



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** North Florida Shipyard, Inc.  
**File:** B-260003; B-260003.2; B-260003.5  
**Date:** April 14, 1995

Thomas J. Touhey, Esq., James A. Kelley, Esq., and George W. Stiffler, Esq., Bastianelli, Brown & Touhey, for the protester.

William A. Scott, Esq., for Braswell Services Group, Inc., an interested party.

Rhonda Russ, Esq., Department of the Navy, for the agency. Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Award to an offeror that lacked specified certification is unobjectionable where the sole element preventing the offeror's certification was irrelevant to performance in this procurement and the protester was not prejudiced by the agency's action.

### DECISION

North Florida Shipyard, Inc. protests the award of a contract to Braswell Services Group, Inc. under request for proposals (RFP) No. N62670-95-R-0002, issued by the Department of the Navy. North Florida contends that Braswell was ineligible for award under the terms of the RFP and that the Navy improperly relaxed the RFP requirements in order to make award to Braswell.

We deny the protest.

The Navy issued the RFP for extensive maintenance and repair work on the U.S.S. Vicksburg, a guided missile cruiser. The work is to be performed at Mayport Naval Station in Jacksonville, Florida.

The contracting officer determined that the competition should be restricted to firms holding a master ship repair agreement (MSRA) with the Navy. Accordingly, the RFP stated that the procurement was restricted to firms that possess an MSRA "unless adequate time exists to permit the Navy to perform an assessment of their [MSRA] application and to execute the applicable [MSRA] without impacting the vessel's

availability dates." The RFP indicated that proposals from firms that could not meet this criterion "will be rejected as ineligible." Award was to be made to the offeror submitting the low-priced proposal that satisfied the RFP requirements.

The Navy received timely proposals from Braswell, North Florida, and two other firms. Braswell's proposed price was low. Because Braswell did not possess an MSRA, the agency performed a survey of its capabilities. That survey resulted in the determination that Braswell satisfied all requirements for an MSRA except for access to its drydock; because of a low bridge over the Ashley River, ships over a certain size cannot access Braswell's drydock. However, because the work under this procurement will be performed at the government's facility, rather than at the contractor's drydock, access to the contractor's drydock is irrelevant to performance. For that reason and because the sole impediment to Braswell's obtaining an MSRA was drydock access, the Navy determined that Braswell should be considered eligible for award, notwithstanding its lack of an MSRA. Accordingly, the agency awarded the contract to Braswell. This protest followed.

North Florida contends that the Navy improperly waived the MSRA requirement for Braswell and that North Florida was prejudiced by the agency action. The Navy responds that its action did not constitute relaxing the RFP requirement for Braswell because Braswell satisfies all components of the MSRA requirements except for drydock access, and that

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North Florida also contends that Braswell's proposal should have been rejected for failure to comply with the RFP requirement that proposals include an environmental plan of action and the names of subcontractors. The first allegation is factually groundless, since Braswell's proposal did include an environmental plan of action. While the agency subsequently sought supplementation of that plan, North Florida has not demonstrated that the Navy acted unreasonably or in a manner inconsistent with the RFP in accepting the proposal with the plan as initially submitted.

Concerning the names of subcontractors, while Braswell's proposal did omit the names of subcontractors for two tasks, this relates to the ability of the offeror to perform, i.e., its responsibility, rather than the technical acceptability of the proposal. Our Office will not review an agency's affirmative determination of responsibility, absent circumstances not alleged here. 4 C.F.R. § 21.3(m)(5) (1995). We note in this regard that North Florida concedes that its proposal similarly failed to identify at least one of its subcontractors.

access is irrelevant to this procurement. In the Navy's view, award to Braswell "complies with the intent of the RFP to restrict award to offerors capable of performing complex ship repair availabilities and which have invested in the requisite level of facilitization."

In reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the contracting activity. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Rather, we will review an evaluation only to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation. Id. A contracting agency properly may determine that a proposal is technically acceptable where it is in substantial, although not total, compliance with a solicitation requirement. Sabreliner Corp., B-248640; B-248640.4, Sept. 14, 1992, 92-2 CPD ¶ 222. The propriety of such a determination turns on whether it prejudices any other offeror and whether the proposal meets the agency's needs. Id.

Here, the agency found that Braswell substantially complied with the MSRA requirement. That finding is plainly reasonable, since the only element Braswell did not satisfy, the drydock access requirement, was irrelevant to performance under this RFP. The only real question here is whether the agency's action prejudiced North Florida. The protester argues that it was prejudiced because it is forced to incur considerable costs in maintaining its drydock while Braswell has allegedly saved money by not maintaining its drydock to the standards required for Navy certification, which is needed to obtain an MSRA.

The record does not support the protester's allegation of prejudice. The Navy states that Braswell's drydock is certified, which means that Braswell is not being spared the cost of maintaining the drydock to the applicable standards.

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<sup>2</sup>The protester alleges that there is an additional issue precluding Braswell from obtaining an MSRA. According to North Florida, Braswell could not perform 55 percent of the contract work with its own workforce within its own facilities, as required for MSRA certification. The Navy confirms that it found that Braswell does have that capability (other than the ability to perform the work under this RFP at its own facility due to the lack of drydock access), and the protester has not offered any basis suggesting that this finding was unreasonable or arbitrary. We therefore reject North Florida's allegation as unsupported.

The Navy's finding that Braswell satisfied the RFP requirement for an MSRA thus did not prejudice North Florida.

The protest is denied.

/s/ Ronald Berger  
for Robert P. Murphy  
General Counsel