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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Specialty Marine, Inc.

File: B-296988

Date: October 11, 2005

Robert E. Korroch, Esq., Williams Mullen, for the protester.
Kenneth T. Rye, Esq., and George Brezna, Esq., Department of the Navy, for the agency.
Kenneth L. Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the time allowed for submission of quotations was unreasonable is denied where the solicited firms received a reasonable time to respond to the solicitation and the agency was under no obligation to solicit the protester.
2. Protest challenging agency's failure to publicly display solicitation is denied where the record supports the agency's use of the unusual and compelling urgency exception to the public display requirement.
3. Protest that the awardee was improperly permitted to alter its quotation is denied where the record supports the agency's assertion that, initially, the quotation was misinterpreted by the contracting specialist and in fact no alteration to the quotation was ever made.

DECISION

Specialty Marine, Inc. (SMI) protests the issuance of a purchase order by the Department of the Navy, Military Sealift Command (MSC), Sealift Logistics Command Atlantic (SEALOGLANT), to Atlantic Fabrication & Boiler Services, Inc. under solicitation No. N2141952135000, to perform a flush of the Central Fresh Water System (CFWS) on a Navy ship. SMI alleges that SEALOGLANT established an unreasonably short response time for receipt of quotations; failed to publicly display the solicitation; and improperly altered the quotation from Atlantic or allowed Atlantic to change the quotation to make it acceptable.

We deny the protest.

According to the agency, a Navy oiler that had recently completed a major reactivation contract required additional repair work. Specifically, an attempted sea trial was cut short due to a rust problem in the ship's CFWS, which provides water to cool various pieces of equipment. The rusty condition of the pipes was discovered on July 8 and 9, 2005. The agency tried less costly remediation methods to rectify the rust problem, finally determining on July 21 that the CFWS needed to be chemically cleaned and flushed. Prior to the system being flushed, the ship would also require "temporary services"--cooling water and low-pressure air services--to continue to operate certain equipment.

The Navy thus prepared two solicitations, each with its own statement of work, one for the temporary services and one for the CFWS flushing; the latter is the subject of this protest. The Navy required the work to be completed promptly, for two reasons. A sea trial was necessary to verify the extensive repairs just completed so that, if necessary, MSC could invoke the warranty clause in the repair contract. Moreover, the Navy asserts that it urgently needed the ship to replace other oilers with mechanical problems. The government estimates were \$20,000 for the temporary services, with a performance period of August 4-8, and \$24,900 for the flushing work, with a performance period of August 8-19.

On July 29, SEALOGLANT orally contacted three potential sources for the temporary services (SMI, Atlantic, and Alliance Technical Services, Inc.) and three for the flushing work (Chemical Cleaning Specialists, Atlantic, and Auxiliary Systems, Inc.). Each firm received the statement of work for the work for which they had been contacted; accordingly, SMI received only the statement of work for the temporary services. Each was advised of a scheduled ship check on August 1 and was told to submit its quotation by 9 a.m. on August 3. The agency did not display or otherwise publicize the solicitations. At the ship check on August 1, SMI requested and received a copy of the statement of work for the flushing work.

Atlantic and SMI submitted the only quotations, and both firms offered quotations for both solicitations. Unlike SMI, Atlantic placed both quotations on one sheet of paper and included the total price for both solicitations. Initially, SEALOGLANT's contract specialist mistakenly viewed Atlantic's total price as its quotation for the CFWS flushing work alone, and therefore incorrectly determined that SMI had submitted the lower quotation for the flushing requirement.

At about 9:30 a.m. on the day quotations were due, the contracting specialist telephoned SMI to advise that it would be receiving purchase orders for both the temporary services and the flushing. A few minutes later, having realized her mistake, the contracting specialist called SMI to advise it of her error and to rescind her prior notice concerning the issuance of a purchase order for the flushing requirement. The contract specialist then called Atlantic and advised that it had submitted the lower quotation for the flushing service and that Atlantic would be receiving a purchase order to flush the ship's CFWS. Shortly thereafter, SMI called

the contracting specialist to say that it was withdrawing its quotation for the temporary services.

SMI alleges that the time allowed for the submission of quotations was unreasonable. Contracting agencies are required to provide a reasonable time for all offerors to respond to solicitations, 41 U.S.C. § 416(a)(5) (2000); Federal Acquisition Regulation (FAR) § 13.003(h)(2). The decision as to the appropriate response time lies within the discretion of the contracting officer. See Crowley Am. Transp., Inc., B-259599.2, June 19, 1995, 95-1 CPD ¶ 277 at 6. There is nothing in the record which would indicate that the contracting officer abused his discretion here. The agency concluded on July 21 that the solution to the rust problem required flushing the system. The agency issued the solicitation 8 days later on July 29, with quotations due August 3, giving the solicited firms 5 days to prepare and submit quotations. As discussed above, the agency states that the Navy's supply of oilers is critically low, and that military readiness mandates that this ship promptly be made seaworthy. In addition, there were concerns that the quality of the renovation work be ascertained, which could not be done absent a sea trial. Given the speed with which the Navy moved to repair this problem with the ship, and the importance of the ship's functioning to the Navy's preparedness, we conclude that the record supports the reasonableness of the contracting officer's exercise of discretion in requiring that quotations be submitted 5 days from the date of the solicitation. See id.

SMI argues not that the 5 days was unreasonable, but that the time that SMI had between when it received the solicitation (the afternoon of August 1) and the time set for submission of quotations (the morning of August 3) was unreasonable. This argument is unpersuasive. The agency was under no obligation to solicit SMI. In using simplified acquisition procedures, agencies are required to promote competition to the maximum extent practicable. FAR § 13.104. Where, as here, a simplified acquisition is not expected to exceed \$25,000, the contracting officer is required to consider solicitation of at least three sources to promote competition to the maximum extent practicable. FAR § 13.104(b); Aleman & Assocs., Inc., B-287275, May 17, 2001, 2001 CPD ¶ 93 at 4. The agency fulfilled this requirement by issuing the flushing solicitation to three firms. Since all firms, regardless of when they received the solicitation, were required to submit quotations by the solicitation's specified due date, SMI did not have as much time as the other, solicited firms in which to prepare its quotation. However, the time period being judged for its reasonableness is that afforded to the firms that were solicited. As explained above, we find the time set by the agency for the submission of quotations reasonable under the particular facts of this case.

SMI also asserts that the agency did not publicly display the solicitation as required by FAR § 5.101(a)(2). For procurements between \$10,000 and \$25,000, such as the one here, the requirements for public notice of the solicitation appear in FAR

§ 5.101(a)(2); that provision requires public display of the solicitation unless one of the enumerated exceptions in FAR § 5.202 applies. While FAR § 5.101(a)(2) is generally applicable to all procurements between \$10,000 and \$25,000, where, as here, the agency has chosen to use simplified acquisition procedures for a procurement in that price range, the notice requirements are established not by FAR § 5.101, but by FAR § 13.105. That provision states that the notice requirements of FAR § 5.101 (including the public display requirement in FAR § 5.101(a)(2)) apply unless “an exception in [FAR §] 5.202 applies.” FAR § 13.105(a)(2). The language does not limit the available exceptions to those enumerated in FAR § 5.101(a)(2). Accordingly, all the exceptions in FAR § 5.202 are available to an agency using simplified acquisition procedures to conduct a procurement with an anticipated value between \$10,000 and \$25,000. See Military Agency Servs. Pty., Ltd., B-290414 et al., Aug. 1, 2002, 2002 CPD ¶ 6-7.

Here, the agency relies on the unusual and compelling urgency exception in FAR § 5.202(a)(2).¹ We will object to an agency’s determination that it has a need for property or services of an unusual and compelling urgency only where the determination lacks a reasonable basis. See Abbott Prods., Inc., B-231131, Aug. 8, 1988, 88-2 CPD ¶ 119 at 6. In this regard, an agency’s assertion that there is a critical need which affects military operations carries considerable weight, and the protester’s burden to show unreasonableness is particularly heavy. Id. As explained above (in the analysis of the whether the response time to the solicitation was reasonable), there is ample support in the record for the agency’s position that there was an urgent need to procure the work called for under both solicitations here.²

¹ Under FAR § 5.202(a)(2), for purchases conducted using simplified acquisition procedures, the exception may be used “if unusual and compelling urgency precludes competition to the maximum extent practicable” We recognize that, in addition to the reference to unusual and compelling urgency, FAR § 5.202(a)(2) ties use of the exception generally to situations where “the Government would be seriously injured if the agency complies with the time periods specified in [FAR §] 5.203.” It is not clear that this provision is intended to apply to simplified acquisitions between \$10,000 and \$25,000, however, since the time periods referenced—those in FAR § 5.203—do not apply to such acquisitions, see FAR §§ 5.101(a)(1), 5.201(b)(1)(i), 5.203; those acquisitions are instead subject to the less stringent time periods in FAR § 5.101(a)(2). In any event, we think the record supports a conclusion that the government would have been seriously injured by complying with the notice period requirements, given the need for the services described above.

² We note that the agency is not required to have a written justification and approval (J&A) for the use of this exception. The requirement for a written J&A is found in FAR § 6.302-2(c)(1); that provision is not applicable to procurements conducted as simplified acquisitions. FAR § 6.001(a).

Given that conclusion, the agency was not obligated to publicly display the solicitation.

SMI also argues that the agency acted improperly by in effect allowing the awardee to alter its quotation. This argument is unsupported by the record. As noted above, the record shows that the awardee's quotations for the two solicitations were submitted on one piece of paper and the contracting specialist mistakenly read the awardee's total quotation for the two solicitations as its quotation for the flushing work alone--a mistake that was quickly recognized and rectified. There simply is no indication of any impropriety by the agency in connection with its consideration of the awardee's quotation. See Pride Mobility Prods. Corp., B-292822.5, Dec. 6, 2004, 2005 CPD ¶ 72 at 5 (contracting officers are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition).

The protest is denied.

Anthony H. Gamboa
General Counsel