,00 -10%	\$ 2 250 00
	1	271-0831-1	Water Flow Switch, 110V.	\$ 295,00 -10%	\$ 265,50

ALL QUOTES ARE VALID FOR 30 DAYS UNLESS STATED OTHERWISE

КОПИЯ
ВЕРНА

[Handwritten Signature]

ЗАО "ФЕРРИ
ВАТТ" Приложение 2
к и.к. №42 от
лист 1 (5 листов) 31.01.13г.

SALES AGENT'S AGREEMENT

This Agreement, made January 30, 2013 at Battle Ground, Washington by and between **TELEMARK** of Battle Ground, Washington ("Principal") and **FERRI VATT** a company in Russia ("Agent").

Witnesseth:

In consideration of the covenants and agreements contained herein, the parties agree as follows:

1. **APPOINTMENT** - Subject to the terms and conditions following, Principal hereby appoints Agent and Agent agrees to and does hereby accept such appointment to act for the Principal as its sales Agent for the solicitation of orders for Principal's products.
2. **PRODUCTS AND TERRITORY COVERED** - The principal's products covered by this Agreement are all Telemark products described in current catalog/export price list, and Accessories relating to these products. The Agent shall have non-exclusive sales rights for such products in Russia.
3. **AGENT'S RESPONSIBILITIES** - During the life of this Agreement, Agent:
 - 3.1. Agrees to energetically solicit orders for Principal's products from person's firms and organizations located in Agent's territory, which orders shall be submitted to Principal for acceptance or rejection as it may determine; to make regular and frequent calls on customers, and prospective customers; to periodically advise Principal of market status and sales forecasts; to advise Principal of any organization or staffing changes which will affect Agent's operations; and to carry out the instructions of Principal in regard to customer, Principal's products or any other matter pertinent to this Agreement.
 - 3.2. Agrees to provide verification of reasonable sales coverage in each country, region or territory on at least a quarter-annual basis, in order to retain its sales rights for that defined area. A summary of activities and sales prospects will be submitted when requested.
 - 3.3. Agrees that orders shall be solicited at the prices stated from time to time in Principal's latest price list or quotation or letter covering the Principal's product so ordered, less such discounts, if any, as may be agreed to from time to time by the Principal

ЗАО „ФЕРРИ БАТТ“ Приложение 2

к и.с.х. № 12
лист 2 (5 листов) от 31.01.13г.

- 3.4. Agrees not to do any act or thing for Principal (other than solicit orders as stated above) or make any commitment for Principal of any character or description unless instructed by Principal in writing to do so.
 - 3.5. Agrees not to sell products which compete directly or indirectly with the sale of or use of Principal's products except by written agreement with Principal, and agrees to advise Principal in writing if products of any kind are to be manufactured by Agent.
 - 3.6. Agrees not to sell Principal's products through a "Sub-Agent" without the express prior written approval of Principal.
4. PRINCIPAL'S RESPONSIBILITIES - During the life of this Agreement, Principal:
- 4.1. Agrees to supply without charge to Agent bulletins, product manuals, photographs and other technical data or information as necessary for proper development of sales in the territory.
 - 4.2. Agrees to pay the Agent a commission on all shipments of orders secured by Agent from within the territory described, but acceptance of an order by the Principal does not commit Principal to pay commission unless products are actually shipped, accepted and paid for by the customer. Commissions shall not be payable on Telemark products included in a system shipped into the Agent's territory from a country outside Agent's territory.
 - 4.3. Agrees to pay Agent, as Agent's only remuneration a 10% commission on each invoice which is sold at Principal's List prices in accordance with sections 5 and 6 below. Agent's Commission shall be reduced by one-half of any quantity, OEM or other discount offered by the Agent to the customer.
 - 4.4. Agrees to extend through Agent to the customer, in substitution of any other condition or warranty express or implied, a guarantee of the product sold to the end-user or O.E.M. customer against faulty material or workmanship for one year from date of original installation or fifteen months from the date of shipment to Agent or their customer from Principal. The guarantee shall be limited to the free replacement of the faulty parts(s) F.O.B. Principal's plant, and Principal shall not be liable for any consequential loss or injury whatsoever or for any faults arising due to accident, misuse, neglect, negligence, tampering or unauthorized modification or to any attempt at adjustment or repair by an unauthorized person.

ЗАО "ПЕППИ БАТТ" Приморский
 КИХ. № 42
 аукт 3 (5 ауктов) от 31.01.13г.

- 5. COMMISSION BASIS - Commissions are to be based upon the Net Sales Price after all O.E.M. and quantity discounts on Principal's products and accessories sold to the customers, but not upon services, surcharges, freight and transportation charges, sales or excise taxes, bank costs, duties or the like which may or may not be included as separate items in the invoice.
- 6. SPLIT COMMISSIONS - Where orders are received and more than one territory is involved, commissions shall be divided in the following manner:

<u>CIRCUMSTANCE:</u>	<u>COMMISSION SHARE</u>
Territory from which order originates . .	33.33%
Territory in which application and sales engineering is done. . .	33.33%
Territory to which order is shipped. . .	33.33%

Split commission qualification: Agent shall notify Principal in writing prior to the order being received by the Principal of the Agent's efforts to secure the order and to request a commission share on the anticipated order under the above conditions.

Alternately, without prior written notice received by Principal, commission split shall be 50% to Territory from which orders originates and 50% to the Territory to which the order is shipped. Generally these allocations apply, but it is understood and agreed that Principal shall have the right, in its sole judgement, to revise the commission allocation in respect to any specific sale, and it is further agreed that any such revision shall be final and binding upon each of the several Agents involved.

7. BUY AND RESELL:

- 7.1. Principal and Agent mutually agree to an arrangement whereby Agent may purchase Principal's product and resell same to the customer; in this case the Agent's net cost (F.O.B. Principal's factory) is List price less 10%.
- 7.2. Agent agrees to provide an irrevocable letter-of-credit or T/T prior to shipment, payable upon shipment for all equipment orders exceeding \$5,000. For orders less than \$5,000, shipment will be on open account, with payment due by wire transfer to Principal's bank within thirty days of shipment. It is mutually agreed that there will be late charges due for payments made more than 60 days after shipment, such late charges to be one (1%) percent of the total invoice amount for the first month or fraction thereof, and two (2%) percent per month thereafter.

3AO "PEPPU BATT" Присоединение 2
к УСХ. № 42
лист 4 (5 листов) от 31.01.13г.

- 7.3. It is agreed that under this arrangement Agent will identify both end-user and O.E.M. customers by name on their purchase order(s).
8. CANCELLATION/TERMINATION - This agreement shall continue from the date hereof until such time as either party cancels same, and shall supersede and cancel any other previous or current verbal or written understanding between the parties. In the event either party hereto desires to cancel this Agreement, such party shall give the other one-hundred-twenty (120) days written notice of intention to do so and at the expiration of said one-hundred-twenty day period this Agreement shall terminate. Such notice shall be given by sending such notice by a major express service, addressed to the party so to be notified.
- 8.1. In the event that Agent shall commit a breach of this Agreement and shall fail to remedy the same to the satisfaction of Principal within thirty days of receiving written notice requiring it to remedy such breach than the Principal shall have the right by giving written notice to the Agent to terminate this Agreement forthwith without payment of compensation.
- 8.2. It is hereby agreed that on the termination of this Agreement the Agent shall have no further rights, duties or obligations of any kind or any claim on Principal for commissions, except that in the case of orders solicited by the Agent and accepted by Principal prior to the effective date of said termination, commissions will be paid at the normal rate.
- 8.3. Upon termination of this Agreement, it is agreed that all quotations, bulletins, sales materials, technical data and price lists and all other written information required to properly carry on sales work shall promptly (within 30 days) be returned by the Agent to the Principal. Also, any of Principal's property, consigned or otherwise, shall be returned as directed by Principal. Principal reserves the right to withhold any and all unpaid commissions until all such information and/or property have been so returned.
9. CONTROVERSIES/DISPUTES - Any controversy arising between the parties in connection with this Agreement, which cannot be settled amicably by the parties, shall be referred to arbitration, in accordance with any existing agreement between the American Arbitration Association (A.A.A.) and a similar organization in the Agent's country. Should such an agreement not be in existence, Agent-Distributor may select an organization to work with A.A.A. to arbitrate the controversy. Such arbitration shall be conducted in California, U.S.A. in the event that Agent proposes the arbitration, and in the Agent's country in the event that Principal proposes the arbitration. The expense of any such arbitration shall be borne equally by the parties.

ЗАО "ФЕРРИ ВАТТ" Дымаомерне 2
 лист 5 (5 листов) к ух. №42
 от 31.01.13г.

- 10. ASSIGNMENTS - This agreement shall not be assigned, transferred, or revised except by written agreement of the parties.
- 11. SCOPE AND ADDITIONAL PROVISIONS - Those subjects not specifically contained within are not a part of this Agreement. Any additional provisions, changes, modifications, explanations or expressions of intent, if necessary, shall be included in an addendum which shall be signed by both parties and attached to this agreement and shall become a part thereof.

In Witness Whereof, the parties hereto have executed this Agreement in duplicate as of the day and year first written above.

In Presence of:

Tom Vally
 Witness

 Witness

TELEMARK
 Battle Ground, WA

By: [Signature]
 President

FERRI VATT

By: [Signature]

