



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Petchem, Inc.
File: B-235653
Date: September 7, 1989

DIGEST

Allegation that contracting agency improperly solicited contract for tug and towing services on a sole-source basis is denied because the matter was previously resolved in an earlier decision involving the same parties and requirement and the protester has failed to demonstrate that any changed facts or circumstances warrant a different result.

DECISION

Petchem, Inc., protests the intent to negotiate a sole-source contract with Port Everglades Towing, Inc. (PET), for tug and towing services for naval vessels at Port Everglades, Florida, by the Naval Supply Center, Jacksonville, Florida. On May 10, 1989, the Navy published in the Commerce Business Daily its intent to negotiate a sole-source contract with PET. Petchem contends that the proposed sole-source award is contrary to the mandate of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (Supp. IV 1986), for full and open competition.

We deny the protest.

PET has been the sole contractor for tug and towing services at Port Everglades since 1979 because it is the only firm franchised to do so by the Port Everglades Authority, which has sole jurisdiction over the Port Everglades harbor. The Authority was created by special acts of the Florida state legislature in 1927 and has exclusive power to grant such franchises to firms establishing that a franchise is needed for "the public convenience and necessity." The Navy sole-sourced the requirement in 1979 because prior attempts at

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competition were unsuccessful. The Navy intends to negotiate this contract with PET because the current contract for these services expires on September 30, 1989.

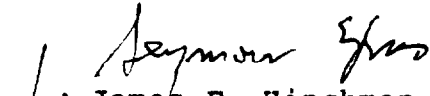
In an earlier protest, Petchem challenged the Navy's right to award the current sole-source contract to PET; we dismissed this protest. See Petchem, Inc., B-222958, July 11, 1986, 86-2 CPD ¶ 63. In 1985, the Navy issued a competitive solicitation for the current contract to 23 sources, but withdrew the solicitation because the Authority advised that there was no basis to grant an additional franchise because PET was providing adequate tug and towing services. We dismissed Petchem's subsequent protest against the Navy's proposed award of a sole-source contract to PET because it had failed to state a valid basis for protest as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1986). We found Petchem's complaint to actually be against the Authority, which advised the Navy that there was no reason to grant an additional franchise, rather than against the Navy, and that it thus was a dispute between private parties. The Navy was constrained by the Authority's exclusive jurisdiction over Port Everglades to award the tug and towing requirement to PET. Also, we held that where a restriction imposed by another entity, rather than by the contracting agency, creates a sole-source procurement because of the protester's inability to obtain the necessary approvals to operate, the matter is not for consideration under our bid protest function.

The Navy advises that the intent to negotiate a new sole-source contract was announced after determining that the circumstances surrounding the procurement had not changed since 1985. Again, the Authority has advised that it likely will not grant a new franchise if PET maintains its current level of service, and that only a properly franchised company may operate in the port.

Petchem essentially contends that CICA does not authorize the Navy to rely solely upon state law as a basis for a sole-source award and that our previous decision was erroneously decided in that it permits the Navy to do so. We do not find that Petchem has presented any arguments or new information that significantly distinguish its current protest from the earlier decision dismissing its protest against the award of the current contract. Since Petchem has failed to demonstrate any change in the previous

circumstances, we do not find it necessary to consider the same protest again. See e.g. Dresser Rand Co., B-225658, B-225692, Apr. 20, 1987, 87-1 CPD ¶ 426; H.V. Allen Co., Inc., B-226059 et al., Mar. 20, 1987, 87-1 CPD ¶ 326.

The protest is denied.


James F. Hinchman
General Counsel