



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

## Decision

**Matter of:** TLC Services, Inc.

**File:** B-252614

**Date:** June 22, 1993

Elizabeth Aviles-Rogers for the protester,  
Denise Webster, Esq., for Defense Mapping Agency, the  
agency,  
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

Protest against award of a 6-month contract for grounds maintenance services using noncompetitive procedures is sustained where record indicates, and agency concedes, that the urgency on which noncompetitive contract award was based was the result of lack of advance planning.

### DECISION

TLC Services, Inc. protests the award of contract No. DMA800-93-C-0012 to Ruppert Landscape, Inc. issued by the Defense Mapping Agency (DMA) for grounds maintenance services for the Hydrographic/Topographic Center at its Sumner and Dalecarlia sites in Bethesda, Maryland, and its site in Herndon, Virginia. TLC maintains that the contract was improperly awarded under noncompetitive procedures, contrary to the Competition in Contracting Act of 1984 (CICA).

We sustain the protest.

Ruppert was the incumbent contractor for the required services pursuant to a contract which expired on September 30, 1992. According to DMA, it was unable to procure a replacement contract using full and open competition by October 1 because the requiring activity (the facilities engineering office) was unable to timely prepare a statement of work (SOW) due to personnel vacancies, inexperience of existing staff, and an excessive backlog of work. As grounds maintenance services were necessary, the contracting officer determined that a contract would have to be awarded under the "unusual and compelling urgency"

exception to the full and open competition requirement of CICA. 10 U.S.C. § 2304(c)(2) (1988); Federal Acquisition Regulation (FAR) § 6.302-2. The contracting officer maintains that he obtained three telephone quotes, including one from Ruppert, for the services based on an abbreviated SOW. Pursuant to those quotes, a 6-month contract was awarded to Ruppert for the required services. That contract expired on March 31, 1993.

DMA maintains that Ruppert's contract was intended as a "bridge" contract to provide officials with time to prepare the SOW for a competitive procurement for award by April 1. Pursuant to this intent, DMA synopsisized a requirement for grounds maintenance services for a base year plus four option years in the January 8, 1993, edition of the Commerce Business Daily.<sup>1</sup>

Generally, CICA requires that federal procurements be conducted using full and open competition. 10 U.S.C. § 2304(a)(1)(A). An agency may use noncompetitive procedures when the agency's need for the property or services is of such an unusual and compelling urgency that the government would be seriously injured if the agency did not limit the number of sources from which it solicits bids or proposals. 10 U.S.C. § 2304(c)(2); FAR § 6.302-2(a)(2). However, CICA explicitly provides that award of a contract using noncompetitive procedures may not be made where the urgent need for the requirement has been brought about by a lack of advance planning. 10 U.S.C. § 2304(f)(5)(A); FAR § 6.301(c); K-Whit Tools, Inc., B-247081, Apr. 22, 1992, 92-1 CPD ¶ 382.

In its report, DMA concedes that the urgency which compelled the award to Ruppert resulted from a lack of advance planning, and that the noncompetitive contract thus could not properly be justified based on urgency. DMA states that it is taking measures to prevent the same situation from reoccurring, specifically, by implementing an automated system of prioritizing, scheduling, and tracking procurements and by filling staffing vacancies. DMA intends to award a grounds maintenance contract using full and open procedures by July 1.

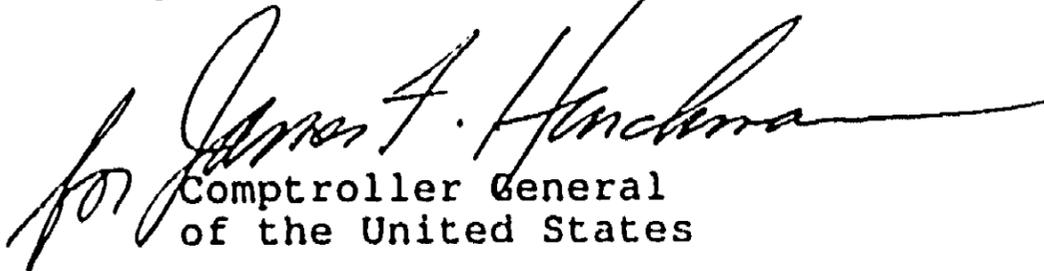
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<sup>1</sup>Subsequently, on March 26, DMA issued a competitive request for quotes under FAR Part 13, Small Purchase Procedures, to provide an additional 3 months of services, the estimated value of which were under \$25,000. TLC was contacted to furnish a quote, and it unsuccessfully challenged the small business size status of the awardee, Lawnscape, Inc.

We concur with the agency's assessment that the urgency for grounds maintenance services resulted from the agency's own lack of advance planning. We have held that agency personnel turnover and inexperience cannot justify a noncompetitive procurement based on urgency. See Service Contractors, B-243236, July 12, 1991, 91-2 CPD ¶ 49. We view a failure to timely draft adequate specifications and "an excessive backlog of work" to be similarly unacceptable justifications.

We conclude that the contract award was improper. However, because the contract was completed on March 31, termination and resolicitation is not possible. Since DMA reports that it is in the process of competitively selecting a new contractor, it appears that the situation will be corrected for the future. We do find that the protester is entitled to reimbursement for the reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d)(1) (1993). In accordance with 4 C.F.R. § 21.6(f), TLC's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

  
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of the United States