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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-190678 **DATE:** May 19, 1978  
**MATTER OF:** Murphy Pacific Marine Salvage Company -  
Reconsideration  
**DIGEST:**

Prior decision that neither basic ordering agreement (BOA), charter agreement nor U.S. salvage law requires that services under new procurement for oil and hazardous material spill control be ordered from protester (holder of salvage BOA and charter agreement) is affirmed since protester fails to show error of law or information not previously considered.

Murphy Pacific Marine Salvage Company (Murphy) requests that we reconsider our decision in Murphy Pacific Marine Salvage Company, B-190678, April 3, 1978, denying Murphy's protest against award of a contract by the Department of the Navy, Naval Sea Systems Command (Navy), for certain oil and hazardous material spill control services pursuant to request for proposals (RFP) N00024-77-R-4349(Q) (spill control RFP). We held that neither the basic ordering agreement (BOA) between the Navy and Murphy nor 10 U.S.C. § 7361, et seq. (1976), the Navy's statutory authority for procuring salvage services, required that the services described in the spill control RFP be assigned to Murphy.

Murphy bases its request for reconsideration on a number of grounds. First, it alleges that it holds a charter agreement to operate certain Navy salvage vessels, contract N00024-76-C-2129, and it argues that this contract when read with its BOA constitutes a binding agreement to order salvage-related services (as those in the spill control RFP are alleged to be) solely from Murphy.

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Second, Murphy asserts that 10 U.S.C. §§ 7362 and 7363, which provide authority for the Navy to transfer salvage equipment to private parties, require that any procurement involving use of Navy salvage equipment by a contractor must be restricted to those contractors who provide or support organized offshore salvage facilities.

Finally, Murphy asserts that paragraph J-23 of the spill control RFP, in which the contractor indemnifies the Government against salvage award claims by himself, his employees or subcontractors, contravenes public policy and salvage law.

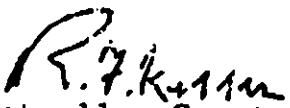
All of these arguments were raised in substantially the same form in Murphy's submissions in the original protest. Article II of the charter agreement does state that the ships transferred to Murphy shall be used in performing task orders under its BOA; however, neither agreement provides that the Government will order, or that Murphy will perform, all tasks that could be considered as involving the use of salvage equipment. As we said in our prior decision, a BOA is not a binding contract, but merely a statement of terms the parties intend to use in future procurements. Such an arrangement cannot be converted into a binding requirements contract by the mere fact that the Navy has chartered two vessels to the BOA holder to assist it in performing task orders. In any event, the charter agreement was terminated on April 20, 1978.

In our prior decision we considered and rejected Murphy's argument that the intent of 10 U.S.C. § 7361, et seq., was to subsidize salvage contractors. Likewise, we are unable to find any intent that the provisions allowing transfer of salvage equipment to contractors (10 U.S.C. §§ 7362 and 7363) embody a requirement that procurements which may involve use of similar equipment be limited to established salvage operators who have BOA's with the Navy. In any event, as the Navy points out, it has other statutory authority to lease personal property. See 10 U.S.C. § 2667 (1976).

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Murphy's argument with respect to clause J-23 merely reiterates points made in its earlier submissions. Murphy does not show any error of law or information not considered in reaching our initial decision. 4 C.F.R. § 20.9(a)(1977).

Accordingly, the decision is affirmed.

  
Deputy Comptroller General  
of the United States