B-245507

Comptroller General
of the United States
Washington, D.C. 20548

# Decision

**Matter of:** Braswell Services Group, Inc.

**File:** B-245507

**Date:** January 15, 1992

William A. Scott, Esq., for the protester.
Janice M. Passo, Esq., and Michael Geffen, Esq., Department of the Navy, for the agency.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**

Protest against the agency's failure to resolicit its revised requirements and its decision to award a sole-source contract, after the cancellation of the initial solicitation for ship repairs, is denied where the repair work was urgent and critical to ship operations and the ship's limited availability did not permit resolicitation on either a competitive basis or on the basis of a limited competition.

**DECISION**

Braswell Services Group, Inc. protests the cancellation of request for proposals (RFP) No. N62673-91-R-0289, issued by the Department of the Navy, for repair work on the U.S.S. Mount Baker, an ammunition ship, at the Charleston, South Carolina, Naval Base, and the subsequent sole-source award made to Metal Trades, Inc. (MTI) for the work. We deny the protest.

The RFP envisioned award of a job order pursuant to a Master Agreement for Repair and Alteration of Vessels (MARAV), a special contracting method utilized for vessel repair and alterations. See Defense Federal Acquisition Regulation Supplement (DFARS) subpart 217.71. There are two types of MARAVs, a Master Ship Repair Agreement (MSRA) and an Agreement for Boat Repair (ABR), which differ according to the nature of the work the contractor is qualified to perform. The protested procurement involves only the ABR.

These agreements set out certain clauses that will apply under any subsequently issued job orders. See generally Campbell Indus., B-238871, July 3, 1990, 90-2 CPD ¶ 5; Fischer Marine Repair Corp., B-228297, Nov. 20, 1987, 87-2 CPD ¶ 497.

When a requirement arises for the type of work covered by these agreements, bids, proposals, or quotations are to be solicited from prospective contractors who have previously executed an agreement and from firms which possess the necessary qualifications to perform the work and agree to execute a MARAV before award of a job order. DFARS § 217.7103-3. However, a contracting officer can, without soliciting competition, issue a written order for work to a contractor who previously executed an agreement when a vessel, its cargo, or stores would be endangered by delay in the performance of necessary repair work, or when military necessity requires immediate work on the vessel. In these situations, the parties may negotiate a price for the work after issuance of an order. See DFARS § 217.7103-6 and § 252.217-7103(5).

The RFP, issued on August 28, 1991, required the submission by each offeror by 2 p.m., August 29, of a lump-sum price for the repair of 11 items. The work was designated as technical availability work, which is defined by the Navy as an unscheduled availability for the accomplishment of repair work, normally without the ship being present, that does not interfere with the ship's ability to perform fully its assigned mission and task. In these circumstances, defective equipment ordinarily is removed from the ship, delivered to a repair activity, and reinstalled in the ship after completion of the repairs. Based on the ship's availability, award was to be made by August 30, and all work was to be completed by September 15.

In accordance with the DFARS, competition was restricted to those five firms in the Charleston homeport area that held an ABR under the MARAV and to those firms that would be able to obtain an ABR should time permit. The RFP was amended on August 29 prior to the 2 p.m. deadline to delete one item of work and to clarify several of the RFP requirements. The deadline for the submission of proposals was not changed. The firms were notified of the amendment by telephone. Proposals were received from Comar Manufacturing Co., Inc. ($28,683), MTI ($84,000), and Braswell ($38,794). Braswell had originally submitted a price of $62,773 prior to being notified of the amendment. MTI withdrew its proposal prior to the deadline. The agency noted that the 101 and 143 manshift estimates for the repairs made by Comar and Braswell, respectively, were now in view of the agency's

estimate of 170 manshifts. The agency also found that the offerors' estimated costs for materials and subcontractors were below the agency's estimates for these items.

On August 30, the contracting agency received a notice from the Atlantic Fleet unit responsible for the U.S.S. Mount Baker stating that "Immediate repairs to essential shipboard equipment is mandatory to ensure completion prior to ship's operation/deployment." As the ship remained available for repairs only until September 15, the situation was viewed as "an unusual and compelling urgency." (The notification, while referencing a prior verbal communication between the agency and the activity, specifically listed only the work involving a motor generator set and the gyro compass (two of the repair items under the protested RFP). The agency advises that while the notice identified only two items for repair as urgent, it did not mean repair on only these two items was urgently needed.) The contracting activity, as a result of this notice, classified the requirements as "emergency voyage repairs" (EVR), which is defined by the Navy as work "necessary to enable a ship to continue on its mission . . . without requiring a change in the ship's operating schedule or the general steaming notice in effect."

Accordingly, on August 30, the contracting officer prepared and signed a justification and approval (J&A) to procure using other than full and open competition. The J&A stated that the entire 10 work items under the RFP and 3 additional items (the repair and testing of an "Unrep Highline Winch" at station 6 and at station 10 and the repair and testing of a Comminutor) identified as in need of repair would be procured by other than full and open competition pursuant to the authority of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(c)(2) (1988), as implemented by Federal Acquisition Regulation (FAR) § 6-302.2. Because of the urgent need to commence the work and complete it by September 15 (six of the repair items were also designated as mission critical repairs), the contracting officer proposed in the J&A to cancel the RFP and to procure the 13 work items by means of sole-source negotiations with MTI under the emergency work clause in MTI's ABR. The J&A acknowledged that five local ABR contractors had the experience and facilities to accomplish the work, but indicated that MTI was selected because the other ABR firms had either received awards or declined them. (The agency's practice is to rotate such orders among the eligible firms.) The RFP was consequently canceled on August 30. On the same date a job order for these repairs was awarded to MTI in an amount not to exceed $60,000, with the agreement that a

firm, fixed price would be subsequently negotiated by the parties in accordance with a schedule included in the job order. The J&A was subsequently approved by the competition advocate.

Braswell first argues that "urgent and compelling circumstances" did not exist to permit the sole-source award made to MTI since the generator set and the gyro compass were repair items identified in the canceled RFP, and they thus could have been procured through an award under the RFP. Braswell notes that the three additional items added to the sole-source job order could not serve as a basis for urgency since the failure to have made them a part of the RFP can only be due to a failure of advance planning. Further, Braswell maintains that the agency could have easily amended the RFP to include the three additional repair items and have acquired all the items by means of the RFP. It notes that the agency routinely issues solicitations and/or amendments requesting priced proposals the same day or by the next day. Braswell also contends that the J&A did not meet statutory requirements, and that the agency's reason for considering only MTI and not the other firms holding ABRs is improper.

The agency argues that the cancellation of the RFP and the sole-source award to MTI were proper given the urgency of the requirement. The agency asserts that the record supports the contracting officer's determination that a legitimate urgency existed, one that was not created by a lack of advance planning, but by the need to perform repairs critical to the ship's operations, some of which were not anticipated. It points to the CICA provision allowing an agency to use other than competitive procedures to procure goods or services where the agency's requirements are of such an unusual and compelling urgency that the government would be seriously injured if the agency were not permitted to limit the number of sources from which it seeks bids or proposals. 10 U.S.C. § 2304(c)(2). While the Navy also recognizes that this authority is limited by the requirement that it seek offers from as many potential sources as is practicable under the circumstances, 10 U.S.C. § 2304(e), the Navy states that an agency has the authority to limit the procurement to only one firm in the appropriate circumstances. It also argues that the sole-source award for emergency repairs is authorized by the ABR which incorporated DFARS § 252.217-7103(b).

We think that the cancellation of the RFP and the subsequent sole-source award to MTI were proper. We will object to an agency's determination to limit competition based upon unusual and compelling urgency only where we find that the agency's decision lacks a reasonable basis. Logics, Inc., B-237411, Feb. 1, 1990, 90-1 CPD ¶ 140. Although an agency

so limiting competition is required to seek competition from as many potential sources as is practicable, the competition may be limited to one firm where it is justified. Id.

The record shows that immediate repairs to essential shipboard equipment, the generator set and the gyro compass, were required to ensure completion prior to the ship's deployment. Further, the record also shows that repairs to other items such as the winches used to load and unload cargo were also critical to the ship's mission. In view of the limited amount of time available for performance of the emergency and mission-critical repairs--15 days--we cannot conclude that the agency had sufficient time to conduct either a competitive procurement, by amending the original RFP or by issuing a new one, or even a limited noncompetitive one. For example, the record shows that discussions would have had to have been conducted under the original RFP in view of the significant disparity between the government's estimates and the offerors' estimates for labor and material costs. We think it is clear that under the circumstances, there was no time to hold such discussions or to solicit, obtain and evaluate responses from competing companies. In other words, selecting only one of the several qualified companies for immediate award and later negotiation of price was all that the agency could reasonably do.

Braswell complains that the sole-source action results from the Navy's lack of advance planning and, thus, pursuant to 10 U.S.C. § 2304(f)(5)(A) cannot be properly justified under CICA. We find no evidence of lack of advance planning which would render the urgency determination improper. Nothing in the record indicates that the urgency to complete the ship repairs was occasioned by the lack of advance planning. Further, in view of the short period of time for performance even of the original work and the fact that negotiations would have had to be conducted under the original RFP, it is not certain that there would have been sufficient time after any negotiations to have completed the original contract work.

Braswell argues that the J&A does not meet the statutory requirements necessary to make a sole-source award. Braswell argues that the person who signed on the J&A on August 30 was not the contracting officer and that the J&A did not contain a determination that the anticipated cost of the procurement would be fair and reasonable, a description of the market survey (or state why one was not conducted), or a list of all interested sources. We find the J&A legally sufficient. The record shows that the J&A was signed by the person designated as the contracting officer--the same person who also signed the job order in the capacity of contracting officer. The J&A specifically references the

contracting officer's review of the last three emergency ship repair jobs to determine companies which could perform this job. Also, the estimated price was stated in the J&A. Given that the cost of the repairs was apparently not readily predictable because the nature of the repairs were not known and the price could be negotiated as the work under the award progressed, we think an estimate of the cost was all that could reasonably be included in the J&A.

Accordingly, we find no legal basis for objecting to the award. Therefore, the protest is denied.

James F. Hinchman
General Counsel